11–16–94
Vol. 59 No. 220

federal register

Wednesday
November 16, 1994

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

11–16–94
Vol. 59 No. 220
Pages 59099–59356

Federal Register

Wednesday
November 16, 1994

Briefings on How To Use the Federal Register
For information on briefings in New York, NY and Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806

Online:

Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions	202–512–1530

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
(TWO BRIEFINGS)

WHEN: November 21 at 9:00 am and 1:30 pm
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

NEW YORK, NY

WHEN: December 13, 9:30 am–12:30 pm
WHERE: National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY
RESERVATIONS: 1–800–347–1997

Contents

Federal Register

Vol. 59, No. 220

Wednesday, November 16, 1994

Separate Parts In This Issue

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.

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 59, No. 220
Wednesday, November 16, 1994

Presidential Documents

Title 3—

The President

Executive Order 12938 of November 14, 1994

Proliferation of Weapons of Mass Destruction

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act, as amended (22 U.S.C. 2751 *et seq.*), Executive Orders Nos. 12851 and 12924, and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, find that the proliferation of nuclear, biological, and chemical weapons ("weapons of mass destruction") and of the means of delivering such weapons, constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.

Accordingly, I hereby order:

Section 1. *International Negotiations.* It is the policy of the United States to lead and seek multilaterally coordinated efforts with other countries to control the proliferation of weapons of mass destruction and the means of delivering such weapons. Accordingly, the Secretary of State shall cooperate in and lead multilateral efforts to stop the proliferation of weapons of mass destruction and their means of delivery.

Sec. 2. *Imposition of Controls.* As provided herein, the Secretary of State and the Secretary of Commerce shall use their respective authorities, including the Arms Export Control Act and the International Emergency Economic Powers Act, to control any exports, to the extent they are not already controlled by the Department of Energy and the Nuclear Regulatory Commission, that either Secretary determines would assist a country in acquiring the capability to develop, produce, stockpile, deliver, or use weapons of mass destruction or their means of delivery. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this order.

Sec. 3. *Department of Commerce Controls.* (a) The Secretary of Commerce shall prohibit the export of any goods, technology, or services subject to the Secretary's export jurisdiction that the Secretary of Commerce determines, in consultation with the Secretary of State, the Secretary of Defense, and other appropriate officials, would assist a foreign country in acquiring the capability to develop, produce, stockpile, deliver, or use weapons of mass destruction or their means of delivery. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this section.

(b) Subsection (a) of this section will not apply to exports relating to a particular category of weapons of mass destruction (i.e., nuclear, chemical, or biological weapons) if their destination is a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of that category of weapons of mass destruction-related goods (including delivery systems) and technology, or maintains domestic export controls comparable to controls that are imposed by the United States with respect to that category of goods and technology, or that are otherwise deemed adequate by the Secretary of State.

(c) The Secretary of Commerce shall require validated licenses to implement this order and shall coordinate any license applications with the Secretary of State and the Secretary of Defense.

(d) The Secretary of Commerce, in consultation with the Secretary of State, shall take such actions, including the promulgation of rules, regulations, and amendments thereto, as may be necessary to continue to regulate the activities of United States persons in order to prevent their participation in activities that could contribute to the proliferation of weapons of mass destruction or their means of delivery, as provided in the Export Administration Regulations, set forth in Title 15, Chapter VII, Subchapter C, of the Code of Federal Regulations, Parts 768 to 799 inclusive.

Sec. 4. *Sanctions Against Foreign Persons.* (a) In addition to the sanctions imposed on foreign persons as provided in the National Defense Authorization Act for Fiscal Year 1991 and the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, sanctions also shall be imposed on a foreign person with respect to chemical and biological weapons proliferation if the Secretary of State determines that the foreign person on or after the effective date of this order or its predecessor, Executive Order No. 12735 of November 16, 1990, knowingly and materially contributed to the efforts of any foreign country, project, or entity to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(b) No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods or services from any foreign person described in subsection (a) of this section. The Secretary of the Treasury shall prohibit the importation into the United States of products produced by that foreign person.

(c) Sanctions pursuant to this section may be terminated or not imposed against foreign persons if the Secretary of State determines that there is reliable evidence that the foreign person concerned has ceased all activities referred to in subsection (a).

(d) The Secretary of State and the Secretary of the Treasury may provide appropriate exemptions for procurement contracts necessary to meet U.S. operational military requirements or requirements under defense production agreements, sole source suppliers, spare parts, components, routine servicing and maintenance of products, and medical and humanitarian items. They may provide exemptions for contracts in existence on the date of this order under appropriate circumstances.

Sec. 5. *Sanctions Against Foreign Countries.* (a) In addition to the sanctions imposed on foreign countries as provided in the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, sanctions also shall be imposed on a foreign country as specified in subsection (b) of this section, if the Secretary of State determines that the foreign country has, on or after the effective date of this order or its predecessor, Executive Order No. 12735 of November 16, 1990, (1) used chemical or biological weapons in violation of international law; (2) made substantial preparations to use chemical or biological weapons in violation of international law; or (3) developed, produced, stockpiled, or otherwise acquired chemical or biological weapons in violation of international law.

(b) The following sanctions shall be imposed on any foreign country identified in subsection (a)(1) of this section unless the Secretary of State determines, on grounds of significant foreign policy or national security, that any individual sanction should not be applied. The sanctions specified in this section may be made applicable to the countries identified in subsections (a)(2) or (a)(3) when the Secretary of State determines that such action will further the objectives of this order pertaining to proliferation. The sanctions specified in subsection (b)(2) below shall be imposed with the concurrence of the Secretary of the Treasury.

(1) *Foreign Assistance.* No assistance shall be provided to that country under the Foreign Assistance Act of 1961, or any successor act, or the

Arms Export Control Act, other than assistance that is intended to benefit the people of that country directly and that is not channeled through governmental agencies or entities of that country.

(2) *Multilateral Development Bank Assistance.* The United States shall oppose any loan or financial or technical assistance to that country by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d).

(3) *Denial of Credit or Other Financial Assistance.* The United States shall deny to that country any credit or financial assistance by any department, agency, or instrumentality of the United States Government.

(4) *Prohibition of Arms Sales.* The United States Government shall not, under the Arms Export Control Act, sell to that country any defense articles or defense services or issue any license for the export of items on the United States Munitions List.

(5) *Exports of National Security-Sensitive Goods and Technology.* No exports shall be permitted of any goods or technologies controlled for national security reasons under the Export Administration Regulations.

(6) *Further Export Restrictions.* The Secretary of Commerce shall prohibit or otherwise substantially restrict exports to that country of goods, technology, and services (excluding agricultural commodities and products otherwise subject to control).

(7) *Import Restrictions.* Restrictions shall be imposed on the importation into the United States of articles (that may include petroleum or any petroleum product) that are the growth, product, or manufacture of that country

(8) *Landing Rights.* At the earliest practicable date, the Secretary of State shall terminate, in a manner consistent with international law, the authority of any air carrier that is controlled in fact by the government of that country to engage in air transportation (as defined in section 101(10) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(10)).

Sec. 6. *Duration.* Any sanctions imposed pursuant to sections 4 or 5 of this order shall remain in force until the Secretary of State determines that lifting any sanction is in the foreign policy or national security interests of the United States or, as to sanctions under section 4 of this order, until the Secretary has made the determination under section 4(c).

Sec. 7. *Implementation.* The Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce are hereby authorized and directed to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this order. These actions, and in particular those in sections 4 and 5 of this order, shall be made in consultation with the Secretary of Defense and, as appropriate, other agency heads and shall be implemented in accordance with procedures established pursuant to Executive Order No. 12851. The Secretary concerned may redelegate any of these functions to other officers in agencies of the Federal Government. All heads of departments and agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this order, including the suspension or termination of licenses or other authorizations.

Sec. 8. *Preservation of Authorities.* Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under the authority of the International Economic Emergency Powers Act, the Export Administration Act, the Arms Export Control Act, the Nuclear Non-proliferation Act, Executive Order No. 12730 of September 30, 1990, Executive Order No. 12735 of November 16, 1990, Executive Order No. 12924 of August 18, 1994, and Executive Order No. 12930 of September 29, 1994.

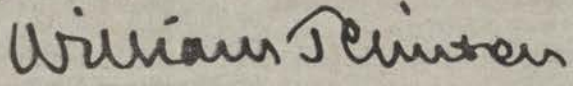
Sec. 9. *Judicial Review.* This order is not intended to create, nor does it create, any right or benefit, substantive or procedural, enforceable at

law by a party against the United States, its agencies, officers, or any other person.

Sec. 10. *Revocation of Executive Orders Nos. 12735 and 12930.* Executive Order No. 12735 of November 16, 1990, and Executive Order No. 12930 of September 29, 1994, are hereby revoked.

Sec. 11. *Effective Date.* This order is effective immediately.

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



THE WHITE HOUSE,
November 14, 1994.

[FR Doc. 94-28487
Filed 11-14-94; 3:16 pm]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 59, No. 220
Wednesday, November 16, 1994

GENERAL ACCOUNTING OFFICE

4 CFR Parts 28 and 29

Personnel Appeals Board; Procedural Regulations

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Interim rule with request for comments.

SUMMARY: The jurisdiction of the General Accounting Office Personnel Appeals Board has recently been expanded by the Architect of the Capitol Human Resources Act, which became effective on July 22, 1994. Under this new legislation, employees of the Architect of the Capitol may file appeals with the Board alleging discrimination in employment based on race, color, sex, national origin, religion, age, or disability. They may also file appeals alleging retaliation for exercising rights under the new law. The Board is issuing procedural regulations to implement this new authority. The regulations below also include a few conforming amendments to the procedures governing claims filed by employees of the General Accounting Office, and a change to the procedures for obtaining judicial review of Board decisions necessitated by a recent decision of the United States Court of Appeals for the District of Columbia Circuit. Because of the need to have procedures in place to implement the Board's new jurisdiction, these regulations are being made effective immediately, on an interim basis. The Board is, however, very interested in receiving comments from the public before it finalizes these regulations.

DATES: These interim regulations are effective on November 16, 1994. Comments on these regulations must be received by the Board on or before February 24, 1995.

ADDRESSES: Comments should be addressed to: Patricia Reardon, Clerk of the Board, General Accounting Office Personnel Appeals Board, Suite 830, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Barbara Lipsky, Attorney, Personnel Appeals Board, 202–512–6137.

SUPPLEMENTARY INFORMATION: The Architect of the Capitol Human Resources Act, Pub. L. 103–283, sec. 312, 108 Stat. 1443, went into effect on July 22, 1994. Under this new legislation, the Architect of the Capitol is required to "establish and maintain a personnel management system that incorporates fundamental principles that exist in other modern personnel systems." *Id.* at sec. 312(b)(2). One important part of the Act requires that all personnel actions affecting employees of the Architect of the Capitol be taken free from discrimination based on race, color, religion, sex, national origin, age, or disability. *Id.* at sec. 312(e)(2)(A). The Act also bans intimidation of or reprisal against employees who exercise their rights under the Act. *Id.* at sec. 312(e)(2)(B). In order to ensure enforcement of these rights, the Act authorizes employees of the Architect of the Capitol to file charges alleging discrimination or retaliation with the General Accounting Office Personnel Appeals Board. *Id.* at sec. 312(e)(3)(A).

The regulations set forth in Part 29 below provide the procedures that will govern this new area of the Board's jurisdiction. Because the Board needs to have procedures in place to address any charge that is filed by an Architect of the Capitol employee, these regulations are being made effective immediately, on an interim basis. At the same time, however, the Board is soliciting comments on the regulations from the Architect of the Capitol and its employees, the General Accounting Office and its employees, and the public. These comments will be considered fully before final regulations are adopted.

In drafting these regulations, the Board has attempted, wherever possible, to adopt the same procedures that are applicable to cases brought before the Board by employees of the General Accounting Office (GAO). In the Architect of the Capitol Human Resources Act, Congress stated that employees of the Architect of the Capitol may file a charge with the Board "in accordance with the General Accounting Office Personnel Act of 1980 [GAOPA] (31 U.S.C. 751–55)." *Id.* at sec. 312(e)(3)(A). The referenced sections of the GAOPA establish both the Board and its General Counsel. The Board is authorized to hear and to adjudicate certain personnel appeals by GAO employees, and the General Counsel is empowered to investigate prohibited personnel practices (including prohibited discrimination) and other matters within the Board's jurisdiction. 31 U.S.C. 752–753. Pursuant to its authority under 31 U.S.C. 753(d), the Board has long had published regulations which define the role of the General Counsel and the procedures to be followed in pursuing an appeal before the Board. See, 4 CFR Part 28. The Board concludes that, by selecting the PAB to hear appeals from employees of the Architect of the Capitol and by stating that such appeals should be filed "in accordance with" the GAOPA, Congress intended the Board to follow the same enforcement scheme for Architect of the Capitol employees as it does for GAO employees.

As a result, the Board's General Counsel will play the same important enforcement role for Architect of the Capitol employees as he does for GAO employees. Charges of discrimination or retaliation will initially be filed with and investigated by the Board's General Counsel. See § 29.8 below. If the General Counsel concludes that there are reasonable grounds to believe that the employee's rights have been violated, the General Counsel will represent the individual before the Board, unless the individual elects not to be represented by the General Counsel. § 29.9(d). This access to professional representation is a significant procedural benefit. The General Counsel is not, however, a "gatekeeper" who can limit an employee's right to present his or her case to the Board. If the General Counsel does not find reasonable grounds to believe that there has been discrimination or retaliation, the employee may still pursue the matter before the Board on his or her own or with private counsel.

Under the procedures applicable to GAO, the Board's General Counsel may also initiate proceedings in his or her

own name before the Board seeking corrective action, disciplinary action, or a stay of a personnel action, where the General Counsel concludes that there is reason to believe that a prohibited personnel practice (including prohibited discrimination) is occurring or has occurred. See, 4 CFR Part 28, Subpart G. The Board's General Counsel will also have this same enforcement authority with respect to alleged discriminatory practices within the Architect of the Capitol. See, § 29.12 below.

Some other notable features of the new part 29 are summarized below:

1. *Definition of "Employee of the Architect of the Capitol" (§ 29.2):* The term "employee of the Architect of the Capitol" is specifically defined in the Architect of the Capitol Human Resources Act. See, Pub. L. 103–283, sec. 312(e)(1)(A). That definition is restated in the Board's regulations. It includes all employees of the Architect of the Capitol, the Botanic Garden, and the Senate restaurants. It does not include House of Representatives garage or parking lot attendants. "Employee" encompasses not only current employees, but also applicants for employment and former employees when certain specified requirements are met. Every time the term "employee of the Architect of the Capitol" or "employee" is used in the regulations, it includes all the individuals covered by the definition in § 29.2.

2. *Description of the Board's jurisdiction over claims of retaliation (§ 29.3(b)):* The Architect of the Capitol Human Resources Act prohibits "intimidation of, or reprisal against," any employee because of the exercise of a right under the Act. See, Pub. L. 103–283, sec. 312(e)(2)(B). In order to assist employees in knowing what actions are covered by this term, the regulation enumerates four particular kinds of retaliation claims that may be brought before the Board. This list is patterned after the language of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–3. Using Title VII as a model is appropriate because the Architect of the Capitol Human Resources Act itself refers to Title VII to provide a definition of what constitutes unlawful discrimination. See, sec. 312(e)(2)(A).

3. *Exhaustion of administrative remedies (§ 29.6):* The Architect of the Capitol Human Resources Act states that an employee may not file a charge with the Board until that employee has first filed a complaint of discrimination with the Architect of the Capitol and exhausted the remedies provided by the Architect for the resolution of such complaints. Public Law 103–283, sec. 312(e)(3)(A). The Board's regulations define what constitutes exhaustion of those remedies. The Board will consider the Architect's internal procedures to be exhausted when either of the following occurs: (a) The employee receives a final decision on his or her complaint; or (b) 120 days have passed without the issuance of a final decision by the Architect. This latter provision is important to ensure that employees have a meaningful right to present their claims to the Board, while witness memories are still fresh and effective relief can be fashioned. The same provision is contained in the Board's regulations applicable to GAO employees. See, 4 CFR 28.98(b)(2). It is also comparable to the procedures followed in the executive branch for appeals of discrimination claims. See, 5 CFR 1201.154(b)(2); 29 CFR 1614.108(f).

The Board appreciates, however, that this provision may work a hardship for complaints that are already pending before the Architect of the Capitol on the date that these interim regulations are adopted. For such pending cases, it may be difficult for the Architect to issue a decision within 120 days because it had no prior notice that the Board would consider administrative remedies exhausted after that point. To ameliorate this problem, the Board is adopting a special rule applicable only to charges filed with the Board's General Counsel prior to March 1, 1995. Such charges may still be filed with the Board's General Counsel after the passage of 120 days if no final decision has been issued by the Architect of the Capitol. However, once the charge is filed, the Architect may, upon request, obtain a deferral of proceedings on the charge for up to 60 days in order to permit the Architect to issue a final decision on the claim. This special rule will not apply to charges filed with the General Counsel after March 1, 1995, and will not be included in the Board's final rules.

4. *Class Actions (§§ 29.6 and 29.8):* These regulations permit an employee to file a charge as representative of a class of employees of the Architect of the Capitol. GAO employees currently enjoy this right, as do executive branch employees. See, 4 CFR 28.97; 29 CFR 1614.204. In interpreting the ban on discrimination in Federal employment contained in Title VII of the Civil Rights Act, the United States District Court for the District of Columbia held that executive branch agencies must accept class complaints and provide class relief in appropriate circumstances. *Barrett* v. *U.S. Civil Service Commission*, 69 F.R.D. 544 (D.D.C. 1975). A similar interpretation of the Architect of the Capitol Human Resources Act is justified, as it essentially extends the Title VII ban on discrimination to the Architect of the Capitol.

5. *Time periods for filing charges with the General Counsel or petitions for review with the Board (§§ 29.8 and 29.10):* The current regulations applicable to claims filed by employees of the GAO require such employees to file a charge with the Board's General Counsel within 20 days after receiving the agency's decision on a complaint of discrimination or retaliation. 4 CFR 28.98(b). Similarly, employees have 20 days after service of a Right to Appeal Letter by the Board's General Counsel, in which to file a petition for review with the Board. 4 CFR 28.18(b). The Board was concerned that this 20-day period may not provide sufficient time for employees of the Architect of the Capitol to file their claims with the Board and its General Counsel. The Board is not a part of their agency and it is not located in one of their buildings. It will take some time for employees of the Architect of the Capitol to become familiar with the Board's existence, its procedures, and its location. For this reason the Board has increased the time period for filing charges with the General Counsel and petitions for review with the Board to 30 days. In order to have consistent regulations for the two agencies within the Board's jurisdiction, the Board is also increasing these filing times to 30 days for claims filed by employees of the General Accounting Office.

6. *Application of these regulations to pending cases (§ 29.13):* The Architect of the Capitol Human Resources Act became effective on July 22, 1994. From that date forward, employees of the Architect of the Capitol have enjoyed the right to bring their claims of discrimination to the Board, once they have exhausted the necessary remedies within their agency. The legislative history of the Act carves out one exception to this rule. Certain employees of the Architect of the Capitol had the right, prior to July 22, 1994, to file a complaint of discrimination with the Office of Senate Fair Employment Practices. See, Government Employee Rights Act of 1991, 2 U.S.C. 1201. Any complaint of discrimination that was pending with or on appeal from that office on July 22, 1994, is to continue to be processed by that office, pursuant to the procedures of the Government Employee Rights Act of 1991. See, H. R. Rep. No. 103–567, 103d Cong., 2d Sess. at 14 (1994).

Changes to the Procedures Applicable to Employees of the General Accounting Office

The adoption of the new regulations concerning employees of the Architect of the Capitol necessitates certain conforming amendments to 4 CFR Part 28, which sets forth the procedures applicable to employees of the GAO. In addition, the Board is amending the provisions of its regulations concerning judicial review of Board decisions to reflect a recent decision by the United States Court of Appeals for the District of Columbia Circuit. These changes are described below.

1. *Purpose and scope (§ 28.1):* Section 28.1 has been amended to make clear that the procedures in Part 28 implement the Board's authority with respect to GAO employees, while the procedures applicable to Architect of the Capitol employees are set forth in Part 29.

2. *Time periods for filing charges with the Board's General Counsel and for filing petitions for review with the Board (§§ 28.11, 28.18, and 28.98):* The Board is expanding the time periods for filing charges with the Board's General Counsel and for filing petitions for review with the Board. GAO employees will now have 30 days following the relevant agency action in which to file charges with the Board's General Counsel. In addition, they will have 30 days following service of a Right to Appeal Letter by the Board's General Counsel in which to file a petition for review with the Board.

As discussed above, the Board concluded that expanded filing periods were necessary in order to give employees of the Architect of the Capitol sufficient time in which to exercise their appeal rights. The Board decided that it was desirable to have one consistent set of time frames applicable to all claims that are filed with the Board. It therefore decided to extend these expanded time periods to claims filed by GAO employees. As a result, GAO employees will also have the benefit of additional time in which to make decisions about their appeal options, and to prepare and submit their papers to the Board. See changes below to §§ 28.11(b), 28.18(b), and 28.98(b) and (c).

3. *Judicial review of Board decisions (§ 28.90):* Two changes have been made to the procedures for seeking judicial review of Board decisions. First, the Architect of the Capitol Human Resources Act amended the Board's governing statute to make clear that final Board decisions concerning Architect of the Capitol employees may be appealed to the United States Court of Appeals for the Federal Circuit. See, Pub. L. 103–283, sec. 312(e)(4)(C). This statutory change is reflected in the amendment to § 28.90(a) below.

Several sections of the Board's regulations that concern judicial remedies have also been amended in light of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Ramey* v. *Bowsher*, 9 F.3d 133 (D.C. Cir. 1993). For many years, the Board's regulations have provided that employees complaining of unlawful discrimination on the basis on race, color, religion, sex, national origin, age, or disability may file suit in Federal district court even after they have received a final decision from the Board on their claim. See, current 4 CFR 28.100. In *Ramey*, the District of Columbia Circuit held that the Board's interpretation was erroneous and that an employee's only recourse following a final decision of the Board on a claim of discrimination is to seek appellate review before the United States Court of Appeals for the Federal Circuit.

Ramey is binding in the District of Columbia Circuit where a great many of the employees within the Board's jurisdiction are employed and would be bringing suit. While there exists the possibility that another circuit might some day render a different interpretation, it is clear that the Board has no authority to define the jurisdiction of the Federal courts. A Board regulation on this subject, therefore, could not be binding and might have the effect of giving employees erroneous advice on their judicial remedies. For this reason, the Board has decided to confine the scope of its regulations to the conduct of matters before the Board, and to eliminate any interpretations concerning what alternate judicial remedies might be available to employees. The Board has, therefore, deleted § 28.100 in its entirety and eliminated all cross references to that section. See changes to §§ 28.17, 28.90, 28.100, and 28.101.

The Board will retain § 28.90 which informs employees of the procedures for seeking judicial review of a final Board decision before the Federal Circuit. This is retained because such appeals are explicitly authorized by the Board's governing statute and because there is no legal dispute about an employee's right to file such appeals. The legal uncertainty highlighted by the *Ramey* case concerns whether GAO employees have any other options for obtaining judicial consideration of their claims of discrimination. The Board will leave that matter for resolution by the courts.

List of Subjects

4 CFR Part 28

Administrative practice and procedure, Equal employment opportunity, Government employees, Labor-management relations.

4 CFR Part 29

Administrative practice and procedure, Equal employment opportunity, Government employees.

For the reasons set out in the preamble, Title 4, Chapter I, Subchapter B, Code of Federal Regulations, is amended as follows.

1. The authority citation for Part 28 continues to read as follows:

Authority: 31 U.S.C. 753.

2. The heading of Part 28 is revised to read as follows:

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GENERAL ACCOUNTING OFFICE

3. and 4. Section 28.1 is revised to read as follows:

§ 28.1 Purpose and scope.

(a) The regulations in this part implement the Board's authority with respect to employment practices within the General Accounting Office (GAO), pursuant to the General Accounting Office Personnel Act of 1980, 31 U.S.C. 751–755. Regulations implementing the Board's authority with respect to employment practices within the Architect of the Capitol, pursuant to the Architect of the Capitol Human Resources Act, Public Law 103–283, sec. 312, 108 Stat. 1443 (July 22, 1994), appear in 4 CFR part 29.

(b) The purpose of the rules in this part is to establish the procedures to be followed:

(1) By the GAO, in its dealings with the Board;

(2) By employees of the GAO or applicants for employment with the GAO, or by groups or organizations claiming to be affected adversely by the operations of the GAO personnel system;

(3) By employees or organizations petitioning for protection of rights or extension of benefits granted to them under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.; and

(4) By the Board, in carrying out its responsibilities under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.

(c) The scope of the Board's operations encompasses the investigation and, where necessary,

adjudication of cases arising under 31 U.S.C. 753. In addition, the Board has authority for oversight of the equal employment opportunity program at GAO. This includes the review of policies and evaluation of operations as they relate to EEO objectives and, where necessary, the ordering of corrective action for violation of or inconsistencies with equal employment opportunity laws.

(d) In considering any procedural matter not specifically addressed in these rules, the Board will be guided, but not bound, by the Federal Rules of Civil Procedure.

5. Paragraph (b) of § 28.11 is revised to read as follows:

§ 28.11 Filing a charge with the General Counsel.

* * * * *

(b) *When to file.* (1) Charges relating to adverse and performance-based actions must be filed within 30 days after the effective date of the action.

(2) Charges relating to other personnel actions must be filed within 30 days after the effective date of the action or 30 days after the charging party knew or should have known of the action.

(3) Charges which include an allegation of prohibited discrimination shall be filed in accordance with the special rules set forth in § 28.98.

(4) Charges relating to continuing violations may be filed at any time.

* * * * *

6. Paragraph (c)(3) of § 28.17 is revised to read as follows:

§ 28.17 Internal appeals of Board employees.

* * * * *

(c) * * *

(3) In any event, whoever is so appointed shall possess all of the powers and authority possessed by the Board in employee appeals cases. The decision of the administrative law judge, administrative judge or arbitrator shall be a final decision of the Board, in the same manner as if rendered by the Board under § 28.86(e). The procedure for judicial review of the decision shall be the same as that described in § 28.90.

* * * * *

7. Paragraph (b) of § 28.18 is revised to read as follows:

§ 28.18 Filing a petition for review with the Board.

* * * * *

(b) *When to file.* Petitions for review must be filed within 30 days after service upon the charging party of the Right to Appeal Letter from the General Counsel.

* * * * *

8. Section 28.90 is amended by revising paragraph (a), removing paragraph (b) and redesignating paragraph (c) as paragraph (b) as follows:

§ 28.90 Board procedures; judicial review.

(a) A final decision by the Board under 31 U.S.C. 753(a) (1), (2), (3), (6), (7) or (9) may be appealed to the United States Court of Appeals for the Federal Circuit within 30 days after the petitioner receives notice of the Board's decision.

* * * * *

9. Paragraphs (b)(1), (b)(3) and (c)(1) of § 28.98 are revised to read as follows:

§ 28.98 Individual charges in EEO cases.

* * * * *

(b) * * *

(1) Within 30 days from the receipt by the charging party of a GAO decision rejecting the complaint in whole or part;

(2) * * *

(3) Within 30 days from the receipt by the charging party of a final GAO decision concerning the complaint of discrimination.

(c) * * *

(1) File a charge directly with the Board's General Counsel within 30 days of the effective date of the personnel action and raise the issue of discrimination in the course of the proceedings before the Board; or

* * * * *

§ 28.100 [Removed and Reserved]

10. Section 28.100 is removed and reserved.

11. Section 28.101 is revised to read as follows:

§ 28.101 Termination of Board proceedings when suit is filed in Federal District Court.

Any proceeding before the Board shall be terminated when an employee or applicant who is alleging violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16, the Rehabilitation Act, 29 U.S.C. 791, or the Age Discrimination in Employment Act, 29 U.S.C. 633a, files suit in Federal District Court.

12. Part 29 is added to read as follows:

PART 29—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE ARCHITECT OF THE CAPITOL

Sec.

Authority: 31 U.S.C. 753.

§ 29.1 Purpose and scope.

(a) The purpose of this part is to implement the Board's authority under the Architect of the Capitol Human Resources Act, Public Law 103–283, sec. 312, 108 Stat. 1443 (July 22, 1994). That act authorizes the Board to adjudicate certain claims of discrimination and retaliation brought by employees of the Architect of the Capitol. The rules contained in this part establish the procedures to be followed by:

(1) Employees of the Architect of the Capitol in pursuing discrimination and retaliation claims before the Board;

(2) The Architect of the Capitol in its dealings with the Board; and

(3) The Board in carrying out its responsibilities under the Architect of the Capitol Human Resources Act.

(b) In considering any procedural matter not specifically addressed by these rules, the Board will be guided, but not bound, by the Federal Rules of Civil Procedure.

§ 29.2 Definitions.

In this part—

Board means the General Accounting Office Personnel Appeals Board as established by 31 U.S.C. 751.

Charge means an allegation, filed with the Board's General Counsel, of an unlawful discriminatory practice that is within the Board's jurisdiction under the Architect of the Capitol Human Resources Act, Public Law 103–283, sec. 312, 108 Stat. 1443 (July 22, 1994).

Charging party means an individual filing a charge with the Board's General Counsel.

Clerk of the Board means the individual appointed by the Board to receive papers filed with the Board, to maintain the Board's official files, and to advise parties and members of the public on the Board's procedures.

Days mean calendar days.

Employee of the Architect of the Capitol means any employee of or applicant for employment with the Architect of the Capitol, the Botanic

Garden, or the Senate restaurants. It also includes, within 180 days after the termination of such employment, any individual who was formerly an employee of the Architect of the Capitol, the Botanic Garden, or the Senate restaurants, and whose claim of violation arises out of such employment. The term "employee of the Architect of the Capitol" does not include any individual who is a House of Representatives garage or parking lot attendant, including the superintendent.

General Counsel means the General Counsel of the Board, as provided for under 31 U.S.C. 752.

Petition for Review means any request filed with the Board for action to be taken on matters within the Board's jurisdiction pursuant to the Architect of the Capitol Human Resources Act, Public Law 103–283, sec. 312, 108 Stat. 1443 (July 22, 1994).

Petitioner means any individual filing a petition for review with the Board.

Solicitor means the attorney appointed by the Board to provide advice and assistance to the Board in carrying out its adjudicatory functions and to advise parties and members of the public on the Board's procedures.

§ 29.3 Jurisdiction of the Board.

(a) The Board has jurisdiction to hear and adjudicate claims brought by employees of the Architect of the Capitol alleging discrimination in employment based on:

(1) Race, color, religion, sex, or national origin, within the meaning of section 717 of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16;

(2) Age, within the meaning of section 15 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 633a; or

(3) Handicap or disability, within the meaning of section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, and sections 102 through 104 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12112–12114.

(b) The Board has jurisdiction to hear and adjudicate claims brought by any individual alleging that he or she was subjected, by any employee of the Architect of the Capitol, to intimidation or reprisal because of the exercise of any right under the Architect of the Capitol Human Resources Act. This includes claims of retaliation against an individual because he or she:

(1) Opposed practices made unlawful by the Architect of the Capitol Human Resources Act;

(2) Filed a charge or petition for review with the Board;

(3) Utilized the internal procedures provided by the Architect of the Capitol for the resolution of claims of discrimination or reprisal including, but not limited to, the filing of a request for formal or informal advice or the filing of a formal complaint; or

(4) Participated in any proceedings before the Board or the Architect of the Capitol for the resolution of complaints of discrimination or reprisal.

(c) The Board has jurisdiction over proceedings brought by the Board's General Counsel seeking:

(1) Corrective action for alleged employment discrimination or retaliation (as described in paragraphs (a) and (b) of this section) by the Architect of the Capitol;

(2) Disciplinary action against an employee of the Architect of the Capitol who has allegedly engaged in employment discrimination or retaliation as described in paragraphs (a) and (b) of this section;

(3) A stay of a personnel action that has occurred or is about to occur and that is alleged to involve unlawful discrimination or retaliation of the kind described in paragraphs (a) and (b) of this section.

§ 29.4 Computation of time.

For the purposes of this part, time will be computed in the manner described in 4 CFR 28.4.

§ 29.5 Informal procedural advice.

Any party or member of the public may seek advice on all aspects of the Board's procedures by contacting the Board's Solicitor, the Board's General Counsel or the Clerk of the Board. Informal advice will be supplied within the limits of available time and staff.

§ 29.6 Requirement for exhaustion of internal administrative remedies provided by the Architect of the Capitol.

(a) *General.* Under the provisions of the Architect of the Capitol Human Resources Act, any employee of the Architect of the Capitol who wishes to pursue a claim of discrimination or retaliation before the Board must first file an internal complaint with the Architect of the Capitol and exhaust the procedures for resolving such complaints. The procedures for filing such complaints are at present set forth in the Equal Employment Opportunity Procedures Manual issued by the Architect of the Capitol. The internal procedures for resolving complaints of discrimination or retaliation will be considered exhausted when either of the following occurs:

(1) The employee receives a final decision by the Architect of the Capitol on his or her complaint of discrimination or retaliation; or

(2) 120 days have passed after the filing of an internal complaint of discrimination or retaliation and the Architect of the Capitol has not issued a final decision on the complaint.

(b) *Class claims.* An employee of the Architect of the Capitol who wishes to seek relief before the Board for a class of employees shall first file an internal complaint of discrimination or retaliation with the Architect of the Capitol and exhaust the internal remedies for resolution of such complaints as described in paragraph (a) of this section. It is not necessary that the employee raise class allegations in his or her internal complaint in order to be able to pursue the matter as a class action before the Board.

(c) *Filing a charge with the Board's General Counsel following exhaustion of administrative remedies.* If, following the exhaustion of internal administrative remedies as described in paragraphs (a) or (b) of this section, an employee of the Architect of the Capitol wishes to pursue the matter before the Board, the employee may file a charge with the Board's General Counsel. The procedures for filing such a charge are set forth in § 29.8.

(d) *Special rule applicable to charges filed with the General Counsel prior to March 1, 1995.* A special rule applies to charges filed with the General Counsel prior to March 1, 1995. For these charges only, the General Counsel shall defer proceedings on the charge for no more than 60 days if the Architect of the Capitol certifies that such action is necessary to enable the Architect to issue a final decision on the charging party's internal complaint of discrimination or retaliation.

§ 29.7 Notice of appeal rights.

(a) The Architect of the Capitol shall be responsible for ensuring that employees are routinely advised of their appeal rights to the Board. Any final decision on an internal complaint of discrimination shall include a notice of the complainant's right to pursue the matter before the Board including:

(1) The time limits for appealing to the Board;

(2) The address of the Board;

(3) The employee's right to representation before the Board;

(4) The availability of a hearing before the Board where factual issues are in dispute; and

(5) The employee's right to a reasonable amount of official time for the preparation and presentation of his or her appeal.

(b) A copy of the Board's regulations shall be attached to the notice required by paragraph (a) of this section. The

notice shall also be accompanied by proof of service.

§ 29.8 Filing a charge with the General Counsel.

(a) *Who may file.* Any employee of the Architect of the Capitol who claims that he or she has been subjected to unlawful discrimination or retaliation (as defined in § 29.3) may file a charge with the Board's General Counsel. One or more employees may file a charge as representative of a class of employees of the Architect of the Capitol.

(b) *When to file.* A charge by an employee of the Architect of the Capitol must be filed at either of the following times:

(1) Within 30 days after the receipt of a final decision by the Architect of the Capitol on the employee's internal complaint of discrimination or retaliation; or

(2) At any time after the passage of 120 days following the filing of an internal complaint of discrimination or retaliation, if the Architect of the Capitol has not yet issued a final decision on the internal complaint.

(c) *How to file.* Charges may be filed with the General Counsel in person or by mail. Please note that the address to be used differs for the two kinds of filing.

(1) *Filing in person:* A charge may be filed in person at the Office of the General Counsel, Suite 840, Union Center Plaza II, 820 First St., NE., Washington, DC.

(2) *Filing by mail:* A charge may be filed by mail addressed to the General Counsel, Personnel Appeals Board, Suite 840, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548. When filed by mail, the postmark shall be date of filing for all submissions to the General Counsel.

(d) *What to file.* The charge should include the following information:

(1) Name, address, and telephone number of the charging party. In the case of a class action, a clear description of the class of employees on whose behalf a charge is filed;

(2) The names and titles of persons, if any, responsible for actions the charging party wishes to have the General Counsel review;

(3) The actions complained about, including dates and reason given;

(4) The charging party's reasons for believing that the actions taken constitute unlawful discrimination;

(5) Remedies sought by the charging party;

(6) Information concerning the charging party's exhaustion of administrative remedies before the Architect of the Capitol, including the date the internal complaint of discrimination was filed and, if applicable, the date on which the employee received a final decision from the Architect of the Capitol on his or her complaint of discrimination;

(7) Name and address of the representative, if any, who will act for the charging party;

(8) Signature of the charging party or the charging party's representative.

(e) *Attorney fees only issue raised.* The General Counsel shall not represent the petitioner when the only issue raised is attorney fees. When attorney fees are the only issue raised in a charge to the General Counsel, the General Counsel shall transmit the charge to the Board for processing as a petition for review.

§ 29.9 General Counsel procedures.

(a) The General Counsel shall serve on the Architect of the Capitol a copy of the charge, investigate the matters raised in the charge, refine the issues where appropriate, and attempt to settle all matters at issue.

(b) The General Counsel's investigation may include gathering information from the Architect of the Capitol, and interviewing and taking statements from witnesses. Employees of the Architect of the Capitol shall be on official time during the time that they are responding to any requests from the General Counsel.

(c) Following the investigation, the General Counsel shall provide the charging party with a Right to Appeal Letter. Accompanying this letter will be a statement of the General Counsel advising the charging party of the results of the investigation. This statement of the General Counsel is not subject to discovery and may not be introduced into evidence before the Board.

(d) If, following the investigation, the General Counsel determines that there are not reasonable grounds to believe that the charging party has been subjected to unlawful discrimination or retaliation as described in § 29.3, then the General Counsel shall not represent the charging party. If the General Counsel determines that there are reasonable grounds to believe that the charging party has been subjected to such discrimination or retaliation, then the General Counsel shall represent the charging party, unless the charging party elects not to be represented by the General Counsel. Any charging party may represent him- or herself or obtain other representation.

(e) When the charging party elects to be represented by the General Counsel, the General Counsel is to direct the representation in the charging party's case. The charging party may also retain a private representative in such cases. However, the role of the private representative is limited to assisting the General Counsel as the General Counsel determines to be appropriate.

(f) When the General Counsel is not participating in a case, the General Counsel may request permission to intervene with respect to any issue in which the General Counsel finds a significant public interest in the enforcement of the right to be free of unlawful discrimination and retaliation in employment.

§ 29.10 Filing a petition for review with the Board.

(a) *Who may file.* A petition for review may be filed with the Board by any employee of the Architect of the Capitol who has received a Right to Appeal Letter from the General Counsel and who is claiming to have been subjected to unlawful discrimination or retaliation as described in § 29.3.

(b) *When to file.* Petitions for review must be filed within 30 days after service upon the charging party of the Right to Appeal Letter from the General Counsel.

(c) *How to file.* Petitions for review may be filed in person or by mail. Please note that the address to be used differs for the two kinds of filing.

(1) *Filing in person:* A petition may be filed in person at the office of the Board, Suite 830, Union Center Plaza II, 820 First Street, NE., Washington, DC.

(2) *Filing by mail:* A petition may be filed by mail addressed to the Personnel Appeals Board, Suite 830, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the Board.

(d) *What to file.* The petition for review shall include the following information:

(1) The name, address, and telephone number of the petitioner. In the case of a class action, a clear description of the class of employees on whose behalf the petition is being filed;

(2) The names and titles of persons, if any, responsible for the actions the petitioner wishes to have the Board review;

(3) The actions being complained about including dates and reasons given;

(4) Petitioner's reasons for believing that the actions constituted unlawful discrimination or retaliation;

(5) Remedies sought by petitioner;

(6) Information concerning petitioner's exhaustion of administrative remedies before the Architect of the

Capitol, including the date that an internal complaint of discrimination or retaliation was filed and the date, if applicable, that the petitioner received a final decision from the Architect of the Capitol;

(7) Name, address, and telephone number of the representative, if any, who will act for the petitioner;

(8) Signature of the petitioner or the petitioner's representative.

(e) *Amendments to a petition for review.* Failure to raise a claim in the petition for review shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

(f) *Class Actions.* One or more employees of the Architect of the Capitol may file a petition for review as representatives of a class of employees in any matter within the Board's jurisdiction as set forth in § 29.3. In determining whether it is appropriate to treat an appeal as a class action, the Board will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure.

§ 29.11 Board procedures on petitions for review.

In adjudicating petitions for review filed by employees of the Architect of the Capitol, the Board will generally follow the same procedures as it does for adjudicating petitions for review filed by General Accounting Office (GAO) employees under 4 CFR part 28, subpart B. The Board specifically adopts the regulations contained in 4 CFR 28.19 through 28.90 as the procedures it will follow for petitions for review filed by Architect of the Capitol employees. The Architect of the Capitol will have the same obligations and responsibilities as are assigned to the GAO under those regulations. The regulations concerning ex parte communications, contained in 4 CFR part 28, subpart I, will also be applicable to all proceedings brought by or on behalf of employees of the Architect of the Capitol.

§ 29.12 Proceedings brought by the General Counsel seeking corrective action, disciplinary action or a stay.

The regulations contained in 4 CFR part 28, subpart G, concerning proceedings brought by the General Counsel seeking corrective action, disciplinary action or a stay, are hereby adopted and made applicable to the Board's authority with respect to employment practices within the Architect of the Capitol with the following qualifications:

(a) The authority of the General Counsel to bring proceedings seeking corrective action, disciplinary action, or a stay will be limited to matters involving allegations of unlawful discrimination or retaliation as described in § 29.3.

(b) Wherever the regulations in 4 CFR part 28, subpart G assign rights, responsibilities, or obligations to the GAO or its employees those same rights, responsibilities, or obligations will be assigned to the Architect of the Capitol or its employees, respectively.

§ 29.13 Applicability of this part to pending cases.

(a) The regulations in this part apply to all claims brought by employees of the Architect of the Capitol alleging discrimination or retaliation (as described in § 29.3) where:

(1) The alleged discrimination or retaliation occurred on or after the July 22, 1994, effective date of the Architect of the Capitol Human Resources Act; or

(2) The internal complaint of discrimination or retaliation was filed with the Architect of the Capitol on or after the July 22, 1994, effective date of the Architect of the Capitol Human Resources Act; or

(3) The final decision of the Architect of the Capitol on an internal complaint of discrimination or retaliation was issued on or after the July 22, 1994, effective date of the Architect of the Capitol Human Resources Act.

(b) The regulations in this part do not apply to any claim of discrimination or retaliation by an employee of the Architect of the Capitol which was pending before, or an appeal from, the Office of Senate Fair Employment Practices on the July 22, 1994, effective date of the Architect of the Capitol Human Resources Act. Any such claims shall continue to be processed pursuant to the procedures established in the Government Employee Rights Act of 1991, 2 U.S.C. 1201, et seq.

Nancy A. McBride,

Chair, Personnel Appeals Board, U. S. General Accounting Office.

[FR Doc. 94–28274 Filed 11–15–94; 8:45 am]

BILLING CODE 1610–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–94–001]

RIN 0581–AB14

Amendment to Regulations for Collecting Cotton Research and Promotion Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is amending the Cotton Board Rules and Regulations by raising the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. The amended value reflects the 12-month average price received by U.S. farmers for Upland cotton for calendar year 1993.

EFFECTIVE DATE: December 16, 1994.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, (202) 720–2259.

SUPPLEMENTARY INFORMATION: This rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the ruling.

The Administrator, Agricultural Marketing Service (AMS) has

considered the economic impact of this action on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This rule will affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This rule will raise the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment will be raised, the increase is small and will not significantly affect small businesses. The AMS Administrator therefore has certified that this rule will not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in this rule have been previously approved by OMB and were assigned control number 0581–0093.

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program. These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of cotton producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991. Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). The final implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

A proposed rule seeking comments regarding the adjustment of the value of imported cotton was published in the **Federal Register** on Wednesday, August 3, 1994 (59 FR 39480–39485). One comment was received during the comment period (August 3, 1994–September 2, 1994). This comment is addressed below.

This final rule increases the value assigned to imported cotton in the Cotton Board Rules and Regulations 7 CFR 1205.510(b)(2). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms.

Supplemental assessments are levied at a rate of five tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency adopted the use of the calendar year average price received by U.S. farmers for Upland cotton as a benchmark for the value of domestically produced cotton. The source for this statistic is "Agricultural Prices", a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton.

The one comment received suggested the use of the marketing year average price received by U.S. cotton producers instead of the calendar year average price, which is also published by NASS. According to the commenter, this would be more consistent with the fiscal period recognized by the cotton industry and would bring the value of the imported cotton closer to the value of domestic cotton.

Based on this comment the Agency consulted with NASS in order to form an opinion as to whether the calendar year or marketing year average price would be more appropriate. The marketing year average price, published by NASS, is calculated using monthly average prices from August of one year through July of the following year. The final adjusted marketing year average price is published in October each year. The calendar year average price is calculated from monthly average prices from January through December each year and published as a final figure on January 31 each year. Because the calendar year average price is made available on a more timely basis the agency will continue to use the calendar year average price as the value of imported cotton for the purpose of calculating the supplemental assessment on imported cotton and the cotton content of imported products. Insofar as the appropriate value to be placed on imported cotton compared to the value placed on domestic cotton is concerned, the time period used to average such value when assessing imported cotton does not materially affect the outcome. This is because the value placed on domestic cotton for the purpose of supplemental assessments is based on actual sale prices of each bale of cotton. Since imported cotton is in the form of products, it is necessary to average the value of bales over a period of time in order to arrive at a bale equivalent value of the cotton content of imported products for the purpose of calculating the supplemental assessment.

The current value of imported cotton based on calendar year 1992 as published in the **Federal Register** (58 FR 52215) for the purpose of calculating supplemental assessments on imported cotton is $1.160 per kilogram. Using the Average Price Received by U.S. farmers for Upland cotton for the calendar year 1993, which is $0.543 per pound, the new value of imported cotton will be $1.197 per kilogram.

An example of the assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.
One kilogram equals 2.2046 pounds.
One pound equals 0.453597 kilograms.
One dollar per bale assessment converted to kilograms
A 500 pound bale equals 226.8 kg. (500×.453597)
$1 per bale assessment equals $0.002000 per pound (1÷500) or $0.004409 per kg. (1÷226.8).
Supplemental assessment of 5/10 of one percent of the value of the cotton converted to kilograms
Average price received $0.543 per pound or $1.197 per kg. (0.543×2.046)=1.1970.
5/10 of one percent of the average price in kg. equals $0.005985 per kg. (1.1970×.005)
The total assessment per kilogram of raw cotton is obtained by adding the $1 per bale equivalent assessment of $0.004409 per kg. and the supplemental assessment $0.005985 per kg. which equals $0.010394 per kg.

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510 (b)(3) are a result of such a calculation, these figures have been revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

The commenter also requested the addition of nine HTS numbers to the Import Assessment Table. Such addition would normally be done by first issuing

a notice and allowing an opportunity for comment. Nevertheless, the agency consulted with USDA's Economic Research Service (ERS) which develops and maintains the raw cotton equivalent conversion factors used in the Import Assessment Table. The Economic Research Service provided the agency with a database library of HTS numbers divided into groups by various fiber types. Products that contain a blend of fibers in their construction are reported under multiple fiber categories in the database with corresponding conversion factors for each type of fiber present. The nine suggested numbers were reviewed against the list of cotton containing HTS numbers in the database. Upon review of the HTS numbers suggested for inclusion in the Import Assessment Table it was determined that eight of the HTS numbers are for products that are primarily composed of manmade fibers and one of the numbers was for products composed primarily of wool. It was further determined that none of the suggested numbers has an ERS raw cotton equivalent conversion factor. Based on the agency's review it was determined not to include the numbers in the Import Assessment Table.

The agency has made a change in the final rule to correct the omission of recent changes to a paragraph from § 1205.510. On July 1, 1994, (59 FR 33901) the agency published an interim final rule with a request for comments. This interim final rule provided for the continuation of assessments on HTS numbers that change between updates to the Import Assessment Table, provided that no change to the description of the product occurred. No comments were received regarding this change and a final rule implementing the change was published on August 26, 1994 (59 FR 44033). This final rule became effective September 26, 1994. The amended § 1205.510 (b)(3) as published in the final rule on August 26 has been added to this final rule.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is amended as follows:

PART 1205–COTTON RESEARCH AND PROMOTION

1. The authority citation for Part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In Section 1205.510, paragraphs (b)(2) and (3) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly average prices received by U.S. farmers will be calculated annually. Such average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.197 per kilogram.

(3) The following table contains Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the following table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed.

(i) Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein is less than $220.99 will not be subject to assessments as described in this section.

(ii) In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the physical properties, description, or cotton content of the product involved, assessments will continue to be collected based on the new number.

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5201001000	0.0000	1.0394
5201002000	0.0000	1.0394
5201002010	0.0000	1.0394
5201002020	0.0000	1.0394
5201002050	0.0000	1.0394
5204110000	1.1111	1.1549
5204200000	1.1111	1.1549
5205111000	1.1111	1.1549
5205112000	1.1111	1.1549
5205121000	1.1111	1.1549
5205122000	1.1111	1.1549
5205131000	1.1111	1.1549
5205132000	1.1111	1.1549
5205141000	1.1111	1.1549
5205210000	1.1111	1.1549

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5205220000	1.1111	1.1549
5205230000	1.1111	1.1549
5205240000	1.1111	1.1549
5205250000	1.1111	1.1549
5205310000	1.1111	1.1549
5205320000	1.1111	1.1549
5205330000	1.1111	1.1549
5205340000	1.1111	1.1549
5205410000	1.1111	1.1549
5205420000	1.1111	1.1549
5205440000	1.1111	1.1549
5205450000	1.1111	1.1549
5206120000	0.5556	0.5775
5206130000	0.5556	0.5775
5206140000	0.5556	0.5775
5206220000	0.5556	0.5775
5206230000	0.5556	0.5775
5206240000	0.5556	0.5775
5206310000	0.5556	0.5775
5207100000	1.1111	1.1549
5207900000	0.5556	0.5775
5208112020	1.1455	1.1906
5208112040	1.1455	1.1906
5208112090	1.1455	1.1906
5208114020	1.1455	1.1906
5208114060	1.1455	1.1906
5208114090	1.1455	1.1906
5208118090	1.1455	1.1906
5208124020	1.1455	1.1906
5208124040	1.1455	1.1906
5208124090	1.1455	1.1906
5208126020	1.1455	1.1906
5208126040	1.1455	1.1906
5208126060	1.1455	1.1906
5208126090	1.1455	1.1906
5208128020	1.1455	1.1906
5208128090	1.1455	1.1906
5208130000	1.1455	1.1906
5208192020	1.1455	1.1906
5208192090	1.1455	1.1906
5208194020	1.1455	1.1906
5208194090	1.1455	1.1906
5208196020	1.1455	1.1906
5208196090	1.1455	1.1906
5208224040	1.1455	1.1906
5208224090	1.1455	1.1906
5208226020	1.1455	1.1906
5208226060	1.1455	1.1906
5208228020	1.1455	1.1906
5208230000	1.1455	1.1906
5208292020	1.1455	1.1906
5208292090	1.1455	1.1906
5208294090	1.1455	1.1906
5208296090	1.1455	1.1906
5208298020	1.1455	1.1906
5208312000	1.1455	1.1906
5208321000	1.1455	1.1906
5208323020	1.1455	1.1906
5208323040	1.1455	1.1906
5208323090	1.1455	1.1906
5208324020	1.1455	1.1906
5208324040	1.1455	1.1906
5208325020	1.1455	1.1906
5208330000	1.1455	1.1906
5208392020	1.1455	1.1906
5208392090	1.1455	1.1906
5208394090	1.1455	1.1906
5208396090	1.1455	1.1906

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5208398020	1.1455	1.1906
5208412000	1.1455	1.1906
5208416000	1.1455	1.1906
5208418000	1.1455	1.1906
5208421000	1.1455	1.1906
5208423000	1.1455	1.1906
5208424000	1.1455	1.1906
5208425000	1.1455	1.1906
5208430000	1.1455	1.1906
5208492000	1.1455	1.1906
5208494020	1.1455	1.1906
5208494090	1.1455	1.1906
5208496010	1.1455	1.1906
5208496090	1.1455	1.1906
5208498090	1.1455	1.1906
5208512000	1.1455	1.1906
5208516060	1.1455	1.1906
5208518090	1.1455	1.1906
5208523020	1.1455	1.1906
5208523040	1.1455	1.1906
5208523090	1.1455	1.1906
5208524020	1.1455	1.1906
5208524040	1.1455	1.1906
5208524060	1.1455	1.1906
5208525020	1.1455	1.1906
5208530000	1.1455	1.1906
5208592020	1.1455	1.1906
5208592090	1.1455	1.1906
5208594090	1.1455	1.1906
5208596090	1.1455	1.1906
5209110020	1.1455	1.1906
5209110030	1.1455	1.1906
5209110090	1.1455	1.1906
5209120020	1.1455	1.1906
5209120040	1.1455	1.1906
5209190020	1.1455	1.1906
5209190040	1.1455	1.1906
5209190060	1.1455	1.1906
5209190090	1.1455	1.1906
5209210090	1.1455	1.1906
5209220020	1.1455	1.1906
5209220040	1.1455	1.1906
5209290040	1.1455	1.1906
5209290090	1.1455	1.1906
5209313000	1.1455	1.1906
5209316020	1.1455	1.1906
5209316030	1.1455	1.1906
5209316050	1.1455	1.1906
5209316090	1.1455	1.1906
5209320020	1.1455	1.1906
5209320040	1.1455	1.1906
5209390020	1.1455	1.1906
5209390040	1.1455	1.1906
5209390060	1.1455	1.1906
5209390080	1.1455	1.1906
5209390090	1.1455	1.1906
5209413000	1.1455	1.1906
5209416020	1.1455	1.1906
5209416040	1.1455	1.1906
5209420020	1.0309	1.0715
5209420040	1.0309	1.0715
5209430020	1.1455	1.1906
5209430040	1.1455	1.1906
5209490020	1.1455	1.1906
5209490090	1.1455	1.1906
5209516030	1.1455	1.1906
5209516050	1.1455	1.1906
5209520020	1.1455	1.1906

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5209590020	1.1455	1.1906
5209590040	1.1455	1.1906
5209590090	1.1455	1.1906
5210114020	0.6873	0.7144
5210114040	0.6873	0.7144
5210116020	0.6873	0.7144
5210116040	0.6873	0.7144
5210116060	0.6873	0.7144
5210118020	0.6873	0.7144
5210120000	0.6873	0.7144
5210192090	0.6873	0.7144
5210214040	0.6873	0.7144
5210216020	0.6873	0.7144
5210216060	0.6873	0.7144
5210218020	0.6873	0.7144
5210314020	0.6873	0.7144
5210314040	0.6873	0.7144
5210316020	0.6873	0.7144
5210318020	0.6873	0.7144
5210414000	0.6873	0.7144
5210416000	0.6873	0.7144
5210418000	0.6873	0.7144
5210498090	0.6873	0.7144
5210514040	0.6873	0.7144
5210516020	0.6873	0.7144
5210516040	0.6873	0.7144
5210516060	0.6873	0.7144
5211110090	0.6873	0.7144
5211120020	0.6873	0.7144
5211190020	0.6873	0.7144
5211190060	0.6873	0.7144
5211210030	0.4165	0.4329
5211210050	0.6873	0.7144
5211290090	0.6873	0.7144
5211320020	0.6873	0.7144
5211390040	0.6873	0.7144
5211390060	0.6873	0.7144
5211490020	0.6873	0.7144
5211490090	0.6873	0.7144
5211590020	0.6873	0.7144
5212146090	0.9164	0.9525
5212156020	0.9164	0.9525
5212216090	0.9164	0.9525
5309214010	0.2864	0.2977
5309214090	0.2864	0.2977
5309294010	0.2864	0.2977
5311004000	0.9164	0.9525
5407810010	0.5727	05953
5407810030	0.5727	0.5953
5407912020	0.4009	0.4167
5408312020	0.4009	0.4167
5408329020	0.4009	0.4167
5408349020	0.4009	0.4167
5408349090	0.4009	0.4167
5509530030	0.5556	0.5775
5509530060	0.5556	0.5775
5513110020	0.4009	0.4167
5513110040	0.4009	0.4167
5513110060	0.4009	0.4167
5513110090	0.4009	0.4167
5513120000	0.4009	0.4167
5513130020	0.4009	0.4167
5513210020	0.4009	0.4167
5513310000	0.4009	0.4167
5514120020	0.4009	0.4167
5516420060	0.4009	0.4167
5516910060	0.4009	0.4167
5516930090	0.4009	0.4167

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5601210010	1.1455	1.1906
5601210090	1.1455	1.1906
5601300000	1.1455	1.1906
5602109090	0.5727	0.5953
5602290000	1.1455	1.1906
5602906000	0.5260	0.5467
5604900000	0.5556	0.5775
5607902000	0.8889	0.9239
5608901000	1.1111	1.1549
5608902300	1.1111	1.1549
5609001000	1.1111	1.1549
5609004000	0.5556	0.5775
5701102010	0.0556	0.0578
5701102090	0.1111	0.1155
5701901010	1.0444	1.0855
5702109020	1.1000	1.1433
5702312000	0.0778	0.0809
5702411000	0.0722	0.0750
5702412000	0.0778	0.0809
5702421000	0.0778	0.0809
5702422090	0.0778	0.0809
5702491010	1.0333	1.0740
5702491090	1.0333	1.0740
5702913000	0.0889	0.0924
5702991010	1.1111	1.1549
5702991090	1.1111	1.1549
5703900000	0.4489	0.4666
5801220000	1.1455	1.1906
5801230000	1.1455	1.1906
5801250010	1.1455	1.1906
5801250020	1.1455	1.1906
5801260020	1.1455	1.1906
5802190000	1.1455	1.1906
5802300030	0.5727	0.5953
5804290020	1.1455	1.1906
5806200000	0.3534	0.3673
5806310000	1.1455	1.1906
5806400000	0.4296	0.4465
5808103010	0.5727	0.5953
5808900010	0.5727	0.5953
5811002000	1.1455	1.1906
6001106000	1.1455	1.1906
6001210000	0.8591	0.8929
6001220000	0.2864	0.2977
6001910010	0.8591	0.8929
6001910020	0.8591	0.8929
6001920020	0.2864	0.2977
6001920030	0.2864	0.2977
6001920040	0.2864	0.2977
6002203000	0.8681	0.9023
6002206000	0.2894	0.3008
6002420000	0.8681	0.9023
6002430010	0.2894	0.3008
6002430080	0.2894	0.3008
6002920000	1.1574	1.2030
6002930040	0.1157	0.1203
6002930080	0.1157	0.1203
6101200010	1.0094	1.0492
6101200020	1.0094	1.0492
6102200010	1.0094	1.0492
6102200020	1.0094	1.0492
6103421020	0.8806	0.9153
6103421040	0.8806	0.9153
6103421050	0.8806	0.9153
6103421070	0.8806	0.9153
6103431520	0.2516	0.2615
6103431540	0.2516	0.2615
6103431550	0.2516	0.2615

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6103431570	0.2516	0.2615
6104220040	0.9002	0.9357
6104220060	0.9002	0.9357
6104320000	0.9207	0.9570
6104420010	0.9002	0.9357
6104420020	0.9002	0.9357
6104520010	0.9312	0.9679
6104520020	0.9312	0.9679
6104622010	0.8806	0.9153
6104622015	0.8806	0.9153
6104622025	0.8806	0.9153
6104622030	0.8806	0.9153
6104622060	0.8806	0.9153
6104632010	0.3774	0.3923
6104632025	0.3774	0.3923
6104632030	0.3774	0.3923
6104632060	0.3774	0.3923
6104692030	0.3858	0.4010
6105100010	0.9850	1.0238
6105100020	0.9850	1.0238
6105100030	0.9850	1.0238
6105202010	0.3078	0.3199
6105202030	0.3078	0.3199
6106100010	0.9850	1.0238
6106100020	0.9850	1.0238
6106100030	0.9850	1.0238
6106202010	0.3078	0.3199
6106202030	0.3078	0.3199
6107110010	1.1322	1.1768
6107110020	1.1322	1.1768
6107120010	0.5032	0.5230
6107210010	0.8806	0.9153
6107220015	0.3774	0.3923
6107220025	0.3774	0.3923
6107910040	1.2581	1.3077
6108210010	1.2445	1.2935
6108210020	1.2445	1.2935
6108310010	1.1201	1.1642
6108310020	1.1201	1.1642
6108320010	0.2489	0.2587
6108320015	0.2489	0.2587
6108320025	0.2489	0.2587
6108910005	1.2445	1.2935
6108910015	1.2445	1.2935
6108910025	1.2445	1.2935
6108910030	1.2445	1.2935
6108920030	0.2489	0.2587
6109100005	0.9956	1.0348
6109100007	0.9956	1.0348
6109100009	0.9956	1.0348
6109100012	0.9956	1.0348
6109100014	0.9956	1.0348
6109100018	0.9956	1.0348
6109100023	0.9956	1.0348
6109100027	0.9956	1.0348
6109100037	0.9956	1.0348
6109100040	0.9956	1.0348
6109100045	0.9956	1.0348
6109100060	0.9956	1.0348
6109100065	0.9956	1.0348
6109100070	0.9956	1.0348
6109901007	0.3111	0.3234
6109901009	0.3111	0.3234
6109901049	0.3111	0.3234
6109901050	0.3111	0.3234
6109901060	0.3111	0.3234
6109901065	0.3111	0.3234
6109901090	0.3111	0.3234

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6110202005	1.1837	1.2303
6110202010	1.1837	1.2303
6110202015	1.1837	1.2303
6110202020	1.1837	1.2303
6110202025	1.1837	1.2303
6110202030	1.1837	1.2303
6110202035	1.1837	1.2303
6110202040	1.1574	1.2030
6110202045	1.1574	1.2030
6110202065	1.1574	1.2030
6110202075	1.1574	1.2030
6110900022	0.2630	0.2734
6110900024	0.2630	0.2734
6110900030	0.3946	0.4101
6110900040	0.2630	0.2734
6110900042	0.2630	0.2734
6111201000	1.2581	1.3077
6111202000	1.2581	1.3077
6111203000	1.0064	1.0461
6111205000	1.0064	1.0461
6111206010	1.0064	1.0461
6111206020	1.0064	1.0461
6111206030	1.0064	1.0461
6111206040	1.0064	1.0461
6111305020	0.2516	0.2615
6111305040	0.2516	0.2615
6112110050	0.7548	0.7845
6112120010	0.2516	0.2615
6112120030	0.2516	0.2615
6112120040	0.2516	0.2615
6112120050	0.2516	0.2615
6112120060	0.2516	0.2615
6112390010	1.1322	1.1768
6112490010	0.9435	0.9807
6114200005	0.9002	0.9357
6114200010	0.9002	0.9357
6114200015	0.9002	0.9357
6114200020	1.2860	1.3367
6114200040	0.9002	0.9357
6114200046	0.9002	0.9357
6114200052	0.9002	0.9357
6114200060	0.9002	0.9357
6114301010	0.2572	0.2673
6114301020	0.2572	0.2673
6114303030	0.2572	0.2673
6115190010	1.0417	1.0827
6115922000	1.0417	1.0827
6115932020	0.2315	0.2406
6116101300	0.3655	0.3799
6116101720	0.8528	0.8864
6116926020	1.0965	1.1397
6116926030	1.2183	1.2663
6116926040	1.0965	1.1397
6116926420	1.0965	1.1397
6116926430	1.2183	1.2663
6116926440	1.0965	1.1397
6116928800	1.0965	1.1397
6116929000	1.0965	1.1397
6116939010	0.1218	0.1266
6117800010	0.9747	1.0131
6117800035	0.3655	0.3799
6201121000	0.9480	0.9854
6201122010	0.8953	0.9306
6201122050	0.6847	0.7117
6201122060	0.6847	0.7117
6201134030	0.2633	0.2737
6201921000	0.9267	0.9632
6201921500	1.1583	1.2039

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6201922010	1.0296	1.0702
6201922021	1.2871	1.3378
6201922031	1.2871	1.3378
6201922041	1.2871	1.3378
6201922051	1.0296	1.0702
6201922061	1.0296	1.0702
6201931000	0.3089	0.3211
6201933511	0.2574	0.2675
6201933521	0.2574	0.2675
6201990061	0.2574	0.2675
6202121000	0.9372	0.9741
6202122010	1.1064	1.1500
6202122025	1.3017	1.3530
6202122050	0.8461	0.8794
6202122060	0.8461	0.8794
6202134005	0.2664	0.2769
6202134020	0.3330	0.3461
6202921000	1.0413	1.0823
6202921500	1.0413	1.0823
6202922026	1.3017	1.3530
6202922061	1.0413	1.0823
6202922071	1.0413	1.0823
6202931000	0.3124	0.3247
6202935011	0.2603	0.2706
6202935021	0.2603	0.2706
6203122010	0.1302	0.1353
6203221000	1.3017	1.3530
6203322010	1.2366	1.2853
6203322040	1.2366	1.2853
6203332010	0.1302	0.1353
6203392010	1.1715	1.2177
6203394060	0.2603	0.2706
6203422010	0.9961	1.0353
6203422025	0.9961	1.0353
6203422050	0.9961	1.0353
6203422090	0.9961	1.0353
6203424005	1.2451	1.2942
6203424010	1.2451	1.2942
6203424015	0.9961	1.0353
6203424020	1.2451	1.2942
6203424025	1.2451	1.2942
6203424030	1.2451	1.2942
6203424035	1.2451	1.2942
6203424040	0.9961	1.0353
6203424045	0.9961	1.0353
6203424050	0.9238	0.9602
6203424055	0.9238	0.9602
6203424060	0.9238	0.9602
6203431500	0.1245	0.1294
6203434010	0.1232	0.1281
6203434020	0.1232	0.1281
6203434030	0.1232	0.1281
6203434040	0.1232	0.1281
6203492010	0.1245	0.1294
6203493045	0.2490	0.2588
6204132010	0.1302	0.1353
6204192000	0.1302	0.1353
6204193090	0.2603	0.2706
6204221000	1.3017	1.3530
6204223030	1.0413	1.0823
6204223040	1.0413	1.0823
6204223050	1.0413	1.0823
6204223060	1.0413	1.0823
6204223065	1.0413	1.0823
6204292040	0.3254	0.3382
6204322010	1.2366	1.2853
6204322030	1.0413	1.0823
6204322040	1.0413	1.0823

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6204423010	1.2728	1.3229
6204423030	0.9546	0.9922
6204423040	0.9546	0.9922
6204423050	0.9546	0.9922
6204423060	0.9546	0.9922
6204522010	1.2654	1.3153
6204522030	1.2654	1.3153
6204522040	1.2654	1.3153
6204522070	1.0656	1.1076
6204522080	1.0656	1.1076
6204533010	0.2664	0.2769
6204594060	0.2664	0.2769
6204622010	0.9961	1.0353
6204622025	0.9961	1.0353
6204622050	0.9961	1.0353
6204624005	1.2451	1.2942
6204624010	1.2451	1.2942
6204624020	0.9961	1.0353
6204624025	1.2451	1.2942
6204624030	1.2451	1.2942
6204624035	1.2451	1.2942
6204624040	1.2541	1.2942
6204624045	0.9961	1.0353
6204624050	0.9961	1.0353
6204624055	0.9854	1.0242
6204624060	0.9854	1.0242
6204624065	0.9854	1.0242
6204633510	0.2546	0.2646
6204633530	0.2546	0.2646
6204633532	0.2437	0.2533
6204633540	0.2437	0.2533
6204692510	0.2490	0.2588
6204692540	0.2437	0.2533
6204699044	0.2490	0.2588
6204699046	0.2490	0.2588
6204699050	0.2490	0.2588
6205202015	0.9961	1.0353
6205202020	0.9961	1.0353
6205202025	0.9961	1.0353
6205202030	0.9961	1.0353
6205202035	1.1206	1.1648
6205202046	0.9961	1.0353
6205202050	0.9961	1.0353
6205202060	0.9961	1.0353
6205202065	0.9961	1.0353
6205202070	0.9961	1.0353
6205202075	0.9961	1.0353
6205302010	0.3113	0.3236
6205302030	0.3113	0.3236
6205302040	0.3113	0.3236
6205302050	0.3113	0.3236
6205302070	0.3113	0.3236
6205302080	0.3113	0.3236
6205902040	0.1245	0.1294
6206100040	0.1245	0.1294
6206303010	0.9961	1.0353
6206303020	0.9961	1.0353
6206303030	0.9961	1.0353
6206303040	0.9961	1.0353
6206303050	0.9961	1.0353
6206303060	0.9961	1.0353
6206403010	0.3113	0.3236
6206403030	0.3113	0.3236
6206900040	0.2490	0.2588
6207110000	1.0852	1.1280
6207190010	0.3617	0.3760
6207210010	1.1085	1.1522
6207210030	1.1085	1.1522

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6207220000	0.3695	0.3841
6207911000	1.1455	1.1906
6207913010	1.1455	1.1906
6207913020	1.1455	1.1906
6208210010	1.0583	1.1000
6208210020	1.0583	1.1000
6208220000	0.1245	0.1294
6208911010	1.1455	1.1906
6208911020	1.1455	1.1906
6208913010	1.1455	1.1906
6208920010	0.1273	0.1323
6208920030	0.1273	0.1323
6209201000	1.1577	1.2033
6209203000	0.9749	1.0133
6209205030	0.9749	1.0133
6209205035	0.9749	1.0133
6209205040	1.2186	1.2666
6209205045	0.9749	1.0133
6209205050	0.9749	1.0133
6209303020	0.2463	0.2560
6209303040	0.2463	0.2560
6210104015	0.2291	0.2381
6210401010	0.0391	0.0406
6210401020	0.4556	0.4736
6211111010	0.1273	0.1323
6211111020	0.1273	0.1323
6211112010	1.1455	1.1906
6211112020	1.1455	1.1906
6211320007	0.8461	0.8794
6211320010	1.0413	1.0823
6211320015	1.0413	1.0823
6211320030	0.9763	1.0148
6211320060	0.9763	1.0148
6211320070	0.9763	1.0148
6211320080	0.9763	1.0148
6211330010	0.3254	0.3382
6211330030	0.3905	0.4059
6211330035	0.3905	0.4059
6211330040	0.3905	0.4059
6211420010	1.0413	1.0823
6211420020	1.0413	1.0823
6211420025	1.1715	1.2177
6211420050	1.1715	1.2177
6211420060	1.0413	1.0823
6211420070	1.1715	1.2177
6211420080	1.1715	1.2177
6211430010	0.2603	0.2706
6211430030	0.2603	0.2706
6211430040	0.2603	0.2706
6211430050	0.2603	0.2706
6211430060	0.2603	0.2706
6211430066	0.2603	0.2706
6211430090	0.2603	0.2706
6212101020	0.2412	0.2507
6212102010	0.9646	1.0026
6212102020	0.2412	0.2507
6212200020	0.3014	0.3133
6212900030	0.1929	0.2005
6213201000	1.1809	1.2274
6213202000	1.0628	1.1047
6213901000	0.4724	0.4910
6214900010	0.9043	0.9399
6216000800	0.2351	0.2444
6216001220	0.6752	0.7018
6216001720	0.6752	0.7018
6216003800	1.2058	1.2533
6216003910	1.2058	1.2533
6216003920	1.2058	1.2533

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6216004100	1.2058	1.2533
6217100010	1.0182	1.0583
6217100030	0.2546	0.2646
6301300010	0.8766	0.9111
6301300020	0.8766	0.9111
6302100010	1.1689	1.2150
6302211020	0.8182	0.8504
6302211040	0.8182	0.8504
6302212010	1.1689	1.2150
6302212020	0.8182	0.8504
6302212030	1.1689	1.2150
6302212040	0.8182	0.8504
6302212090	0.8182	0.8504
6302222010	0.4091	0.4252
6302222020	0.4091	0.4252
6302311020	0.8182	0.8504
6302311090	0.8182	0.8504
6302312010	1.1689	1.2150
6302312020	0.8182	0.8504
6302312030	1.1689	1.2150
6302312040	0.8182	0.8504
6302312055	0.8182	0.8504
6302312090	0.8182	0.8504
6302322020	0.4091	0.4252
6302322040	0.4091	0.4252
6302402010	0.9935	1.0326
6302511000	0.5844	0.6074
6302512000	0.8766	0.9111
6302513000	0.5844	0.6074
6302514000	0.8182	0.8504
6302600010	1.1689	1.2150
6302600020	1.0520	1.0934
6302600030	1.0520	1.0934
6302910005	1.0520	1.0934
6302910015	1.1689	1.2150
6302910025	1.0520	1.0934
6302910035	1.0520	1.0934
6302910045	1.0520	1.0934
6302910050	1.0520	1.0934
6302910060	1.0520	1.0934
6303110000	0.9448	0.9820
6303910000	0.6429	0.6682
6303920000	0.2922	0.3037
6304111000	1.0629	1.1048
6304190500	1.0520	1.0934
6304191000	1.1689	1.2150
6304191500	0.4091	0.4252
6304192000	0.4091	0.4252
6304910020	0.9351	0.9719
6304920000	0.9351	0.9719
6505901540	1.1810	1.2275
6505902060	0.9935	1.0326
6505902545	0.5844	0.6074

* * * * *

Dated: November 8, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–28114 Filed 11–15–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–101; Special Conditions No. 25–ANM–91]

Special Conditions: Dassault Aviation, Model Falcon 2000 Airplane, High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 2000 airplane. This new airplane will utilize electrical and electronic systems, such as electronic displays and electronic engine controls, 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. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 4, 1994.

Comments must be received on or before January 2, 1995.

ADDRESSES: Comments on these final special conditions; request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn.: Rules Docket (ANM–7), Docket No. NM–101, 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–101." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056, telephone (206) 227–2797.

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–101." The postcard will be date stamped and returned to the commenter.

Background

On September 13, 1989, Dassault Aviation, B.P. 24, 33701 Mérignac Cédex, France, applied for a new type certificate in the transport airplane category for the Model Falcon 2000 airplane. The Dassault Aviation Model Falcon 2000 is a medium-sized transcontinental business jet powered by two General Electric/Garrett CFE 738 turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 5,600 lbs. thrust. The airplane will be capable of operating with two flight crewmembers and eight passengers.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Dassault Aviation must show that the Falcon 2000 meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–69. The certification basis may also include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Falcon 2000 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Dassault Aviation Model Falcon 2000 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 in 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, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Falcon 2000 incorporates new avionic/electronic installations, including primary flight displays and digital electronic engine controls. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from 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, special conditions are needed for the Dassault Aviation Model Falcon 2000, which require that new technology electrical and electronic systems be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical

digital avionics systems 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 of electromagnetic energy 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 the HIRF protection special condition 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–100 KHz	50	50
100 KHz–500KHz	60	60
500 KHz–2 MHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1 GHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions are applicable to the Dassault Aviation Model Falcon 2000. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Dassault Aviation Model Falcon 2000 airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane have 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 not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 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 Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Aviation Model Falcon 2000 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 high-intensity radiated fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions 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 November 4, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 94–28284 Filed 11–15–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 25

[Docket No. NM–100; Final Special Conditions No. 25–ANM–90]

Special Conditions; Dassault Aviation Model Falcon 2000 Airplane, High Altitude Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 2000 airplane. This new airplane will have an unusual design feature associated with an unusually high operating altitude (47,000 feet), for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 4, 1994.

Comments must be received on or before January 2, 1995.

ADDRESSES: Comments on these final special conditions; request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn.: Rules Docket (ANM–7), Docket No. NM–100, 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–100." 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: Stephen Slotte, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056, telephone (206) 227–2797.

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–100." The postcard will be date stamped and returned to the commenter.

Background

On September 13, 1989, Dassault Aviation, B.P. 24, 33701 Mérignac Cédex, France, applied for a new type certificate in the transport airplane category for the Model Falcon 2000 airplane. The Dassault Aviation Model Falcon 2000 is a medium-sized transcontinental business jet powered by two General Electric/Garrett CFE 738 turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 5,600 lbs. thrust. The airplane will be capable of operating with two flight crewmembers and eight passengers.

The type design of the Model Falcon 2000 contains a number of novel and unusual design features for an airplane type certificated under the applicable provisions of part 25 of the Federal Aviation Regulations (FAR). Those features include the relatively small passenger cabin volume and a high maximum operating altitude. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for the Falcon 2000; therefore, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, Dassault Aviation must show that the Falcon 2000 meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–69. The certification basis may also include later amendments to part 25 that are not relevant to these special conditions. In addition, the certification basis for the Falcon 2000 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. These special conditions form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Falcon 2000 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 in 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, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Feature

The Dassault Aviation Falcon 2000 will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 47,000 feet.

The FAA considers certification of transport category airplanes for operation at altitudes greater than 41,000 feet to be a novel or unusual feature because current part 25 does not contain standards to ensure the same level of safety as that provided during operation at lower altitudes. Special conditions have therefore been adopted to provide adequate standards for transport category airplanes previously approved for operation at these high altitudes, including certain Learjet models, the Boeing Model 747, Dassault-Breguet Falcon 900, Canadair Model 600, Cessna Model 650, Israel Aircraft Industries Model 1125, and Cessna Model 560. The special conditions for the Learjet Model 45 are considered the most applicable to the Falcon 2000 and its proposed operation and are therefore used as the basis for the special conditions described below.

Damage tolerance methods are proposed to be used to ensure pressure vessel integrity while operating at the higher altitudes, in lieu of the ½-bay crack criterion used in some previous special conditions. Crack growth data are used to prescribe an inspection program that should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under § 25.571, as amended by Amendment 25–72. The maximum extent of failure and pressure vessel opening determined from the above analysis must be demonstrated to comply with the pressurization section of the proposed special conditions, which state that the cabin altitude after failure must not exceed the cabin altitude/time curve limits shown in Figures 3 and 4.

In order to ensure that there is adequate fresh air for crewmembers to perform their duties, to provide reasonable passenger comfort, and to enable occupants to better withstand the effects of decompression at high altitudes, the ventilation system must be designed to provide 10 cubic feet of fresh air per minute per person during normal operations. Therefore, these special conditions require that crewmembers and passengers be provided with 10 cubic feet of fresh air per minute per person. In addition, during the development of the supersonic transport special conditions, it was noted that certain pressurization failures resulted in hot ram or bleed air being used to maintain pressurization. Such a measure can lead to cabin temperatures that exceed human tolerance. Therefore, these special conditions require airplane interior temperature limits following probable and improbable failures.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. Therefore, to prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes, or 40,000 feet for any time period. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at high altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be

incapacitated by internal expanding gases).

Decompression resulting in cabin altitudes above the 37,000-foot limit depicted in Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilots receive oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. These special conditions therefore require pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

As discussed above, these special conditions are applicable to the Dassault Aviation Model Falcon 2000. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Dassault Aviation Model Falcon 2000 airplane. It is not a rule of general applicability and affects only the manufacturer 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 not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1341, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Dassault Aviation Model Falcon 2000:

Operation to 47,000 Feet

1. *Pressure Vessel Integrity.*

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to ensure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

(c) With regard to the fuselage structural design for cabin pressure capability above 45,000 feet altitude, the pressure vessel structure, including doors and windows, must comply with § 25.365(d), using a factor of 1.67 instead of the 1.33 factor prescribed.

2. *Ventilation.* In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system that could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. *Air Conditioning.* In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

(a) After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. *Pressurization.* In addition to the requirements of § 25.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system, combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs 4(a) and 4(b) of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note: For flight evaluation of the rapid descent, the test article must have the cabin

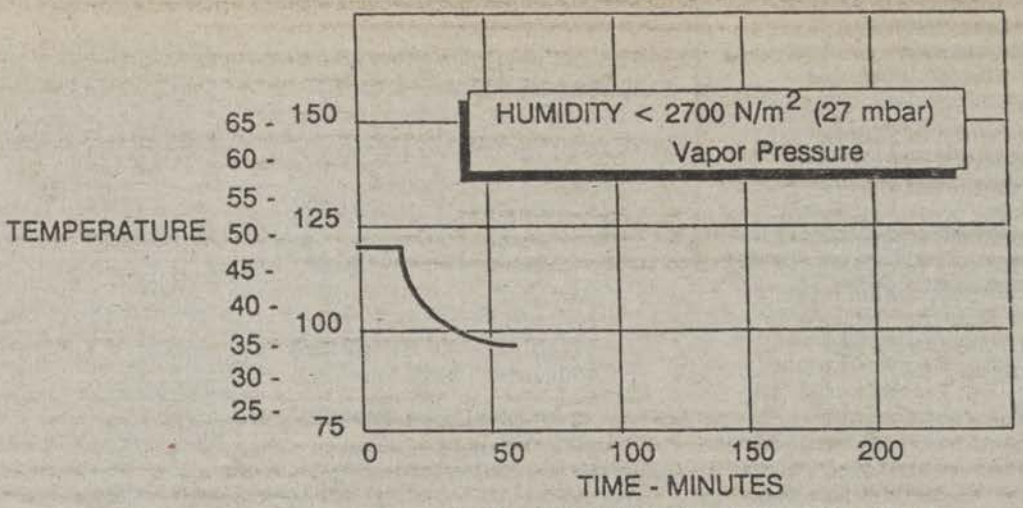
volume representative of what is expected to be normal, such that Dassault Aviation must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

5. *Oxygen Equipment and Supply.*

(a) A continuous flow oxygen system must be provided for the passengers.

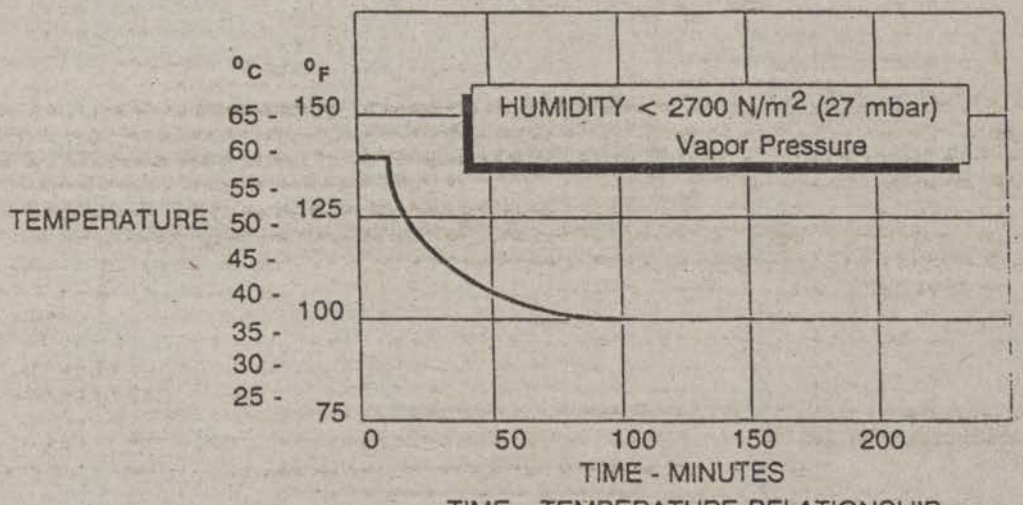
(b) A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned with 5 seconds.

BILLING CODE 4910–13–M



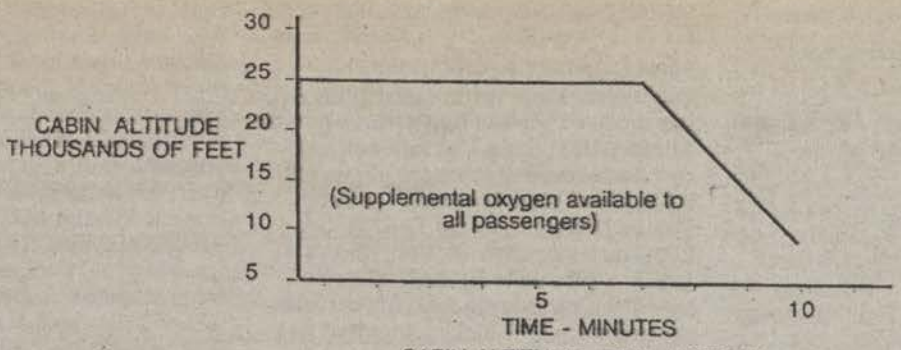
TIME - TEMPERATURE RELATIONSHIP

FIGURE 1



TIME - TEMPERATURE RELATIONSHIP

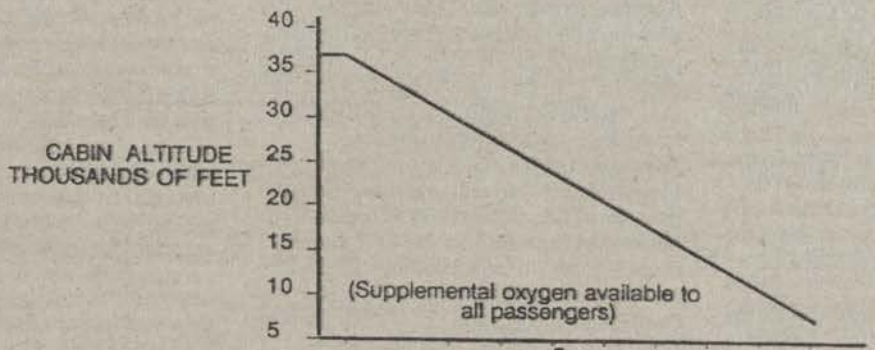
FIGURE 2



CABIN ALTITUDE - TIME HISTORY

FIGURE 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.



CABIN ALTITUDE - TIME HISTORY

FIGURE 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

BILLING CODE 4910-13-C

Issued in Renton, Washington, on November 4, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 94-28285 Filed 11-15-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 94–ANE–01; Amendment 39–9067; AD 94–23–05]

Airworthiness Directives; AlliedSignal Inc. TFE731–3A and –3AR Model Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. (formerly Garrett Engine Division) TFE731–3A–200G and –3AR–200G model turbofan engines. This action requires removing from service certain low-pressure turbine (LPT) disks, imposing an hourly life limit on the first stage and second stage LPT disks, performing a dimensional inspection of second stage LPT disks at repetitive intervals, and incorporating honeycomb material in the second stage LPT nozzle air seal. This amendment is prompted by reports of LPT disk web separations. The actions specified in this AD are intended to prevent LPT disk web separations, which can result in an uncontained engine failure and damage to the aircraft.

DATES: Effective December 1, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 1, 1994.

Comments for inclusion in the Rules Docket must be received on or before January 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–01, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from AlliedSignal Inc., Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2548. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, CA 90806–2425; telephone (310) 988–5246; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of two low pressure turbine (LPT) disks that failed in the disk web area due to creep fatigue on AlliedSignal Inc. (formerly Garrett Engine Division) Model TFE731–3A–200G turbofan engines. Both disk failures were uncontained. A metallurgical examination of first and second stage LPT disks found that two heat treatment production processes created a microstructure more susceptible to creep fatigue cracking. Both production processes affected AlliedSignal Inc. TFE731–3 series engines' first and second stage LPT disks.

In addition, a field inspection of LPT disks on AlliedSignal Inc. TFE731–3 series turbofan engines revealed that excessive disk growth occurred on AlliedSignal Inc. Model TFE731–3A–200G and TFE731–3AR–200G engines, which are installed on Israel Aircraft Industries, Ltd. (IAI) 1125 Westwind Astra series aircraft. The FAA has determined that the IAI Astra flight profile subjects the first and second stage LPT disks to prolonged flight time at or near the maximum continuous inner turbine temperatures limit. Repeated prolonged exposure to high temperatures can cause a more rapid deterioration of the nickel-graphite abradable material on the LPT second stage nozzle air seal than originally anticipated during the certification process of the engine. This deterioration results in increased seal clearance, which contributes to disk growth. This disk growth, also known as creep, resulting either from certain heat treatment production processes, excessive LPT second stage nozzle air seal clearance, or the LPT disk(s) prolonged exposure to elevated operating temperatures, if not corrected, could result in LPT disk web separations, which can result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of AlliedSignal Aerospace Alert Service Bulletin (ASB) No. TFE731–A72–3519, Revision 3, dated May 6, 1994, that imposes an hourly life limit on first and second stage LPT disks and describes procedures for removal and replacement of these LPT disks; SB No. TFE731–72–3530, Revision 1, dated October 8, 1993, that describes procedures for installing a second stage LPT turbine nozzle that incorporates a honeycomb air seal; and ASB No. TFE731–A72–3544, dated October 8, 1993, and ASB No. TFE731–A72–3557, dated May 12, 1994, that describe procedures for removal and replacement of specific serial numbered first and second stage LPT disks. Certain requirements of this AD may be accomplished using an earlier version of a service bulletin (SB) or ASB than the one cited in the AD. The original version of AlliedSignal Aerospace SB No. TFE731–72–3530 differs only by minor changes that do not impact the technical content of the procedures, and is an acceptable method of compliance to paragraph (c)(1) of this AD. Prior to the effective date of this AD, replacement of LPT disks in accordance with previous revisions of SB No. TFE731–A72–3519 is an acceptable method of compliance to paragraph (b) or (c)(2) of this AD.

Since an unsafe condition has been identified that is likely to exist or develop on other AlliedSignal Inc. TFE731–3A–200G series turbofan engines of the same type design, this AD is being issued to prevent LPT disk web separations, which can result in an uncontained engine failure and damage to the aircraft. This AD requires removing from service certain LPT disks, imposing an hourly life limit on first and second stage LPT disks, performing a dimensional inspection of second stage LPT disks at repetitive intervals, and incorporating honeycomb material in the second stage LPT nozzle air seal. The actions are required to be accomplished in accordance with the service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in

evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD 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 postcard on which the following statement is made: "Comments to Docket Number 94–ANE–01." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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:

94–23–05 AlliedSignal Inc.: Amendment 39–9067. Docket 94–ANE–01.

Applicability: AlliedSignal Inc. TFE731–3A–200G and –3AR–200G turbofan engines installed on but not limited to Israel Aircraft Industries, Ltd., 1125 Westwind Astra aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent low pressure turbine (LPT) disk web separations, which can result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service first and second stage LPT disks, with Part Numbers (P/N) 3072351–( ), 3072542–( ), 3074103–1, and 3074105–1, where ( ) denotes any dash number, identified by serial number in the Compliance Sections of AlliedSignal Aerospace Alert Service Bulletin (ASB) No. TFE731–A72–3544, dated October 8, 1993, and AlliedSignal Aerospace ASB No. TFE731–A72–3557, dated May 12, 1994, within 100 hours time in service (TIS) after the effective date of this airworthiness directive (AD), in accordance with the Accomplishment Instructions of AlliedSignal Aerospace ASB No. TFE731–A72–3544, dated October 8, 1993, and AlliedSignal Aerospace ASB No. TFE731–A72–3557, dated May 12, 1994, and replace with serviceable disks.

(b) Remove first stage LPT disk, P/N 3072351–( ), where ( ) denotes any dash number, and install a serviceable first stage LPT disk in accordance with the Accomplishment Instructions of AlliedSignal Aerospace ASB No. TFE731–A72–3519, Revision 3, dated May 6, 1994, as follows:

Stage 1 LPT disk TIS since new (TSN)	Initial replacement schedule
More than 850 hours.	Replace within the next 50 hours TIS after the effective date of this AD, or at the next removal of the LPT module, whichever occurs first.
551 to 850 hours.	Replace within the next 200 hours TIS after the effective date of this AD, 900 hours TSN, or at the next removal of the LPT module, whichever occurs first.
Less than 551 hours.	Replace prior to 750 hours TSN.

(c) Prior to 1,500 hours TIS after the effective date of this AD, or at the next removal of the LPT module, whichever occurs first, accomplish the following:

(1) Replace the second stage LPT nozzle air seal, P/N 3071878–1, in accordance with the Accomplishment Instructions of AlliedSignal Aerospace SB No. TFE731–72–3530, Revision 1, dated October 8, 1993, with a serviceable nozzle air seal.

(2) Replace or inspect the second stage LPT rotor assembly, P/N 3072541–( ), where ( ) denotes any dash number, and install a serviceable assembly in accordance with the Accomplishment Instructions of AlliedSignal Aerospace ASB No. TFE731–A72–3519, Revision 3, dated May 6, 1994.

(d) Perform subsequent repetitive inspections and remove from service first and second stage LPT disks, and replace with a serviceable disk, as follows:

(1) Remove first stage LPT disks, P/N 3074103–1, prior to accumulating 750 hours TSN, or 3,000 CSN.

(2) Remove first stage LPT disks, P/N 3073733–1, prior to accumulating 1,500 hours TSN, or 3,000 CSN.

(3) Remove second stage LPT disks, P/N 3074105–1 prior to accumulating 4,500 hours TSN, or 3,000 CSN.

(4) Inspect the second stage LPT rotor assembly, P/N 3074106–1, by performing a balance rim dimensional inspection, wire gauge check, and fluorescent penetrant inspection, in accordance with the Engine Light Maintenance Manual, at intervals not to exceed 1,500 hours TIS since last inspection.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office. NOTE: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Accomplishment of the requirements of paragraph (c)(1) of this AD in accordance with the original version of AlliedSignal Aerospace SB No. TFE731–72–3530; or the requirements of paragraphs (b) or (c)(2) of this AD in accordance with the original version, Revision 1, or Revision 2 of AlliedSignal Aerospace ASB No. TFE731–A72–3519 constitute acceptable alternative methods of compliance to the applicable requirements of this AD.

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

(h) The requirements of this AD shall be accomplished in accordance with the following applicable service documents:

Document No.	Pages	Revision	Date
AlliedSignal Aerospace ASB No. TFE731–A72–3544	1–10	Original	Oct. 8, 1993.
Total pages: 10.			
AlliedSignal Aerospace SB No. TFE731–72–3530	1–2	1	Oct. 8, 1993.
	3–4	Original	July 2, 1993.
	5	1	Oct. 8, 1993.
	6–8	Original	July 2, 1993.
Total pages: 8.			
AlliedSignal Aerospace ASB No. TFE731–A72–3519	1–8	3	May 6, 1994.
Total pages: 8.			
AlliedSignal Aerospace ASB No. TFE731–A72–3557	1–12	Original	May 12, 1994.
Total pages: 12.			

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 AlliedSignal Inc., Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 1, 1994.

Issued in Burlington, Massachusetts, on November 3, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–28109 Filed 11–15–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 90–NM–265–AD; Amendment 39–9073; AD 94–23–10]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing AD that currently requires periodic leak checks of the forward lavatory drain system and provides for the installation of a new drain valve as terminating action. This action continues to require various leak checks, but deletes a previously provided terminating action; adds requirements for leak checks of other lavatory drain systems; provides for the option of revising the FAA-approved maintenance program to include a schedule of leak checks; requires the installation of a cap on the flush/fill line; and requires either a periodic leak check of the flush/fill line cap or replacement of the seals on both that cap and the toilet tank anti-siphon (check) valve. This amendment was prompted by continuing reports of damage to engines and airframes, separation of engines from airplanes, and damage to property on the ground, caused by "blue ice" that had formed from leaking forward lavatory drain systems and subsequently had dislodged from the airplane. The actions specified by this AD are intended to prevent such damage associated with the problems of "blue ice."

EFFECTIVE DATE: December 16, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration, (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 90–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Don Eiford, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2788; fax (206) 227–1811.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to Boeing Model 727 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 18, 1994 (59 FR 12865). That supplemental NPRM proposed to supersede AD 86–05–07, amendment 39–5250 (51 FR 7767, March 6, 1986). That AD currently requires periodic leak checks of the forward lavatory drain system and provides for the installation of a new drain valve as terminating action.

Among other things, the supplemental NPRM proposed to:

1. Delete the existing provision for terminating action;

2. Require repetitive leak checks of both the forward and the aft lavatory drain systems;

3. Provide an optional procedure for complying with the rule, which would entail revising the FAA-approved maintenance program to incorporate a schedule and procedure to conduct leak checks of the lavatory drain systems; and

4. Require the installation of a lever lock cap on flush/fill lines, and periodic leak check of the flush/fill line.

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

Personal Injury Risk of Blue Ice

Several commenters request that all actions applicable to the aft lavatory drainage systems be deleted from the proposed rule, since the risk of injury caused by "blue ice" forming at an aft lavatory, dislodging from an airplane, and striking a person on the ground is extremely remote. As justification for their request, these commenters cite an analysis that was performed in 1990 to determine the probability of personal injury. This analysis concludes that such probability is on the order of 1×10^{-9} per flight.

The FAA does not concur with these commenters' request. The criteria of a probability of injury being on the order of 1×10^{-9} per flight hour is relevant when an aircraft system is originally certified. However, once an unsafe condition becomes known to the FAA, an analysis is not necessarily sufficient to refute the unsafe condition. The FAA considers that the numerous reported cases of "blue ice" striking and damaging houses, cars, and populated areas is sufficient to support the conclusion that "blue ice" falling from aft lavatory drain systems presents an unsafe condition.

Moreover, the FAA does not find the analysis submitted by the commenters to be conclusive. That particular analysis was based on several

assumptions whose adequacy the FAA questions. Among them are:

1. The analysis assumed that a piece of "blue ice" falls to the ground once every two weeks in the United States. These figures were based upon language that appeared in a newspaper article and are apparently anecdotal data. The FAA points out that the cases addressed in the newspaper article (and, therefore, in the analysis) may be only the "reported" cases; however, the vast majority of cases go unreported, and are likely to be on the order of many magnitudes greater than the number reported.

2. Additionally, the crux of the analysis is based on assumptions that the size of a shadow of a person on the ground is two square feet. This appears to assume that the person is standing up, the ice comes straight down, the ice falls as a single projectile, and the ice does not break into smaller pieces as it comes through a roof and ceiling. None of these assumptions are proven or representative of a typical scenario.

Further, the FAA points out that demographic studies have shown that population density has increased around airports, and probably will continue to increase. These are populations that are at greatest risk of damage and injury due to "blue ice" dislodging from an airplane during descent. Without actions to ensure that leaks from the aft lavatory drain systems are detected and corrected in a timely manner, "blue ice" incidents would go unchecked and eventually someone would be struck, perhaps fatally, by falling "blue ice." To discount the unsafe condition to persons on the ground presented by falling "blue ice" would be a gross breach of the FAA's safety obligations and commitment to the public.

Reliability Targets for Leak Check Intervals

One commenter requests that the FAA provide reliability targets so that operators would know what data were necessary to obtain FAA approval of any request for an extension of a leak check interval. The FAA cannot concur with the commenter's request. The FAA has not provided such a "reliability target" because of the difficulty involved in specifying a target that would be applicable to and appropriate for all or most operators. While the FAA recognizes that larger operators are more likely to be able to provide a statistically significant data package, it considers that the approach to the development of "reliability targets" must also allow smaller operators to participate. For these reasons, and until a universal reliability target program can be developed, the FAA will review individual requests on a case-by-case basis. Paragraph (c) of the final rule provides for the submission of data to be considered for the approval of extensions to leak check intervals; these data can be summarized and accompanied by recommendations from industry groups.

Data From Boeing Model 737's

One commenter requests that the FAA consider data from Boeing Model 737 airplanes, in conjunction with data from Boeing Model 727 airplanes, when reviewing requests to extend the leak check interval. The FAA points out that, even though the design of the Model 727 and Model 737 are not similar in many aspects, the functioning of the lavatory drain systems on both models may be similar due to the similarity of the hardware used. Therefore, the FAA will consider data from similar drain systems of different airplane models when reviewing requests received to extend leak check intervals; however, in accordance with the data gathering requirements of paragraph (c) of this final rule, any data submitted must reflect which airplanes and which drain valves the data represent.

Boeing Specifications vs. Brand Name Valves

Several commenters request that the proposed rule be revised so that affected hardware is identified by Boeing Specification number, rather than by vendor part numbers. These commenters are concerned that certain parts may not qualify for longer inspection intervals because they have dash numbers not called out specifically in the proposed rule. They consider that this is not only confusing, but inequitable, since many later hardware configurations will fall into the "any other type valve" category that provides for a leak check interval of only 400 flight hours. The commenters consider that requesting "alternative methods of compliance" will become the norm, unless the rule is revised to refer to hardware specification numbers. One commenter, a manufacturer of valves, is concerned that it will be unable to market its equipment because the proposed rule provides no performance standards under which its valves can qualify.

On the other hand one commenter objects to the FAA's statement in the preamble to the supplemental NPRM that indicated, "* * * One of the factors that the FAA will consider in approving alternative valve designs is whether the valve meets Boeing Specification S417T105 or 10–62213." This commenter interprets the phrase to be a requirement for Boeing approval of any alternative valve only to the Boeing specifications.

The FAA does not concur with the commenters' requests to call out valves by Boeing specification only. Boeing specifications were not referenced in this final rule because the FAA does not consider it appropriate for Boeing to screen and potentially disapprove, for purposes of this AD, alternative valves that may not qualify to Boeing's specifications. This would have the effect of delegating to Boeing, through its specification qualification procedure, the authority to approve or disapprove alternative methods of compliance with this AD. Approval under a Boeing specification is not a requirement for a valve design under this rule; it is only a factor to be considered. Other factors may be taken into account as well, such as having extensive service history data. Review and approval of alternative valve designs is a function of the FAA through the "alternative methods of compliance" procedures provided by paragraph (f) of the final rule. The wording of the NOTE 7 following paragraph (f) of the final rule has been revised to clarify this point.

Qualifying For 1,000 Flight Hour Leak Check Interval

Several operators request that the proposed rule be revised to include a provision that would allow any service panel drain valve, manufactured by any manufacturer, to become qualified for the 1,000-flight hour leak check interval. These commenters state that, by restricting the 1,000-flight hour interval to only certain brand name valves, the FAA restricts competition that could lead eventually to the development of better valves.

The FAA does not agree that the 1,000 flight hour leak check interval should be allowed unequivocally for all service panel drain valves. Current service history data indicate that some valves are more reliable than others; those valves that have demonstrated such reliability in service so far are the valves identified (by brand name) in this rule. The FAA does not consider that a design review and qualification test are sufficient to determine how well a valve will perform in actual service. This has been clearly demonstrated by the history of this specific AD action: the installation of any of several valves was designated previously as terminating action for the required leak check, but those valves were later found to be subject to leakage. However, the FAA does agree that requirements for service

history data should not be so rigid as to preclude competition by valve manufacturers with new designs. Therefore, the FAA will consider requests for inclusion in the 1,000-flight hour leak check category any valve for which the design, qualification test, and service history data are provided. The request should include an analysis of known failure modes for the valve and failure modes of similar valves; an explanation should be included as to how the design features of the valve will preclude these failure modes. Also included should be the results of qualification tests, and service history data covering approximately 25,000 flight hours or 25,000 flight cycles (including a winter season), collected in accordance with the requirements of paragraph (c) of the final rule, or a similar program. The final rule has been revised to include a new NOTE 7 to specify the request for this information.

Further, the FAA notes that one operator and a manufacturer, Pneudraulics, already have provided these data to the FAA, and the final rule has been revised to add certain Pneudraulics valves to the category of valves subject to a 1,000-flight hour leak check interval. (Without the submission and approval of this data, these valves would have been required to be leak checked at the 200-flight hour interval.)

Differences Between Paragraphs (a) and (b) of the Rule

One commenter maintains that the FAA's safety objective in addressing the "blue ice" issue should be to ensure that each and every operator has a comprehensive lavatory drain service program in place. The commenter points out that the FAA attempted this approach under the provisions of proposed paragraph (b), but made the conditions of compliance more stringent than those of proposed paragraph (a), such that no operator would elect to comply with paragraph (b). The commenter considers this unfortunate since it will result in a less effective "blue ice" prevention program fleetwide.

The FAA acknowledges that a difference exists between the provisions of paragraphs (a) and (b), both in the supplemental NPRM and in this final rule. However, as explained elsewhere in this preamble, the FAA has revised several requirements of paragraph (b) of the final rule to make it more 'attractive" to operators. Certain of these revised requirements include extended leak check intervals for some valves. The FAA does consider that revising the maintenance program to include the procedures specified in paragraph (b) will be more effective overall in addressing "blue ice" as an on-going issue. The provisions of paragraph (b) are more comprehensive in approach: they include requirements not only for leak checks of the valves, but replacement of valve seals, repetitive visual inspections for leakage, procedures for reporting leakage, and training programs to inform pertinent personnel on "blue ice" awareness.

The FAA considers that it is appropriate to maintain the provisions of paragraph (a) as an option, so that operators without an FAA-approved maintenance program will have some means to comply with the rule.

Along this same line, another commenter points out other differences between the provisions of paragraphs (a) and (b). The commenter indicates that any valve service history data that is gathered by an operator complying with paragraph (a) may not be as valuable as data gathered by an operator complying with paragraph (b). Unless there is a specific, scheduled maintenance program, there is no way to determine if a valve may have begun leaking before a leak check was conducted and was subsequently repaired; therefore, merely passing a leak check successfully, as under the provisions of paragraph (a), does not verify the valve's reliability. The FAA acknowledges this commenter's observations. However, the FAA expects that some operators will choose to comply with the provisions of paragraph (b) and will provide the FAA with valve service history data. These data may indicate that the current leak check intervals are acceptable for operators operating under a maintenance program, but should be shortened for operators without a maintenance program. If, as the commenter suggests, leak tests alone prove to be inadequate to prevent "blue ice" formation, the FAA may consider revising this rule at a later time to modify or delete paragraph (a).

Alternative Recordkeeping

Several commenters request that a revision be made to proposed paragraph (b) that would allow for the use of an alternative method of recordkeeping to that otherwise required by Federal Aviation Regulations § 121.380 (14 CFR 121.380), "Maintenance recording requirements". The commenters' main concern is that it should be clear to the cognizant Principal Maintenance Inspectors (PMI), and other FAA officials in the years ahead, that once the maintenance program revision is made and approved, the AD is "signed off as complete." No other special records should be required to track the various tasks specified in proposed paragraph (b) (such as valve seal replacement, training, reporting procedures, visual checks, etc.), which are in addition to the recordkeeping requirements that now exist within each of the affected operator's maintenance program.

The FAA does not concur with the commenters' request for many of the same reasons it did not concur with a similar request made in response to the previous supplemental NPRM. The FAA considers that, even though this AD would affect the maintenance program, it is of such importance that it warrants other than "normal" procedures to be followed in certain aspects. Some method of recordkeeping must be maintained to ensure that the required valve seal changes and periodic leak checks continue, and to ensure that the procedures required by this AD are not eventually dropped from any operator's maintenance program.

Principal Maintenance Inspector Involvement

These same commenters request that a statement be added to proposed paragraph (b) to indicate that the "AD is no longer applicable once a revision to the FAA-approved maintenance program is implemented." These commenters indicate that it would be less cumbersome to operators to accomplish all of the AD-required tasks within the parameters of their FAA-approved maintenance program, where the cognizant PMI would be the FAA official permitted to approve any further changes to the program. These commenters contend that it is much more appropriate for the PMI, rather than the Seattle Aircraft Certification Office (ACO) engineering staff, to approve subsequent changes to the program once the program has been approved. The commenters consider that the PMI is more qualified than the ACO staff to approve tasks on training, reporting, and adjustments to the leak check intervals based upon reliability program recommendations. The commenters point out that the subject matter of the rule is clearly maintenance-related, and the ACO staff is not equipped to effectively respond to requests for maintenance interval changes that may occur.

The FAA does not concur with this request for the same reasons it did not concur with a similar request made by these commenters to the previous supplemental NPRM. While the FAA agrees that the PMI may be permitted certain oversight of the proposed alternative maintenance program provision of the rule (specifically with

regard to recordkeeping), the FAA does not agree that the PMI should be tasked with approving certain adjustments of the program. As was explained in detail in the preamble to the supplemental NPRM, failure threshold criteria and definitive leak/failure rate data do not exist for the majority of the subject valves; therefore, a PMI would have no data on which to base the approval of an extension of a leak check interval for many valves with the assurance that the valve would not fail within the adjusted interval. In light of this, it is essential that the FAA, at the ACO level, have feedback as to the leak and failure rates experienced in the field. Although the PMI's serve as the FAA's critical link with the operators (and the PMI's oversight responsibilities will not be minimized by this AD action), it is the staff of the ACO that provides the engineering support necessary to evaluate whether increases in leak check intervals will maintain an acceptable level of safety.

Further, the FAA considers it essential that any adjustment of the required leak check intervals, seal change intervals, and data reporting procedures should be approved in a uniform manner in order to ensure that the program is administered uniformly (and appropriately) fleetwide. The staff of the Seattle ACO is in the best position to ensure that this is accomplished. Additionally, given that possible new relevant issues might be revealed during the approval process, it is imperative that the engineering staff at the ACO have such feedback. In any case, the ACO staff will work closely with the cognizant PMI to ensure that any approved revisions to this aspect of the maintenance program are appropriate and workable for the applicable airline.

Specific Leak Check Instructions

One commenter requests that the proposed rule be revised to include a procedure for performing the leak checks. The commenter suggests that the instructions contained in Boeing Service Letter 737–SL–38–3–A (which applies to Model 737 series airplanes) be referenced in order to ensure that all affected operators perform the same leak check. The FAA does not concur totally. The instructions contained in Boeing Service Letter 737–SL–38–3–A address only the forward lavatory service panel (not the aft or executive panels), and do not correlate with the requirement to perform a leak check of the outer cap on certain valves. The instructions do contain procedures for performing a leak test of the toilet tank anti-siphon (check) valve, which are appropriate for performing that leak check in accordance with the requirements of this AD; therefore, the FAA has added a Note to paragraphs (a)(5) and (b)(3) to indicate that operators may consider the leak check procedures relative to the toilet tank anti-siphon (check) valve in accordance with the service letter as an acceptable means of compliance with those paragraphs. The FAA does agree that a standard leak check procedure would be beneficial, and will consider revision of this final rule to include one if an acceptable procedure becomes available in the future.

Another commenter requests that the proposed rule be revised to include specific procedures for conducting the leak check of the dump valve. This commenter suggests that this leak check should be performed by filling the toilet tank with water or rinsing fluid to a level such that the bowl is approximately half full (at least 2 inches above the flapper in the bowl) and waiting at least 5 minutes to determine if leakage is present. The FAA concurs and has revised the rule to include a new **Note 1**, which indicates that operators may conduct this particular leak check in accordance with the procedures suggested by this commenter.

Service Panel Waste Drain Cap Leak Check

Several commenters request that paragraphs (a)(1)(i) and (b)(2)(i) of the proposed rule be revised to delete the requirement to perform a leak check of the service panel waste drain cap that does not have an inner door with a second positive seal. These commenters state that, to perform this leak check, approximately 20 gallons of contaminated waste water are required to be dumped on the ramp; such dumping violates various environmental regulations.

The FAA does not agree that conducting this leak check will necessarily require spilling a vast amount of waste water on the ramp. Compliance with FAA rules is not a license to violate environmental regulations. Operators could devise a means to catch or handle the waste water to ensure that they will be in compliance with applicable State or Federal environmental regulations.

However, the FAA has reconsidered this requirement for leak checks of the service panel waste drain cap in waste drain systems incorporating in-line drain (ball) valves. The FAA has determined that, for these configurations, the valve reliability is sufficient to obviate the need for additional assurance provided by performing a leak check of the cap, as long as a leak check of the dump valve is accomplished. A leak check of the dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel) can be accomplished easily and does not entail spillage of waste on the ramp. Therefore, the FAA has revised paragraph (b)(2)(i) of the final rule to require operators to perform a leak check of the dump valve, in lieu of performing a leak check of the cap valve. Operators would still be required to perform a leak check of the in-line drain (ball) valve. The leak checks must be accompanied by visual inspections of the service panel drain valve outer cap/door seal, the inner seal (if the valve has an inner door/closure device with a second positive seal), and seal mating surface for wear or damage that may cause leakage.

This revision to the requirements of the final rule does not entail any additional burden on operators. As previously proposed, operators would have been required to perform leak checks of both the inner and outer doors of the cap valve and of the in-line drain valve, and a visual inspection of the service panel drain valve outer cap/door seal. As now required by the final rule, operators will be required to perform fewer leak checks of valves, and one additional visual inspection of the (inner) door seals. Since visual inspections are less labor-intensive and less costly than leak checks, the FAA considers that the revised requirements will significantly reduce the economic burden on affected operators.

Similarly, the FAA has revised the requirements of paragraphs (b)(2)(ii) and (b)(2)(iv), which require leak checks of the dump valve and service panel valve. The final rule now specifies that the leak check of the service panel drain valve need only entail a leak check of the inner door/closure device (rather than leak checks of both the inner and outer door, as was previously proposed), provided that a visual inspection is made of the outer cap/door seal and seal mating surface for wear or damage.

The FAA has not revised the similar requirements of paragraph (b)(2)(iii), which pertains to drain systems incorporating "donut" valves. As explained later in this preamble, the reliability of this type of valve is such that a leak test of the downstream cap is considered necessary; therefore, paragraph (b)(2)(iii) retains the requirement for leak checking the cap in drain system configurations where "donut" valves are installed.

Waste Drain System Leak Check Procedure

One commenter requests that proposed paragraphs (a) and (b)(2) be clarified to specify that, for drain systems that may contain more than one kind of valve, only one of the waste drain system leak check procedures needs to be conducted at each service panel location. The procedure conducted should be the one that applies to the equipment with the longest leak check interval. The FAA concurs with the commenter's request, since this was the intent of this requirement. The final rule has been revised to clarify this point.

Kaiser Valve Part Numbers

One commenter requests that the part number for the Kaiser Electroprecision in-line drain valve, specified in the proposal as "part number 2651–329–5 (or higher dash number)," be revised to include the entire part number 2651–329 series. The valves in this series are all virtually identical in design and, therefore, would have the same reliability. The FAA concurs and has revised the final rule to call out these valves as "Kaiser Electroprecision part number series 2651–329."

Additionally, this same commenter requests that the proposed rule be revised to include Kaiser Electroprecision in-line drain valves, having part number series 2651–334 and 2651–278, in all requirements that apply to part number series 2651–329 valves. Although these valves differ slightly in their inlet/outlet configurations, actuating handle sizes and shapes, and actuating handle orientation and movement, they are identical in their main sealing components, design standards, and principle of operation; therefore, their reliability can be assumed to be equivalent. The FAA concurs and has revised the final rule accordingly. Operators should note that a review of available data indicates that the latter valve series are not currently installed on Boeing 727 airplanes, however.

Leak Check Interval for Kaiser Valves

Other commenters request that the proposed rule be revised to permit the Kaiser Electroprecision part number series 0218–0026 valves (Expander Valves) to be leak checked at the same interval as the valves listed in the supplemental NPRM for 1,000-flight hour leak checks. This valve series was qualified to and meets the design/performance criteria of Boeing Specification 10–62213 (Revision A). The commenter indicates that a large number of these valves have been installed in various transport category aircraft, and a tracking of the service history of the installed valves reveals that over one million flight hours have been accumulated without any reported leakage.

The FAA partially concurs with the commenter's request to provide an extended leak check interval for this specific valve series. The FAA considers that the presence of a forced-opening, or "icebreaker," feature in a valve reduces the likelihood that service abuse will occur that would create a leaking valve. Unlike other valves eligible for inspections at 1,000-flight hour intervals in this rule, the Kaiser Electroprecision part number series 0218–0026 valves do not have such an "icebreaker" feature. In light of this, as well as the service history data provided, the FAA has revised the final rule to add a new paragraph (a)(3) to address these Kaiser Electroprecision valves and to provide for a repetitive 600-flight hour leak check of them for those operators electing to comply with paragraph (a) of the final rule. The FAA has also revised paragraph (b)(2)(ii) of the final rule to include these Kaiser Electroprecision valves in the requirements for leak checks at 1,000 flight hour intervals. The FAA has determined that the difference in this leak check interval between paragraph (a) and (b) is appropriate, since the repetitive visual inspections, seal replacement requirements, and other comprehensive aspects of paragraph (b) will ensure that any leakage will be detected that may be caused by service damage inflicted on the valve (due to lack of an icebreaker feature on the valve).

Additionally, the FAA has revised the repetitive leak check interval for the Kaiser Electroprecision valves subject to the requirements of paragraph (b)(2)(i). That paragraph has been revised to provide for conducting the applicable repetitive leak checks at intervals of "5,000 flight hours or 24 months, whichever occurs later." (The supplemental NPRM proposed a repetitive leak check interval of 5,000 flight hours only.) This provision has been made in acknowledgment of those operators who may have related maintenance procedures that are conducted on a schedule based on calendar time rather than on flight hours.

Kaiser Expander Valve

One commenter has concerns about the requirements of proposed paragraph (b)(2)(i) of the supplemental NPRM, which is applicable to forward lavatory drain systems modified in accordance with Boeing Service Bulletin 727–38–0021. This commenter indicates that the proposed paragraph does not require that a Kaiser Electroprecision Expander Valve or a lever-lock cap be installed in accordance with that Boeing service bulletin, even though the service bulletin does refer to such installations in certain of its modification procedures. This commenter questions whether those installations are required to be installed and, if so, suggests that the FAA re-issue this AD action as a proposal to clearly indicate the intent of that paragraph.

The FAA acknowledges this commenter's concerns and agrees that different interpretations are possible from the wording of paragraph (b)(2)(i) as it appeared in the supplemental NPRM. The FAA has revised the final rule to delete reference to Boeing Service Bulletin 727–38–0021, and to merely call out the applicable Kaiser Electroprecision part number series valves. This revision should make clear that there is no requirement for installation of a Kaiser Electroprecision Expander Valve to qualify for the repetitive 5,000 flight hour leak checks. The requirement for installing a lever lock cap is contained in paragraph (d) of the supplemental NPRM and this final rule.

Kaiser Expander Valve/In-Line Drain Valve Combination

One commenter requests that the proposed rule be revised to establish a 6,000-flight hour leak check interval for installations of an in-line drain valve in combination with a Kaiser Electroprecision Expander Valve. As proposed, the leak check interval for this combination of valves is 5,000 flight hours. The commenter provided no justification for this request, however.

The FAA does not concur with the commenter's request. Available data have demonstrated that the seal life and reliability of the Expander Valve are significantly less than that of the in-line drain valve. In light of this, an extension of the 5,000-flight hour interval to a 6,000-flight hour interval is not justified for the in-line drain valve in combination with the Expander Valve. However, under the provisions of paragraph (b)(5)(i)(B) of the final rule, if an in-line drain valve is found to have abnormal operation of the handle, the system may continue in operation, provided a service panel drain valve that is in the 1,000-flight hour leak check interval category is installed in the system and has passed a leak check within the preceding 1,000 flight hours.

Shaw Aero Valves Part Numbers

Several commenters request that the proposed rule be revised to include Shaw Aero Devices valves in the part number 1010100B and 1010100C series in the requirements for 1,000-flight hour leak check intervals. One of these commenters indicates that these part-numbered valves are merely later generations of the Shaw Aero Devices part number 1010100C–N (or higher dash number) valve, which was called out in the supplemental NPRM and for which a 1,000-flight hour leak check interval was proposed.

The FAA agrees that these Shaw Aero Devices valves should be addressed in the AD, and that some increase in the leak check interval, above the basic 200-flight hour interval, is justified for these valves. However, the FAA does not concur with the commenters' request to provide for a 1,000-flight hour leak check interval for them in all circumstances. The FAA has obtained data on certain design improvements, such as an "ice breaker" feature, that have been made to certain Shaw Aero Devices valves to correct previously identified deficiencies. Evidence indicates that Shaw Aero Devices valves having part number 1010100B–A–1, and having serial numbers 0115 through 0121 (inclusive), 0146 through 0164 (inclusive), and 0180 and higher, incorporate these design improvements. Therefore, the FAA has revised paragraph (a)(2) of the final rule to include these specific valves in the requirements for the 1,000-flight hour leak check interval.

These data also indicate that, while some Shaw Aero Devices valves in the part number series 1010100C incorporate the "ice breaker" feature and have a configuration that corrects known design deficiencies, other valves in this same series do not incorporate these features. Therefore, not all Shaw Aero Devices part number series 1010100 are included in the 1,000-flight hour interval leak check category. Accordingly, the FAA has revised the final rule to include a new paragraph (a)(3), applicable to certain part number series 1010100C valves (those without the ice breaker feature and other improvements), which provides for a 600-flight hour leak check interval for them. Paragraph (b)(2)(ii) of the final rule has been revised to address these valves and provides for a 1,000-flight hour leak check interval for them. [As explained previously, justification for the extended interval under paragraph (b) is that the maintenance program provisions of paragraph (b) should detect any leakage caused by service damage inflicted due to lack of an icebreaker feature or other improvement on the valve.] This is considered interim action, however. The FAA plans further review of the valves in this part number series to determine if these leak check intervals are appropriate, or whether they should be extended or shortened.

For these same reasons, the FAA also is reviewing the valves included in the part number 1010100C–N (and higher dash number) group, which was called out in paragraphs (a)(2) and (b)(2)(ii) of the supplemental NPRM. Currently, this final rule provides for a 1,000-fight hour leak check interval for these valves. However, as more data become available, the FAA may consider further rulemaking to address the leak check interval for this particular valve group.

"Donut" Valves

One commenter contends that "donut" valves, which are addressed in proposed paragraph (b)(2)(iii), are unsafe and should be banned immediately. This commenter states that these valves are of design that has resulted in significant leakage and "blue ice" incidents. In discussions with airline personnel, this commenter has found that it is commonplace to find these valves leaking, or to find that the "donuts" are missing when an aircraft reaches its destination. It is common to have the "donut" installed at the start of the day and find it to be missing only one to two flights into the day. This is clearly a dangerous situation.

The FAA acknowledges this commenter's remarks. During the past year the FAA has received two additional reports of engine damage caused by "blue ice" formation from lavatory drain systems using "donut" valves. The FAA is continuing to review this service history of these valves and may consider further rulemaking to require their removal from service.

Additionally, the FAA has revised paragraph (b)(2)(iii) of the final rule to specify certain Kaiser Roylyn part-numbered valves as ones that incorporate the "donut" configuration and are, therefore, subject to the requirements of that paragraph.

"Taco" Valves

One commenter requests that the Kaiser Electroprecision "taco" valve be deleted from proposed paragraph (b)(2)(iii), which would require that it be leak checked at intervals of 200 flight hours. The commenter suggests that it be included in paragraph (b)(2)(iv), instead, since that paragraph addresses similar double-door types of valves and requires their inspection at intervals of 400 flight hours.

The FAA concurs with this request and has revised the final rule accordingly. This change leaves only the "donut" valve in the category of valves [addressed by paragraph (b)(2)(iii)] requiring leak checks at the 200-flight hour interval. The FAA considers this appropriate, since the "donut" valve clearly has been the valve associated with the greatest number of problems relative to "blue ice."

Visual Inspections To Detect Leakage

Several commenters request that paragraph (b)(4) be revised to allow flight crew to perform the visual inspections to detect leakage. These commenters state that, since this inspection involves only a visual examination, trained maintenance personnel should not be made to accomplish it.

The FAA does not concur with the commenters' request. While flight crews are authorized to perform walk-around inspections of the airplane, in accordance with FAR 91.7(b) [14 CFR 91.7(b)], "Civil aircraft airworthiness," there is no requirement for the flight crew to record the results of that inspection. The FAA considers that certified maintenance personnel are best suited to perform this inspection due to their specific skills, training, and experience with reporting procedures.

Flush/Fill Line Cap Installation

Several commenters request that the proposed rule be revised to delete paragraph (d), which would require the installation of a cap on the flush/fill lines for forward, aft, and executive lavatories. One commenter states that the caps on the service panel are a secondary sealing system, and that the toilet check valve is the primary seal preventing fluid from flowing back down this line. Other commenters also request that the requirements for periodic leak testing of the cap be deleted. Additionally, one commenter believes that installation of a cap on the flush/fill line will cause problems because, in their experience, if the caps are installed, the residual flush/fill fluid trapped inside the line will freeze by the time it reaches the next destination; the frozen line and installed cap must be thawed out prior to servicing of the lavatory, which can create a delay in normal operations. This commenter and others suggest that, as an alternative to the installation of a cap and a leak test, the proposed rule should be revised to require periodic replacement of the seal in the toilet tank anti-siphon (check) valve. The commenters point out that this valve, when maintained, effectively prevents the toilet fluid from being

siphoned out through the flush/fill line, thereby making the cap unnecessary.

The FAA does not concur with the requests to delete the requirement for installation of a cap on the flush/fill line, but does concur that certain alternative procedures may be provided. The FAA has received a report of a Boeing Model 727 series airplane that experienced an in-flight shutdown of the number 3 engine due to the ingestion of "blue ice" caused by leakage from the flush/fill line. Investigation revealed that approximately one in four of the toilet tank anti-siphon (check) valves in the affected operator's fleet was found to leak within a three-month period. The FAA has concluded that the anti-siphon (check) valve alone does not appear to have sufficient integrity and reliability to prevent leakage from the flush/fill line. However, the FAA does acknowledge that, because the flush/fill line does not normally have water in it and a leak test of the flush/fill line cap is impractical in many circumstances, it is sufficient to replace the seals in the toilet tank anti-siphon valve and the cap, and perform a leak check of the toilet tank anti-siphon (check) valve. Paragraphs (a)(5) and (b)(3) of the final rule have been revised to provide for this alternative procedure.

Several commenters request that proposed paragraph (d) be revised to delete the requirement that installation of the cap must be accomplished only in accordance with Boeing Service Bulletin 727–38–0021, dated July 30, 1992. That service bulletin specifies the installation of a particular lever-lock cap; however, the commenters request that other FAA-approved lever-lock caps also be permitted to be used. (In their comments, certain commenters provided design and service history data on another such lever-lock cap.) The FAA agrees that other FAA-approved lever-lock caps are acceptable in this installation, and has revised the final rule to specify this.

One commenter requests that any FAA approved cap, as opposed to only lever/lock caps, be considered sufficient for the installation required by proposed paragraph (d). The FAA does not concur, since the commenter provided no design or service history data for any other particular cap. However, under the provisions of paragraph (f) of the final rule, this commenter may elect to provide such data in a request for an alternative method of compliance with the rule.

One commenter considers that installation of a cap without a provision for a heating element will cause ice to form in the line at the cap. This commenter has experienced this problem on airplanes in its fleet that are equipped with a lever-lock cap. This freezing problem has been further exacerbated when service personnel have damaged the caps or flush/fill line by trying to remove the ice with a tool (such as a screw driver). The commenter suggests that the rule should require installation of a heating element to prevent freezing in or on the flush/fill line, and points out that Boeing Service Bulletin 727–38–0021, which is referenced in proposed paragraph (d) for the cap installation procedures, does not call for installation of any heating element.

The FAA agrees that one way to prevent freezing in the subject area may be to install an FAA-approved heating element. It is also possible to avoid the freezing problem by allowing the fluid to drain out of the flush/fill line after servicing the tank. Since frozen flush/fill lines are avoidable without a heating element, provided proper servicing is done, the FAA does not consider a specific requirement to install a heating element to be warranted.

Terminating Action

One commenter requests that installation of an in-line drain valve per Boeing Specification S417T105 be considered terminating action for the required leak checks. As justification for this request, the commenter provided data indicating that, out of several million flight hours of airplanes equipped with this particular valve, there have been very few incidents of leakage.

The FAA does not concur with the commenter's request. Based on the available data to date relative to all valves, the FAA has determined that periodic leak testing of valves, as well as the replacement of valve seals, is warranted in order to ensure that the valves do not start to leak. Because of this, the FAA does not consider that there is currently a "terminating action" for these necessary requirements.

Terminology Changes

One commenter requests that the wording of the proposed rule be revised by changing the term "operating torque" to "operation" in all procedures relative to inspections of the valve handle for the in-line drain valves. This commenter points out that the actuation of neither the in-line drain valve nor the service panel drain valve is a rotational movement at the service panel. The FAA concurs and has revised the terminology of the final rule accordingly.

This same commenter requests that proposed paragraph (b)(5) be revised by changing the phrase "blue streak findings" to "horizontal blue streak findings" when specifying which findings must be reported to maintenance. The commenter states that this change is necessary in order to differentiate between indications of leakage that has resulted from spills that occurred during servicing and indications of leakage that occurred during flight. Leakage that has occurred during flight would be indicated by horizontal blue streaks. The FAA concurs and has revised the terminology in the final rule accordingly.

This commenter also requests that the proposed rule be revised by deleting the terms "forward and aft" when referring to "each lavatory * * * having an in-line drain valve installed." This commenter states that some Model 727 aircraft have been built with an executive mid-cabin lavatory with an in-line drain valve. The FAA concurs and has revised the rule accordingly. The intent of the rule is clear that the related procedures are to be performed on "each" lavatory having the subject drain valve, regardless of where the lavatory is located on the airplane.

This commenter further points out that the terms "service panel drain valve," "cap valve," and "drain valve at the service panel" are used in various places throughout the proposed rule to describe the same valve. The commenter suggests that, in order to be consistent, the rule be revised to call this valve "the service panel drain valve" in all pertinent references. The FAA concurs and has revised the final rule accordingly. For similar reasons, the final rule has been revised by changing the term "ball valve" to "in-line drain valve" in several places.

Estimated Cost Figures

Several operators state that the estimated cost impact of the rule, as presented in the preamble to the supplemental NPRM, is too low and should be revised to reflect estimates of the costs as submitted by these individual operators. The FAA does not concur that the estimated cost impact figure need to be revised. While it is reasonable to assume that the costs to some operators may be higher than those presented in this preamble, it is also reasonable to assume that the costs to other operators may be considerably lower. Therefore, the estimated cost impact represents an average for the U.S. fleet, based on the best data available to date. The FAA considers the cost impact estimate, as presented, to be

sufficiently accurate for the purposes of this rulemaking action.

Cost Impact

There are approximately 1,752 Boeing Model 727 series airplanes of the affected design in the worldwide fleet, operated by 153 operators. It is estimated that 1,277 airplanes of U.S. registry and 54 U.S. operators will be affected by this AD.

The FAA estimates that it will take approximately 4 work hours per airplane lavatory drain (normally, there are 2 drains per airplane) to accomplish a leak check, at an average labor cost of $55 per work hour.

Certain airplanes (i.e., those that have "donut" type of drain valve installed) may be required to be leak checked as many as 15 times each year. Certain other airplanes having other valve configurations will be required to be leak checked as few as 3 times each year. Some airplanes that have various combinations drain valves installed will require approximately 2 leak checks of one drain valve and 3 leak checks of the other drain valve each year. Based on these figures, the total annual (recurring) cost impact of the required repetitive leak checks on U.S. operators is estimated to be between $6,600 and $1,320 per airplane per year.

The FAA estimates that it will take approximately 1 work hour per airplane lavatory drain to accomplish a visual inspection of the service panel drain valve cap/door seal and seal mating surfaces, at an average labor cost of $55 per work hour.

As with leak checks, certain airplanes will be required to be visually inspected as many as 15 times or as few as 3 times each year. Based on these figures, the total annual (recurring) cost impact of the required repetitive visual inspections on U.S. operators is estimated to be between $825 and $165 per airplane per year.

The 1,277 affected airplanes of U.S. registry have, on an average, 3 flush/fill lines per airplane. The FAA estimates that the installation of a level lock cap assembly will require approximately 2 work hours to accomplish, at an average labor cost of $55 per work hour. Required parts are estimated to be $275 per drain installation. Based on these figures, the total cost impact of the requirement to install a cap on the flush/fill lines is estimated to be $1,474,935, or an average of $1,155 per airplane.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions proposed in this AD were to be conducted as "stand alone" actions. However, in actual practice, these actions could be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary "additional" work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling should be minimal.

In addition to the costs discussed above, for those operators who elect to comply with proposed paragraph (b) of this AD action, the FAA estimates that it will take approximately 40 work hours per operator to incorporate the lavatory drain system leak check procedures into the maintenance programs, at an average labor cost of $55 per work hour. Based on these figures, the total cost impact of the proposed maintenance revision requirement of this AD action on the 54 U.S. operators is estimated to be $118,800, or $2,200 per operator.

The "total cost impact" figures described above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from 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 part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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 39–5250 (51 FR 7767, March 6, 1986), and by adding a new airworthiness directive (AD), amendment 39–9073, to read as follows:

94–23–10 Boeing: Amendment 39–9073. Docket No. 90–NM–265–AD. Supersedes AD 86–05–07, Amendment 39–5250.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent engine damage or separation, airframe damage, and/or hazard to persons or property on the ground as a result of "blue ice" that has formed from leakage of the lavatory drain system and dislodged from the airplane, accomplish the following:

Note 1: The dump valve leak checks required by this AD may be performed by filling the toilet tank with water/rinsing fluid to a level such that the bowl is approximately half full (at least 2 inches above the flapper in the bowl) and checking for leakage after a period of 5 minutes.

(a) Except as provided in paragraph (b) of this AD, accomplish the applicable procedures specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5) and (a)(6) of this AD. If the waste drain system incorporates more than one type of valve, only one of the waste drain system leak check procedures (the one that applies to the equipment with the longest leak check interval) must be conducted at each service panel location.

(1) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–329, 2651–334, or 2651–278: Within 1,500 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,500 flight hours, accomplish the following:

(i) Conduct a leak check of the dump valve (in-tank valve that is spring loaded closed and operable by a T-handle at the service panel) and the in-line drain valve. The in-line drain valve leak check must be performed with a minimum of 3 pounds per square inch differential pressure (PSID) applied across the valve.

(ii) Visually inspect the service panel drain valve outer cap seal and the inner seal (if the valve has an inner door/closure device with a second positive seal), and the seal mating surfaces, for wear or damage that may allow leakage. Prior to further flight, replace any worn or damaged seal, and repair or replace any damaged seal mating surfaces, in accordance with the valve manufacturer's maintenance manual.

(2) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0032; or Shaw Aero Devices part number 1010100C–N (or higher dash number); or Shaw Aero Devices part number 1010100B–A–1, serial numbers 0115 through 0121, 0146 through 0164, and –0180 and higher; or Pneudraulics part number series 9527: Within 1,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 1,000 flight hours, conduct a leak check of the dump valve and drain valve. The service panel drain valve leak check must be performed with a minimum of 3 PSID applied across the valve. Both the inner door/closure device and the outer cap/door must be leak checked.

(3) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0026, or Shaw Aero Devices part number series 1010100C (except as called out in paragraph (a)(2) above), or Shaw Aero Devices part number 1010100B (except as called out in paragraph (a)(2) above): Within 600 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 600 flight hours, conduct a leak check of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum 3 PSID applied across the valve. Both the inner door/closure device and the outer cap/door must be leak checked.

(4) For each lavatory drain system not addressed in paragraph (a)(1), (a)(2), or (a)(3) of this AD: Within 200 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 200 flight hours, conduct a leak check of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum 3 PSID applied across the valve. If the service panel drain valve has an inner door with a second positive seal, both the inner door and the outer cap/door must be leak checked.

(5) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 5,000 flight hours, accomplish either of the following procedures specified in paragraphs (a)(5)(i) or (a)(5)(ii) of this AD:

(i) Conduct a leak check of the flush/fill line cap. This leak check must be made with a minimum of 3 PSID applied across the cap. Or

(ii) Replace the seals on the toilet tank anti-siphon (check) valve and the flush/fill line cap. Additionally, perform a leak check of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve.

Note 2: The leak test procedure specified in Boeing Service Letter 737–SL–38–3–A, dated March 19, 1990, may be referred to as guidance for the procedures required by this paragraph.

(6) If a leak is discovered during any leak check required by paragraph (a) of this AD, prior to further flight, accomplish one of the following procedures:

(i) Repair the leak; or

(ii) Drain the affected lavatory system and placard the lavatory inoperative until repairs can be accomplished.

(b) As an alternative to the requirements of paragraph (a) of this AD: Within 180 days after the effective date of this AD, revise the FAA-approved maintenance program to include the requirements specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this AD.

(1) Replace the valve seals in accordance with the applicable schedule specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD. Any revision to this replacement schedule must be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(i) For each lavatory drain system that has an in-line drain valve installed, Kaiser Electroprecision part number series 2651–329, 2651–334, or 2651–278: Replace the seals within 5,000 flight hours after revision of the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 52 months.

(ii) For each lavatory drain system that has any other type of drain valve: Replace the seals within 5,000 flight hours after revision of the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 18 months.

(2) Conduct periodic leak checks of the lavatory drain systems in accordance with the applicable schedule specified in paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), and (b)(2)(iv) of this AD. If the waste drain system incorporates more than one type of valve, only one of the waste drain system leak check procedures (the one that applies to the equipment with the longest leak check interval) must be conducted at each service panel location. Any revision to the leak check schedule must be approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate.

(i) For each lavatory drain system that has an in-line drain valve, Kaiser Electroprecision part number series 2651–278, 2651–329, or 2651–334: Within 5,000 flight hours after revision of the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 24 months or 5,000 flight hours, whichever occurs later, accomplish the procedures specified in paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this AD:

(A) Conduct a leak check of the dump valve (in-tank valve that is spring loaded, closed and operable by a T-handle at the service panel), and in-line drain valve. The in-line drain valve leak check must be performed with a minimum of 3 pounds per square inch differential pressure (PSID) applied across the valve.

(B) Visually inspect the service panel drain valve outer cap/door seal and the inner seal (if the valve has an inner door/closure device with a second positive seal) and seal mating surface for wear or damage that may cause leakage. Any worn or damaged seal must be replaced and any damaged seal mating surface must be repaired or replaced, prior to further flight, in accordance with the valve manufacturer's maintenance manual.

(ii) For each lavatory drain system that has a service panel drain valve installed, Kaiser Electroprecision part number series 0218–0032, or Kaiser Electroprecision part number series 0218–0026, or Shaw Aero Devices part number series 1010100C, or Shaw Aero Devises part number series 1010100B, or Pneudraulics part number series 9527: Within 1,000 flight hours after revising the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 1,000 flight hours, accomplish the procedures specified in paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this AD:

(A) Conduct leak checks of the dump valve and service panel drain valve. The service panel drain valve leak check must be performed with a minimum of 3 PSID applied across the valve. Only the inner door/closure device of the service panel drain valve must be leak checked.

(B) Visually inspect the service panel drain valve outer cap/door seal and seal mating surface for wear or damage that may cause leakage. Any worn or damaged seal must be replaced, and any damaged seal mating surface must be repaired or replaced, prior to further flight, in accordance with the valve manufacturer's maintenance manual.

(iii) For each lavatory drain system with a lavatory drain system valve that either incorporates "donut" assemblies (or substitute assemblies from another manufacturer) Kaiser Electroprecision part number 4259–20 or 4259–31, or incorporates Kaiser Roylyn part number 2651–194C, 2651–197C, 2651–216, 2651–219, 2651–235, 2651–256, 2651–258, 2651–259, 2651–260, 2651–275, 2651–282, or 2651–286: Within 200 flight hours after revising the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 200 flight hours, conduct leak checks of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum 3 PSID applied across the valve. Both the donut and the outer cap/door must be leak checked.

(iv) For each lavatory drain system that incorporates any other type of approved valves: Within 400 flight hours after revising the maintenance program in accordance with paragraph (b) of this AD, and thereafter at intervals not to exceed 400 flight hours accomplish the procedures specified in paragraphs (b)(2)(iv)(A) and (b)(2)(iv)(B) of this AD:

(A) Conduct leak checks of the dump valve and the service panel drain valve. The service panel drain valve leak check must be performed with a minimum 3 PSID applied across the valve. If the service panel drain valve has an inner door/closure device with a second positive seal, only the inner door must be leak checked.

(B) If the valve has an inner door/closure device with a second positive seal: Visually inspect the service panel drain valve outer door/cap seal and seal mating surface for wear or damage that may cause leakage. Any worn or damaged seal must be replaced and any damaged seal mating surface must be repaired or replaced, prior to further flight, in accordance with the valve manufacturer's maintenance manual.

(3) For flush/fill lines: Within 5,000 flight hours after the effective date of this AD, and thereafter at intervals not to exceed 5,000 flight hours, accomplish either of the procedures specified in paragraphs (b)(3)(i) or (b)(3)(ii) of this AD:

(i) Conduct a leak check of the flush/fill line cap. This leak check must be made with a minimum of 3 PSID applied across the cap. Or

(ii) Replace the seals on the toilet tank anti-siphon (check) valve and the flush/fill line cap. Additionally, perform a leak check of the toilet tank anti-siphon (check) valve with a minimum of 3 PSID across the valve.

Note 3: The leak test procedure specified in Boeing Service Letter 737–SL–38–3–A, dated March 19, 1990, may be referred to as guidance for the procedures required by this paragraph.

(4) Provide procedures for accomplishing visual inspections to detect leakage, to be conducted by maintenance personnel at intervals not to exceed 4 calendar days or 45 flight hours, whichever occurs later.

(5) Provide procedures for reporting leakage. These procedures shall provide that any "horizontal blue streak" findings must be reported to maintenance and that, prior to further flight, the leaking system shall either be repaired, or be drained and placarded inoperative.

(i) For systems incorporating an in-line drain valve, Kaiser Electroprecision part number series 2651–278, 2651–329, or 2651–334: The reporting procedures must include provisions for reporting to maintenance any instances of abnormal operation of the valve handle for the in-line drain valve, as observed by service personnel during normal servicing.

(A) Additionally, these provisions must include procedures for either: prior to further flight, following the in-line drain valve manufacturer's recommended troubleshooting procedures and correction of the discrepancy; or prior to further flight, draining the lavatory system and placarding it inoperative until the correction of the discrepancy can be accomplished.

(B) If the drain system also includes an additional service panel drain valve, Kaiser Electroprecision part number series 0218–0026 or 0218–0032, or Shaw Aero Devices part number series 1010100C or 1010100B, or Pneudraulics part number series 9527, indications of abnormal operation of the valve handle for the in-line drain valve need not be addressed immediately if a leak check of the service panel drain valve indicates no leakage or other discrepancy. In these cases, repair of the in-line drain valve must be accomplished within 1,000 flight hours after the leak check of the additional service panel drain valve.

(6) Provide training programs for maintenance and servicing personnel that include information on "Blue Ice Awareness" and the hazards of "blue ice."

(c) For operators who elect to comply with paragraph (b) of this AD: Any revision to (i.e., extension of) the leak check intervals required by paragraph (b) of this AD must be approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Requests for such revisions must be submitted to the Manager of the Seattle ACO through the FAA Principal Maintenance Inspector (PMI), and must include the following information:

(1) The operator's name;

(2) A statement verifying that all known cases/indications of leakage or failed leak tests are included in the submitted material;

(3) The type of valve (make, model, manufacturer, vendor part number, and serial number);

(4) The period of time covered by the data;

(5) The current FAA leak check interval;

(6) Whether or not seals have been replaced between the seal replacement intervals required by this AD;

(7) Whether or not leakage has been detected between leak check intervals required by this AD, and the reason for leakage (i.e., worn seals, foreign materials on sealing surface, scratched or damaged sealing surface or valve, etc.);

(8) Whether or not any leak check was conducted without first inspecting or cleaning the sealing surfaces, changing the seals, or repairing the valve. [If such activities have been accomplished prior to conducting the periodic leak check, that leak check shall be recorded as a "failure" for purposes of the data required for this request submission. The exception to this is the normally scheduled seal change in accordance with paragraph (b)(1) of this AD. Performing this scheduled seal change prior to a leak check will not cause that leak check to be recorded as a failure.]

Note 4: Requests for approval of revised leak check intervals may be submitted in any format, provided that the data give the same level of assurance specified in paragraph (c) of this AD.

Note 5: For the purposes of expediting resolution of requests for revisions to the leak check intervals, the FAA suggests that the requester summarize the raw data; group the data gathered from different airplanes (of the same model) and drain systems with the same kind of valve; and provide a recommendation from pertinent industry group(s) and/or the manufacturer specifying an appropriate revised leak check interval.

(d) For all airplanes: Within 5,000 flight hours after the effective date of this AD, install a lever/lock cap on the flush/fill lines for forward, aft, and executive lavatories. The cap must be either an FAA-approved lever/lock cap, or a cap installed in accordance with Boeing Service Bulletin 727–38–0021, dated July 30, 1992.

(e) For any affected airplane acquired after the effective date of this AD: Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of the leak checks required by this AD shall be established in accordance with either paragraph (e)(1) or (e)(2) of this AD, as applicable. After each leak check has been performed once, each subsequent leak check must be performed in accordance with the new operator's schedule, in accordance with either paragraph (a) or (b) of this AD as applicable.

(1) For airplanes previously maintained in accordance with this AD, the first leak check to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that leak check.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first leak check to be performed by the new operator must be accomplished prior to further flight, or in accordance with a schedule approved by the FAA PMI, but within a period not to exceed 200 flight hours.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Seattle ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Note 7: For any valve that is not eligible for the extended leak check intervals of this AD: To be eligible for the leak check interval

specified in paragraphs (a)(1), (a)(2), (b)(2)(i), and (b)(2)(ii), the service history data of the valve must be submitted to the Manager, Seattle ACO, FAA, Transport Airplane Directorate, with a request for an alternative method of compliance with this AD. The request should include an analysis of known failure modes for the valve, if it is an existing design, and known failure modes of similar valves. Additionally, the request should include an explanation of how design features will preclude these failure modes, results of qualification tests, and approximately 25,000 flight hours or 25,000 flight cycles of service history data, including a winter season, collected in accordance with the requirements of paragraph (c) of this AD or a similar program. One of the factors that the FAA will consider in approving alternative valve designs is whether the valve meets Boeing Specification S417T105 or 10–62213; however, meeting the Boeing specification is not a prerequisite for approval of alternative valve designs.

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

(h) This amendment becomes effective on December 16, 1994.

Issued in Renton, Washington, on November 9, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–28243 Filed 11–15–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 73

[Airspace Docket No. 94–ASW–13]

Amendment to Time of Designation for Restricted Areas R–2403 A and B; Little Rock, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the times of designation for Restricted Areas R–2403 A and B, Little Rock, AR. The U.S. Army has determined that the present published times of designation for the restricted areas do not accurately reflect their actual times of use.

EFFECTIVE DATE: 0901 UTC, February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Riley, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7130.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations amends the times of designation for Restricted Areas R–2403 A and B, Little Rock, AR, respectively from "May 1 through August 31, daily 0700–2100 local, other times by NOTAM," and "September 1 through April 30, Saturday 0700–2100 local and Sunday 0700–1700 local, other times by NOTAM." to "by NOTAM 24 hours in advance." Following a review of its special use airspace, the U.S. Army, Camp Robinson Joint Air Space Committee, determined that it has a continuing requirement for the restricted areas; however, the current published times of designation do not accurately reflect the time the airspace is required for military use. This action amends the published times for the restricted areas to reflect actual use and to provide more lead time notification via NOTAM 24 hours prior to activation. It does not change the existing boundaries, or the type of activities currently conducted within R–2403 A and B. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.24 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

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

Environmental Review

This action amends the times of designation of the restricted areas. It does not change the existing boundaries, or the type of activities currently conducted within R–2403 A and B. Accordingly, this action is not subject to environmental assessments and procedures as set forth in FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts."

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.24 [Amended]

2. Section 73.24 is amended as follows:

R–2403A Little Rock, AR [Amended]

By removing "Time of designation. May 1 through August 31, daily 0700–2100 local, other times by NOTAM. September 1 through April 30, Saturday 0700–2100 local and Sunday 0700–1700 local, other times by NOTAM." and substituting the following: "Time of designation. By NOTAM 24 hours in advance."

R–2403B Little Rock, AR [Amended]

By removing "Time of designation. May 1 through August 31, daily 0700–2100 local, other times by NOTAM. September 1 through April 30, Saturday 0700–2100 local and Sunday 0700–1700 local, other times by NOTAM." and substituting the following: "Time of designation. By NOTAM 24 hours in advance."

Issued in Washington, DC, on November 4, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–28282 Filed 11–15–94; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 73

[Airspace Docket No. 94–AGL–29]

Amendment to Time of Designation for Restricted Area R–4207; Upper Lake Huron, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation for Restricted Area R–4207, Upper Lake Huron, MI. This action changes the hours of operation from "sunrise to sunset" to "intermittent, sunrise to sunset by Notice to Airmen (NOTAM)." This action will enhance real-time joint utilization of special use airspace.

EFFECTIVE DATE: 0901 UTC, February 2, 1995.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7686.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations reduces the time of designation for Restricted Area R–4207, Upper Lake Huron, MI, from "sunrise to sunset" to "intermittent, sunrise to sunset by NOTAM." This action is the result of a request from the U.S. Air Force to reduce the time of designation of Restricted Area R–4207, Upper Lake Huron, MI. There are no changes to the activities conducted within R–4207. This action will enhance real-time joint utilization of special use airspace and more accurately reflect actual use of the area. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.42 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

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

Environmental Review

This action reduces the time of designation of the restricted area. There are no changes to the boundaries, altitudes or activities conducted within the restricted area. Accordingly, this action is not subject to environmental assessments and procedures as set forth in FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts."

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.42 [Amended]

2. Section 73.42 is amended as follows:

R–4207, Upper Lake Huron, MI [Amended]

By removing "Time of designation. Sunrise to sunset" and substituting the following:

"Time of designation. Intermittent, sunrise to sunset by NOTAM."

Issued in Washington, DC, on November 4, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–28283 Filed 11–15–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770, 772, 773, 774, and 776

[Docket No. 940976–4276]

RIN 0694–AB04

Revisions to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR), to make certain editorial clarifications and corrections and, in some cases, insert material inadvertently omitted from earlier regulatory amendments.

EFFECTIVE DATE: This rule is effective November 16, 1994.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Telephone: (202) 482–0074.

SUPPLEMENTARY INFORMATION:

Specifically, this rule makes the following corrections and clarifications:

(1) Revises § 770.11 by clarifying how applicants obtain status information on export license applications;

(2) Revises § 770.13 by amending the introductory text.

(3) Revises § 772.4 by removing the phrase "or GTE" and amending how to apply for a validated license.

(4) Revises § 772.11 by amending the regulatory citing.

(5) Revises Supplement No. 1 to Part 772 by adding the phrase "AND END-USER(S)".

(6) Revises § 773.9(l) by adding "Argentina, Hungary, Finland, and Sweden" to the list of countries eligible for permissive reexport under the Special Chemical License.

(7) Revises § 774.2 by adding the parenthetical phrase "(except supercomputers)".

(8) Revises § 776.12 by removing the requirement for submission of Form BXA–6031P with applications for use of U.S.-origin parts and components in foreign goods.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994.

Rulemaking Requirements

1. This final rule has been determined to be not significant for puposes of Executive Order 12866.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, and 0694–0013.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective

date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 772, 773, 774, and 776

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 770, 772, 773, 774, and 776 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citations for 15 CFR Parts 770, 772, and 774 are revised to read as follows:

Authority: 50 U.S.C. App. 5, as amended; Pub. L. 264, 59 Stat. 619 (22 U.S.C. 287c), as amended; Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O 12918 of May 26, 1994 (59 FR 28205, May 31, 1994); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994); and E.O. 12930 (59 FR 50475 of October 3, 1994).

2. The authority citation for 15 CFR Part 773 is revised to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended [(extended by Pub. L. 103–10, 107 Stat. 40 and by Pub. L. 103–277, 108 Stat. 1407)]; Pub. L. 102–484, 106 Stat. 2575 (22 U.S.C. 6004); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12851 of June 11, 1993 (58 FR 33181, June 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747, October 4, 1993); E.O. 12930 of September 29, 1994 (59 FR 50475, October 3, 1994); E.O. 12924 of August 19, 1994 (59 FR 43437 of August 23, 1994); and E.O. 12930 (59 FR 50475 of October 3, 1994).

3. The authority citation for 15 CFR part 776 is revised to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 12, 1993 (58 FR 60361, November 15, 1993); E.O. 12867 of September 30, 1993 (58 FR 51747 of October 4, 1993); E.O. 12924 of August 19, 1994 (59 FR 43437, August 23, 1994); E.O. 12930 (59 FR 50475 of October 3, 1994).

PART 770—[AMENDED]

4. Section 770.11 is amended by revising the fifth sentence in paragraph (a)(2)(i)(A) and paragraph (a)(2)(i)(B) to read as follows:

§ 770.11 Information to exporters.

(a) * * *

(2) * * *

(i) * * *

(A) * * * The case number entered must use the number "1" to represent the letter "A", the number "2" to represent the letter "B", the number "3" to represent the letter "C", the number "4" to represent the letter "D", the number "8" to represent the letter "H", and the asterisk symbol "*" to represent the hyphen "-" that appears in a case number assigned to an amendment application. * * *

(B) Applicants for individual validated export licenses, amendments, or reexport requests who do not have case numbers or who experience difficulty in using STELA may call the Exporter Counseling Division of the Bureau of Export Administration on (202) 482–4811 for status information. Calls will be answered Monday through Friday from 8:30 a.m. to 5:00 p.m., Eastern Standard time. Status information on special licenses is not available from STELA, but can be obtained from the Special Licensing and Compliance Division, Bureau of Export Administration, at (202) 482–0062. Requests for status information may be made only by the applicant or applicant's agent. Callers must identify themselves with information contained on the applicant's file copy of the application.

* * * * *

5. Section 770.13 is amended by revising paragraph (a), introductory text, to read as follows:

§ 770.13 Procedures for processing license applications.[7]

(a) *General.* This section implements section 10 of the Export Administration Act of 1979, as amended (the Act), which prescribes procedures for processing export license applications, including time limits for certain stages of the process. Section 770.14 describes shorter processing time frames for export license applications for COCOM participating or cooperating countries, as required by section 10(o) of the Act. As set forth in paragraph (g) of this section, applications subject to nuclear non-proliferation controls are not subject to all the requirements of this section. As used in this section:

* * * * *

PART 772—[AMENDED]

7. Section 772.4 is amended:

(a) By revising paragraph (a)(1)(i); and

(b) By revising the phrase "Humanitarian or GTE Licenses" to read "Humanitarian or G–TEMP Licenses" in paragraph (i)(6), as follows:

§ 772.4 How to apply for a validated license.

(a) * * *

(1) * * *

(i) An application for a validated license must be submitted on Form BXA–622P, Application for Export License. An application that omits essential information, or that is otherwise incomplete, will be returned without action to the applicant. (See § 770.12 for instructions on obtaining forms.)

* * * * *

[7] See § 772.4(h) of this subchapter for procedures to expedite processing of an export license application in an emergency situation.

§ 772.11 [Amended]

8. Section 772.11 is amended by revising the phrase "§ 786.7(a)" in paragraph (e)(4) to read "§ 786.7"; and by revising the phrase "§ 786.7(b)" in paragraph (e)(5) to read "§ 786.7".

Supplement No. 1 to Part 772 [Amended]

9. Supplement No. 1 to part 772 is amended by adding the phrase "AND END-USER(S)" directly following the phrase "PROVIDED ACTUAL END-USE(S)" in Item 6.

PART 773—[AMENDED]

§ 773.9 [Amended]

10. Section 773.9 is amended by revising the phrase "Australia, Austria, Ireland, Japan, New Zealand, and Switzerland" in the notice at the end of paragraph (l) to read "Argentina, Australia, Austria, Finland, Hungary, Ireland, Japan, New Zealand, Sweden, or Switzerland".

PART 774—[AMENDED]

§ 774.2 [Amended]

11. Section 774.2 is amended by adding a parenthetical phrase "(except supercomputers)" directly following the phrase "Commerce Control List" in paragraph (i)(5).

PART 776—[AMENDED]

12. Section 776.12 is amended by revising paragraph (e)(5) to read as follows:

§ 776.12 Parts, components, and materials incorporated abroad into foreign-made products.

* * * * *

(e) * * *

(5) *Supporting documentation.* The supporting documentation otherwise required for a license application need not be submitted with a parts and components request.

* * * * *

Dated: November 9, 1994.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 94-28201 Filed 11-15-94; 8:45 am]

BILLING CODE 3510-DT-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 33-7110; 34-34952; IC-20691; File No. S7-5-93]

RIN 3235-AF85

Securities Transactions Settlement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; change of effective date.

SUMMARY: On October 6, 1993, the Securities and Exchange Commission ("Commission" or "SEC") adopted Rule 15c6-1 (17 CFR 240.15c6-1) under the Securities Exchange Act of 1934 which establishes, effective June 1, 1995, three business days as the standard settlement time frame for most broker-dealer trades. In order to provide for an orderly conversion to three business day settlement, the effective date of Rule 15c6-1 has been changed.

EFFECTIVE DATE: The regulation published on October 13, 1993, 58 FR 52891, will now be effective on June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Jerry Carpenter, Assistant Director, or Christine Sibille, Senior Counsel, at 202/942-4187, Office of Securities Processing Regulation, Division of Market Regulation ("Division"), 450 Fifth Street, N.W., Mail Stop 5-1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On October 6, 1993, the Commission adopted Rule 15c6-1[1] which establishes three business days after the trade date ("T+3") instead of five business days ("T+5") as the standard settlement time frame for most broker-dealer securities transactions. As adopted, Rule 15c6-1 was to be effective June 1, 1995.

After discussions with representatives from the securities exchanges, the clearing agencies, the National Association of Securities Dealers, and the Municipal Securities Rulemaking Board, it was determined that implementation should be moved from June 1, 1995, to June 7, 1995, in order to minimize any potential disruption resulting from the conversion to a T+3 settlement environment.

It has been decided that the most efficient method of converting to a T+3 settlement time frame is to have trades executed on Friday, June 2, 1995, settle five business days later; trades on Monday, June 5, and Tuesday, June 6, settle four business days later; and trades executed on Wednesday, June 7, 1995, the new effective date for Rule 15c6-1, settle three business days later. This process will result in two double settlement days (*i.e.*, days in which trades from two trade dates will settle). Trades from June 2 and June 5 will settle on Friday, June 9, and trades from June 6 and June 7 will settle on Monday, June 12.

By moving the conversion to T+3 settlement from June 1, 1995, to June 7, 1995, the two double settlement days will be split by a weekend. This will provide an opportunity for broker-dealers to make any necessary adjustments to their systems should any problems develop during the conversion process. Furthermore, by moving the effective date to June 7, implementation will not take place at the same time as heavy systems usage that is expected to occur from the processing of interest and dividend payments (interest and dividend processing are typically times of extensive systems usage).

By the Commission.

Dated: November 9, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-28266 Filed 11-15-94; 8:45 am]

BILLING CODE 8010-01-M

[1] 17 CFR 240.15c6-1 (1994).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 342, 346, and 347

[Docket No. RM94-2-000]

Cost-of-Service Reporting and Filing Requirements for Oil Pipelines

Issued October 28, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to establish filing requirements for cost-of-service rate filings for oil pipelines; filing requirements for oil pipelines seeking to establish new or changed depreciation rates; and new and revised pages of FERC Form No. 6, Annual Report for Oil Pipelines. These requirements are adopted as companions to Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, published in the **Federal Register** on November 4, 1993. That order established an indexing methodology which would establish ceilings on oil pipeline rates. The

Commission provided the opportunity for oil pipelines to seek an exception to indexing through a cost-of-service filing if the pipeline could show that, under indexing, it would substantially underrecover prudent costs.

EFFECTIVE DATE: This final rule is effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0224.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this proposed rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order No. 571

The Federal Energy Regulatory Commission (Commission) in this order revises the information reported by oil pipelines in their FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form No. 6), and adopts filing requirements for cost-of-service rate filings by oil pipelines. The Commission also adopts rules for oil pipelines performing depreciation studies. Finally, the Commission is deferring at this time the requirement to file Form No. 6 on an electronic medium in addition to making a paper filing. These changes shall become effective January 1, 1995, concurrently with the new regulations promulgated by Order No. 561.[1]

[1] Revisions to Oil Pipeline Regulations pursuant to Energy Policy Act, Order No. 561, 58 FR 58785 (November 4, 1993), III Stats. & Regs. ¶ 30,985 (1993), *order on reh'g and clarification*, Order No. 561–A, 59 FR 40243 (August 8, 1994), III FERC Stats. & Regs. ¶ 31,000 (1994). Unless the context indicates otherwise, all references to Order No. 561 include Order No. 561–A.

I. Introduction

This proceeding is a companion to Order No. 561. In Order No. 561, the Commission established an indexing methodology, which would establish ceilings on oil pipeline rates, to be used by oil pipelines as the generally applicable and simplified ratemaking methodology for oil pipelines on or after January 1, 1995. The Commission provided the opportunity for oil pipelines to seek an exception to indexing through a cost-of-service filing if the pipeline could show that, under indexing, it would substantially underrecover prudent costs. Further, the Commission provided that rates for new services could be established either through settlement or by use of a cost-of-service methodology.[2]

In Order No. 561, the Commission recognized that cost-of-service rate filing information would be necessary for oil pipelines to justify seeking rate increases under the cost-of-service alternative, should they choose to use this methodology, and for interested parties to decide whether to challenge proposed cost-of-service rates. The Commission also recognized that Form No. 6 might need to be revised to enable review of the effectiveness of the index in tracking industry-wide cost changes and for interested parties to decide whether to challenge indexed rates.

The present rule adopts regulations specifying the information that must accompany oil pipelines' cost-of-service rate filings and requested changes in depreciation rates, and modifies and streamlines Form No. 6.

II. Public Reporting Requirement

The Commission estimates the public reporting burden for the collections of information under the final rule will be reduced for Form No. 6 by approximately seven percent and will, in effect, remain unchanged for rate filings, since the Commission is here codifying the information to be provided which the Commission's staff in the past has requested from oil pipelines that have made cost-of-service rate filings. The information will be collected on Form No. 6, "Annual Report of Oil Pipeline Companies" and FERC–550, "Oil Pipeline Rates: Tariff Filings."[3] These estimates include the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The current annual reporting burden associated with these information collection requirements is as follows:

Form No. 6: 22,200 hours, 148 responses, and 148 respondents; and FERC–550: 5,350 hours, 535 responses, and 140 respondents.

The final rule will reduce the existing reporting burden associated with Form No. 6 by an estimated 1,628 hours annually, or an average of 11 hours per response based on an estimated 148 responses. This estimate includes the addition of two new schedules, the elimination of several schedules, and increasing the reporting thresholds for which oil pipelines must analyze and report certain data.

Comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, can be sent to the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]; and to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission), FAX: (202) 395–5167.

III. Background

On October 22, 1993, the Commission issued a Notice of Inquiry (NOI) concerning the information to be included by an oil pipeline in a cost-of-service rate filing, and on potential changes to Form No. 6.[4] In the NOI, the Commission invited comment on what action would be appropriate to develop a final rule with respect to cost-of-service rate filings, whether and to what extent its Form No. 6 should be revised in light of Order No. 561, and whether and to what extent it should establish additional requirements with respect to an oil pipeline's depreciation studies.

On July 28, 1994, the Commission issued a Notice of Proposed Rulemaking (NOPR).[5] In the NOPR, the Commission

[2] 18 CFR 342.2. In Docket No. RM94–1–000, Market-Based Ratemaking for Oil Pipelines, the Commission elicited comments on its proposal to permit oil pipelines to seek market-based rates and the appropriate standards for making a determination that a pipeline lacks significant market power. This matter is the subject of a Final Rule in Docket No. RM94–1–000, issued contemporaneously.

[3] FERC–550 is the designation covering oil pipeline tariff filings made to the Commission.

[4] Cost-of-Service Filing and Reporting Requirements for Oil Pipelines, Notice of Inquiry, 58 FR 58817 (November 4, 1993), IV FERC Stats. & Regs. Notices ¶ 35,528 (October 22, 1993).

[5] Cost-of-Service Filing and Reporting Requirements for Oil Pipelines, Notice of Proposed

proposed that oil pipelines seeking cost-of-service rates would be required to file specific data conforming to the Order No. 154–B methodology.[6] The Commission also proposed to revise and streamline Form No. 6, and proposed that Form No. 6 data would be filed on an electronic medium. Finally, the Commission proposed certain rules for oil pipelines performing depreciation studies. The changes were proposed to be made effective January 1, 1995.[7]

The Commission received fourteen sets of comments.[8] After analyzing those comments as discussed below, the Commission is adopting the rules proposed in the NOPR, except for the electronic reporting requirement for Form No. 6, with minor modifications and with clarifying statements. Although the Commission has procured the software development tool, the electronic version of the Form No. 6 application has not yet been developed. Therefore, the Commission is deferring the electronic reporting requirement at this time, pending development and testing of the necessary electronic version of the Form No. 6 application. Once that process is complete, the Commission intends to issue a final rule providing for the electronic filing of Form No. 6.

IV. Cost-of-Service Filing Requirements

The Commission is adding a new Part 346 to its regulations that sets forth the threshold filing requirements for oil pipelines seeking to establish initial rates on a cost-of-service basis, or to pursue a cost-of-service alternative to indexing as a means of establishing just and reasonable rates. The Commission is also amending sections 342.2 and 342.4 to reflect the addition of Part 346.

A. Authority for Filing Requirements

AOPL argues that the Commission's proposed cost-of-service rate filing requirements represents an improper attempt to modify the Interstate Commerce Act's (ICA)[9] rate filing scheme, ignores the mandate of the Act of 1992 to reduce regulatory burdens and costs through streamlined procedures, and imposes undue burdens on pipelines proposing cost-based rates.[10] AOPL asserts that a pipeline need only file a notice of a rate change, not the supporting documents underlying that rate change, unless its rates have been called into question.[11]

The Commission's filing requirements for oil pipeline rate changes fully comport with the Act of 1992 and the ICA. The Act of 1992 required the Commission to establish a simplified and generally applicable ratemaking methodology for oil pipelines in accordance with the just and reasonable standard of the ICA. Order No. 561 has done so by adopting an index method. Cost-based rates are a part of this scheme but are allowed a pipeline only as an alternative to indexing, and only if the pipeline can meet certain threshold conditions. Thus, the pipeline must demonstrate at the outset that it meets the substantial divergence test of Order No. 561—*i.e.*, that there is a substantial divergence between the actual costs experienced by the pipeline and the rate resulting from application of the index such that rates at the indexed ceiling level would preclude the pipeline from charging a just and reasonable rate.[12] The threshold filing requirements for cost-of-service ratemaking adopted in this rule are the means that the Commission has decided are necessary for a pipeline to make a *prima facia* demonstration that it should be allowed to pursue the cost-of-service alternative as a means of establishing just and reasonable rates. The materials required to be filed with a cost-of-service optional filing thus are designed to address the threshold issue of whether there is such a substantial divergence as to warrant a cost-of-service filing. A mere notice of rate change alone would fail to show good cause for a pipeline's departure from indexing, or why it should be allowed to change its rates outside the basic indexing scheme. As to AOPL's claim that the cost-of-service filing requirements impose undue burdens,[13] a pipeline can always choose not to pursue this alternative to indexing and stay with rate changes under indexing.

Contrary to AOPL's assertion,[14] the Commission is following the statutory scheme applicable to oil pipeline rate filings. If a pipeline desires to depart from the ordinary scheme of rate changes based on the index and seek rate changes based on its cost of service, it is up to the pipeline to meet the special circumstances of the rules, and it is reasonable for the Commission to require a threshold filing from the pipeline to demonstrate that it does.[15]

AOPL claims that the pipeline should not be required to establish an initial case for cost-based rates at the initial filing stage.[16] It claims that to require the pipeline to shoulder a burden of proof regarding cost-based rates prior to knowing whether the rate has been challenged is contrary to any notion of streamlining, and it argues that the pipeline should not be required to provide extensive threshold justification for each cost-based rate.[17] Further, AOPL asserts that the pipeline may choose some method other than the Opinion No. 154–B method to justify its cost-based rates, such as a stand-alone cost showing.

The Commission's cost-of-service filing requirements are not designed to provide information in sufficient detail for a pipeline to shoulder its burden of proof regarding cost-based rates if they are challenged. Rather, the burden is on the pipeline to demonstrate only that its rates at the index ceiling would substantially diverge from its actual costs to such an extent that the indexed ceiling rates would not be just and reasonable. If a pipeline's rates are challenged, it must demonstrate that the challenged rate, if based on cost, is just and reasonable, which may include an appropriate rate design and cost allocation to justify the rate. Additional information can be supplied by the pipeline to justify its challenged rates, including, if it chooses, a stand-alone cost showing. This, however, does not negate the importance of the initial showing that is required of the pipeline in order to justify departure from indexing.

B. Cost-of-Service Methodology

AOPL and Marathon argue that the Opinion No. 154–B methodology is inadequate for establishing rates. AOPL asserts that this methodology has never been used to set individual rates, and continues to argue for a stand-alone cost methodology.[18] As explained in Order No. 561, the regulations providing for an Opinion No. 154–B submission are merely the filing requirements for the cost-of-service alternative to indexing. An oil pipeline seeking cost-of-service

---

Rulemaking, 59 FR 40493 (August 9, 1994), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,509 (July 28, 1994).

[6] Opinion No. 154–B methodology is derived from the Commission's opinions in Williams Pipe Line Company, Opinion No. 154–B, 31 FERC ¶ 61,377 (1985), on rehearing, Opinion No. 154–C, Williams Pipeline Company, 33 FERC ¶ 61,327 (1985); and ARCO Pipe Line Company, Opinion No. 351, 52 FERC ¶ 61,055 (1990), on rehearing, Opinion No. 351–A, ARCO Pipe Line Company, 53 FERC ¶ 61,398 (1990).

[7] Electronic reporting of Form No. 6 was proposed to commence with the reporting year 1995 reports, due on or before March 31, 1996.

[8] A list of commenters is contained in Appendix A to this order.

[9] 49 App. U.S.C. 1 (1988).

[10] AOPL, pp. 29–39.

[11] AOPL, pp. 36–39.

[12] 18 CFR 342.4(a).

[13] AOPL, p. 8.

[14] AOPL, p. 36.

[15] Section 12(1) of the ICA provides: "The Commission is authorized and required to execute and enforce the provisions of this chapter."

[16] AOPL, pp. 36–39.

[17] AOPL, p. 37.

[18] AOPL, pp. 25–28.

rate treatment for some or all of its rates will submit the information required by new Part 346. Absent challenge to the rates proposed, that is all that is required of the oil pipeline. Matters of rate design and cost allocation will be at issue only if the rates are protested and a hearing is conducted.[19] As the Commission stated in Order No. 561–A, the issues of fully-allocated costs for oil pipelines have not been determined in a fully litigated case by this Commission under the ICA.[20] The Commission also stated that proponents of costing methodologies other than fully-allocated costs will not be precluded from advocating such methodologies in individual cases.[21] The Commission reaffirms that statement here.

Chevron suggests that the filing requirements should include a requirement that the carrier provide cost allocation and rate design schedules with its rate filing.[22] The Commission will not adopt this recommendation, since there will be no need for allocation and rate design information except at a hearing on a challenged cost-of-service rate filing. Thus, the Commission does not believe that a point-to-point rate showing, for example, is necessary as a filing requirement. The burden that this requirement would impose is not justified, particularly since the cost-of-service methodology is an alternative to indexing, and the initial filing need only show that there is a substantial divergence between the costs of the pipeline, as reflected in Statement A, and the revenues that would be produced by the indexed ceiling rates, as reflected in Statement G.[23]

Similar requests are made by Alaska and Total.[24] These commenters also request that the Form No. 6 data be provided in such a fashion. For the same reasons, the Commission will not adopt these suggestions.

AOPL urges the Commission to discard Opinion No. 154–B, arguing that this must have been Congress' intent in passing the Act of 1992.[25] To the contrary, Congress mandated only that the Commission establish a simplified and generally applicable ratemaking methodology. It did not specify what methodology should be used. The Commission has given full weight to the Congressional intent by providing that indexing will be the simplified and generally applicable methodology for oil pipeline ratemaking. Under this scheme, cost of service continues only as an option that pipelines may choose to use if they meet the threshold requirement.[26]

AOPL further argues that pipelines should be allowed to use a variety of methods to justify individual rate changes.[27] Buckeye also seeks alternatives to indexing for partly competitive pipelines to use in less competitive markets.[28] These issues are beyond the scope of this rulemaking, but parties are free to make proposals in individual cases.

ARCO seeks clarification of several items. It first asks that the Commission require that pipelines seeking to use a cost of service approach file a full system-wide cost of service. Protestants then would be required to be specific in their protests.[29] The Commission has determined that the Opinion No. 154–B filing will be required for a cost-of-service filing, and that a cost allocation and rate design showing would only be required if the pipeline's rates are protested. This will reduce the burden on the pipeline and the Commission in those cases where there is no protest. The information required to be filed by Part 346 of the regulations adopted by this order will be sufficient for a cost-of-service showing if there are no protests.

ARCO further requests clarification that, if a pipeline can show that its total revenue requirement is not being met, it may charge cost-of-service rates above the index without any other showing, and that, in that case, no information on point-to-point rates would be filed except in an investigation.[30] ARCO is generally correct. All a pipeline need show to make a *prima facie* case under the cost-of-service alternative is that the revenues to be produced by the indexed ceiling rates substantially diverge from its costs. Upon challenge, however, the pipeline must provide data supporting its proposed individual rates, including allocation and rate design. It will not be allowed to charge rates higher than its properly allocated costs would justify for any one service.

ARCO further seeks clarification of when in the process a pipeline must demonstrate prudence of its costs.[31] It asserts that a pipeline should be required to demonstrate prudence only when a serious doubt is raised. In this, too, ARCO is correct. A protestor must first raise a reasonable challenge as to the prudence of the pipeline's costs, and then the pipeline will have the burden of establishing the prudence of those costs.

The Commission will continue to use the Opinion No. 154–B methodology for oil pipelines seeking to use a cost-of-service methodology.

C. Filing Requirements Adopted

As required by Order No. 561, a pipeline seeking to change rates is required to file a transmittal letter containing the previous rate for the same movement or service, the applicable ceiling rate for the movement in question, and the new proposed rate.[32] This is all that is required to justify a rate change within the index.

In this rule, the Commission requires a pipeline to file additional information if it is filing for a cost-of-service rate above the indexed rate ceiling, or as support for an initial rate. This information will permit a pipeline to establish an initial case for cost-of-service rates. The additional filing requirements provide sufficient information for a preliminary cost-of-service showing. If the Commission institutes an investigation into a pipeline's rates, additional information may be required of the pipeline. The new filing requirements are set forth in new Part 346 of the Commission's regulations.

Part 346 also contains the definition of the terms "base period" and "test period." The definitions of these terms are consistent with the definitions of similar terms in the Regulations under the Natural Gas Act,[33] applicable to natural gas pipeline companies.

The oil pipeline must file the following statements and supporting work papers to support either an initial rate developed on a cost-of-service basis or a change in rates using the cost-of-service methodology.

Statement A—Total Cost of Service

This statement shows the calculation of the Total Cost of Service for a pipeline.

[19] The Commission has never established individual rates for oil pipelines on a cost-of-service basis, since no contested case has come to the Commission for final decision on issues of cost allocation and rate design. However, nothing in the Opinion No. 154–B costing methodology would limit the Commission in deciding how to allocate costs to establish individual rates.

[20] Order No. 561–A, Regulations Preambles, III FERC Stats. & Regs. ¶ 31,000, at p. 31,107.

[21] IV FERC Stats. and Regs. ¶ 31,000, at p. 31,107 (1994).

[22] Chevron, p. 7.

[23] See 18 CFR 346.2(c) (1) and (7).

[24] Alaska, pp. 1–2 and the appendices to its comments; Total, p. 1.

[25] AOPL, p. 19.

[26] See 18 CFR 342.4(a), adopted by Order No. 561–A.

[27] AOPL, p. 28.

[28] Buckeye, pp. 2–4.

[29] ARCO, p. 3.

[30] ARCO, pp. 3–5.

[31] ARCO, pp. 8–9.

[32] 18 CFR 342.3(b).

[33] *See* 18 CFR 154.63(e)(2)(i).

Statement B—Operation and Maintenance

This statement shows the operation, maintenance, administrative and general expenses, and depreciation and amortization expenses.

Statement C—Overall Return on Rate Base

This statement shows the derivation of the return on rate base consisting of deferred earnings, equity and debt ratios, weighted cost of capital, and costs of debt and equity.

Statement D—Income Taxes

This statement shows the calculation of the Income Tax Allowance.

Statement E—Rate Base

This statement shows the calculation of the return rate base required by the Opinion No. 154–B methodology to derive the cost of service.

Statement F—Allowance for Funds Used During Construction

This statement shows the calculation of the Allowance for Funds Used During Construction (AFUDC).

Statement G—Revenues

This statement shows the revenues at the effective, proposed, and indexed ceiling rates.

Details of the various statements and supporting schedules are found in new Part 346 of the regulations.

V. Form No. 6 Revisions

In the NOPR, the Commission proposed several changes to Form No. 6, the Annual Report for Oil Pipelines. These changes were proposed to provide information that would be necessary for the implementation of Order No. 561, and to update and streamline the information required of oil pipelines.

A. New Schedule

A new schedule, page 700, Annual Cost of Service Based Analysis Schedule, was proposed to be added to Form No. 6 showing basic information needed for a review of rate filings made within the index cap. The new schedule would require each pipeline company to report, as of the end of the reporting year and the immediately preceding year, its Total Annual Cost of Service (as calculated under the Order No. 154–B methodology), operating revenues, and throughput in barrels and barrel-miles. This schedule would permit a shipper to compare proposed changes in rates against the change in the level of a pipeline's cost of service. It would also permit a shipper to compare the change in a shipper's individual rate with the change in the pipeline's average company-wide barrel-mile rate. Underlying calculations of and supporting data for these figures need not be reported in Form No. 6. Of course, the oil pipeline will be expected to be consistent in its application of the Opinion No. 154–B methodology from year to year to permit valid comparisons of data from one year to the next. If it makes major changes in its application of the methodology, it must report that it has done so, and recalculate the prior year's cost of service to reflect such a change. While the Commission believes that the Opinion No. 154–B methodology is well-defined and for the most part generally understood in the industry, it is modifying the instructions for page 700 to require that the pipeline describe any change in application of Opinion No. 154–B made from past years in its calculation of total cost of service, and to require that the changed application be reflected on page 700 for the calculation of the total cost of service for the prior reporting year as well.

The commenters supporting the use of page 700 recommended that the pipeline be required to report its cost of service on each separate system operated by the pipeline.[34] Moreover, some commenters recommended that substantial additional information be required on page 700, setting forth in detail additional information and the assumptions used in the calculations.[35] Alberta recommended that the cost-of-service reporting requirements be implemented for Form No. 6 expense and income statements to streamline shipper review of the individual cost components, thereby making the information contained in page 700 consistent, from an accounting standpoint, with the other information contained in Form No. 6.[36]

The pipelines, on the other hand, strenuously objected to the use of page 700 as a rate review tool and as a monitoring tool, asserting that it is misleading, burdensome, and duplicative.[37]

Contrary to what appears to be the assumption by most commenters, page 700 is designed to be a preliminary screening tool for pipeline rate filings. It is not intended to be the information which, in itself, either forms the basis of a Commission decision on the merits of a pipeline filing, or demonstrates that the pipeline's proposed or existing rates are just and reasonable. Rather, it should provide a means whereby a shipper can determine whether a pipeline's cost of service or per-barrel/mile cost is so substantially divergent from the revenues produced by its rates to warrant a challenge that requires the pipeline to justify its rates. Therefore, the additional information suggested by the commenters—e.g., specifying the achieved rate of return, rate of return assumptions, and the debt and equity components—will not be required.

Moreover, the Commission is not here attempting to require a pipeline to demonstrate with precision its cost-of-service attributable to each individual pipeline system it operates. If the pipeline seeks a cost-of-service rate for some or all of its rates, it will be required at that time to demonstrate that its properly allocated costs justify such rate treatment. This, however, will be left to individual cost-of-service rate filings, not required as a part of Form No. 6, which is and shall remain primarily a financial report.

Requests that the pipelines be required to file separate cost-of-service information for each individual system are denied. Likewise, the recommendations of the pipelines that page 700 be discarded will be denied. The Commission finds that the information contained in a single place in Form No. 6 will be useful in its monitoring of the performance of the index, and that the information may indeed be useful as a "substantial divergence" screen, as suggested by TE Products Pipeline.[38] Any additional burden should be minimal on the pipelines in deriving an Opinion No. 154–B cost of service on an annual basis, since much of the basic information is available in its Form No. 6. As explained above, the use of the page 700 should be limited and should not be misleading. As Marathon and AOPL point out, some of the information is already included in other schedules in Form No. 6. However, the Commission finds that having the information displayed on a single page 700 will make it easier for the Commission and other interested parties to analyze.

Davis[39] suggests that the Commission define "substantial divergence as being a percentage [variation] * * *." The Commission will not adopt this suggestion, inasmuch as what constitutes a "substantial divergence" may depend on factors other than a

[34] Total, pp. 1–2, Alaska, p. 2, Chevron, pp. 3–5.

[35] Chevron, p. 5, Alaska, pp. 1–2, Alberta, pp. 2–3.

[36] Alberta, p. 2.

[37] AOPL, pp. 8–15, ARCO, pp. 9–14, Marathon, pp. 1–4.

[38] TE Products, p. 1.

[39] Davis, p. 2.

simple percentage variation in costs and revenues. Therefore, the Commission concludes that whether a substantial divergence exists should be determined on the facts of individual cases, not generically.

Chevron suggests that use of page 700 is likely to be meaningless as a monitoring tool, since the Commission is likely to get numerous interpretations of how the Opinion No. 154–B methodology should be implemented, thereby resulting in a compilation that does not reflect actual changes in costs on an industry-wide basis.[40] As previously stated, the Commission will require that any change in application of the Opinion No. 154–B methodology from one year to the next be described and reflected in the total cost of service calculations appearing on page 700. Moreover, the compilation of data from page 700 will be only a part of the evidence used by the Commission for monitoring how the index tracks industry cost changes.

Upon consideration of the comments, the Commission has determined that Form No. 6 should contain information that will permit its use for a number of purposes: Reviewing changes in rates made by use of the index, monitoring existing rates, and analyzing and auditing finances. At present, the primary focus of Form No. 6 is on financial accounting information that is gathered based on accounting principles which are different in some respects from the ratemaking principles used to establish rates for oil pipelines. To serve as a tool to evaluate the performance of the index and future changes in oil pipeline rates using the index methodology, Form No. 6 will be revised to include additional information.

Revisions to Form No. 6 are needed to provide at least a preliminary basis for shipper assessments of filed rate changes under Order No. 561. Form No. 6 data should be complete enough to enable an evaluation of whether a proposed rate change under indexing substantially exceeds the pipeline's changes in costs. As currently structured, Form No. 6 does not provide sufficient information to do this.

Only limited additional information is needed in Form No. 6 to permit adequate preliminary review of a pipeline's cost-of-service showings, and to permit shipper comparison of indexed rate changes with changes in costs incurred. Thus, the single new schedule will be added to Form No. 6.

The use of trended original cost to establish a rate base for oil pipelines, as required by the Opinion No. 154–B methodology, entails complex calculations to derive annual figures for equity and equity returns for ratemaking purposes. This calculation will differ from the book equity figures contained in Form No. 6, which are required for financial reporting purposes. To require the display of these calculations in Form No. 6 would be cumbersome and not be of significant benefit in a shipper's determination of whether to protest a pipeline's indexed rate filing.[41] In any event, if a shipper protest results in a cost-of-service justification by the pipeline, the underlying calculations would be available.

The changes to Form No. 6 will be effective for reporting year 1995. The 1995 Form No. 6 must be filed on or before March 31, 1996. The new schedule appearing on page 700 therefore would not be required for Form No. 6 filings until March 31, 1996, for reporting year 1995. In the interim, a verified copy of this new schedule for calendar years 1993 and 1994 is required to be prepared separately and filed concurrently with the first indexed rate change filing made by a pipeline after January 1, 1995, or by March 31, 1995, whichever is earlier. For index rate change filings made early in 1995, complete data may not be available. In this instance, a 1994 schedule shall be prepared utilizing the most recently available data annualized for 1994. By March 31, 1995, a new 1994 schedule must be submitted, using the actual 1994 data.

This will provide shippers with the necessary information for an analysis of proposed indexed rate changes after January 1, 1995, the effective date of the regulations in Order No. 561. In addition, as discussed below, the information on this page will become part of the Commission's evaluation of the effectiveness of the index. Accordingly, the Commission will amend § 342.3(b) of the regulations to require a verified copy of a schedule containing the information contained on page 700 for calendar years 1993 and 1994 to be filed with the first indexed rate change filing made after January 1, 1995, or by March 31, 1995, whichever is earlier.

In Order No. 561, the Commission stated it would monitor the effectiveness of the index in tracking industry costs. These reviews will occur every five years, commencing July 1, 2000.[42] Page 700, together with other information contained in Form No. 6, will permit the Commission to use the Form No. 6 data to help fulfill this commitment. Since the Total Cost of Service, for example, is derived from all of the components of a pipeline's costs and capital properties, this figure, when used in conjunction with other Form No. 6 information, will provide details on general trends affecting each company.

B. Other Revisions to Form No. 6

Since the regulatory responsibility for oil pipelines was transferred to this Commission from the Interstate Commerce Commission in 1977, only cosmetic changes have been made to Form No. 6, other than the addition of a Statement of Cash Flows. In addition to the addition of Page 700, which is primarily designed to conform with Order No. 561, the Commission proposed in the NOPR other changes to make Form No. 6 a more useful report. As discussed below, some of the information proposed in the NOPR will not be required by this final rule.

AOPL and Marathon[43] argue that the information to be contained on pages 102–103, Corporate Control, is of no value to the Commission. However, in the Commission's view, it is necessary to have information about vertical control of the pipelines for proper rate regulation to ensure against improper cost shifting and for the purpose of analyzing property transactions between affiliates. The suggestion to delete this information is denied.

AOPL and ARCO[44] argue that the information regarding officer salaries requested on page 104, Principal General Officers, is not needed by the Commission. On further reflection, the Commission agrees, and the changes proposed to page 104 will not be adopted.

AOPL and Marathon[45] recommend that the information proposed on pages 230–231, Analysis of Federal Income & Other Taxes Deferred, and pages 108–109, Important Changes During the Year, be combined with pages 122–123, Notes to Financial Statements. AOPL also suggests that the information proposed for collection by the NOPR on pages 230–231 should be limited to present GAAP reporting requirements. The Commission does not agree. As to AOPL's suggestion that the information required on pages 230–231 be presented

[40] Chevron, p. 5.

[41] For a discussion of the differences in the equity and equity return figures contained in Form No. 6 and the use of those figures for ratemaking purposes under the Opinion No. 154–B methodology, see Supplemental Brief of AOPL filed in Docket No. RM93–11–000 on January 21, 1994, at 11–12.

[42] III FERC Stats. & Regs. ¶ 30,985 (1993), at 30,947.

[43] AOPL, p. 18; Marathon, p. 3.

[44] AOPL, pp. 18–19; ARCO, pp. 14–15.

[45] AOPL, pp. 18–19; Marathon, p. 3.

in accordance with GAAP reporting requirements and combined with the Notes to Financial Statements, the Commission considers the deferred tax schedule on pages 230–231 to be a necessary supporting schedule to the financial statements. Although the notes to financial statements are the appropriate place to disclose significant financial effects on a company of recently enacted income tax laws and regulatory actions, the deferred tax schedule is designed to present details, using a uniform format, on each significant item which causes a temporary difference between taxable income and pretax accounting income. This schedule, like the Form No. 6 carrier property and operating expense account schedules, permits a detailed analysis of the various charges and credits which comprise the balances of the current and noncurrent deferred income tax assets and liabilities. The latter are presented in the financial statements only as a single asset or liability balance for current and noncurrent deferred income taxes. Moreover, the information contained on pages 108–109 may not be appropriate for notes to financial statements, such as properties added or changes to franchise rights. These pages are for reporting of different types of information than changes to the financial condition of the pipeline, even though they may impact the financial condition.

AOPL and Marathon[46] recommend that page 350, Employees and Their Compensation, be deleted. The Commission agrees, since the information as to salary expense is available in a different format elsewhere in Form No. 6.

Based on the comments received on the NOPR and review of the current schedules in Form No. 6, the Commission will make several changes to the annual report for oil pipelines. To simplify the Form No. 6 data, the Commission will delete information not relevant to the Commission's regulatory responsibilities under the ICA. The Commission will also modify certain Form No. 6 financial statements to a comparative format by requiring two years of data to enhance their usefulness and to conform the Form No. 6 data formats to the formats of FERC Form Nos. 1[47] and 2[48] (Form Nos. 1 and 2) for electric utilities and natural gas pipeline companies, respectively.

The Commission will change the format of several schedules to accommodate electronic filing and reporting requirements for Form No. 6 similar to that used for Form No. 1. When a rule adopting an electronic filing requirement is issued, electronic filing of Form No. 6 information, similar to that for Form No. 1, should reduce the reporting burden for both large and small pipelines. Financial information reported electronically should also aid the Commission in conducting reviews of the pipeline companies and the rates charged.

The Commission will eliminate unneeded schedules or individual data elements, and will modify certain schedules so they will contain more useful and relevant data. A sample copy of the revised pages in Form No. 6 are attached as Appendix B.

Other than as discussed above, the Commission is adopting the changes to Form No. 6 as proposed in the NOPR. The specific changes the Commission adopts are:

Page 102—Corporate Control Over Respondent

Some format modifications are made for electronic reporting purposes to better report vertical control of respondent from the immediate parent to ultimate controlling parent company.

Page 103—Companies Controlled by Respondent

This is a new schedule added as new page 103, similar to the schedules currently in Form Nos. 1 and 2, to report all subsidiaries directly controlled by a respondent.

Page 105—Directors

This schedule is modified to delete the instructions at the top of the page and information required at lines 21 through 23. The deleted material is replaced with similar instructions at the top of the schedule and "Title" is inserted in addition to "Name of Director" in column (a). This will make the format the same as Form Nos. 1 and 2.

Pages 106 and 107—Voting Powers of Security Holders

This schedule is deleted because it is not needed for Commission regulatory purposes.

Pages 108 and 109—Important Changes During the Year

The current format is replaced with instructions similar to Form Nos. 1 and 2.

Pages 110, 111 and 113—Comparative Balance Sheet Statement

Page 114—Income Statement

Page 118—Appropriated Retained Income

Page 119—Unappropriated Retained Income Statement

Pages 120 and 121—Statement of Cash Flows

The Commission has modified these financial statements to require that data be presented on a comparative basis (*i.e.*, for two years) to enhance the usefulness of these financial statements. The Commission has deleted from page 119 the schedule showing Dividend Appropriations of Retained Income, because it is not needed for Commission regulatory purposes.

Page 117—Working Capital

This schedule is deleted because it is not needed for Commission regulatory purposes.

Pages 122 and 123—Notes to Financial Statements

The Commission has added new instructions which will require statements of a company's accounting practices and policies (with specific reference to such matters as income taxes, pensions, and post-retirement benefits); and significant matters concerning acquisitions and sales, significant contingencies, and liabilities existing at the end of the year, and other matters that will materially affect company operations.

Page 200—Receivables From Affiliated Companies

The reporting thresholds in Instruction No. 2 are raised from $100,000 to $500,000.

Page 201—General Instructions Concerning Schedules 202–205

The Commission has modified these instructions to conform with Form Nos. 1 and 2 by deleting the subclassifications presently required.

Pages 206 and 207—Other Investments

Pages 208 and 209—Securities, Advances and Other Intangibles Owned or Controlled Through Nonreporting Carrier and Noncarrier Subsidiaries

These schedules are deleted because they are not needed for Commission regulatory purposes.

Page 211—Instructions for Schedule 212–213

The Commission has modified the footnote to Instruction No. 3 to require that a respondent identify the original

[46] AOPL, p. 19; Marathon, p. 3.

[47] Annual Report of Major Electric Utilities, Licensees, and Others.

[48] Annual Report of Natural Gas Companies.

cost of property purchased or sold. This information is useful in the analysis of carrier property transactions between oil pipeline companies. In addition, the reporting thresholds in Instruction Nos. 3 and 5 are raised from $50,000 and $100,000 to $250,000 and $500,000, respectively.

Pages 218 and 219—Amortization Base and Reserve

The reporting thresholds in Instruction No. 4 are raised from $10,000 to $100,000.

Page 220—Noncarrier Property

The reporting thresholds in Instruction No. 2 are raised from $100,000 to $250,000.

Page 221—Other Deferred Charges

The reporting thresholds in the instruction are raised from $100,000 to $250,000.

Page 225—Payables to Affiliated Companies

The reporting thresholds in Instruction Nos. 2 and 3 are raised from $100,000 to $250,000.

Pages 230 and 231—Analysis of Federal Income and Other Taxes Deferred

The Commission has replaced the current reporting format with instructions that require an analysis of the respondent's current and non-current deferred income tax assets and liabilities.

Pages 250 and 251—Capital Stock

The current schedules are replaced with schedules and instructions similar to Form No. 2.

Pages 302 through 304—Operating Expense Accounts

"Operating Ratio" at line 23 is deleted because it is not needed for Commission regulatory purposes.

Page 336—Interest and Dividend Income

The reference to Schedule pages 206 to 207 at line 2 is deleted because these pages are eliminated.

Page 337—Miscellaneous Items in Income and Retained Income Accounts for the Year

The reporting thresholds in Instruction No. 2 are raised from $100,000 to $250,000.

Page 351—Payments for Services Rendered by Other Than Employees

The reporting thresholds in Instruction No. 1 are raised from $30,000 to $100,000.

Finally, since the Commission has deferred the requirement that oil pipelines file Form No. 6 on an electronic medium, in addition to paper filing, § 385.2011 of Part 385 of Title 18 of the Code of Federal Regulations will not be changed as proposed in the NOPR at this time. The Commission will issue a final rule on this subject at an appropriate time.

VI. Depreciation

A. Discussion of Comments

In Order No. 561, the Commission stated that it would be the pipelines' responsibility in the future to perform depreciation studies to establish revised depreciation rates for oil pipelines. The Commission further stated that the specific requirements for such studies would be developed in this proceeding.[49] In the NOPR, the Commission proposed a new Part 347 to its regulations, encompassing the information required to be submitted by oil pipeline companies to establish revised depreciation rates.

Several commentors provided comments concerning the process for the establishment and/or changing of depreciation rates for common carrier property. Based upon a review of these comments, several modifications will be made to the regulations as proposed in the NOPR.

One commentor[50] suggested that the transmittal letter, which submits a request for new or changed depreciation rates, only be filed with the Commission and not sent to all shippers and subscribers. The Commission disagrees. It will continue to require the transmittal letter to be sent to all shippers and subscribers. Depreciation rates as set or as subsequently modified can have a considerable effect on a pipeline's rates; and as such, shippers need to be kept informed as to when the rates are being requested to be established or changed. As Davis states, "To apprise shippers and subscribers of the change in the depreciation rate is alerting them that a forthcoming rate change could be challenged on the basis of the rate of depreciation."[51] If a change in the tariff rate is requested resulting from an approved change in the underlying depreciation rates, then protests filed because of a lack of adequate information about the change in depreciation rates could be prevented.

Modifications to the proposed regulations (18 CFR 347.1) which delineate the information which should be filed when seeking to establish or change depreciation rates have been requested by several commentors.[52] As to those claims that certain data are not available, the Commission has provided in § 347.1(e) for consideration of individual circumstances. Section 347.1(e) states, in part:

> Modifications, additions, and *deletions to these data elements should be made to reflect the individual circumstances* of the carrier's properties and operations. [emphasis added]

This statement allows for the modification of the data elements for individual pipelines to account for, among other things, information which is not available to the pipeline. Therefore, a pipeline which does not have up-to-date engineering maps[53] could submit "simplified maps or drawings that contain such information * * *." Where information is not available, that data element may be omitted by simply stating that the information is not available.

The comments concerning oil field reserve and production information[54] are well taken and that portion of the regulations [18 CFR 347.1(e)(5)(ix)] is modified from that previously proposed to require only that the pipeline disclose the fields or areas from which crude oil is obtained.

Similarly, the comments concerning the proprietary nature of individual shipper information are also well taken.[55] The portion of the proposed regulations in 18 CFR 347.1(e)(vi) is modified to require that pipelines supply only a list of shipments and their associated receipt points, delivery points, and volumes for the most current year. Such information shall be provided in such a format to prevent disclosure of information which would violate the ICA.

Further, as requested by AOPL,[56] all information submitted pursuant to 18 CFR 347.1 will be publicly available unless specific confidential treatment is sought by the filing carrier.

B. Depreciation Regulations Adopted

Other than as discussed above, the Commission is adopting depreciation regulations as proposed in the NOPR. The Commission adopts the following regulations as new Part 347 of the Commission's regulations, which requires the following information to be filed by oil pipeline companies to justify

[49] III FERC Stats. & Regs. ¶ 30,985 (1993), at 30,967–8.

[50] Davis, p. 2.

[51] *Id.*

[52] Davis, Marathon, and AOPL.

[53] See Davis, pp. 3–4.

[54] Davis, pp. 4–5, Marathon, pp. 5–6, and AOPL, pp. 40–41.

[55] Davis, p. 4; AOPL, pp. 41–42.

[56] AOPL, p. 40, n. 69.

a request for either new or changed carrier account depreciation rates:

a. A brief summary of the general principles on which the proposed depreciation rates are based (*e.g.*, why the economic life of the pipeline section is less than the physical life).

b. An explanation of the organization, ownership, and operation of the pipeline.

c. A table of the proposed depreciation rates by primary carrier account.

d. An explanation of the average remaining life on a physical basis and on an economic basis.

e. The following specific background data would be submitted concurrently with any request for new or changed property account depreciation rates for oil pipelines: [57]

(1) Up-to-date engineering maps of the pipeline including the location of all gathering facilities, trunkline facilities, terminals, interconnections with other pipeline systems, and interconnections with refineries/plants. These maps must indicate the direction of flow.

(2) A brief description of the pipeline's operations and an estimate of any major near-term additions or retirements including the estimated costs, location, reason, and probable year of transaction.

(3) The present depreciation rates being used, by account.

(4) For the most current year available and for the two prior years, a breakdown of the throughput (by type of product, if applicable) received from each source (e.g., name of well, pipeline company) at each receipt point and throughput delivered at each delivery point.

(5) The daily average throughput (in barrels per day) and the actual average capacity (in barrels per day) for the most current year, by line section.

(6) A list of shipments and their associated receipt points, delivery points, and volumes (in barrels) by type of product (where applicable) for the most current year.

(7) For each primary carrier account, the latest month's book balances for gross plant and accumulated reserve for depreciation.

(8) An estimate of the remaining life of the system (both gathering and trunk lines) including the basis for the estimate.

(9) For crude oil, a list of the fields or areas from which crude oil is obtained.

(10) If the proposed depreciation rate adjustment is based on the remaining physical life of the properties, the Service Life Data Form (FERC Form No. 73) through the most current year. This may only require an updating from the last year for which information was filed with the Commission.

(11) Estimated salvage value of properties by primary carrier account.

An oil pipeline company is required to provide this, and any other information it deems pertinent, in sufficient detail to fully explain and justify its proposed rates. Any modifications, additions, and deletions to these data elements should only be made to reflect the individual circumstances of the pipeline's properties and operations, and must be accompanied by a full explanation of why the modifications, additions, or deletions are being made.

VII. Other Issues

In addition to the issues discussed above, certain other issues were raised by the commenters. The TAPS Carriers seek clarification on whether they must file page 700 of Form No. 6 in their annual reports. For consistency, the Commission will require that page 700 be included in the Form No. 6 filing, but the information required need not be submitted by those entities excluded, for ratemaking purposes, from the Act of 1992.[58] Page 700, as indicated above, is a tool to assist in the analysis of rate changes and cost changes brought about by the rate methodologies of Order No. 561, which was issued to conform with the Act of 1992. Since certain entities, such as the TAPS Carriers, are excluded from its provisions, no useful purpose would be served by having the exempted entities submit the information required on page 700.

Chevron objects to the use of a test year comprised of nine months of known and measurable changes after the last month of available actual experience utilized in a cost-of-service rate filing. It argues that the Commission's natural gas regulations, which have the same nine-month period "factors into the nine-month adjustment period the fact that the gas pipeline's rate filing will be protested by its customers and suspended by the Commission for the statutory five-month period." It asserts that oil pipeline rates are typically suspended for only one-day, and by allowing the full nine-month period, the pipeline may recover costs five months before the costs are incurred.[59] Chevron suggests that the Commission not allow changes that occur outside a three-month period, or which do not take place before the rate goes into effect, whichever is later.[60] The Commission will not adopt this proposed change. The nine months of known and measurable changes applied to the base period to arrive at the test period is a method long established and utilized in natural gas pipeline regulation. The nine-month period is appropriate in establishing rates which are prospective in nature and which will be in effect into the future. Only "known and measurable" changes are properly allowed to be included. By including these changes, the resulting test period correctly reflects the best projection of the actual circumstances which will be in effect under which the proposed rates of the pipeline are filed. Moreover, there is no basis for Chevron's suggestion that the nine-month period factors into account a five-month suspension period, especially as § 154.63(e)(2)(i) provides for a test period up to nine months beyond the date of filing.

VIII. Environmental Analysis

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for Commission action that may have a significant adverse effect on the human environment.[61] The Commission categorically excludes certain actions from this requirement as not having a significant effect on the human environment.[62] No environmental consideration is necessary for the promulgation of a rule that does not substantially change the effect of the regulation being amended, or that involves the gathering, analysis, and dissemination of information, or the review of oil pipeline rate filings.[63] Because this final rule involves only these matters, no environmental consideration is necessary.

IX. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [64] generally requires the Commission to describe the impact that a rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is

[57] All of the information listed here may not be appropriate and thus could be omitted from the filing. For example, if the pipeline carries only crude oil, information requested concerning petroleum products would not be needed.

[58] Section 1804(2)(B) of the Act of 1992 excludes from the provisions of the Act, for ratemaking purposes, TAPS and any pipeline delivering oil directly or indirectly to TAPS.

[59] Chevron, p. 6.

[60] Chevron, p. 7.

[61] Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 1987); FERC Stats. and Regs., Regulations Preambles 1986–1990, ¶30,783 (1987).

[62] 18 CFR 380.4.

[63] 18 CFR 380.4(a).

[64] 5 U.S.C. 601–612.

not required if a rule will not have such an impact.[65]

Pursuant to section 605(b), the Commission certifies that the rules and amendments will not have a significant impact on a substantial number of small entities. The pipelines subject to this rule are not small entities.

X. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations at 5 CFR 1320.14 (footnote) require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this final rule are contained in FERC–6 "Annual Report of Oil Pipeline Companies" (1902–0022) and FERC–550 "Oil Pipeline Rates: Tariff Filings" (1902–0089).

The Commission uses the data collected in these information requirements to carry out its regulatory responsibilities pursuant to the Interstate Commerce Act (ICA), the Act of 1992, and delegations to the Commission from the Secretary of Energy. The Commission's Office of Pipeline Regulation uses the data for the analysis of all rates, fares, or charges demanded, charged, or collected by any pipeline common carrier in connection with the transportation of petroleum and petroleum products and also as a basis for determining just and reasonable rates that should be charged by the regulated pipeline company.

The Office of Economic Policy uses the data in its functions relating to the administration of the ICA and the Act of 1992. The Commission's Office of Chief Accountant uses the data collected in Form No. 6 to carry out its compliance audits and for continuous review of the financial conditions of regulated companies.

Because of the proposed revisions to both FERC–550 and Form No. 6, and the expected reduction in public reporting burden of the latter, the Commission is submitting a copy of the final rule to OMB for its review and approval. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE, Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission), Washington, DC 20503, FAX: (202) 395–5167.

[65] 5 U.S.C. 605(b).

IX. Effective Dates

This final rule will be effective January 1, 1995.

List of Subjects in 18 CFR Parts 342, 346, and 347

Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below.

PART 342—OIL PIPELINE RATE METHODOLOGIES AND PROCEDURES

1. The authority citation for Part 342 is revised to read as follows:

Authority: 5 U.S.C. 571–83; 42 U.S.C. 7101–7532; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

2. Section 342.2 is amended by revising paragraph (a) to read as follows:

§ 342.2 Establishing initial rates.

* * * * *

(a) Filing cost, revenue, and throughput data supporting such rate as required by Part 346 of this chapter; or

* * * * *

3. Section 342.3 is amended by revising paragraph (b) to read as follows:

§ 342.3 Indexing.

* * * * *

(b) *Information required to be filed with rate changes.* The carrier must comply with Part 341 of this chapter.

(1) Carriers must specify in their letters of transmittal required in § 341.2(c) of this chapter the rate schedule to be changed, the proposed new rate, the prior rate, and the applicable ceiling level for the movement. No other rate information is required to accompany the proposed rate change.

(2) On March 31, 1995, or concurrently with its first indexed rate change filing made on or after January 1, 1995, whichever first occurs, carriers must file a verified copy of a schedule for calendar years 1993 and 1994 containing the information required by page 700 of the 1995 edition of FERC Form No. 6. If actual data are not available for calendar year 1994 when the rate change filing is made, the information for calendar year 1994 must be comprised of the most recently available actual data annualized for the year 1994. A schedule containing the information comprised of actual data for calendar year 1994 must be filed not later than March 31, 1995. Thereafter, carriers must file page 700 as a part of their annual Form No. 6 filing.

* * * * *

4. Section 342.4 is amended by revising paragraph (a) to read as follows:

§ 342.4 Other rate changing methodologies.

(a) *Cost-of-service rates.* A carrier may change a rate pursuant to this section if it shows that there is a substantial divergence between the actual costs experienced by the carrier and the rate resulting from application of the index such that the rate at the ceiling level would preclude the carrier from being able to charge a just and reasonable rate within the meaning of the Interstate Commerce Act. A carrier must substantiate the costs incurred by filing the data required by Part 346 of this chapter. A carrier that makes such a showing may change the rate in question, based upon the cost of providing the service covered by the rate, without regard to the applicable ceiling level under § 342.3.

* * * * *

5. Part 346 is added to subchapter P to read as follows:

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

Sec.

346.1 Content of filing for cost-of-service rates.

346.2 Material in support of initial rates or change in rates.

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 346.1 Content of filing for cost-of-service rates.

A carrier that seeks to establish rates pursuant to § 342.2(a) of this chapter, or a carrier that seeks to change rates pursuant to § 342.4(a) of this chapter, must file:

(a) A letter of transmittal which conforms to §§ 341.2(c) and 342.4(a) of this chapter;

(b) The proposed tariff; and

(c) The statements and supporting workpapers set forth in § 346.2.

§ 346.2 Material in support of initial rates or change in rates.

A carrier that files for rates pursuant to § 342.2(a) or § 342.4(a) of this chapter must file the following statements, schedules, and supporting workpapers. The statements, schedules, and workpapers must be based upon an appropriate test period.

(a) *Base and test periods defined.* (1) For a carrier which has been in operation for at least 12 months:

(i) A base period must consist of 12 consecutive months of actual

experience. The 12 months of experience must be adjusted to eliminate nonrecurring items (except minor accounts). The filing carrier may include appropriate normalizing adjustments in lieu of nonrecurring items.

(ii) A test period must consist of a base period adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within nine months after the last month of available actual experience utilized in the filing. For good cause shown, the Commission may allow reasonable deviation from the prescribed test period.

(2) For a carrier which has less than 12 months' experience, the test period may consist of 12 consecutive months ending not more than one year from the filing date. For good cause shown, the Commission may allow reasonable deviation from the prescribed test period.

(3) For a carrier which is establishing rates for new service, the test period will be based on a 12-month projection of costs and revenues.

(b) *Cost-of-service summary schedule.* This schedule must contain the following information:

(1) Total carrier cost of service for the test period.

(2) Throughput for the test period in both barrels and barrel-miles.

(3) For filings pursuant to § 342.4(a) of this chapter, the schedule must include the proposed rates, the rates which would be permitted under § 342.3 of this chapter, and the revenues to be realized from both sets of rates.

(c) *Content of statements.* Any cost-of-service rate filing must include supporting statements containing the following information for the test period.

(1) *Statement A—total cost of service.* This statement must summarize the total cost of service for a carrier (operating and maintenance expense, depreciation and amortization, return, and taxes) developed from Statements B through G described in paragraphs (c)(2) through (7) of this section.

(2) *Statement B—operation and maintenance expense.* This statement must set forth the operation, maintenance, administration and general, and depreciation expenses for the test period. Items used in the computations or derived on this statement must consist of operations, including salaries and wages, supplies and expenses, outside services, operating fuel and power, and oil losses and shortages; maintenance, including salaries and wages, supplies and expenses, outside services, and maintenance and materials; administrative and general, including salaries and wages, supplies and expenses, outside services, rentals, pensions and benefits, insurance, casualty and other losses, and pipeline taxes; and depreciation and amortization.

(3) *Statement C—overall return on rate base.* This statement must set forth the rate base for return purposes from Statement E in paragraph (c)(5) of this section and must also state the claimed rate of return and the application of the claimed rate of return to the overall rate base. The claimed rate of return must consist of a weighted cost of capital, combining the rate of return on debt capital and the real rate of return on equity capital. Items used in the computations or derived on this statement must include deferred earnings, equity ratio, debt ratio, weighted cost of capital, and costs of debt and equity.

(4) *Statement D—income taxes.* This statement must set forth the income tax computation. Items used in the computations or derived on this statement must show: return allowance, interest expense, equity return, annual amortization of deferred earnings, depreciation on equity AFUDC, underfunded or overfunded ADIT amortization amount, taxable income, tax factor, and income tax allowance.

(5) *Statement E—rate base.* This statement must set forth the return rate base. Items used in the computations or derived on this statement must include beginning balances of the rate base at December 31, 1983, working capital (including materials and supplies, prepayments, and oil inventory), accrued depreciation on carrier plant, accrued depreciation on rights of way, and accumulated deferred income taxes; and adjustments and end balances for original cost of retirements, interest during construction, AFUDC adjustments, original cost of net additions and retirements from land, original cost of net additions and retirements from rights of way, original cost of plant additions, original cost accruals for depreciation, AFUDC accrued depreciation adjustment, original cost depreciation accruals added to rights of way, net charge for retirements from accrued depreciation, accumulated deferred income taxes, changes in working capital (including materials and supplies, prepayments, and oil inventory), accrued deferred earnings, annual amortization of accrued deferred earnings, and amortization of starting rate base write-up.

(6) *Statement F—allowance for funds used during construction.* This statement must set forth the computation of allowances for funds used during construction (AFUDC) including the AFUDC for each year commencing in 1984 and a summary of AFUDC and AFUDC depreciation for the years 1984 through the test year.

(7) *Statement G—revenues.* This statement must set forth the gross revenues for the actual 12 months of experience as computed under both the presently effective rates and the proposed rates. If the presently effective rates are not at the maximum ceiling rate established under § 342.4(a) of this chapter, then gross revenues must also be computed and set forth as if the ceiling rates were effective for the 12 month period.

6. Part 347 is added to subchapter P to read as follows:

PART 347—OIL PIPELINE DEPRECIATION STUDIES

Sec.

347.1 Material to support request for newly established or changed property account depreciation studies.

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 347.1 Material to support request for newly established or changed property account depreciation studies.

(a) *Means of filing.* Filing of a request for new or changed property account depreciation rates must be made with the Secretary of the Commission. Filings made by mail must be addressed to the Federal Energy Regulatory Commission with the envelope clearly marked as containing "Oil Pipeline Depreciation Rates."

(b) *Number of copies.* Carriers must file three paper copies of each request with attendant information identified in paragraphs (c) through (e) of this section.

(c) *Transmittal letter.* Letters of transmittal must give a general description of the change in depreciation rates being proposed in the filing. Letters of transmittal must also certify that the letter of transmittal (not including the information to be provided, as identified in paragraphs (d) and (e) of this section) has been sent to each shipper and to each subscriber. If there are no subscribers, letters of transmittal must so state. Carriers requesting acknowledgement of the receipt of a filing by mail must submit a duplicate copy of the letter of transmittal marked "Receipt requested." The request must include a postage paid, self-addressed return envelope.

(d) *Effectiveness of property account depreciation rates.* (1) The proposed depreciation rates being established in the first instance must be used until they are either accepted or modified by the Commission. Rates in effect at the time of the proposed revision must continue to be used until the proposed revised rates are approved or modified by the Commission.

(2) When filing for approval of either new or changed property account depreciation rates, a carrier must provide information in sufficient detail to fully explain and justify its proposed rates.

(e) *Information to be provided.* The items delineated in paragraphs (e) (1) through (5) of this section are the data to be provided as justification for depreciation changes. Modifications, additions, and deletions to these data elements should be made to reflect the individual circumstances of the carrier's properties and operations.

(1) A brief summary relating to the general principles on which the proposed depreciation rates are based (*e.g.*, why the economic life of the pipeline section is less then the physical life).

(2) An explanation of the organization, ownership, and operation of the pipeline.

(3) A table of the proposed depreciation rates by account.

(4) An explanation of the average remaining life on a physical basis and on an economic basis.

(5) The following specific background data must be submitted at the time of and concurrently with any request for the establishment of, or modification to, depreciation rates for carriers. If the information listed is not applicable, it may be omitted from the filing:

(i) Up-to-date engineering maps of the pipeline including the location of all gathering facilities, trunkline facilities, terminals, interconnections with other pipeline systems, and interconnections with refineries/plants. Maps must indicate the direction of flow.

(ii) A brief description of the carrier's operations and an estimate of any major near-term additions or retirements including the estimated costs, location, reason, and probable year of transaction.

(iii) The present depreciation rates being used by account.

(iv) For the most current year available and for the two prior years, a breakdown of the throughput (by type of product, if applicable) received with source (e.g. name of well, pipeline company) at each receipt point and throughput delivered at each delivery point.

(v) The daily average capacity (in barrels per day) and the actual average capacity (in barrels per day) for the most current year, by line section.

(vi) A list of shipments and their associated receipt points, delivery points, and volumes (in barrels) by type of product (where applicable) for the most current year. The submitted data must be presented in a format which will protect any individual shipper information, the release of which would violate Section 15(13) of the Interstate Commerce Act (49 App. U.S.C. 15(13)).

(vii) For each primary carrier account, the latest month's book balances for gross plant and for accumulated reserve for depreciation.

(viii) An estimate of the remaining life of the system (both gathering and trunk lines) including the basis for the estimate.

(ix) For crude oil, a list of the fields or areas from which crude oil is obtained.

(x) If the proposed depreciation rate adjustment is based on the remaining physical life of the properties, a complete, or updated, if applicable, Service Life Data Form (FERC Form No. 73) through the most current year.

(xi) Estimated salvage value of properties by account.

Note: These Appendices will not appear in the Code of Federal Regulations.

Appendix A—Comments Received

Alaska, State of (Alaska)
Alberta Department of Energy (Alberta)
Association of Oil Pipelines (AOPL)
ARCO Pipe Line Company and Four Corners Pipe Line Company (ARCO)
Buckeye Pipe Line Company, L.P. (Buckeye)
Chevron U.S.A. Products Company (Chevron)
Davis, Glenn E. (Davis)
Indicated TAPS Carriers and Kuparuk Transportation Company (TAPS Carriers)
Lakehead Pipe Line Company (Lakehead)
Marathon Pipe Line Company (Marathon)
National Council of Farmer Cooperatives (NCFC)
Petrochemical Energy Group (PEG)
Texas Eastern Products Pipeline Company, L.P. (TEPPCO)
Total Petroleum, Inc. (Total)

Appendix B—Revised Sheets For Form No. 6: Annual Report of Oil Pipeline Companies

This Appendix B contains the pages from Form No. 6 which are revised in the Commission's Final Rule, Docket No. RM94–2–000.

APPENDIX B.—FORM NO. 6 SCHEDULES REVISED [1]

Title	Page No.
Control Over Respondent	102
Companies Controlled by Respondent	103
Directors	105

APPENDIX B.—FORM NO. 6 SCHEDULES REVISED [1]—Continued

Title	Page No.
Important Changes During the Year	108–109
Comparative Balance Sheet Statement	110–113
Income Statement	114
Appropriated Retained Income	118
Unappropriated Retained Income Statement	119
Statement of Cash Flows	120–121
Notes to Financial Statements	122–123
Receivables From Affiliated Companies	200
General Instructions Concerning Schedules 202 Through 205	201
Instructions for Schedules 212–213	211
Amortization Base and Reserve	218–219
Noncarrier Property	220
Other Deferred Charges	221
Payables to Affiliated Companies	225
Analysis of Federal Income and Other Taxes Deferred	230–231
Capital Stock	250–251
Operating Expense Accounts (Account 610)	302–304
Interest and Dividend Income	336
Miscellaneous Items in Income and Retained Income Accounts for the Year	337
Payments for Services Rendered by Other Than Employees	351
Annual Cost of Service Based Analysis Schedule	700

[1] Copies of these revised sheets are not being published in the **Federal Register**, but are available in copies of this order from the Commission's Public Reference Room.

[FR Doc. 94–27621 Filed 11–15–94; 8:45 am]
BILLING CODE 6717–01–P

18 CFR Part 348

[Docket No. RM94–1–000]

Market-based Ratemaking for Oil Pipelines

Issued October 28, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to adopt filing requirements and procedures with respect to an application by an oil pipeline for a determination that it lacks significant market power in the markets in which it proposes to charge market-based rates. This rule adopts procedural rules in order to implement the Commission's Order 561 market-based ratemaking policy, which was published in the **Federal Register** on November 4, 1993. In that order, the Commission adopted a simplified and generally applicable

ratemaking methodology for oil pipelines, which is an indexing system to establish ceilings on those rates. The Commission also continued its policy of allowing an oil pipeline to attempt to show that it lacks significant market power in the market in which it proposes to charge market-based rates. However, an oil pipeline may not charge market-based rates until the Commission concludes that the oil pipeline lacks significant market power in the relevant markets.

EFFECTIVE DATE: This final rule is effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Order No. 572

I. Introduction

The Federal Energy Regulatory Commission (Commission) hereby adopts procedural rules governing an oil pipeline's application for a Commission finding that the oil pipeline lacks significant market power in the relevant markets.

The present rule is a companion to Order No. 561.[1] There, the Commission adopted a simplified and generally applicable ratemaking methodology for oil pipelines to fulfill the requirements of Title VIII of the Energy Policy Act of 1992 (Act of 1992).[2] That methodology is an indexing system to establish ceilings on oil pipeline rates. The Commission also will permit, under defined circumstances, the use of two alternative methodologies. These are the use of a cost-of-service methodology and the use of settlement rates. In addition, in Order No. 561, the Commission continued its policy of allowing an oil pipeline "to attempt to show that it lacks significant market power in the market in which it proposes to charge market-based rates."[3] Under Order No. 561, however, an oil pipeline may not charge market-based rates until the Commission concludes that the oil pipeline lacks significant market power in the relevant markets.[4] The present rule adopts procedural rules in order to implement Order No. 561's market-based ratemaking policy.

II. Public Reporting Requirement

The Commission estimates the public reporting burden for this collection of information under the rule will increase the existing reporting burden associated with FERC–550 by an estimated 510 hours annually—an average of 255 hours per response based on an estimated 2 responses. The information filed by the oil pipelines will be collected by the Commission under FERC–550 "Oil Pipeline Rates: Tariff Filings." FERC–550 is a designation covering oil pipeline tariff filings made to the Commission. The estimates include the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The current annual reporting burden is 5,350 hours based on an estimated 535 responses from approximately 140 respondents.

Interested persons may send comments regarding these burden estimates or any other aspect of this information collection, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]; and to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

III. Background

On October 22, 1993, the Commission issued a Notice of Inquiry (NOI) about market-based rates for oil pipelines.[5] In the NOI, the Commission first inquired whether it should continue to permit oil pipelines to seek market-based rates on a showing that they do not have significant market power in the relevant markets. The Commission also inquired about how it should make a market power determination and, in that connection, raised a number of substantive and procedural issues.

On July 28, 1994, the Commission issued a Notice of Proposed Rulemaking (NOPR) in response to the NOI and the comments to the NOI.[6] In the NOPR, the Commission concluded that oil pipelines may continue to seek market-based rates upon a showing that they do not have significant market power in the relevant markets. In addition, the Commission concluded that no consensus existed on the substantive standards to be used in determining whether an oil pipeline lacks significant market power in the relevant markets and that, therefore, the appropriate course of action is to develop oil pipeline precedents on a case-by-case basis. Accordingly, the Commission did not propose in the NOPR any substantive rules about market power determinations. However, the Commission did propose in the NOPR appropriate procedural rules to govern applications by oil pipelines for a market-power determination that could lead to market-based rates. The Commission has received comments on the NOPR from eleven commenters.[7] In brief, after analyzing those comments as discussed below, the Commission is adopting the procedural rules proposed in the NOPR with minor modifications and some clarifications.

---

[1] Revisions to Oil Pipeline Regulations pursuant to Energy Policy Act, Order No. 561, 58 FR 58785 (November 4, 1993), III Stats. & Regs. ¶ 30,985 (1993), *order on reh'g and clarification*, Order No. 561–A, 59 FR 40243 (August 8, 1994), III FERC Stats. & Regs. ¶ 31,000 (1994).

[2] 42 U.S.C. 7172 note (West Supp. 1993).

[3] 18 CFR 342.4(b) to be effective January 1, 1995.

[4] *Id.*

[5] Market-Based Ratemaking for Oil Pipelines, Notice of Inquiry, 58 FR 58814 (November 4, 1993), IV FERC Stats. & Regs. Notices ¶ 35,527 (October 22, 1993).

[6] Market-Based Ratemaking for Oil Pipelines, Notice of Proposed Rulemaking, 59 FR 39985 (August 5, 1994), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,508 (July 28, 1994).

[7] Comments were filed by: ARCO Pipe Line Company and Four Corners Pipe Line Company (ARCO), the Association of Oil Pipe Lines (AOPL), Marathon Pipeline Company (Marathon), Buckeye Pipe Line Company, L.P. (Buckeye), Kaneb Pipe Line Operating Partnership, L.P. (Kaneb), Glenn E. Davis (Davis), Total Petroleum, Inc. (Total), Alberta Department of Energy (Alberta), Petrochemical Energy Group (Petrochemical), Natural Council of Farmer Cooperatives (Farmers), and Sinclair Oil Corporation, Crysen Refining, Inc., Frontier Refining Company, and Lion Oil Company (Sinclair).

IV. The Continuation of Market-Based Rates

As in the NOPR, the Commission concludes that oil pipelines may continue to seek market-based rates on a showing that they do not possess significant market power in the relevant markets. Most of the commenters support or do not oppose the continuation of market-based rates. Only Sinclair and the Farmers oppose the continuation of market-based rates. Sinclair maintains that there is no need for a market-based methodology in light of the indexation approach adopted by the Commission in Order No. 561, coupled with the cost-of-service alternative. The Farmers argue that market-based ratemaking is not needed in that the Order No. 561 ratemaking options provide pipelines with ample flexibility in obtaining just and reasonable rates and that market-based ratemaking will create an unnecessary potential for abuse of market power.

The Commission believes that it is appropriate for oil pipelines to continue to be able to seek market-based rates because this approach comports with the spirit of the Act of 1992 by retaining a light-handed regulatory method to complement the indexing approach adopted as the generally applicable ratemaking methodology for oil pipelines. In addition, as the Commission has previously stated, a market-based approach is clearly within the Commission's authority under the ICA.[8] Further, the Commission believes that the market-based approach will be of use in circumstances where the oil pipeline needs the flexibility to compete provided by market-based rates, rather than other approaches. Under the market-based approach, the oil pipeline will be able to engage in competitive pricing in order to react to changes in market conditions, such as increased demand for its service. This can result in pricing that is both efficient and just and reasonable. As the court stated in *Tejas Power Corp.* v. *FERC:*

> In a competitive market, where neither buyer nor seller has significant market power, it is rational to assume that the terms of their voluntary exchange are reasonable, and specifically to infer that the price is close to marginal cost, such that the seller makes only a normal return on its investment.[9]
>
> Traditional regulatory ratemaking is based on historic accounting cost. But rates based on historic cost do not function well to signal individuals how to efficiently respond to changes in market conditions.[10] Historic cost-based rates, even if indexed for past inflation, do not perform this function well, which generally requires one price to change relative to another. Therefore, where appropriate, it is reasonable to permit a market pricing option.

The Commission is confident that the information provided to it by the procedural requirements adopted in this rule will permit the Commission to make informed decisions about market power and prevent the possibility of abuses of market power. In that vein, both Sinclair and the Farmers in general support the rules proposed in the NOPR. Those rules will enable the Commission to comply with *Farmers Union* by not permitting market-based rates until there is an affirmative showing that the oil pipeline lacks significant market power in the relevant markets.[11] Such a showing will assure the Commission that the oil pipeline's prices are just and reasonable.[12]

V. Legal Basis

The oil pipelines raise several legal objections to the proposed regulations. In brief, they maintain that the Commission has acted outside of its authority under the Interstate Commerce Act (ICA)[13] and has contravened the mandate of Section 1802 of the Act of 1992 by not adopting streamlined procedures for market-based filings.

In Order No. 561, the Commission adopted section 342.4(b) of the regulations, which provides that: "Until the carrier establishes that it lacks market power, these rates will be subject to the applicable ceiling level under § 342.3." This rule builds on that requirement by requiring an oil pipeline to file an application for a market power determination rather than a rate filing under the ICA. Only after the Commission concludes that the oil pipeline lacks significant market power in the markets in which it proposes to charge market-based rates may it file market-based rates.

The AOPL, Kaneb, and Marathon argue that the Commission has overstepped its authority under the ICA by precluding an oil pipeline from charging market-based rates until the Commission has determined that the oil pipeline lacks significant market power in the relevant markets. The AOPL and Kaneb maintain that the Commission will be improperly suspending market-based rates indefinitely when Section 15(7) of the ICA permits suspensions for a period no longer than seven months. They both contend that the Commission's procedure is unnecessary in light of the ICA's refund mechanism, which protects the public interest. The AOPL further maintains that the Commission is acting inconsistently with its approach to market-based determinations for gas storage rates while Kaneb contends that the Commission has not justified disparate treatment between market-based rate filings and cost-of-service based rate filings, which will be allowed to become effective, subject to refund. Marathon maintains that the Commission will violate Section 6(3) of the ICA by opening an investigation before either a rate can be filed or go into effect.[14]

The Commission rejects the above arguments as collateral attacks on Order No. 561. ARCO recognized that the present rule merely implements that regulation when it stated that "the Commission has indicated in Order No. 561–A that it intends to proceed on the basis that it has this power" to prevent an oil pipeline from putting into effect a market-based rate until the Commission concludes that the oil pipeline lacks significant market power in the relevant markets.[15] Nonetheless, the Commission sees no merit in the above arguments.

The indexing method sets the maximum lawful rate subject to exceptions which must be proven. For

---

[8] Order No. 561, III FERC Stats. & Regs. ¶ 30,985 at p. 30,958; *Cf. Elizabethtown Gas Co.* v. *FERC*, 10 F.3d 866 (D.C. Cir. 1993).

[9] 908 F.2d 998, 1004 (D.C. Cir. 1990).

[10] The classic statement on the informational role of prices is F. Hayek, "The Use of Knowledge in Society," American Economic Review, XXXV(4) 519–30 (September, 1945). On the natural gas shortage and its relation to historic cost of service ratemaking see Stephen Breyer and Paul McAvoy, Energy Regulation by the Federal Power Commission, Brookings 56–88 (1974).

[11] *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486, 1510 (D.C. Cir. 1984).

[12] *Elizabethtown Gas Co.* v. *FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993), citing *Tejas Power Corp.* v. *FERC*, 908 F.2d 998, 1004 (D.C. Cir. 1990) and *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486, 1510 (D.C. Cir. 1984).

[13] 49 U.S.C. app. 1 (1988).

[14] Section 6(3) of the ICA provides: No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: Provided, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions: Provided further, That the Commission is authorized to make suitable rules and regulations for the simplification of schedules of rates, fares, charges, and classifications and to permit in such rules and regulations the filing of an amendment of change in any rate, fare, charge, or classification without filing complete schedules covering rates, fares, charges or classification not changed if, in its judgement, not inconsistent with the public interest.

[15] Comments at 9.

purposes of analyzing the legal issues presented, the Commission must assume that market-based rates would be higher than indexed rates because an oil pipeline is free to file for rates under the index without justification. Hence, an oil pipeline must show that it is entitled to an exception to charge more than the index would permit. In this context, the application is in essence a request for waiver of the maximum rate. Such a moratorium on filings for market-based rates (except under the application process) comports with the Commission's power to restrict filings of proposed rates higher than those determined by the Commission to be just and reasonable.[16]

It is true that this treatment of market-based rates differs from the Commission's approach to filings by oil pipelines for cost-based rates. However, the difference is justified. It is appropriate to take the present action with respect to market-based rates for oil pipelines in order to ensure that presumed market forces will not be the basis of effective rates for the transportation of oil when an oil pipeline's application (*i.e.*, its waiver request) is under consideration.[17] The Commission cannot permit market-based rates without an affirmative showing that the oil pipeline lacks significant market power in the relevant markets.[18]

Because the Commission is taking the approach that an oil pipeline must file an application for market-based rates, Marathon's reliance on Section 6(3) of the ICA is misplaced. Simply put, there is no rate investigation. Rather, the investigation is into whether the oil pipeline possesses significant market power in the relevant markets.

The AOPL also maintains that the Commission is not authorized by the ICA to adopt market-power filing requirements. It argues that, under Section 6(3) of the ICA, an oil pipeline seeking to change its rates need only file a notice of proposed change with the Commission, and that the Commission's authority under that action is limited to rules and regulations for the "simplification" of schedules.[19] The AOPL adds that the ICA does not require the submission of material in justification of a proposed rate change unless and until that rate change is set for hearing. It asserts that the oil pipeline's statutory burden of proof under Section 15(7) of the ICA does not attach until the matter is set for hearing.[20] The AOPL last maintains that the Commission's characterization of the market power application as a nonrate filing does not cure the statutory shortcoming because if it is not a rate filing there is no statutory basis for the application. It further maintains that, in any event, the characterization is wrong as shown by the caption of this proceeding and the collection of information form (FERC 550 "Oil Pipeline Rates—Tariff Filings").

As discussed in the order in *Cost-of-Service Filing and Reporting Requirements for Oil Pipelines*, issued contemporaneously with this rule, the Commission has the authority to adopt filing requirements beyond the mere form of notices and schedules. The Commission may require information upon which to determine how to act on a filing. In any event, as discussed above, the Commission views the application required here as in essence a waiver request, which will enable the Commission to make the required affirmative finding that the oil pipeline lacks significant market power in the relevant markets before it permits market-based rates as an exception to the indexing approach. Nothing in the ICA prevents the Commission from setting forth the requirements of a waiver request, including placing the burden of proof on the person seeking the waiver. Even if the application is a rate change under Section 15(7), the Commission is not compelled to hold a hearing, but if it does hold a hearing, the hearing may be resolved on the written record. The required application simply starts the hearing process and the statutory burden of proof would affix.[21]

With respect to the AOPL's arguments about the caption to this proceeding, it merely reflects the end result of the process—market-based rates. Further, the form for the collection of information merely recognizes the end-result—oil pipeline rates and, in any event, is purely ministerial.

The AOPL maintains that the Commission's market power application process is inconsistent with the Act of 1992 streamlining mandate because it violates the Act of 1992's requirements that the Commission "develop streamlined procedures 'to avoid unnecessary regulatory costs and delays'," that "proceedings address issues raised by parties with real economic interests, and that Staff initiated proceedings be limited to 'specific circumstances.'"[22] It thus "submits that the scope of any market power investigation should be limited to (1) rates subject to a valid protest by an entity with a demonstrated economic interest in the pipeline's rate, or (2) markets that do not meet Commission-established screens."[23] It asserts that the Commission's failure to adopt substantive guidelines does not comply with the Act of 1992's streamlining mandate.

The Commission has fully complied with the mandate of the Act of 1992. The Commission has adopted the indexing methodology, which is "a simplified and generally applicable ratemaking methodology for oil pipelines in accordance with section 1(5) of Part I of the [ICA]."[24] And, the Commission has adopted streamlined procedures with respect to rates established under that methodology. The market-based ratemaking approach is not generally applicable. Therefore, it must be optional and oil pipeline specific. Indeed, the Commission doubts that it could have adopted market-based ratemaking as the simplified and generally applicable ratemaking methodology in light of the court's holding in *Farmers Union* that the Commission cannot presume the existence of competition or that a competitive price will be within a just

[16] *Cf.*, Permian Basin Area Rate Cases, 390 U.S. 747, 780 (1968). ("The Commission may under Sections 5 and 16 [of the Natural Gas Act] restrict filings under Section 4(d) of proposed rates higher than those determined by the Commission to be just and reasonable.")

[17] *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486, 1510 (D.C. Cir. 1984).

[18] *Id.* With respect to the AOPL's contention about gas storage rates, the Commission notes that those cases were considered mostly in certificate proceedings. While Koch Gateway Pipeline Company's proceeding was a rate filing, it involved the continuation of an experimental program that had been previously approved as part of a settlement. 66 FERC ¶ 61,385 (1994). In addition, oil pipeline market cases have been lengthy and have gone beyond the statutory suspension period.

[19] Comments at 18.

[20] Section 15(7) provides in pertinent part:

At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

[21] The AOPL maintains that the scope of discovery is limited under the Commission's rules of practice and procedure (18 CFR 385.402(a)) to issues set for hearing. It submits that the Commission will put the "procedural cart before the horse by requiring production of discovery—related information before the scope of contested issues has been established." Comments at 40. As stated in the text, the Commission has the authority to adopt filing requirements and to set forth the requirements for a waiver as the first stage of the investigation.

[22] Comments at 25. ARCO, Marathon, and Davis similarly argue that the Commission has fallen short of the Act of 1992's streamlining mandate.

[23] *Id.*

[24] Section 1801(a) of the Act 1992.

and reasonable range.[25] In any event, the Commission believes that the present regulations, in the spirit of the Act of 1992, indeed streamline procedures as to market-based rates by filling a regulatory void with respect to procedures and by minimizing burdens by obtaining data at the outset. This should avoid unnecessary regulatory costs and delays and result in informed decisions with respect to all markets in which an oil pipeline seeks to charge market-based rates rather than the generally applicable indexing methodology or, if appropriate, cost-based rates. In addition, the Commission's requirements for standing are applicable.[26] Last, there is nothing in the Act of 1992 even suggesting that the Commission must adopt substantive guidelines for market-based rates, which, as discussed below, are not warranted at this time.

C. Disclosure of Confidential Shipper Information

The AOPL maintains that the NOPR's filing procedures will place oil pipelines in the untenable position of violating their statutory duty not to disclose confidential shipper information in order to comply with the rule. The AOPL asserts that the Commission cannot by rule repeal the statutory protection of confidentiality provided to shipper information by Section 15(13) of the ICA. The AOPL asks the Commission "to clarify that nothing in the NOPR is intended to require the production of shipper information otherwise protected by ICA Section 15 (13)."[27]

Section 15(13) of the ICA makes it unlawful for an oil pipeline to disclose "any information concerning the nature, kind, quality, destination, consignee, or routing of any property tendered to" the oil pipeline for transportation, "which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor." However, Section 15(13) provides certain exceptions to allow "the giving of such information in response to any legal process under the authority of any State or Federal court, or to any officer or any agent of the Government of the United States * * * in the exercise of its powers * * *."

The Commission is concerned about the possibility that an oil pipeline might violate Section 15(13) and subject itself to a misdemeanor charge under Section 15(14) of the ICA by disclosing statutorily protected shipper information. However, the Commission sees no reason to eliminate the information collection in the proposed rule on that ground. Under the new procedural rules adopted as § 348.2,[28] the oil pipeline must file its application for a market power determination with the Commission and provide a copy of its letter of transmittal, without a copy of the application, to each shipper and subscriber on or before the day the material is submitted to the Commission. Thereafter, the shipper or subscriber must make a written request for a copy of the oil pipeline's complete application, which must be provided by the oil pipeline.

The Commission will adopt the following additional approach with respect to protected shipper information. First, under the exception provided by Section 15(13), the Commission in this order authorizes an oil pipeline to disclose information and materials necessary for it to file its application, which disclosure in the absence of this order might be deemed to violate Section 15(13). Next, as with all submissions to the Commission that include privileged information, the oil pipeline should file its application for a market power determination with a request for privileged treatment under Section 388.112 of the Commission's regulations. As required by that section, the oil pipeline must indicate the information for which it is seeking privileged treatment, including identification of the material subject to Section 15(13) of the ICA. However, for administrative convenience, the Commission is requiring the oil pipeline to file the original application and three copies in an unredacted form rather than only the original as required by section 388.112(b)(ii) of the Commission's regulations. The oil pipeline must file the remaining eleven copies required by section 348.2(a) of this rule and by Section 388.112(b) without the information for which privileged treatment is sought as required by section 388.112(b)(iii).

In addition, the Commission will require the pipeline to submit a proposed form of protective agreement with its request for privileged treatment and with its letter of transmittal to its shippers and subscribers. Any shipper or subscriber seeking a complete copy of the oil pipeline's application must provide the oil pipeline with an executed copy of the protective agreement at the time it requests a copy of the oil pipeline's application. The Commission will act expeditiously to resolve any controversies about protective agreements. This approach is similar to that used in litigated cases to prevent the disclosure of sensitive information[29] and akin to that suggested by the AOPL in its comments to the NOI. This approach will be sufficient to prevent the use of the information to the detriment or prejudice of a shipper and will not result in the improper disclosure of business transactions to a competitor.[30] Hence, there will be no violation of Section 15(13).

VI. Substantive Guidelines and Screens and Alternative Procedures

The Commission will not adopt substantive standards, including screens and rebuttable presumptions at this time. Instead, the Commission will continue to develop oil pipeline precedents on a case-by-case basis through the application procedure adopted by this rule.

The AOPL, Marathon, and ARCO maintain that the Commission should adopt market power guidelines in this rule. The AOPL contends that the absence of those guidelines threatens to impose undue burdens on all participants in a market-based rate proceeding. They further assert that the NOPR's reliance on a lack of consensus was misplaced because the Administrative Procedure Act (APA) does not require consensus as a prelude to adoption of a final rule and that, in any event, there was substantial support for streamlining market power determinations. It believes that without such substantive guidelines a market power presentation will be too elaborate and unfocussed because the oil pipeline will fear selecting an analytical model that unknown to it is disfavored by the Commission. It thinks the industry is facing a "regulatory vacuum."

The AOPL, Marathon, and ARCO suggest the Commission adopt certain guidelines and threshold screens in connection with establishing rebuttable presumptions as a means of streamlining market power determinations. They maintain that the oil pipelines should be able to use BEAs[31] as their geographic markets without justification as proposed by the NOPR. They further submit that the

[25] *Farmers Unions Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486, 1510 (D.C. Cir. 1984).

[26] See section 348.2(g) referring to section 343.2(b).

[27] Comments at 23.

[28] See *infra*.

[29] *See, e.g.*, Phillips Pipe Line Co., Order to Produce Shipper Information and Enter Protective Order, Docket No. IS94–1–000 (January 19, 1994).

[30] *Id.*

[31] The term BEA refers to United States Department of Commerce, Bureau of Economic Analysis Economic Areas. BEAs are geographic regions surrounding major cities that are intended to represent areas of actual economic activity.

relevant product market should be delivered pipelineable petroleum products (AOPL) or delivered pipelineable barrels of both refined and unrefined products (Marathon). They also maintain that the Commission should establish market power screens to establish rebuttable presumptions in connection with market power determinations. Marathon suggests an HHI[32] of 2500. ARCO suggests screens of a market share based on actual deliveries or capacity of less than 45 percent into, for example, a BEA or a market share of 55 percent combined with an HHI of 2500 or less based on capacity data. The AOPL refers to those screens as suggested by *Williams*[33] and *Buckeye*[34] and refers to a third threshold of a ten percent market share for potential waterbased traffic.

On the other hand, Alberta, Total, the Farmers, and Sinclair support the Commission's decision not to set substantive standards and to develop precedents on a case-by-case basis. They agree with the NOPR that no consensus exists among affected groups about substantive standards and maintain that the Commission should not consider establishing substantive standards until it has gained more experience from a number of applications for market rates. Total and the Farmers submit that the Commission properly rejected the use of HHIs as screens to avoid arbitrary results. Sinclair approves of the Commission's decision not to establish generic standards about geographic markets and to place the burden on the oil pipeline to show the relevance of any BEA.

The Commission recognizes that the APA does not require a consensus to adopt rules. However, here, where the Commission has the very limited experience of two oil pipeline proceedings with respect to market power determinations, this lack of consensus among the parties most affected suggests to the Commission that it should proceed cautiously on a case-by-case basis to ensure that markets are not presumed to be competitive.[35] Hence, the Commission at this time is not adopting substantive guidelines and screens.[36]

The Commission sees no regulatory vacuum as asserted by the AOPL. The Commission's procedural regulations set forth clearly what matters are pertinent in determining significant market power—*e.g.*, geographic and product markets, HHIs and market share. The Commission does not view the lack of screens as unfair or unduly burdensome. As with any proponent, the oil pipeline must make its most persuasive case for its position.

With respect to specific screen issues, the Commission is not ready to adopt BEAs as the defined or presumed geographic market in the absence of more experience in determining relevant geographic markets. Similarly, the Commission is not ready to adopt a specific definition of product market. Nor can the Commission at this time adopt presumptions about market power determinations. The Commission prefers to gain more experience with specific cases to develop HHI (market concentration) and market power criteria for oil pipelines.[37] These issues should all be pursued cautiously on a case-by-case basis to ensure that markets are not assumed to be competitive. Of course, as more experience is gained, precedent can serve as well as presumptions to provide guidance.

The AOPL contends that the proposed application process is unfair because an oil pipeline must shoulder its burden of proof prior to knowing whether the competitiveness of a market has been challenged. Both the AOPL and ARCO suggest alternative procedures based on the use of screens. Total, the Farmers, Petrochemical, and Sinclair approve of the Commission's procedural rules requiring the oil pipeline to file a case-in-chief at the outset. Total maintains that this will lessen the burden on parties to a market power case. It suggests that the burden could be further minimized and the analytical quality of the data enhanced if the Commission would direct staff to aggregate oil pipeline data by origin and destination markets.[38]

As indicated above, the Commission is not adopting any market power screens. Hence, it rejects the AOPL's and ARCO's proposed alternative procedures. In any event, the Commission sees no unfairness in adopting the proposed case-in-chief approach in lieu of the *"Buckeye"* approach.[39] The Commission is requiring no more than an oil pipeline bear its burden of proof in a fashion that ensures that there is no reliance on presumed market forces.[40] Last, the Commission, as part of this rule, sees no reason to direct staff to aggregate oil pipeline data.

ARCO suggests that if an oil pipeline's indexed-based rates are challenged as substantially exceeding its increase in costs, the oil pipeline should be allowed to advance a market-based justification of those rates in a *Buckeye* bifurcated procedure. The Commission rejects ARCO's suggestion because it is appropriate to keep cost challenges to indexed rates separate from market-based rate cases. For example, under ARCO's proposal, if the oil pipeline failed in its market-based defense, it would still be able to defend on cost grounds. The Commission believes it better for the oil pipeline to defend solely on cost grounds under Order No. 561. An oil pipeline may file an application for market-based rates at any time.

Buckeye asks about noncompetitive markets after others are found to be competitive. It asks the Commission to clarify that it will "permit substantially competitive pipelines to propose alternative ratemaking programs or approaches that do not apply the index to their less competitive markets."[41] It also is concerned about the difficulty of an allocation of costs between competitive and noncompetitive markets under a cost-of-service analysis if raised by the shipper or oil pipeline.

The Commission sees no need to discuss Buckeye's requests and concerns here. Any oil pipeline seeking a waiver from the index for another approach for noncompetitive markets may file such a waiver request with its application for market-based rates.

VII. Monitoring and Constraints

As in the NOPR, the Commission proposes no generic constraints on the level of market-based prices or on their duration. In addition, the Commission

[32] The HHI stands for the Herfindahl-Hirschman Index, which calculates market concentration by summing the squares of individual market shares of all the firms in the market. For example, if each of four firms has a 25 percent share of the market, the HHI for the market would be .2500 [(.25 x .25)4] or 2500 in nontechnical terms.

[33] Williams Pipe Line Co., 68 FERC ¶ 61,136 (1994).

[34] Buckeye Pipe Line Co., 53 FERC ¶ 61,473 (1990), *order on reh'g*, 55 FERC ¶ 61,084 (1991).

[35] *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486, 1510 (D.C. Cir. 1984).

[36] The comments to the NOI, among other things, indicated a lack of consensus about the use of BEAs and the appropriate level for an HHI screen.

[37] Geographic and product markets and HHIs and market power are also discussed *infra*.

[38] In example, Total states that: "delivery-based market shares of pipelines can be aggregated to calculate delivery-based HHIs. The availability of such studies to shippers would minimize their burden of constructing an answer to a pipeline's direct case." Comments at 2, 3.

[39] In general, an oil pipeline tariff filing was not suspended or investigated unless it was protested. Under the *"Buckeye"* approach, if its rates were protested, the oil pipeline could elect at the hearing to prove it lacked significant market power, filing its case-in-chief after discovery. See Buckeye Pipe Line Co., 44 FERC ¶ 61,066 (1988).

[40] *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486, 1510 (D.C. Cir. 1984).

[41] Comments at 8. Buckeye refers to its own program but states that it does not suggest that be addressed here.

proposes no mechanism to monitor market-based rates.

Sinclair maintains that the Commission, to discharge its responsibilities under the ICA, must impose price caps and term limits on market-based rates. The Farmers submit that any market-based rates should be experimental and for a trial period such as the three-year period allowed in *Buckeye*. They argue that this will allow the Commission and shippers to judge whether competition is actually effective in a particular market. In addition, they maintain that the final rule should require applicants for market-pricing authority to propose specific safeguards against the risk that competition will not effectively constrain rate increases.

Alberta maintains that the Commission should require an oil pipeline to file comprehensive information about the markets in which it is charging market rates so that the Commission can examine whether the pipeline has been able to exercise significant market power. It also suggests that the Commission monitor an oil pipeline's earnings because comparison of its earnings prior to using market rates to its earnings thereafter may indicate that it has exerted monopoly power. Alberta further suggests the Commission reconsider adopting a rate trigger mechanism as a safeguard against monopoly rents and to provide a tolerance level around rates to ensure they do not stray from a zone of reasonableness.

The Commission concludes that there is no need to adopt generic rules about constraints on the level or duration of market-based prices. This is a matter to be considered in individual cases in light of the circumstances there. The Commission does not consider the market-based rate approach for oil pipelines generically as experimental or in need of a trial or in need of generic safeguards, such as rate triggers. All such issues can be discussed in the context of an individual case.

The Commission will be able to adequately monitor market-based rates through price changes because the oil pipeline must file its rates. In addition, the Commission can monitor the oil pipeline's aggregate earnings through its Form No. 6 filing.

VIII. The Rule

The Commission is amending subchapter P of its regulations, Regulations Under the Interstate Commerce Act, by adding a new Part 348 to those regulations. Section 348.1(a) requires an oil pipeline to file a statement of position and supporting statements with its application. Section 348.1(b) provides that an oil pipeline's statement of position must include an executive summary of its statement of position and a statement of material facts. The latter must include citation to the supporting statements, exhibits, affidavits, and prepared testimony. In its statement of position, the oil pipeline would be expected to present its arguments in favor of its position that it lacks significant market power in the relevant markets. The Commission received no comments about the specifics of Sections 348.1(a) and (b).[42]

Section 348.1(a) requires that an oil pipeline seeking a market power determination include with its application the information required by section 348.1(c). Under section 348.1(c) the oil pipeline must include certain designated information. The information required is mostly factual and is relevant to measuring the oil pipeline's ability to exercise market power in the relevant markets. That measurement will enable the Commission to determine whether the oil pipeline can exercise significant market power by profitably maintaining its prices significantly above competitive levels for a significant period.

The Commission is requiring the oil pipelines to essentially file the same information as the Commission has analyzed in the past in oil pipeline proceedings with respect to market power determinations. In brief, the Commission is first requiring the oil pipeline to define the relevant markets to be analyzed. It must identify the geographic areas and the products to be analyzed to establish the relevant markets for which to determine market power. For example, the inquiry might be, does the oil pipeline possess significant market power over the transportation of crude oil into the Houston area? Further, the Commission is requiring the oil pipeline to identify the competitive transportation alternatives for its shippers, including potential competition, and other competition constraining its rates. Finally, the oil pipeline must compute the market concentration for the relevant markets (the HHI) and other market power measures based on the information provided about competition. The Commission will be able to analyze the oil pipeline's information and its measures of market concentration and power to determine if the oil pipeline lacks significant market power in the relevant markets.

If a record about a market has been established in an oil pipeline proceeding, another oil pipeline may make use of all or part of that record in satisfying its burden to present information to the extent the other record contains relevant public information which is not out-of-date.[43] The Commission turns to the specific supporting statements.

A. Statement A—Geographic Market

In Statement A, the Commission is requiring that the oil pipeline describe the geographic markets in which it seeks to make a showing that it lacks significant market power. The oil pipeline must explain why its method for selecting the geographic markets is appropriate. The Commission also is requiring the oil pipeline to include both relevant origin and destination markets in its evidentiary presentation. This will provide interested parties with complete information about competition at the supply and delivery ends of the pipeline system. The Commission is not requiring the oil pipeline to file a market analysis of each point-to-point corridor. The Commission concludes that, in light of the significant point-to-point traffic in the oil pipeline industry, this would be too onerous a requirement at the filing stage, that a point-to-point corridor analysis may exclude competitive alternatives to the relevant service and, in some instances, it could provide an inaccurate picture of market concentration. However, a protestant may, as part of its response to the oil pipeline's application, seek to prove that in the particular circumstances a point-to-point corridor approach should be used to determine the appropriate geographic market.

The Commission is not requiring an oil pipeline to file pursuant to any particular geographic market definition. But the Commission expects that oil pipelines will propose to use BEAs as their geographic markets. In that event, the burden will be on the oil pipeline to explain why its use of BEAs or any other definition of the geographic market is appropriate. If a pipeline uses BEAs, it must show that each BEA represents an appropriate geographic market. Of course, the oil pipeline may choose to define its relevant geographic markets at a sub-BEA level, such as by a given radius around its terminals. As with BEAs, the oil pipeline must explain why this geographic market definition is appropriate.

[42] The argument that it is unfair to require the oil pipeline applicant to file a case-in-chief at the outset was discussed above.

[43] FERC Stats. & Regs. Proposed Regulations ¶32,508 at p. 32,889.

The AOPL, ARCO, and Marathon maintain that the Commission should establish BEAs "as the generally applicable means for determining relevant geographic markets" or "[a]lternatively the 'explanation' that use of BEAs to define relevant geographic markets complies with Commission precedent should satisfy a pipeline's obligation to explain its chosen approach."[44] The AOPL refers to *Buckeye* and *Williams* as such precedents employing BEAs to define relevant geographic markets.

Alberta, Total, and the Farmers support the Commission's geographic market proposal. Alberta maintains that the geographic size of markets will depend on many factors. Total submits that there are many instances where BEAs are larger than a relevant geographic market area, such as where a pipeline needs two terminals to serve distinct population centers. It further states that it does not object to the Commission's proposal to allow pipelines to submit data on a BEA basis, provided that shippers have the right to contend that the BEA is too large. In addition, Total states that it supports the Commission's conclusion that shippers should be entitled to present information demonstrating that it may be appropriate to utilize a point-to-point transportation corridor market as the relevant geographic market. The Farmers maintain that it is far more realistic to define relevant geographic markets on a fact basis than on the basis of arbitrary BEAs.

The Commission rejects the oil pipelines' requests with respect to BEAs. As stated above, the Commission believes that the appropriate geographic markets should be determined in each proceeding based on its facts. The burden is on the proponent of any particular definition.

The AOPL also argues against the proposal to include origin markets. It states that the Commission provided no rationale in the NOPR and that in *Buckeye* and *Williams* the Commission rejected arguments that it consider origin markets and focused only on destination markets. It adds that this complexity is not needed when there is little reason to be concerned about monopsony power in origin markets, that an analysis of each end of point-to-point service would significantly increase the burden on oil pipelines, and that the definition of origin market is a matter of some uncertainty owing to interconnections. The AOPL asserts that a competitive analysis of origin markets should be required only when proposed by an oil pipeline or if a shipper raises an issue of market power in origin markets.

On the other hand, Alberta and the Farmers support the Commission's proposal to include origin markets. Alberta maintains that an oil pipeline need only possess market power in either an origin or destination market to exert market power in a transportation corridor. The Farmers state that while the NOPR properly allows protestants to seek corridor market definitions, there is no justification for requiring protestants to bear the burden of proof and that if a protestant raises the issue of corridor market power, the burden of proof should remain with the applicant as part of its overall burden of establishing the relevant geographic market.

The Commission concludes that it is appropriate to include origin markets in the geographic market information. At this time, the Commission is still concerned about the possibility of monopsony power. The Commission agrees with the Farmers that the ultimate burden of proof is on the oil pipeline to establish the relevant geographic market. However, a proponent of corridor geographic markets must come forward with an adequate presentation to warrant rebuttal by the oil pipeline.

B. Statement B—Product Markets

In Statement B, the Commission is requiring the oil pipeline to identify the product market or markets for which it seeks to establish that it lacks significant market power. The oil pipeline must explain why the particular product definition is appropriate.

Under the ICA, the Commission regulates the transportation of oil by pipeline.[45] In a market power analysis, the Commission must determine the oil pipeline's ability to exercise market power over this transportation service. However, a market power analysis in general cannot be made solely in the context of transportation rates. Where competitive alternatives constrain the applicant's ability to raise transport prices, the effect of such constraints are ultimately reflected in the price of the commodity transported. Hence, the delivered commodity price (relevant product price plus transportation charges) generally will be the relevant price to be analyzed for making a comparison of the alternatives to a pipeline's services. However, in some instances such as for origin markets or crude oil pipelines, it may be appropriate to make a case based only on transportation rates. A pipeline may elect to file such a case and a protestant may argue that such a case is appropriate. In either event, the burden of establishing the relevant product market remains on the oil pipeline.

The Commission is not requiring a specific way to define the product markets. The relevant product market first would be distinguished between the transportation of crude oil and the transportation of refined products. Crude oil transportation could further be divided to include transportation of natural gas liquids while products transportation could be delineated by type, such as motor gasoline, distillates, or jet fuel. The oil pipeline should, in the first instance, select its product market and the burden is on the oil pipeline to justify its choice.

The AOPL argues that the Commission is unjustifiably retreating from the standard of *Buckeye* and *Williams*—"delivered pipelineable petroleum products." It maintains that this standard should be the generally applicable method for identifying relevant product markets, with participants free to argue for exceptions as appropriate.

Total maintains that the Commission has correctly recognized that crude and product markets can and should be divided further into differentiated products. It argues that, in order to minimize the need for discovery, the Commission should require that the delivery data be submitted by crude and product type and that capacity relied upon in HHI calculations should be segregated by crude types and product types. It further submits that oil pipelines should be further required to identify all alternatives of the same crude type or products which are being transported by the pipeline seeking a market-power demonstration.

The Commission reiterates that it is up to the oil pipeline to identify the product market or markets for which it seeks to establish that it lacks significant market power. As stated above, the Commission is not establishing at this time any presumptions as suggested by the AOPL. Nor will the Commission require the oil pipeline to submit information by crude and product type as proposed by Total. This would be too onerous at the outset. However, in identifying competition, as suggested by Total, the type identification should match that of the oil pipeline's commodity type used to determine the product market.

The AOPL also contends that the Commission's discussion of transportation in the product context is "problematic." It argues that if it "is intended to address relevant price for

[44] AOPL's comments at 41.

[45] 49 U.S.C. 1(1)(b).

the purpose of comparing competitive alternatives to all pipeline transportation, it simply is misplaced and should be shifted to a discussion of how to define market power," but if the Commission intends to require relevant product markets to be defined to include transportation, or the transportation of particular products, the discussion would represent a significant break with *Buckeye* and *Williams* which recognized that relevant product market could include non-transportation alternatives, such as refiners.[46] It asks the Commission at a minimum to clarify that "no such narrowing of the definition of 'relevant product markets' was intended."[47]

The Commission is not narrowing the definition of relevant product market by defining it in terms of the transportation of the commodity. That definition of relevant product market simply recognizes that the Commission regulates the transportation rate. As the AOPL maintains, non-transportation factors, such as competition from refiners, are an element in an analysis of an oil pipeline's market power with respect to the pertinent product.

Sinclair is concerned about the NOPR's statement that "the delivered commodity price (relevant product price plus transportation charges) generally will be the relevant price."[48] It assumes, and seeks clarification, that the term "product" applies to both petroleum products and crude oil. It further urges that the Commission "state that the use of any delivered price concept in a market power analysis is directed to the market power which a pipeline exercises with respect to shippers—not with respect to the price ultimate consumers pay for refined petroleum products." It maintains that the Commission should do this because shippers, and not end users, are the protected class under the ICA.[49] Sinclair further urges the Commission to reflect on the particular situations in which the delivered price concept is useful in market power analysis, such as in developing the geographic contours of the market. It further contends that it must be recognized that it is a pipeline's ability to increase its transportation rates, and not the delivered price, that must be the ultimate focus of the analysis. It specifically refers to crude oil origin markets, where the net-back price is pertinent, and to captive refiners in the origin market of a product pipeline, which refiner could be adversely affected by a rate increase by an inability to raise prices in the retail market. Sinclair suggests that protestants should always be given the opportunity to conduct discovery and present evidence with respect to a pipeline's ability to unilaterally raise its transportation rates and that there should not be any narrow bounds on the relationship between the commodity price and a pipeline's market power.

Sinclair is right that the product referred to in the NOPR was both petroleum products and crude oil. Sinclair is also correct that the Commission's analysis reflects market power *vis a vis* shippers and not consumers. This is because, whether or not the ICA is intended to protect consumers, it is the rate paid by shippers that must be just and reasonable.[50] Sinclair's other arguments should be presented in a particular case when the Commission must consider the appropriate determination of the geographic and product market. The Commission will consider requests for discovery when it determines what future proceedings are appropriate after protests are filed.

C. Statement C—Pipeline Facilities and Services

In Statement C, the Commission is requiring the oil pipeline to describe its own facilities and services in the relevant markets identified in Statements A and B. Statement C must include all pertinent data about the pipeline's facilities and services in those markets. For example, without limitation, the oil pipeline would have to include data on the capacity of its facilities, on its throughput, on its receipts in its origin markets, on its deliveries in its destination markets and to its major consuming markets, and the mileage between its terminals and its major consuming markets. Data should be supplied for each commodity carried, such as jet fuel, gasoline, etc.

The AOPL maintains that, aside from its origin market objection, the proposed Statement C would require extremely sensitive shipper receipt and delivery information, which, in many instances, would constitute disclosure of confidential shipper information in violation of Section 15(13) of the ICA. It adds that disclosure of data for each commodity carried would compound the problem. It makes two requests. First, Statement C should be streamlined to require only information likely to influence the ultimate market power determination and, second, some mechanism must be developed to safeguard the confidentiality of the information filed.

Alberta and Total support the Commission's proposal to collect detailed data. Total adds that the Commission should direct its staff to aggregate delivery data submitted by all pipelines serving each BEA and calculate delivery-based HHIs because the availability of such studies would reduce the need and difficulty of obtaining such data in discovery. It further states that the delivery data also will be useful to determine the extent of excess capacity and to determine the likelihood that terminals would be constructed in response to a rate increase because it is necessary to know the extent of available uncommitted upstream capacity and supplies to serve a new terminal.

The Commission rejects the AOPL's request that Statement C require only data likely to influence the ultimate market power determination because it would enable the oil pipeline to make that determination at the outset. The AOPL's concern about safeguarding the confidentiality of sensitive information is being addressed through a change in procedures as discussed above. In this rule, the Commission will not direct staff to collect aggregate delivery data and calculate delivery-based HHIs. However, if the Commission receives sufficient data to make collection warranted, it may reconsider this in the future.

D. Statement D—Competitive Alternatives

In Statement D, the Commission is requiring the oil pipeline to describe available transportation alternatives in competition with the oil pipeline in the relevant markets and other competition constraining the oil pipeline's rates in those markets. To the extent available, Statement D must include all pertinent data about transportation alternatives and other constraining competition. For example, the oil pipeline would have to include data similar to that provided for its own facilities and services in Statement C, including cost and mileage data in specific reference to the oil pipeline's terminals and major consuming markets. The following transport and other competition might be included in a market power calculation: Other pipelines, including private pipelines and those passing through the geographic market but without terminals, pipelines passing near the geographic market, barges, trucks, and refineries within the

[46] Comments at 44.

[47] *Id.*

[48] IV FERC Stats. & Regs. Proposed Regulations ¶32,508 at p. 32,890.

[49] Citing Williams Pipeline Co., 21 FERC ¶61,260 at p. 61,584 (1982).

[50] *Farmers Union Central Exchange, Inc.* v. *FERC*, 734 F.2d 1486, 1507 (D.C. Cir. 1984).

geographic market. The Commission is not excluding any alternative form of transport or other competition, including, for example, local consumption in origin markets. However, the burden is on the oil pipeline to justify its inclusion of transportation alternatives and other competition in its market power analysis.

The AOPL maintains that the Statement D-type information lies largely beyond a pipeline's reach. It declares it highly unlikely that a competing pipeline will provide information such as throughput, origin market receipts, destination market deliveries, and deliveries to major consuming markets, particularly by commodity. It states that to do so would be illegal. It also argues that Statement D potentially requires the production of much ultimately useless information. It requests the Commission to require "only information or estimates concerning matters ultimately affecting the Commission's determination of market power" and to require only "publicly available information or [the oil pipeline's] best estimate of competitive alternatives."[51]

The Commission denies the AOPL's first request. As stated above, permitting the oil pipeline to submit information or estimates that only affects the Commission's determination of market power will enable it to make that determination at the outset. With respect to the second request, the Commission has modified the proposal in the NOPR to require the oil pipeline to include pertinent data only to the extent available. Hence, as requested by the AOPL, the oil pipeline need only file information that is publicly available or its best estimates of competitive alternatives, unless the oil pipeline possesses additional information. Of course, it is in the oil pipeline's interest to make its best case to satisfy its burden of proof.

E. Statement E—Potential Competition

In Statement E, the Commission is requiring the oil pipeline to describe potential competition in the relevant markets. To the extent available, Statement E must include data about the potential competitors such as a potential entrant's costs and their distance in miles from the oil pipeline's terminal and major consuming markets.

The AOPL asserts that the most reliable information is possessed by shippers and not pipelines. It states that it has no objection so long as the pipeline's best estimates of potential competition drawn from publicly available information are acceptable.

The Commission has modified the proposal in the NOPR to require the oil pipeline to include data only to the extent available. Hence, as proposed by the AOPL, an oil pipeline need only submit its best estimates of potential competition drawn from publicly available information, unless the oil pipeline possesses additional information. Of course, it is in the oil pipeline's interest to make its best case to satisfy its burden of proof.

F. Statement F—Maps

In Statement F, the Commission is requiring maps showing the oil pipeline's principal transportation facilities and the points at which service is rendered under its tariff, the direction of flow of each line, the location of each of the oil pipeline's terminals, the location of each of its major consuming markets (cities, airports, and the like, as appropriate), and the location of alternatives to the oil pipeline, including their distance in miles from oil pipeline's terminals and major consuming markets. The statement must include a general system map and maps by geographic markets and the information required by this statement may be on separate pages. No commenter opposed Statement F.

G. Statement G—Market Power Measures

In Statement G, the Commission is requiring the oil pipeline to set forth the calculation of the HHI[52] and its market share with respect to the relevant markets and the calculation of other market power measures relied on by the oil pipeline, along with complete particulars about those calculations. The Commission believes that it is useful to obtain a showing of market concentration using the HHI. The HHI must include the oil pipeline and the competitive alternatives set forth in Statements D and E. The burden is on the oil pipeline to justify the individual market shares used in calculating the HHIs. In addition, the Commission is not proposing any particular HHI level, such as 1800 or 2500, as a screen or presumption, rebuttable or otherwise. All factors must be considered in determining whether an oil pipeline lacks significant market power.

The Commission also is requiring the oil pipeline to submit a market share calculation based on its receipts in its origin markets and its deliveries in its destination markets, if the HHIs are not based on those factors. For example, if the destination HHIs are based on capacity determined market shares, the oil pipeline would have to submit a calculation showing its share of the market based on deliveries in the respective destination markets. The Commission is not proposing any screen or presumption, rebuttable or otherwise, about particular market share levels. All factors must be considered in determining whether an oil pipeline lacks significant market power.

The oil pipeline may also include other indicators of the lack of significant market power for example, it could present evidence about water transportation as an indication that the oil pipeline lacks significant market power.

The AOPL objects to the inclusion of origin market information in HHI and market share calculations and to the production of underlying HHI and market share calculations as part of an initial submission, particularly where a market's HHI or pipeline market share is so low as to preclude a challenge to the market's competitiveness. The AOPL also maintains that market share data for HHIs should reflect market capacity and not market deliveries. It argues that the use of delivery data distorts the analysis of market behavior because it is at best a "snapshot" of the market as it existed prior to any purported try to exercise market power rather than a gauge of the potential of the market to respond to such an exercise. It maintains that this prospective response can be evaluated best by considering the market's capacity to respond. It also argues that delivery data are not readily available and of questionable accuracy unlike capacity data which tend to be a matter of public information and more readily available.

Total supports the collection of delivery data in order to calculate market shares. It further maintains that the delivery information should be aggregated in order to calculate delivery-based HHIs to provide the Commission with a picture of how the market is actually behaving inasmuch as this understanding is essential to analyzing the rule of potential competition.

As discussed above, the Commission considers it appropriate to include origin markets in a determination of market power because it is not ready to exclude the possibility of oil pipeline monopsony power. The Commission is permitting oil pipelines to submit HHIs based on capacity rather than on deliveries. They need submit delivery based data only for market share as another factor to consider in making the determination whether or not an oil

[51] Comments at 46.

[52] *Id.*

pipeline possesses significant market power. At this time, the Commission is not going to aggregate data, but may do so at a later time.

H. Statement H—Other Factors

In Statement H, the oil pipeline would describe any other factors that bear on the issue of whether it lacks significant market power in the relevant markets. The oil pipeline must explain why those other factors are pertinent. Possible other factors are: Exchanges, Excess Capacity, Competition with vertically integrated companies, buyer power, and profitability. The Commission is not excluding any factor and is not limiting the factors to those listed in the NOI. For example, an oil pipeline might want to show that it has been losing markets over a period of years or that the relevant market is expanding. The burden is on the oil pipeline to show the relevance of any factor to showing its lack of significant market power. No commenter opposed Statement H.

I. Statement I—Proposed Testimony

In Statement I, the Commission is requiring the oil pipeline to present proposed testimony in support of its application. This will serve as its case-in-chief if the Commission sets the application for hearing. The proposed witness must subscribe to the testimony and swear that all statement of facts in the proposed testimony are true and correct to the best of his or her knowledge, information, and belief.

The AOPL opposes Statement I because it does not believe it should present a case-in-chief prior to the filing of a protest as discussed above. In addition, it argues that the filing of a case-in-chief at this stage raises significant due process concerns because it cannot conduct discovery, as it can now, of other shippers prior to submitting its case. It points out that all participants except the oil pipeline will be able to conduct discovery before first filing prepared testimony. It asks, at a minimum, that an oil pipeline should receive a 15-day period after its initial filing to submit proposed testimony.

There is no entitlement to discovery before an applicant files a case-in-chief. In addition, the Commission has not ruled that a participant is entitled to discovery from the oil pipeline or any one else before it files a protest and its responsive case.[53] Last, the AOPL has provided no justification for a 15-day delay in filing its proposed testimony.

The Commission expects the oil pipeline to file a complete application which should contain sufficient information upon which the Commission could grant the application after expiration of the protest period. However, in the event the Commission finds it necessary to establish a hearing, that process would be greatly expedited because the applicant's testimony is part of the record already. Thus, this requirement is intended to expedite the hearing process. The Commission's experience with gas pipelines, for example, has been that the proposed testimony often provides essential justification for the applicant's proposal which is not provided elsewhere in the filing. It has been the Commission's experience that the process of proposing sworn testimony often causes an applicant to organize its arguments and facts in a manner that is easier to understand. This also aids the protestants in their framing of the issues to pursue.

IX. Procedural Requirements

In new section 348.2 the Commission is adopting several procedural requirements in connection with applications for a market power determination. First, an oil pipeline must file an original and 14 copies of its complete application with the Commission but would only have to provide its letter of transmittal to its shippers and subscribers. As discussed above, some of the supporting information may be prohibited from disclosure under Section 15(13) of the ICA. Hence, the oil pipeline must submit with its application any request for privileged treatment of documents and information under Section 388.112 of the Commission's regulations and a proposed form of protective agreement. In the event the oil pipeline requests privileged treatment under § 388.112, it must file the original and three copies of its application with the information for which privileged treatment is sought and 11 copies of the application without that information. The letter of transmittal must describe the application for a market power determination and identify each rate that would be market-based, if the oil pipeline shows that it lacks significant market power in the relevant market. The pipeline must include a copy of its proposed form of protective agreement with its letter of transmittal.

Under the regulations, a person must make a written request to the pipeline for a copy of the complete application within 20 days after the filing of the application with the Commission. The requesting person must include an executed copy of the protective agreement. Any person objecting to a proposed form of protective agreement must file a motion under Section 385.212 of the Commission's regulations.[54] The oil pipeline must provide a person with a copy of its complete application within seven days after receipt of the written request and an executed copy of the protective agreement. A protestant must file its protest to the application within 60 days after the filing of the application. At that time, the protestant must set forth in detail its grounds for opposing the oil pipeline's application, including responding to its statement of position and information, and, if the protestant desires, presenting information of its own pursuant to Statements A-I.

The Commission, after examination of the oil pipeline's application and any protests, will issue an order in which it will rule summarily on the application or, if appropriate, establish additional procedures and the scope of the investigation. Additional procedures may or may not involve a hearing before an administrative law judge.

The Commission is requiring the oil pipelines to file their applications with the Commission on an electronic medium in addition to the paper filing. The formats for the electronic filing and the paper copy will be obtainable at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, N.E., Washington, D.C. 20426. The Commission intends to establish the formats in cooperation with the oil pipeline industry.

The Commission believes that it is sufficient to adopt procedures only for the submission of applications and responses thereto. Hence, the Commission is not adopting any regulations with respect to protests or complaints against existing market-based rates under Sections 15(7) and 13(1) of the ICA. However, the Commission expects a protestant or complainant to allege and to present evidence that the pipeline has developed significant market power. In particular, the Commission would expect a protestant or complainant to describe any circumstances that have changed since the Commission made the determination that the oil pipeline lacks significant market power and could charge market-based rates.

Petrochemical requests that the Commission publicly notice any oil pipeline rate filing in the **Federal Register** as further assurance that any notice of a proposed rate change is

[53] See *infra*.

[54] The Commission will act expeditiously to resolve any controversies about protective agreements.

widely disseminated. It further asks the Commission to clarify that "pursuant to proposed regulation § 348.2(b), the copy of the letter of transmittal that is to be provided to shippers and subscribers on or before the day the application is filed, must be received by the shipper or subscriber prior to the date of the application. In other words, the deadline is an in-hand receipt date, not a posted for mailing date."[55] It contends that this is necessary to avoid erosion of the 15-day window for requesting a copy of the entire application.

It has not been the Commission's practice to publicly notice oil pipeline tariff filings in the Federal Register because the oil pipeline must serve all affected persons. However, the Commission has modified the proposal in the NOPR to require written requests 20 days after the application was filed rather than 15 days. This should satisfy Petrochemical's concern about the deadline running from the date of application rather than receipt by the shipper.

Alberta, Petrochemical, and Sinclair maintain that protestants need more time than 60 days after the filing of the application as proposed in the NOPR. Alberta and Petrochemical suggests that the deadline for filing protests be extended to 90 days.

The Commission believes that protestants will be able to respond within 60 days of the filing of the application. However, if this period is insufficient in a particular case, then additional time can be requested from the Commission under Section 385.2008 of the Commission's regulations. The Commission will act liberally in connection with requests for an extension of time.

Petrochemical requests clarification that a complete copy of the application provided to protestants will include the materials submitted in electronic format. It argues that the "ability to obtain cost and other data in electronic form would save vast amounts of money that would otherwise be spent in the redundant task of taking a hard copy generated from computers and then reentering the data into computer format so that studies and analyses can be performed on the data."[56] The Commission clarifies, as requested by Petrochemical, that the complete copy of the application must include the materials submitted in electronic format.

Davis submits that if "electronic medium" is defined as computer modem-based electronic equipment, the electronic filing requirement may be a hardship on small independent pipeline companies. Davis suggests the requirement be permissive. Davis also maintains that proposed sections 348.2 (b) and (c) are redundant to current procedure and place an additional burden on oil pipelines.

The Commission is not modifying its requirement that applications must be submitted on an electronic medium. However, an oil pipeline may submit a waiver request. Last, with respect to Davis' redundancy argument, the Commission sees to harm in repetition as the new regulations merely reiterate in part current procedure for convenience.

The Farmers maintain that the protestants have a right to a hearing where a case involves substantial issues of fact, law, or ratemaking policy. They argue that because the time for preparing a rebuttal is so short, shippers need the opportunity for normal prehearing and hearing procedures to present a meaningful response to an oil pipeline's case-in-chief and to obtain clarification or explanation of the applicant's evidence. Alberta also suggests that "all proceedings must receive full hearing before an Administrative Law Judge (ALJ) to ensure that all evidence is thoroughly tested and the Commission has a complete evidentiary record on which to base its decision."[57]

The Commission believes that the procedures for proceeding on an application for a market power determination should be tailored to the specifics of the case. Hence, the Commission will make no generic decisions here. The protestants should make their request for a hearing before an ALJ when they file their protests. The oil pipeline applicants may make their request after the protests are filed. The Commission is not establishing provisions for limited discovery. The oil pipeline and the protestants should file their case-in-chiefs and responsive pleadings without discovery. The Commission believes that the oil pipeline and the protestants should have sufficient information available from public sources or their own experience to submit their cases. Of course, the Commission encourages the informal exchange of information to expedite and facilitate the application process. The protestants may request discovery when their protests are filed. The oil pipeline applicants may request discovery after the protests are filed. Both requests must provide a full explanation for the need for discovery, a hearing, or both.

X. Environmental Analysis

The Commission is required to prepare a Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[58] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[59] The action taken here is procedural in nature and therefore falls within the categorical exclusions provided in the Commission's regulations.[60] Therefore, neither an environmental impact statement nor an environment assessment is necessary and will not be prepared in this rulemaking.

XI. Reporting Flexibility Certification

The Regulatory Flexibility Act (RFA)[61] generally requires the Commission to describe the impact that a rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a rule will not have such an impact.[62] Most oil pipelines to whom the rule will apply do not fall within the definition of small entity.[63] Consequently, pursuant to section 605(b) of the RFA, the Commission certifies that the regulations will not have a significant impact on a substantial number of small entities.

XII. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations[64] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this rule are contained in FERC–550 "Oil Pipeline Rates" Tariff Filings" (1902–0089).

The Commission's Office of Pipeline Regulation uses the data collected in

[55] Comments at 5.

[56] Comments at 6.

[57] Comments at 4.

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

[59] 18 CFR 380.4.

[60] See 18 CFR 380.4(a)(2)(ii).

[61] 5 U.S.C. 601–612.

[62] 5 U.S.C. 605(b).

[63] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by referent to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[64] 5 CFR 1320.14.

these information requirements to investigate the rates charged by oil pipeline companies subject to its jurisdiction, to determine the reasonableness of rates, and when appropriate prescribe just and reasonable rates. In addition, the information to be required by the rule would allow the Commission to determine if an oil pipeline lacks significant power in the relevant markets when it proposes to charge market-based rates.

Because the adoption of the procedural rules will create an expected increase in the public reporting burden under FERC–550, the Commission is submitting a copy of the rule to OMB for its review and approval. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

XIII. Effective Date

The final rule will be effective January 1, 1995.

List of Subjects in 18 CFR Part 348

Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission adds Part 348, Chapter I, Title 18, Code of Federal Regulations, to read as follows:

PART 348—OIL PIPELINE APPLICATIONS FOR MARKET POWER DETERMINATIONS

Sec.

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 348.1 Content of application for a market power determination.

(a) If, under § 342.4(b) of this chapter, a carrier seeks to establish that it lacks significant market power in the market in which it proposes to charge market-based rates, it must file and provide an application for such a determination. An application must include a statement of position and the information required by paragraph (c) of this section.

(b) The carrier's statement of position required by paragraph (a) of this section must include an executive summary of its statement of position and a statement of material facts in addition to its complete statement of position. The statement of material facts must include citation to the supporting statements, exhibits, affidavits, and prepared testimony.

(c) The carrier must include with its application the following information:

(1) *Statement A—geographic market.* This statement must describe the geographic markets in which the carrier seeks to establish that it lacks significant market power. The carrier must include the origin market and the destination market related to the service for which it proposes to charge market-based rates. The statement must explain why the carrier's method for selecting the geographic markets is appropriate.

(2) *Statement B—product market.* This statement must identify the product market or markets for which the carrier seeks to establish that it lacks significant market power. The statement must explain why the particular product definition is appropriate.

(3) *Statement C—the carrier's facilities and services.* This statement must describe the carrier's own facilities and services in the relevant markets identified in statements A and B in paragraphs (c) (1) and (2) of this section. The statement must include all pertinent data about the pipeline's facilities and services.

(4) *Statement D—competitive alternatives.* This statement must describe available transportation alternatives in competition with the carrier in the relevant markets and other competition constraining the carrier's rates in those markets. To the extent available, the statement must include all pertinent data about transportation alternatives and other constraining competition.

(5) *Statement E—potential competition.* This statement must describe potential competition in the relevant markets. To the extent available, the statement must include data about the potential competitors, including their costs, and their distance in miles from the carrier's terminals and major consuming markets.

(6) *Statement F—maps.* This statement must consist of maps showing the carrier's principal transportation facilities, the points at which service is rendered under its tariff, the direction of flow of each line, the location of each of its terminals, the location of each of its major consuming markets, and the location of the alternatives to the carrier, including their distance in miles from the carrier's terminals and major consuming markets. The statement must include a general system map and maps by geographic markets. The information required by this statement may be on separate pages.

(7) *Statement G—market power measures.* This statement must set forth the calculation of the market concentration of the relevant markets using the Herfindahl-Hirschman Index. The statement must also set forth the carrier's market share based on receipts in its origin markets and deliveries in its destination markets, if the Herfindahl-Hirschman Index is not based on those factors. The statement must also set forth the calculation of other market power measures relied on by the carrier. The statement must include complete particulars about the carrier's calculations.

(8) *Statement H—other factors.* This statement must describe any other factors that bear on the issue of whether the carrier lacks significant market power in the relevant markets. The description must explain why those other factors are pertinent.

(9) *Statement I—prepared testimony.* This statement must include the proposed testimony in support of the application and will serve as the carrier's case-in-chief, if the Commission sets the application for hearing. The proposed witness must subscribe to the testimony and swear that all statements of fact contained in the proposed testimony are true and correct to the best of his or her knowledge, information, and belief.

§ 348.2 Procedures.

(a) A carrier must file, as provided in § 341.1 of this chapter, an original plus fourteen copies of its application, including its statement of position, statements, and related material, and a letter of transmittal and must submit its application on an electronic medium. The formats for the electronic filing and the paper copy can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, N.E., Washington, D.C. 20426. A carrier must submit with its application any request for privileged treatment of documents and information under § 388.112 of this chapter and a proposed form of protective agreement. In the event the carrier requests privileged treatment under § 388.112 of this chapter, it must file the original and three copies of its application with the information for which privileged treatment is sought and 11 copies of the

application without the information for which privileged treatment is sought.

(b) A carrier must provide a copy of its letter of transmittal and its proposed form of protective agreement to each shipper and subscriber on or before the day the material is transmitted to the Commission for filing.

(c) A letter of transmittal must describe the market-based rate filing, including an identification of each rate that would be market-based, and the pertinent tariffs or supplement numbers, state if a waiver is being requested and specify the statute, section, subsection, regulation, policy or order requested to be waived. Letters of transmittal must be certified pursuant to § 341.2(c)(2) of this chapter and acknowledgement must be requested pursuant to § 341.2(c)(3) of this chapter.

(d) An interested person must make a written request to the carrier for a copy of the carrier's complete application within 20 days after the filing of the application. The request must include an executed copy of the protective agreement. Any objection to the proposed form of protective agreement must be filed under § 385.212 of this chapter.

(e) A carrier must provide a copy of the complete application to the requesting person within seven days after receipt of the written request and an executed copy of the protective agreement.

(f) A carrier must provide copies as required by paragraphs (b) and (e) of this section by first-class mail or by other means of transmission agreed upon in writing.

(g) Any intervention or protest to the application must be filed within 60 days after the filing of the application and must be filed pursuant to §§ 343.2 (a) and (b) of this chapter. A protest must also be telefaxed if required by § 343.3(a) of this chapter.

(h) A protest filed against an application for a market power determination must set forth in detail the grounds for opposing the carrier's application, including responding to its position and information and, if desired, presenting information pursuant to § 348.1(c).

(i) After expiration of the date for filing protests, the Commission will issue an order in which it will summarily rule on the application or, if appropriate, establish additional procedures and the scope of the investigation.

[FR Doc. 94–27620 Filed 11–15–94; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

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

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS ENTERPRISE (CVN 65) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval aircraft carrier. Additionally, a prior certification of noncompliance for USS THEODORE ROOSEVELT (CVN 71) is amended to reflect compliance with 72 COLREGS. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Commander K. P. McMahon, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS ENTERPRISE (CVN 65) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; without interfering with its special function as a naval aircraft carrier. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Furthermore, this amendment provides notice that certain navigation lights on USS THEODORE ROOSEVELT (CVN 71), previously certified as not in compliance with 72 COLREGS, now comply with the applicable 72 COLREGS requirements, to wit: The ship now has a single forward anchor light, as required by Rule 30(a)(i).

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

List of subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Two of § 706.2 is amended by revising the information on the following vessels:

TABLE TWO

Vessel	No.	Masthead lights, distance to stbd of keel in meters; rule 21(a).	Forward anchor light, distance below flight deck in meters; part 2(k), annex I	Forward anchor light, number of; rule 30(a)(i)	AFT anchor light, distance below flight deck in meters; rule 21(e), rule 30(a)(ii)	AFT anchor light, number of; rule 30(a)(ii)	Side lights, distance below flight deck in meters; part 2(g), annex I.	Side lights, distance forward of forward masthead light in meters; part 3(b), annex I.	Side lights, distance inboard of ship's sides in meters; part 3(b), annex I.
USS ENTERPRISE	CVN-65	28.0	—	1	6.6	2	0.4	—	—
USS THEODORE ROOSEVELT	CVN-71	30.0	—	1	9.0	2	0.6	—	—

Dated: September 15, 1994.

H.E. Grant,

Rear Admiral, JAGC, U.S. Navy Judge Advocate General.

[FR Doc. 94-28233 Filed 11-15-94; 8:45 am]

BILLING CODE 5000-AE-P

32 CFR Part 706

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

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS JOHN PAUL JONES (DDG 53) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Commander K. P. McMahon, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, telephone number: (703) 325-9744.

SUPPLEMENTARY INFORMATION:

Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JOHN PAUL JONES (DDG 53) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and Annex I, section 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; without interfering with its special function as a Navy ship. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

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

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

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

Authority: 33 U.S.C. § 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by revising the following vessel listing in Paragraph 16:

Vessel	No.	Obstruction angle relative ship's headings
USS JOHN PAUL JONES.	DDG 53	103.29 thru 112.50°

§ 706.2 [Amended]

3. Table Five of section 706.2 is amended by revising the information on the following vessel:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS JOHN PAUL JONES	DDG 53	X	X	X	20

Dated: September 15, 1994.

H.E. Grant,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General.

[FR Doc. 94–28234 Filed 11–15–94; 8:45 am]

BILLING CODE 5000–AE–P

32 CFR Part 706

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

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS RUSSELL (DDG 59) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval guided missile destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS RUSSELL (DDG 59) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction; and Rule 21(a), pertaining to the masthead light unbroken arc of visibility over an arc of the horizon of 225 degrees and visibility from right ahead to abaft the beam of 22.5 degrees, without interfering with its special function as a naval guided missile destroyer. The Judge Advocate General has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

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

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

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

Authority: 33 U.S.C. 1605.

2. Table Four of § 706.2 is amended by:

a. Adding the following vessel to Paragraph 15:

Vessel	No.	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS RUSSELL	DDG 59	1.91 meters.

b. Adding the following vessel to Paragraph 16:

Vessel	No.	Obstruction angle relative ship's headings
USS RUSSELL	DDG 59	92.62 thru 109.38°.

Table Five of § 706.2 [Amended]

3. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS RUSSELL	DDG 59	X	X	X	12.8

Dated: September 15, 1994.

Approved:

H.E. Grant,

Rear Admiral, JAGC, U.S. Navy, Judge Advocate General

[FR Doc. 94-28235 Filed 11-15-94; 8:45 am]

BILLING CODE 3810-AE-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300353A; FRL-4908-4]

RIN 2070-AB78

Calcium Hypochlorite; Exemption From Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of chlorine gas in or on grapes when applied as a fumigant postharvest by means of a chlorine generator pad in accordance with good agricultural practices. Chiquita Frupac requested this expansion of the tolerance exemption.

EFFECTIVE DATE: This regulation becomes effective November 16, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP-300353A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Ruth Douglas, Product Manager (PM) 32, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-305-7964.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 3, 1994 (59 FR 39504), EPA issued a proposed rule that gave notice that under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), EPA proposed to exempt from the requirement of a tolerance residues of chlorine gas in or on grapes when applied as a fumigant postharvest by means of a chlorine generator pad. The fumigation process uses polyethylene-lined paper pads containing calcium hypochlorite that are packed in grape containers during shipment. Under conditions of normal use, the pads are not in direct contact with the grapes. The moisture from inside the box and the carbon dioxide produced by the metabolic process of the fruit permeate the pad, activating the release of chlorine gas. The chlorine gas released in the pad diffuses through the paper and the polyethylene liner before depositing on the grapes. The exemption for chlorine generators would not apply to the use of chlorine gas during food processing or as a food-contact surface sanitizer since these uses are under the jurisdiction of the Food and Drug Administration.

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

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: November 2, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1054 is revised to read as follows:

§ 180.1054 Calcium hypochlorite; exemptions from the requirement of a tolerance.

(a) Calcium hypochlorite is exempted from the requirement of a tolerance when used preharvest or postharvest in solution on all raw agricultural commodities.

(b) Calcium hypochlorite is exempted from the requirement of a tolerance in or on grapes when used as a fumigant postharvest by means of a chlorine generator pad.

[FR Doc. 94–28142 Filed 11–15–94; 8:45 am]

BILLING CODE 6560–50–F

---

40 CFR Parts 180 and 186

[PP 6F3372 and FAP 6H5497/R2085; FRL–4917–8]

RIN 2070–AB78

Pesticide Tolerances and Feed Additive Regulations for Triflumizole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the fungicide triflumizole and its metabolites in or on various agricultural commodities. Uniroyal Chemical Co. petitioned for these maximum permissible levels for residues of the fungicide.

EFFECTIVE DATE: October 31, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 6F3372 and FAP 6H5497/R2085], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring a copy of the objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Leonard S. Cole, Jr., Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 19, 1986 (51 FR 9514), which announced that Uniroyal Chemical Co. (Uniroyal), 74 Amity Rd., Bethany, CT 06542-3402, had submitted pesticide petition (PP) 6F3372 proposing to amend 40 CFR part 180 by establishing tolerances for the combined residues of the fungicide triflumizole, 1-(1-{[4-chloro-2-(trifluoromethyl)phenyl]imino}-2-propoxyethyl)-1*H*-imidazole and its aniline-containing metabolites 4-chloro-2-trifluoromethylaniline, *N*-4-chloro-2-trifluoromethylaniline and *N*-(4-chloro-2-trifluoromethylphenyl)-propoxyacetamide, in or on the following commodities: apples at 0.1 part per million (ppm); cattle, fat, meat, and meat byproducts (mbyp) at 0.05 ppm; grapes at 0.3 ppm; hogs, fat, meat, and mbyp at 0.05 ppm; milk at 0.05 ppm; pears at 0.1 ppm; and poultry, eggs, fat, meat, and mbyp at 0.05 ppm. Uniroyal also submitted feed additive petition (FAP) 6H5497 proposing to amend 21 CFR part 193 (redesignated in the **Federal Register** of June 29, 1988 (53 FR 24666), as 40 CFR part 186) by establishing a regulation permitting the combined residues of the fungicide described above in or on the following commodities: apples, dried at 3.0 ppm; apple pomace, dry at 1.0 ppm; apple pomace, wet at 3.0 ppm; grape juice at 1.0 ppm; grape pomace, dry at 1.0 ppm; grape pomace, wet at 4.0 ppm; raisins at 1.0 ppm; and raisin waste at 2.0 ppm.

Uniroyal amended these petitions, as announced in the **Federal Registers** of October 5, 1988 (53 FR 39131), March 10, 1993 (58 FR 13262), and October 21, 1993 (58 FR 54350). These amendments changed the tolerances to the following: apples at 0.5 ppm; grapes at 2.5 ppm; pears at 0.5 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; milk, eggs, and poultry fat at 0.05 ppm; meat byproducts of poultry at 0.1 ppm; meat by-products and fat of cattle, goats, hogs, horses, and sheep at 0.5 ppm; apple pomace at 2.0 ppm; grape pomace at 15.0 ppm; and raisin waste at 10.0 ppm. Uniroyal also changed the chemical expression for the fungicide to combined residues of the fungicide triflumizole, 1-(1-{(4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole, the metabolite 4-chloro-2-hydroxy-6-trifluoromethylaniline sulfate (in raw agricultural commodities of animal origin only), and other metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound.

No comments were received in response to any of the above **Federal Register** notices.

The scientific data submitted in the petition and other relevant material have been evaluated. By way of public reminder, this notice also reiterates the registrant's responsibility, under section 6(a)(2) of FIFRA, to submit additional factual information regarding adverse effects on the environment and to human health by the pesticide. The toxicological data considered in support of the tolerances include:

1. A 2-year rat feeding chronic toxicity/carcinogenicity study (negative for carcinogenicity) with a no-observable-effect level (NOEL) for liver effects [lowest dose tested was 100 ppm (4.1 mg/kg/day)].

2. A 2-year mouse feeding/carcinogenicity study (negative for carcinogenicity) with a systemic NOEL of 100 ppm (16.2 mg/kg/day for males, 21.7 mg/kg/day for females) and an LEL of 400 ppm (67.4 mg/kg/day for males, 88.1 mg/kg/day for females).

3. A 3-month feeding study in rats with a NOEL of 200 ppm (10 mg/kg/day) and a lowest-effect-level (LEL) of 2,000 ppm (100 mg/kg/day).

4. A 3-month feeding study with mice with a NOEL of 200 ppm (30 mg/kg/day) and an LEL of 2,000 ppm (300 mg/kg/day).

5. A 30-day feeding study with rats with a NOEL of 200 ppm (10 mg/kg/day) and an LEL of 2,000 ppm (100 mg/kg/day).

6. A 30-day feeding study with mice with a NOEL of 200 ppm (30 mg/kg/day and an LEL of 2,000 ppm (300 mg/kg/day).

7. A 1-year feeding study with beagle dogs with a NOEL of 300 ppm (10.0 mg/kg/day for males, 10.7 mg/kg/day for females) and an LEL of 1,000 ppm (34.1

mg/kg/day for males, 35.2 mg/kg/day for females).

8. Three developmental toxicity studies in rats (considered together) with a maternal NOEL of 10 mg/kg/day and maternal LEL of 35 mg/kg/ day. The developmental toxicity NOEL was 10 mg/kg/day, and the developmental toxicity LEL was 10 mg/kg/day.

9. Two developmental toxicity studies in rabbits (considered together) with a maternal NOEL of 50 mg/kg/day and a maternal LEL of 100 mg/kg/day. The developmental toxicity NOEL was 50 mg/kg/day and the developmental toxicity LEL was 100 mg/kg/day.

10. Two three-generation reproduction studies in rats (when considered together) with a reproductive toxicity NOEL of 30 ppm (1.5 mg/kg/day) and a reproductive toxicity LEL of 70 ppm (3.5 mg/kg/day). Triflumizole is considered a reproductive toxicant.

11. Triflumizole was negative for mutagenicity in the mitotic gene conversion test, rec assay test, in vitro mouse micronucleus test, reverse mutation in *Salmonella* and *E. coli* test and unscheduled DNA synthesis test.

The Office of Pesticide Programs' Health Effects Division Carcinogenicity Peer Review Committee has classified triflumizole in Group E (evidence of non-carcinogenicity for humans). This classification is based on the Agency's Guidelines for Carcinogen Risk Assessment published in the **Federal Register** of September 24, 1986 (51 FR 33992). The Agency has chosen to use the reference dose calculations based upon chronic toxicity effects to estimate human dietary risk from triflumizole residues since carcinogenicity is not a concern with this chemical. Additionally, an estimate of human dietary risk for acute effects was determined using a reference dose based upon the NOEL taken from three developmental toxicity studies in the rat considered together.

The reference dose (RfD) for chronic effects was established at 0.015 mg/kg body weight/day, based on the NOEL of 1.5 mg/kg/day for the three-generation reproductive toxicity study in rats and an uncertainty factor of 100. The Theoretical Maximum Residue Contribution (TMRC) is estimated at 0.002221 mg/kg bodyweight/day and utilizes 14.8 percent of the RfD for the general population of the 48 States. The percentages of the RfD for the most highly exposed subgroups, nonnursing infants (less than 1 year old) and children (1 to 6 years old), are 61.2% and 41.2%, respectively. The TMRC was calculated based on the assumption that triflumizole occurs at the maximum legal limit in all of the dietary commodities for which tolerances are proposed. Even with this probable large overestimate of exposure/risk, the TMRC is well below the RfD for the population as a whole and for each of the 22 subgroups considered. Thus, there does not appear to be any dietary concern due to chronic effects.

The acute exposure analysis evaluates individual food consumption and estimates the distribution of single day exposures through the diet for the U.S. population and certain subgroups. The analysis assumes uniform distribution of triflumizole in the commodity supply. Since the toxicological effect to which high end exposure is being compared in this analysis is developmental toxicity, the population group of interest is females aged 13 years and above. This subgroup most closely approximates women of child bearing age. The Margin of Exposure (MOE) is a measure of how closely the high end exposure comes to the NOEL and is calculated as the ratio of the NOEL to the exposure. The Agency is not generally concerned about MOEs of 100 or above when the toxicological endpoint to which the exposure is compared is taken from an animal study. In this acute exposure analysis, the calculated exposure of those individuals most highly exposed (0.02 mg/kg bwt/day) was compared to the NOEL of 10 mg/kg bwt/day to get an MOE of at least 500. This means that those individuals most highly exposed to triflumizole through these proposed uses would receive at most 1/500th of the dose that represents the NOEL in animals for developmental toxicity. Less than 1% of the population of females 13 years and over would be exposed to triflumizole at levels of 0.02 mg/kg bwt/day or greater. Based on the risk estimates arrived at in this analysis, it appears that acute dietary risk from the proposed uses of triflumizole is not of concern.

The nature of the residue in plants and animals is adequately understood, and adequate analytical methods are available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The pesticide is considered useful for the purpose for which the tolerances are sought. Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR parts 180 and 186 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal

governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180 and 186

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

Dated: October 31, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, chapter I of the title 40 of the Code of Federal Regulations is amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. By adding new § 180.476, to read as follows:

§ 180.476 Triflumizole; tolerances for residues.

(a) Tolerances are established for the combined residues of the fungicide triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on the following raw agricultural commodities:

Commodity	Parts per million
Apples	0.5
Grapes	2.5
Pears	0.5

(b) Tolerances are established for the combined residues of the fungicide triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole, the metabolite 4-chloro-2-hydroxy-6-trifluoromethylaniline sulfate, and other metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on the following raw agricultural commodities of animal origin:

Commodity	Parts per million
Cattle, fat	0.5
Cattle, meat	0.05
Cattle, mbyp	0.5
Eggs	0.05
Goats, fat	0.5
Goats, meat	0.05
Goats, mbyp	0.5
Hogs, fat	0.5
Hogs, meat	0.05
Hogs, mbyp	0.5
Horses, fat	0.5
Horses, meat	0.05
Horses, mbyp	0.5
Milk	0.05
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, mbyp	0.1
Sheep, fat	0.5
Sheep, meat	0.05
Sheep, mbyp	0.5

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.5850, to read as follows:

§ 186.5850 Triflumizole.

Tolerances are established for the combined residues of the fungicide triflumizole, 1-(1-((4-chloro-2-(trifluoromethyl)phenyl)imino)-2-propoxyethyl)-1*H*-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety, calculated as the parent compound, in or on the following processed feed commodities when present therein as a result of application to growing crops:

Commodity	Parts per million
Apple pomace	2.0
Grape pomace	15.0
Raisin waste	10.0

[FR Doc. 94-28141 Filed 11-15-94; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 59a

RIN 0905-AE55

National Library of Medicine Grants

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health is amending the regulations governing certain National Library of Medicine (NLM) grants to conform the maximum award amount set forth in the regulations to the maximum award amount set forth in the NIH Revitalization Act of 1993. The NIH Revitalization Act of 1993 increased the maximum award amount for an NLM grant for basic resources from $750,000 to $1,000,000. The regulations are being amended to reflect this statutory change.

EFFECTIVE DATE: This amendment is effective on November 16, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Moore, Regulatory Affairs Officer, National Institutes of Health, Building 31, Room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20892-0001, telephone (301) 496-2832 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The National Institutes of Health is amending the regulations at 42 CFR part 59a, subpart A, governing NLM grants for establishing, expanding, and improving basic medical library resources, authorized by section 474 of the Public Health Service (PHS) Act, as amended, by revising the introductory sentence of paragraph (b) of § 59a.5 to set forth a maximum award amount of $1,000,000. This action is being taken so that the regulations will accurately reflect the new statutory limit of $1,000,000 on these grants.

Additionally, Public Law 103-227, enacted on March 31, 1994, prohibits smoking in certain facilities in which minors will be present. The Department of Health and Human Services is now preparing to implement the provisions of that law. Until those implementation plans are in place, PHS continues to strongly encourage all grant recipients to provide a smoke-free workplace and promote the nonuse of all tobacco products.

Under sections 553(b)(3)(B) and 553 (d) (1) and (3) of title 5, United States

Code, notice, public comment, and delayed effective date procedures have been waived for this amendment based on a finding of good cause. These procedures for ensuring public participation in the rulemaking process and time for compliance are unnecessary because the change has already been made by section 1401 of Public Law 103–43 and it relieves the current restriction in the regulations limiting grant award amounts.

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires the Department to prepare an analysis for any rule that meets one of the E. O. 12866 criteria for a significant regulatory action; that is, that may—

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal, governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, the Department prepares a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

For the reasons outlined below, we do not believe this rule is economically significant nor do we believe that it will have a significant impact on a substantial number of small entities. In addition, this proposed rule is not inconsistent with the actions of any other agency.

This rule merely codifies the maximum award amount established by law for NLM grants awarded under part 59a, subpart A, thereby conforming the regulations governing the grants to the NIH Revitalization Act of 1993. The grant program does not have a significant economic or policy impact on a broad cross-section of the public. Furthermore, this rule would only affect those institutions, organizations, or agencies authorized or qualified to carry on the functions of a medical library that are interested in participating in the program, subject to the normal accountability requirements for program participation. No institution, organization, or agency is obligated to participate in the program.

For these same reasons, the Secretary certifies this proposed rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act of 1980, is not required.

Paperwork Reduction Act of 1980

This final rule does not contain any information collection, recordkeeping, or disclosure requirements subject to Office of management and Budget (OMB) review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance (CDFA) numbered program affected by this final rule is: 93.879 Medical Library Assistance.

List of Subjects in 42 CFR Part 59a

Grant programs-Health; Libraries; Medical research.

Dated: October 28, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: November 9, 1994.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, subject A of part 59a, title 42 of the Code of Federal Regulations, is amended as set forth below.

PART 59a—NATIONAL LIBRARY OF MEDICINE GRANTS

Subpart A—Grants for Establishing, Expanding, and Improving Basic Resources

1. The authority citation for subpart A of part 59a continues to read as follows:

Authority: 42 U.S.C. 286b–2, 286b–5.

2. Section 59a.5 is amended by revising the introductory sentence in paragraph (b) to read as follows:

§ 59a.5 Awards.

* * * * *

(b) *Determination of award amount.* An Award may not exceed $1,000,000 or other amount established by law for any fiscal year. * * *

* * * * *

[FR Doc. 94–28322 Filed 11–15–94; 8:45 am]

BILLING CODE 4140–01–P–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503, 510, 514, 540, and 583

[Docket No. 94–14]

Update of Existing Filing and Service Fees

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") is revising its fees for (1) filing petitions, complaints, and special docket applications; (2) providing various public information services, such as lists of non-vessel-operating common carriers ("NVOCCs"), record searches, and document copying; (3) filing applications for freight forwarder licenses, performance and casualty certificates for cruise operators, and for admission to practice before the Commission; and (4) providing various services related to the Commission's Automated Tariff Filing and Information System. These revised fees reflect current costs to the Commission.

EFFECTIVE DATE: Effective January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jeremiah D. Hospital or George S. Smolik, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5790.

SUPPLEMENTARY INFORMATION: The Commission published a Notice of Proposed Rulemaking in the Federal Register on July 28, 1994, 59 FR 38411, ("NPR" or "Proposed Rule"),[1] proposing to update its existing filing and service fees. The NPR noted that the Independent Offices Appropriation Act ("IOAA"), 31 U.S.C. 9701, permits it to establish fees for services and benefits that the Commission provides to specific recipients. The NPR also pointed out that the primary guidance for implementation of IOAA is Office of Management and Budget ("OMB") Circular A–25, as revised July 8, 1993. OMB Circular A–25 requires that a reasonable charge be made to each recipient for a measurable unit or amount of Federal Government service from which the recipient derives a benefit, in order that the Government recover the full cost of rendering that

[1] On the same day, the Commission also published in the Federal Register (59 FR 38418) a companion Notice of Proposed Rulemaking in Docket No. 94–15, *New Filing Fees*, proposing to implement new fees for, among other things, tariff and agreement filings.

service. OMB Circular A–25 further provides that costs be determined or estimated from the best available records in the agency, and that cost computations shall cover the direct and indirect costs to the Government of carrying out the activity.

The NPR advised that the FMC's existing filing and service fees have been in effect since 1983, and that they no longer reflected the Commission's actual costs for providing these services. The Commission, accordingly, proposed to update its fees to reflect current costs.

Fourteen entities filed comments in response to the NPR regarding user fees: C V International, Inc.; Tampa Port Authority; Seariders International, Inc.; the Inter-American Discussion Agreement;[2] Puerto Rico Maritime Shipping Authority; Matson Navigation Company, Inc.; The Joint Carrier Group;[3] Hanjin Shipping Co., Ltd.; Cari-Freight Shipping Co. Ltd.; Caribbean Shipowners Association; Lykes Bros. Steamship Co., Inc. ("Lykes"); Transportation Services Incorporated; and the Japan Conferences.[4] The National Industrial Transportation League ("NIT League")[5] filed late comments, which are also being considered.

The commenters represent a variety of industry interests: individual ocean common carriers, ocean freight conferences and other aligned agreement parties, ocean freight forwarders, NVOCCs, a tariff publisher, a shipper's group, and a port authority. Generally, the commenters oppose the Commission's proposed fee increases as being unfair and burdensome on the industry.

On specific fee increases, Lykes and the NIT League object to the proposed fee for special docket applications. They argue that the increase from $25 to $86 is out of proportion and unfair. Both urge that the Commission consider a more modest increase to avoid a chilling effect on potential applicants. Lykes suggests a fee of $50 or $60.

The NIT League opposes proposed fee increases for filing petitions, formal and informal complaints, and for providing information to the public. The League argues that the proposed fees do not represent a reasonable value for the service provided and that no public policy is served by such fees. The ultimate effect, it claims, could be to discourage petitioners or complainants from raising valid claims or causes with the Commission.

The Japan Conferences oppose the proposed fee increase for special permission applications. They submit that the fee for special permission applications was recently increased to $100 from $90, and that they are experiencing an increasing need to seek special permission authority to deviate from the Commission's tariff filing regulations. Further, they argue that these requests benefit shippers and consignees, not carriers.

The only other specific fee increase to elicit a comment is the proposed registration fees for the Commission's Automated Tariff Filing and Information System ("ATFI"). Lykes believes the proposed fees are disproportionately high because it discerned no appreciable increase in the procedures for requesting additional logons for ATFI.

The general statements opposing the proposed increased fees are unpersuasive. As pointed out in the NPR, it has been over eleven years since the Commission last reviewed its costs in providing these services. The proposed fee increases only reflect the increased costs to the Commission in providing these services.

The Commission also does not agree with those comments suggesting that the proposed increase for special docket applications is too high and unfair, and would have a chilling effect on potential applicants. The proposed increase is justified on a cost basis. In cases where the amount to be refunded or waived is less than the filing fee, an applicant can request a waiver of the fee under FMC rules, as revised herein. Therefore, we do not see the revised fee having a chilling effect on potential applicants.

NIT League's comments opposing the increases for filing petitions, formal and informal complaints, and for providing information to the public also are unpersuasive. As with every proposed increase, the proposed increases for these services reflect only the increased cost to the Commission in providing the services. These fees should not create an undue burden nor cause a chilling effect on potential complainants. As noted above, prospective complainants may request a waiver of the specific fees under the Commission's rules, if they believe an applicable fee causes an undue hardship.

The Japan Conferences' opposition to the fee increase for special permission applications is based on the fact that the fee was recently increased and that these requests benefit shippers and consignees, not carriers. It is immaterial whether or not this application fee was recently increased; the fact remains that the proposed fee reflects the current cost to the Commission for processing these applications. Although there is a benefit for shippers, we find this benefit incidental to the direct benefit a carrier derives for being allowed to deviate from statutory notice requirements.

Lykes' concerns about the increased fees for ATFI registration are unfounded. The proposed fees simply reflect the Commission's costs in processing and verifying the validity of registration requests as well as creating an organizational record for the registrant in the ATFI system.

The other proposed increased fees in this proceeding, for example applications for freight forwarder licenses and passenger vessel certifications, elicited no direct comment and are adopted as final. Appendix B to this document contains a summary list of the revised fees.

Lastly, Lykes raises an additional issue regarding the proposed ATFI fees that deserves comment. Lykes suggests that the Commission set aside a certain percentage of its ATFI user fees for system enhancements. Whatever the merits of this proposal otherwise, the IOAA and OMB Circular A–25 do not permit user fee collections to be used to offset costs of activities that are not related to the specific service the Commission is performing for an identifiable recipient.

In keeping with OMB guidelines, the Commission intends to update its fees on an annual basis. In updating its fees, the Commission will incorporate changes in the wages and salaries of its employees into direct labor costs associated with its services, and recalculate its indirect costs (overhead) based on current level costs.

The Commission, in its latest amendment to 46 CFR Part 502, omitted a reference to "Pub. L. 88–777" in its Authority statement (58 FR 36848, July 19, 1993). This omission is corrected in this document.

The Commission again certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small

[2] Conferences represented by the Inter-American Discussion Agreement are: the Inter-American Freight Conference; Brazil/Puerto Rico and U.S. Virgin Islands Conference; River Plate/Puerto Rico and U.S. Virgin Islands Conference; and the Inter-American Freight Conference-Pacific Coast Area.

[3] See Appendix A to this document.

[4] The Conferences are: the Trans-Pacific Freight Conference of Japan, the Japan-Atlantic and Gulf Freight Conference, the Japan-Puerto Rico & Virgin Islands Freight Conference, and their member lines.

[5] The NIT League is a voluntary organization said to represent some 1,400 shippers and groups/associations of shippers conducting industrial and/or commercial enterprises, large, medium, and small, throughout the United States and internationally.

governmental jurisdictions. The Commission recognizes that these revised fees may have an impact on the shipping industry, but not of the magnitude that would be contrary to the requirements of the Regulatory Flexibility Act. For the most part, entities impacted by the revised fees are ocean common carriers, who traditionally have not been viewed as small entities. Fees collected from the general public for Commission information recover the total cost to the Commission for providing specific services. Fees for filing petitions, and formal and informal complaints do not impose an undue burden nor have a chilling effect on filers. Furthermore, Commission regulations provide for waiver of fees for those entities that can make the required showing of undue hardship.

This Final Rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1980, as amended. Therefore, OMB review is not required.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Reporting and recordkeeping requirements.

46 CFR Part 503

Classified information, Freedom of information, Privacy, Sunshine Act.

46 CFR Part 510

Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 514

Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 583

Freight, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

Pursuant to 5 U.S.C. 553, the Independent Offices Appropriations Act, 31 U.S.C. § 9701, and section 17 of the Shipping Act of 1984, 46 U.S.C. app. § 1716, the Commission amends title 46 of the Code of Federal Regulations as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. app. 817, 820, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6469); 21 U.S.C. 853a; and Pub. L. 88–777 (46 U.S.C. app. 817d, 817e).

Subpart E—Proceedings; Pleadings; Motions; Replies

2. Section 502.62(f) is revised to read as follows:

§ 502.62 Complaints and fee.

* * * * *

(f) The complaint shall be accompanied by remittance of a $166 filing fee.

* * * * *

3. Section 502.68(a)(3) is revised to read as follows:

§ 502.68 Declaratory orders and fee.

(a) * * *

(3) Petitions shall be accompanied by remittance of a $162 filing fee.

* * * * *

4. Section 502.69(b) is revised to read as follows:

§ 502.69 Petitions—general and fee.

* * * * *

(b) Petitions shall be accompanied by remittance of a $162 filing fee. [Rule 69.]

Subpart F—Settlement; Prehearing Procedure

5. Section 502.92(a)(3)(ii) is revised to read as follows:

§ 502.92 Special docket applications and fee.

(a) * * *

(3)(i) * * *

(ii) The application for refund or waiver must be accompanied by remittance of an $86 filing fee.

* * * * *

Subpart K—Shortened Procedure

6. The last sentence of § 502.182 is revised to read as follows:

§ 502.182 Complaint and memorandum of facts and arguments and filing fee.

* * * The complaint shall be accompanied by remittance of a $166 filing fee. [Rule 182.]

Subpart S—Informal Procedure for Adjudication of Small Claims

7. The last sentence of § 502.304(b) is revised to read as follows:

§ 502.304 Procedure and filing fee.

* * * * *

(b) * * * Such claims shall be accompanied by remittance of a $68 filing fee.

* * * * *

Subpart U—Conciliation Service

8. The last sentence of § 502.404(a) is revised to read as follows:

§ 502.404 Procedure and fee.

(a) * * * The request shall be accompanied by remittance of a $61 service fee.

* * * * *

PART 503—PUBLIC INFORMATION

9. The authority citation for Part 503 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

Subpart E—Fees

10. The introductory paragraph of § 503.41 is revised to read as follows:

§ 503.41 Policy and services available.

Pursuant to policies established by Congress, the Government's costs for services provided to identifiable persons are to be recovered by the payment of fees (Independent Offices Appropriations Act, 31 U.S.C. 9701 and Freedom of Information Reform Act of 1986, October 27, 1986, 5 U.S.C. 552). Except as otherwise noted, it is the general policy of the Commission not to waive or reduce service and filing fees contained in this chapter. In extraordinary situations, the Commission will accept requests for waivers or fee reductions. Such requests are to be made to the Secretary of the Commission at the time of the information request or the filing of documents and must demonstrate that the waiver or reduction of a fee is in the best interest of the public, or that payment of a fee would impose an undue hardship. The Secretary will notify the requestor of the decision to grant or deny the request for waiver or reduction.

* * * * *

11. In § 503.43, paragraphs (c)(1) (i) and (ii), the first sentence of paragraph (c)(2), paragraph (c)(3)(ii), paragraph (c)(4), paragraphs (d)(1), (2), and (3), and paragraph (e) are revised; paragraphs (f) and (i) are removed; paragraphs (g), (h), and (j) are redesignated paragraphs (f), (g), and (h); and newly designated paragraphs (f) and (g) are revised to read as follows:

§ 503.43 Fees for services.

* * * * *

(c) * * *

(1) * * *

(i) Search will be performed by clerical/administrative personnel at a rate of $15.00 per hour and by professional/executive personnel at a rate of $30.00 per hour.

(ii) Minimum charge for record search is $15.00.

(2) Charges for review of records to determine whether they are exempt from disclosure under § 503.35 shall be assessed to recover full costs at the rate of $63.00 per hour. * * *

(3) * * *

(i) * * *

(ii) By Commission personnel, at the rate of five cents per page (one side) plus $15.00 per hour.

(iii)* * *

(4) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $70.00 for each certification.

(d) * * *

(1) Orders, notices, rulings, and decisions (initial and final) issued by Administrative Law Judges and by the Commission in all formal docketed proceedings before the Federal Maritime Commission are available at an annual subscription rate of $278.

(2) Final decisions (only) issued by the Commission in all formal docketed proceedings before the Commission are available at an annual subscription rate of $223.

(3) General rules and regulations of the Commission are available at the following rates: (i) Initial set including all current regulations for a fee of $83, and (ii) an annual subscription rate of $6 for all amendments to existing regulations and any new regulations issued.

* * * * *

(e) To have one's name and address placed on the mailing list of a specific docket as an interested party to receive all issuances pertaining to that docket: $7 per proceeding.

(f) Loose-leaf reprint of the Commission's complete, current Rules of Practice and Procedure, part 502 of this chapter, for an initial fee of $9. Future amendments to the reprint are available at an annual subscription rate of $7.

(g) Applications for admission to practice before the Commission for persons not attorneys at law must be accompanied by a fee of $77 pursuant to § 502.27 of this chapter.

* * * * *

Subpart G—Access to Any Record of Identifiable Personal Information

12. In § 503.69, paragraphs (b)(1) and (2) are revised to read as follows:

§ 503.69 Fees.

* * * * *

(b) * * *

(1) The copying of records and documents will be available at the rate of five cents per page (one side), limited to size 8¼" x 14" or smaller.

(2) The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $70 for each certification.

* * * * *

PART 510—LICENSING OF OCEAN FREIGHT FORWARDERS

13. The authority citation for Part 510 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; 21 U.S.C. 853a.

Subpart B—Eligibility and Procedure for Licensing; Bond Requirements

14. Section 510.12(b) is revised to read as follows:

§ 510.12 Application for license.

(a) * * *

(b) *Fee.* The application shall be accompanied by a money order, certified check or cashier's check in the amount of $687 made payable to the *Federal Maritime Commission.*

* * * * *

15. The penultimate sentence in § 510.14(b) is revised to read as follows:

§ 510.14 Surety bond requirements.

(a) * * *

(b) * * * The fee for such supplementary investigation shall be $213 payable by money order, certified check or cashier's check to the *Federal Maritime Commission.* * * *

* * * * *

16. The first sentence of § 510.19(e) is revised to read as follows:

§ 510.19 Changes in organization.

* * * * *

(e) *Application form and fee.* Applications for Commission approval of status changes or for license transfers under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, on form FMC–18 Rev., together with a processing fee of $365, made payable by money order, certified check or cashier's check to the *Federal Maritime Commission.* * * *

* * * * *

PART 514—TARIFFS AND SERVICE CONTRACTS

17. The authority citation for Part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721, and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

Subpart C—Form, Content and Use of Tariff Data

18. In § 514.21, paragraphs (c), (e) introductory text and (e)(1), (f), (j), and (k) are revised to read as follows:

§ 514.21 User charges.

* * * * *

(c) *Registration for user (filer and/or retriever ID and password* (see exhibit 1 to this part and §§ 514.4(d), 514.8(f) and 514.20)): $162 for initial registration for firm and one individual; $136 for additions and changes.

(d) * * *

(e) *Certification of batch filing capability (by appointment through the Bureau of Administration)* (§ 514.8(l)).

(1) *User charge:* $359 per certification submission (covers all types of tariffs for which the applicant desires to be certified as well as recertification required by substantial changes to the ATFI system).

* * * * *

(f) *Application for special permission* (§ 514.18): $146.

* * * * *

(j) *Database tapes* (§ 514.20(d)). The fees for subscriber tapes, similar to other fees in this section, reflect the cost of providing those copies, including staff time, the cost of duplication, distribution, and user-dedicated equipment, and are:

(1) *Initial set* of full database tapes: $336.

(2) *Daily updates:* $61.

(3) *Weekly updates:* $86.

(4) *Monthly updates:* $136.

Updates of ATFI tapes include a set number of tapes; if more tapes are required, the fee will increase by $25 per additional tape.

(k) *Miscellaneous tapes.* The fee for tape data, other than the ATFI database described in paragraph (j) of this section, shall be $61 for the initial tape plus $25 for each additional tape required.

* * * * *

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

19. The authority citation for Part 540 is revised to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. 1716).

Subpart A—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation

20. The last sentence in § 540.4(b) is revised to read as follows:

§ 540.4 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Performance) shall be accompanied by a filing fee remittance of $1,874.

* * * * *

Subpart B—Proof of Financial Responsibility, Bonding and Certification of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

21. The last sentence of § 540.23(b) is revised to read as follows:

§ 540.23 Procedure for establishing financial responsibility.

* * * * *

(b) * * * An application for a Certificate (Casualty) shall be accompanied by a filing fee remittance of $830.

* * * * *

PART 583—SURETY FOR NON-VESSEL-OPERATING COMMON CARRIERS

22. The authority citation for Part 583 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710–1712, 1716, and 1721.

23. A new paragraph (d) is added to § 583.7 to read as follows:

§ 583.7 Proof of Compliance.

* * * * *

(d) The fee for providing the list of tariffed and bonded NVOCCs referred to in paragraph (b)(1) of this section is $122. The list is available in several forms: Hard paper copy, diskette, or tape.

By the Commission.

Joseph C. Polking,

Secretary.

Note: The following appendixes will not appear in the Code of Federal Regulations.

Appendix A—Conferences and Discussion Agreements and the ATFI Working Group Represented by the Joint Carrier Group

Asia North American Eastbound Rate Agreement
Colombia Discussion Agreement
Hispaniola Discussion Agreement
Inter-American Discussion Agreement
Inter-American Freight Conference
Inter-American Freight Conference Pacific Coast Area
Inter-American Freight Conference Puerto Rico and U.S. Virgin Islands
Inter-American Freight Conference River Plate/Puerto Rico and U.S. Virgin Islands/River Plate
Israel Trade Conference
Jamaica Discussion Agreement
Latin American Shipping Services Agreement
Mediterranean/North Pacific Freight Conference
Mediterranean/Puerto Rico Conference
Pacific Coast/Australia-New Zealand Tariff Bureau
PANAM Discussion Agreement
Southeastern Caribbean Discussion Agreement
South Europe American Conference
The 8900 Lines Agreement
Transpacific Westbound Rate Agreement
U.S. Atlantic & Gulf/Australia-New Zealand Conference
U.S. Atlantic & Gulf Hispaniola Freight Association
U.S. Atlantic & Gulf Port/Eastern Mediterranean North Africa Freight Conference
U.S. Atlantic & Gulf/Southeastern Caribbean Freight Agreement
U.S./Panama Freight Association
Venezuelan American Maritime Association
West Coast of South America Agreement
West Coast of South America Discussion Agreement
Westbound Transpacific Stabilization Agreement

ATFI Working Group

American West African Freight Conference
Caribbean and Central America Discussion Agreement
The 8900 Lines Agreement
Inter-American Discussion Agreement
Inter-American Freight Conference
Israel Trade Conference
South Europe American Conference
Trans-Atlantic Agreement
Transpacific Westbound Rate Agreement
U.S. Atlantic & Gulf/Australia-New Zealand Conference

APPENDIX B.—FEDERAL MARITIME COMMISSION, SUMMARY OF REVISED FEES

CFR citation	Application or service	Revised fee
Part 502—Rules of Practice and Procedure:		
502.68(a)(3) and 502.69(b)	Petitions	$162
502.92(a)(3)	Special Dockets	86
502.62(f) and 502.182	Formal Complaints	166
502.304(b)	Informal Complaints	68
502.404(a)	Conciliation Services	61
Part 503—Public Information:		
503.43(c)	Document Search	15/$30 @ hr.
	Min. Charge	15
	FOIA Review	63 @ hr.
	Copying by Commission Staff	15 @ hr.
503.43(c) and 503.69(b)(2)	Document Certification	70 @ cert.
503.43(d)	Annual Subscriptions: (1) Orders, notices, etc., all docketed proceedings.	278
	(2) Final Decisions Only	223
	(3)(i) Rules, Initial Set	83
	(3)(ii) Rules, Amendments	7
503.43(e)	Mailing List	7
503.43(f)	Rules of Practice and Procedure—Initial Set	9
	Amendments	7
503.43(g)	Non-Attorney Admission to Practice Before Commission	77
503.69(b)(1)	Copying	0.05 @ page

APPENDIX B.—FEDERAL MARITIME COMMISSION, SUMMARY OF REVISED FEES—Continued

CFR citation	Application or service	Revised fee
Part 510—Licensing of Ocean Freight Forwarders:		
510.12(b)	Application for License	687
510.14(b)	Supplementary Investigation	213
510.14(e)	Status Changes	365
Part 514—Tariffs and Service Contracts:		
514.21(c)	ATFI Registration	162
	Registration Changes	136
514.21(e)(1)	Certification of Software	359
514.21(f)	Special Permission Applications	146
514.21(j)	ATFI Database Tapes:.	
	Initial Set	336
	Daily Updates	61
	Weekly Updates	86
	Monthly Updates	136
514.(k)	Miscellaneous Tapes	61
Part 540—Security for the Protection of the Public:		
540.4(b)	Certificate (Performance)	1,874
540.23(b)	Certificate (Casualty)	830
Part 583—Surety for Non-Vessel-Operating Common Carriers:		
583.7	NVOCC Listing	122

[FR Doc. 94–28246 Filed 11–15–94; 8:45 am]
BILLING CODE 6730–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Reclassification of the Virginia Round-Leaf Birch (Betula Uber) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines that *Betula uber* (Ashe) Fernald (Virginia round-leaf birch) warrants reclassification from endangered to threatened. The determination is based on the substantial improvement in the status of this tree species, which is known from one naturally occurring population in southwestern Virginia. The establishment of 20 additional populations over the past decade has resulted in a dramatic increase in the total population to over 1,400 subadult trees. Betula uber seedlings also have been cultivated and distributed to interested parties throughout the United States and to two foreign countries. This rule implements the Federal protection and recovery provisions for threatened species as provided by the Act.

EFFECTIVE DATE: December 16, 1994.

ADDRESSES: The complete file of this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Office, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Mignogno at the above address, telephone (413/253–8627) (FAX 413/253–8482).

SUPPLEMENTARY INFORMATION:

Background

The Virginia round-leaf birch was originally described as a variety of the common sweet birch (*Betula lenta* L.) in 1918 by W.W. Ashe from trees he reported growing along the banks of Dickey Creek in Smyth County, Virginia (Ashe 1918). The taxon was subsequently elevated to the species level by M.L. Fernald. The round-leaf birch was not collected or observed during the 1950s and 1960s, and was assumed to be extinct until it was rediscovered in 1975 along the banks of Cressy Creek, approximately 2 kilometers (1 mile) from the type locality (Ogle and Mazzeo 1976). The general consensus among botanists working with the species is that Ashe probably erred in his original reference to Dickey Creek (Sharik and Ford 1984, Sharik, Feret and Dyer 1990). Since 1975, searches in the Cressy Creek and other watersheds over a three-county area have not revealed any additional populations in the wild.

Several lines of evidence now suggest a close evolutionary relationship between the Virginia round-leaf birch and the sweet birch. Both taxa are apparently diploids, with 28 pairs of chromosomes, and isozymes extracted from the cambium of both species showing similar patterns (U.S. Fish and Wildlife Service 1990). The taxa overlap completely in flowering times, and they are interfertile (Sharik and Ford 1984, U.S. Fish and Wildlife Service 1990). The offspring of crosses between the two taxa typically possess either the round leaves characteristic of round-leaf birch or the ovate leaf shape typical of sweet birch. Preliminary analysis suggests that this difference in leaf shape may be controlled by a single gene (Sharik *et al.* 1990, U.S. Fish and Wildlife Service 1990). This subject warrants further data collection and analysis to determine the species' proper taxonomic status.

Betula uber is a moderate-sized tree in the Betulaceae family. It grows to 15 meters (45 feet) in height with smooth, dark brown to black, aromatic bark and a compact crown (Ogle and Mazzeo 1976, Sharik and Ford 1984, U.S. Fish and Wildlife Service 1990). Its leaves are round to slightly oblong and alternately arranged. The catkins have long, smooth scales and three broadly divergent lobes. Three winged nutlets or samaras are borne at the base of each scale (Sharik and Ford 1984). *Betula uber* flowers when the leaves emerge from the winter buds in April to early May (U.S. Fish and Wildlife Service 1986).

At the time of its rediscovery in 1975, the only known natural *Betula uber* population consisted of 41 individuals; by 1977 the population had declined to 26 individuals, and it is now down to 11 trees. This population is confined to a 100 meter-wide (100 yard-wide) band of highly disturbed second-growth forest

along a one kilometer (1 mile) stretch of the Cressy Creek floodplain, a site nearly surrounded by agricultural land (Ogle and Mazzeo 1976, Ford, Sharik and Feret 1983). The strip of forest containing the round-leaf birch occurs within a much larger population of related dark-barked birch species (sweet birch and yellow birch, *B. alleghaniensis*). The round-leaf birch population extends over three contiguous ownerships comprising the Mount Rogers National Recreation Area in the Jefferson National Forest and two private tracts. In 1976, the Federal government and the private landowners erected protective fences around their respective segments of the population. This did not, however, prevent subsequent vandalism and transplanting of individual trees by private landowners, with a resultant loss of 12 round-leaf birches on the private lands.

Previous Federal Action

Protection of the species gained momentum in 1977 with formation of the *Betula uber* Protection, Management and Research Coordinating Committee, which consists of representatives from the Federal and State governments, conservation organizations, universities, and the private sector. *Betula uber* was added to the U.S. Department of the Interior's list of endangered and threatened wildlife and plants on April 26, 1978 (43 FR 17910), bringing it under the protection of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The species was also added to the Commonwealth of Virginia's Endangered Plant and Insect Species Act in 1979 (Virginia Department of Agriculture and Consumer Services 1979).

In 1982, the Service approved the Virginia Round-Leaf Birch Recovery Plan (U.S. Fish and Wildlife Service 1982), which was revised in 1986 and updated in 1990. The goal of this plan is to increase the number of round-leaf birches in the wild to a level where the species can be removed from the Federal list; this level is estimated at 500–1,000 individuals in each of 10 self-sustaining populations. These populations may include individuals of sweet birch which carry the round-leaf trait. Any population of round-leaf birch, whether natural or established through plantings, will be considered self-sustaining when it produces 500–1,000 individuals greater than 2 meters (6 feet) tall. Given the present status of round-leaf birch and current knowledge of its life history, this condition is projected to be met by the year 2010 in both the natural and additional populations. The 1990 plan does not document a reclassification objective; nevertheless, significant recovery progress can trigger consideration for reclassification to threatened.

The natural population has been monitored closely since 1978. Given the heavy mortality that has occurred in this population since 1975, an effort to enhance natural regeneration was implemented in 1981. Two small areas were cleared of vegetation within 60 meters (65 yards) of potential seed sources, one on public land and one on private land. Eighty-one round-leaf birch seedlings were recorded on the private property site. Round-leaf birch seedlings were not produced at the public land site, and this was attributed to the absence of a pollen source for the relatively isolated round-leaf birch mother trees growing there (Sharik *et al.* 1990). Initial survival and growth rates of the seedlings suggested that fitness in round-leaf birch may be as high as that in sweet birch (Sharik *et al.* 1990). However, all of the 30 round-leaf birch seedlings remaining after the end of the second growing season were gone by 1986, the apparent result of vandalism, as whole plants (including roots) were missing.

In 1984, The Nature Conservancy acquired 14 hectares (35 acres) of land adjacent to the natural population. The land was in turn purchased by the U.S. Forest Service in 1986 and has since been managed as potential round-leaf birch habitat; however, round-leaf birches currently do not occur there.

Given the initial success of experiments with birch regeneration, it was concluded that additional populations could be established and that they could be self-sustaining given periodic disturbance. In preparation for planting of seedlings, 20 small (0.1 hectare) (.3 acre) openings were cleared in wooded areas within the Cressy Creek watershed in locations where sweet birch was abundant. Seeds were collected from six round-leaf birch mother trees and four sweet birch mother trees, germinated in greenhouse conditions, and held in cultivation for two to three growing seasons before transplanting to the cleared areas in 1984 and 1985. Additional seeds were germinated in 1985 for transplanting in 1986 and 1987.

Five populations per year were established over the 4-year period, for a total of 20 populations, with the hope that a minimum of 10 populations would be self-sustaining. Each newly-established population consisted of 96 individuals, including both round-leaf and sweet birch progeny. Habitat management to promote the establishment of these populations included fencing trees from browsers, removing competing vegetation around individual transplants, and removing competing vegetation from the forests bordering the populations. As of May 1992, survival averaged 77.5% for all populations regardless of the mother tree species, and ranged from 7.2% to 96.9% (Sharik *et al.* 1990). On this basis, 19 of the additional populations offer the possibility of self-maintenance.

Retention of round-leaf germplasm began in 1975 when the U.S. National Arboretum transplanted three seedlings from the wild to their grounds in Washington, D.C. Approximately 50 plants were produced from the 3 genotypes; these plants were distributed to arboreta, botanical gardens, and nurseries in the United States and 2 European countries (Sharik *et al.* 1990). In 1988, approximately 2,000 seedlings from crosses of selected genotypes were propagated for distribution to arboreta and botanical gardens for teaching and research. Since 1989, round-leaf birch seedlings have been distributed to other interested organizations and individuals under policy guidelines developed by the Virginia Agricultural Experiment Station. Recipients are required to cover costs and sign a waiver that they will not sell the plants or their offspring.

To increase awareness of the recovery effort and to minimize human impact on the natural population of round-leaf birch located on private property, the trees on public land have been the focus of an ongoing round-leaf birch interpretive program. A sign erected by the U.S. Forest Service gives the location of the largest round-leaf birch in the population—the Mt. Rogers Viewing Area—and a ramp provides a close-up view of the tree, which is enclosed by a chain link fence. Informational materials and guides tell the round-leaf birch story from its discovery through current recovery activities.

After a decade of coordinated effort by Federal, State, and private agencies and institutions, as well as private landowners, the outlook for the Virginia round-leaf birch has brightened considerably. Because of the significant progress made toward recovery of the species and the species' current status, reclassification of the Virginia round-leaf birch to threatened status is warranted. The current status of *Betula uber* is described below:

1. Ten additional populations have been established in suitable habitat; these populations have showed an average survival rate of ≥ 75% over a 5 to 8 year period and have reached the stage of initiating reproduction.

2. Genotypes have been preserved through a program of sexual propagation and through maintenance of a breeding orchard.

3. The single natural population is extant, and there are opportunities to protect and manage its habitat.

4. Sufficient information is known to facilitate *Betula uber* reproduction through habitat management.

Based on a review of status information, research results, and further planned recovery actions, it appears highly likely that progress toward the delisting objective specified in the recovery plan will continue.

Summary of Comments and Recommendations

In the December 6, 1993 (58 FR 64281), proposed rule and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to the development of a final rule. Appropriate Federal and State agencies, the Smyth County government, scientific organizations, and interested parties were contacted by letter dated December 21, 1993. A legal notice was published in the Smyth County News in December 1993.

Five written comments were received. The Virginia Department of Agriculture and Consumer Services and Dr. Terry L. Sharik, University of Utah, support reclassification of the Virginia round-leaf birch to threatened status. However, The Nature Conservancy and Mr. Omar G. Ross do not support reclassification based on the present status of the one naturally-occurring population and the young age of the established new populations. One individual supported the Service's efforts to recover the species, but did not state his position on the proposed reclassification.

Questions regarding the status of the Virginia round-leaf birch, and its eligibility for reclassification to threatened status include: (1) Questionable viability of the existing natural stand of 11 Virginia round-leaf birches; (2) the immature status of the 20 introduced populations which have not yet reached sexual maturity, which means that reproductive capability has not yet been demonstrated; and, (3) it is unknown whether the existing stands can be self-maintaining. In response, the Service's recovery objective for this species, as outlined in the Virginia Round-Leaf Birch Recovery Plan (U.S. Fish and Wildlife Service 1990), is to ensure viable self-sustaining populations by increasing the number of individuals in the wild. Scientists who have worked extensively with the round-leaf birch generally agree that the 20 introduced populations are highly likely to reproduce in the near future. The proven ability to propagate the plant, the variety of habitat conditions it appears to tolerate, the fact that all introduced populations and a portion of the native population are on protected Forest Service lands, the survival rate of the seedlings, and the comparative overall status of the species since the species was listed, indicate that the species is not in immediate danger of extinction. Threats to the species have been effectively diminished, and opportunities for further habitat protection and management exist. Therefore, reclassification to threatened status reflects the Service's awareness that threats continue to exist for *Betula uber*, though it is no longer in immediate danger of extinction.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Betula uber* should be reclassified as a threatened species. Procedures found in section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) for reclassifying species on the Federal lists were followed. A species may be listed or reclassified as threatened or endangered due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Betula uber* (Ashe) Fernald (Virginia round-leaf birch) are as follows:

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

The Virginia round-leaf birch is a pioneer species that succumbs to competition from longer-lived species. Under natural conditions, Virginia round-leaf birch habitat is threatened by factors such as drought, flooding, and competing vegetation. In this regard, by 1984 flooding and competition with later successional species had caused the death of 14 individual trees in the natural population.

There are 11 trees, 4 reproductively mature adults and 7 subadults, remaining in the natural population. Only 2 of the 11 trees occur on publicly protected land. The nine trees on private lands remain susceptible to adverse habitat modification or to vandalism. However, these threats have been greatly diminished through efforts to achieve landowner cooperation and public awareness together with the widespread distribution of artificially propagated seedlings to the public.

The optimum habitat requirements of this species apparently are very similar to these of sweet birch. Therefore, most of the 20 introduced populations were planted in areas where sweet birch was abundant and could be expected to regenerate well. Additionally, the 20 established populations were planted on U.S. Forest Service lands; thus protecting these individuals from take. Further, their habitats are protected from adverse modification and may be managed specifically to enhance the species' survival.

As part of the U.S. Forest Service's land management activities, competing vegetation is periodically removed from the base of the established trees. Because birches, in general, are known to be sensitive to elevated temperatures and reduced moisture (T.L. Sharik, Michigan Technological University, pers. comm., 1992), care is taken while raking around the trees to avoid removal of too much organic matter and exposure of the roots (C. Thomas, U.S. Forest Service, pers. comm., 1992).

On Forest Service land, a bank stabilization project located near the fenced enclosure of the largest *Betula uber* specimen at the Mt. Rogers Viewing Area was completed in the summer of 1992. This project, which was designed to hold excessive runoff in the existing stream channel in order to prevent flooding or erosion of birch habitat, has apparently achieved its aims without causing any unintended deleterious effects on the birch population.

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

To date, the historical loss of 10 of the original 41 individuals in the population discovered in 1975 (Sharik *et al.* 1990) can be attributed to transplanting of individual trees on the privately-owned tracts and to vandalism. Collection accounts for an additional loss of 30 seedlings in 1981 from the private land portion of the natural regeneration study area (U.S. Fish and Wildlife Service 1990, Sharik *et al.* 1990). Beginning in 1988, in an attempt to reduce collection pressure, and to protect from loss of genetic diversity due to illegal collecting, seedlings were produced from controlled crosses at a breeding orchard located at the Reynolds Homestead Research Center in Critz, Virginia. The orchard is maintained by periodic mowing, weeding, inspection, and treatment for insects and diseases. The majority of the seedlings are in good to excellent condition.

Beginning in 1988, public arboreta, botanical gardens, nurseries, and other interested parties were informed of the availability of round-leaf birch seedlings produced from the breeding orchard, and many requests were filled, subject to the condition that the plants or their offspring were not to be sold. In addition to increasing the number and geographical distribution of round-leaf birches in cultivation, making the plants available to the public was viewed as a way of possibly reducing vandalism to the natural population by changing the public's perception of the tree as rare.

While vandalism and collection remain concerns, the distribution of seedlings, along with public awareness efforts such as the interpretive activities at the Mt. Rogers National Recreation Area, and coordination with persons and agencies in the area whose activities could affect the species, have shown at least some indirect success in alleviating these problems. It was noted at the 1992 meeting of the *Betula uber* Protection, Management and Research Coordinating Committee that no vandalism was reported during the previous year in the introduced populations for the first time in five years.

C. Disease or Predation

Betula uber is subject to a number of compromising factors, including diseases, insects, and herbivory. Additionally, white-tailed deer will rub saplings with their antlers, and this may nearly or completely girdle the main stem. While no serious problems with insect damage or disease have been observed in the natural population, three diseases were observed in the introduced populations during the 1989 growing season (C. Thomas, pers. comm., 1992), cankers, anthracnose, and a putative foliar virus. In 1991, the highest mortality rate of trees with basal cankers occurred in those trees located on poor or exposed sites or those which showed symptoms of die-back during the year. Plots were sprayed with pesticides between May and August 1991 to control fungal pathogens and insects that may be transmitting these fungi or creating wounds through which the fungal canker pathogens can enter. Damage to round-leaf birch leaves has also been incurred from Japanese beetles.

During 1992, considerable mortality of *Betula uber* was attributed to deer rubs. Browsing by deer and rabbit was evident in several of the established populations. While browsing may not cause direct mortality due to the capacity of *Betula uber* to resprout, it may decrease the birch's ability to compete with other plants, resulting in the demise of the tree. Wire cages, which were placed around the smaller trees to prevent further loss from browsing, may have been prematurely removed from some of the birch trees in June 1991. Further fencing is needed for protection. Additionally, approximately ten were found to be leaning. The cause is unknown, but the trees were staked in an attempt to stabilize them.

The maintenance activities described above will continue as part of the recovery program following reclassification of *Betula uber* to threatened.

D. The Inadequacy of Existing Regulatory Mechanisms

Betula uber is protected by the Federal Endangered Species Act of 1973, as amended, and by the Virginia Endangered Plant and Insect Act of 1979. The Virginia statute prohibits taking of endangered plants on both public and private lands, except by the private landowner. If the proposed reclassification to threatened status becomes final, no substantive change in the protection afforded this species under these laws is anticipated. Populations on private lands will still be subject to loss due to inadequate regulatory protection.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Most of the loss in the natural population has been attributed to vandalism and collection. However, loss of individuals could continue to occur from such natural causes as competition from later successional species and flooding of Cressy Creek. Minimal reproduction in the natural population, probably due to the limited source of pollen, may result in the gradual and possibly irreversible decline of this population unless further management actions are taken.

The relatively low numbers and limited range of the species continue to make the Cressy Creek populations vulnerable to natural stresses or catastrophes. However, given the management tools developed for the species, as well as the variety of conditions under which the 20 introduced populations appear to grow, it is unlikely that a single natural stress would result in the loss of *Betula uber* in more than a portion of its existing range.

While the single natural population remains vulnerable to extirpation, due largely to past acts of vandalism and a continuing failure to reproduce, 19 of the 20 additional populations offer the possibility of self-maintenance, suggesting that it is unlikely that the round-leaf birch will disappear from its only known native watershed. The additional populations are believed to encompass the genetic diversity of the natural population. As of May 1992, more than 1,400 individuals occur within the Cressy Creek watershed, as compared to only 41 individuals known to exist when the Cressy Creek population was rediscovered in 1975.

Based on a review of the Virginia Round-Leaf Birch Recovery Plan (U.S. Fish and Wildlife Service 1990), the present species' status does not meet the criteria established for delisting the species. However, given the successful propagation and distribution of plants together with its current distribution and afforded protection, this rare birch is not in imminent danger of extinction. The best available data indicate that *Betula uber* qualifies as a threatened species. The Service has carefully assessed the best scientific and commercial information available regarding the 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 reclassify *Betula uber* from endangered status to threatened status. Although the natural population has decreased from 41 to 11 plants since the species' rediscovery in 1975, threatened status is more appropriate because the establishment of 20 additional populations over the past decade has resulted in a dramatic increase in the total population to over 1,400 subadult trees.

Available Conservation Measures

This rule changes the status of *Betula uber* at 50 CFR 17.12 from endangered to threatened. This rule formally recognizes that this species is no longer in imminent danger of extinction throughout a significant portion of it's range. The change in classification does not significantly alter the protection for this species under the Act. Anyone taking, attempting to take, or otherwise possessing a *Betula uber* in an illegal manner is still subject to penalty under Section 11 of the Act. There is no difference in penalties for the illegal take of an endangered species versus a threatened species. Section 7 of the Act still continues to protect this species from Federal actions that would jeopardize the continued existence of *Betula uber*.

Conservation measures prescribed by the Virginia Round-Leaf Birch Recovery Plan will proceed. Conservation measures identified in the species recovery plan include: continued efforts to protect portions of the natural

population that occur on private lands; expanded management of the natural population; continued efforts to facilitate natural regeneration; establishment of pollen and seed banks; continued maintenance of the additional populations, including control of disease and insect problems, prevention of browsing, and management of competing vegetation; further research into the plant's reproductive and genetic systems, as well as habitat requirements; and continued efforts to raise the public's awareness in regard to issues affecting this and other endangered plants (U.S. Fish and Wildlife Service 1990). According to the recovery plan, implementation of these recovery actions will take place over a period of approximately 17 years, with full recovery of the species being achieved by the year 2010.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, 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

Ashe, W.W. 1918. Notes on *Betula*. Rhodora 20:63–64.

Ford, R.H., T.L. Sharik, and P.P. Feret. 1983. Seed dispersal of the endangered Virginia round-leaf birch (*Betula uber*). Forest Ecology and Management 6:115–128.

Ogle, D.W. and P.M. Mazzeo. 1976. *Betula uber*, the Virginia round-leaf birch, rediscovered in southwest Virginia. Castanea 41:248–255.

Sharik, T.L. and R.H. Ford. 1984. Variation and taxonomy of *Betula uber, B. lenta*, and *B. alleghaniensis*. Brittonia 36(3):307–316.

Sharik, T.L., P.P. Feret and R.W. Dyer. 1990. Recovery of the endangered Virginia round-leaf birch (*Betula uber*): A decade of effort. Page 185–188. *IN*: Sheviak and D.J. Leopold (eds.) Ecosystem management: Rare species and significant habitats. 1990. New York State Museum Bulletin 471.

Virginia Department of Agriculture and Consumer Services. 1979. Endangered Plant and Insect Species Act. 1979 Cumulative Supplement to Code of Virginia 39: 3–6.

U.S. Fish and Wildlife Service. 1982. Virginia round-leaf birch recovery plan. Newton Corner, MA. 58 pp.

U.S. Fish and Wildlife Service. 1986. Virginia round-leaf birch recovery plan, first revision, Newton Corner, MA. 25 pp.

U.S. Fish and Wildlife Service. 1990. Virginia round-leaf birch recovery plan. Update. Newton Corner, MA. 43 pp.

Authors: The primary author of this rule is Ms. Debbie Mignogno, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589 (413) 253–8627.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

§ 17.12 [Amended]

2. § 17.12(h) is amended by revising the "Status" column in the table entry for *Betula uber* under "FLOWERING PLANTS" to read "T" instead of "E" and to read "39, 560" in the "When Listed" column.

Dated: October 5, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–28326 Filed 11–15–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 931100–4043: I.D. 110894A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Apportionment of reserve.

SUMMARY: NMFS is apportioning reserve to supplement the 1994 total allowable catch (TAC) specified for yellowfin sole in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow for ongoing harvest.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 9, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The Director, Alaska Region, NMFS, has determined that the TAC specified for yellowfin sole in the BSAI must be supplemented from the nonspecific reserve to continue directed fishing for this species. Therefore, in accordance with § 675.20(b), NMFS is apportioning 20,000 metric tons from the reserve to the TAC for yellowfin sole.

This apportionment is consistent with § 675.20(a)(2)(i) and does not result in overfishing of a target species or the "other species" category, because the revised TAC is equal to or less than the specification of acceptable biological catch.

Classification

This action is taken under 50 CFR 675.20 and is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, has determined, under section 553(d)(3) of the Administrative Procedure Act and 50 CFR 675.20(b)(2), that good cause exists for waiving the opportunity for public comment and the 30-day delayed effectiveness period for this action. Fisheries are currently taking place that will be supplemented by this apportionment. Delaying the implementation of this action would be disruptive and costly to these ongoing operations.

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

Dated: November 9, 1994.

David S. Crestin,

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

[FR Doc. 94–28217 Filed 11–9–94; 5:05 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 220
Wednesday, November 16, 1994

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–136–AD]

Airworthiness Directives; Airbus Model A300 B4–2C, B4–103, and B4–203 Series Airplanes; and Model A300–600 B4–620, B4–622, B4–603, and B4–601 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 and A300–600 series airplanes. This proposal would require modification of the fuel tank jettison system. This proposal is prompted by a quality survey which revealed that the electrical bonding of the fuel jettison system has insufficient protection from a lightning strike. The actions specified by the proposed AD are intended to prevent electrical arcing and resultant fire in the event of a lightning strike.

DATES: Comments must be received by December 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

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 shall identify the Rules 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 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 postcard on which the following statement is made: "Comments to Docket Number 94–NM–136–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–136–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4–2C, B4–103, and B4–203 series airplanes, and Model A300–600 B4–620, B4–622, B4–603, and B4–601 series airplanes. The DGAC advises that the results of a quality survey, conducted by Airbus Industrie, revealed that the electrical bonding of the fuel jettison system has insufficient protection from a lightning strike. Investigation revealed that the existing lightning protection could fail to adequately safeguard the fuel jettison pipe against a lightning strike at the fuel pipe exit. This condition, if not corrected, could result in electrical arcing and resultant fire in the event of a lightning strike.

Airbus has issued Alert Service Bulletin A300–28A065, Revision 1, dated February 14, 1994 (for Model A300 series airplanes), and Alert Service Bulletin A300–28A6033, Revision 1, dated February 14, 1994 (for Model A300–600 series airplanes), which describe procedures for modification of the fuel tank jettison system. This modification involves removing the bonding strap that bridges the flexible hose and installing a new thicker bonding strap from the fuel jettison pipe to the No. 5 flap track beam, which will improve the electrical bonding at both ends. Accomplishment of this modification will improve the bonding method at the interface of the fuel jettison pipe and the adjacent fuel tank. The DGAC classified these service bulletins as mandatory and issued French Airworthiness Directive 93–074–144(B), dated May 12, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the fuel tank jettison

system. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 21 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $42,840, or $1,260 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the 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 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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:

AIRBUS INDUSTRIE: Docket 94–NM–136–AD.

Applicability: Model A300 B4–2C, B4–103, and B4–203 series airplanes on which Airbus Modification 0013 has been installed; and Model A300–600 B4–620, B4–622, B4–603, and B4–601 series airplanes on which Airbus Modification 4607 has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing and resultant fire in the event of a lightning strike, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the fuel tank jettison system in accordance with Airbus Alert Service Bulletin A300–28A065, Revision 1, dated February 14, 1994 (for Model A300 series airplanes), or Airbus Alert Service Bulletin A300–28A6033, Revision 1, dated February 14, 1994 (for Model A300–600 series airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on November 9, 1994.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–28244 Filed 11–15–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–126–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. This proposal would require conducting closed loop tests to determine the setting of the underfrequency trip level on suspect generator control units (GCU), and either the correction of discrepancies or replacement of the GCU. This proposal is prompted by several malfunctions of in-service GCU's due to the effects of setting the underfrequency trip level too high. The actions specified by the proposed AD are intended to correct GCU's that may have the underfrequency level set too high, which could result in the unwanted shut down of an electrical generator; this condition may lead to loss of all generated electrical power on the airplane when other generator faults or failures occur.

DATES: Comments must be received by January 13, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Holdings, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington DC 20041–6039; and GEC-Marconi Aerospace Ltd, Titchfield, Fareham, Hampshire P014 4QA, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, ANM–113, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056;

telephone (206) 227–2148; fax (206) 227–1320.

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 shall identify the Rules 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 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 postcard on which the following statement is made: "Comments to Docket Number 94–NM–126–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–126–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. The CAA advises that reports have been received of several malfunctions of in-service generator control units (GCU). Investigation revealed that GCU's repaired or adjusted by workshops other than GEC-Marconi may have the underfrequency trip level set too high. The cause has been attributed to the fact that the GEC-Marconi Component Maintenance Manual does not recommend that the underfrequency trip level be checked during the closed loop test. (GEC-Marconi is the manufacturer of the subject GCU's.) Setting the underfrequency level too high could lead to the shut down of an electrical generator. If an electrical generator shuts down when other generator faults or failures occur, all generated electrical power on the airplane may be lost.

Avro International Aerospace (a division of British Aerospace) has issued Service Bulletin S.B. 24–103, dated March 24, 1994, which describes procedures for checking the part and serial number on the data plate of each GCU to identify discrepant units, replacing the discrepant GCU with a serviceable unit, and conducting post assembly testing. The CAA classified this service bulletin as mandatory.

GEC-Marconi has issued Service Bulletin HGE 24–23, dated March 11, 1994, which describes procedures for conducting closed loop tests to determine the setting of the underfrequency trip level, adjusting the underfrequency trip level, and conducting post assembly testing. This service bulletin also describes the part and serial number of affected GCU's.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require checking the part and serial number on the data plate of each GCU to identify discrepant units, and conducting closed loop tests on affected GCU's to determine the setting of the underfrequency trip level. The proposed AD would also require either adjusting the underfrequency trip level or replacing the discrepant GCU with a serviceable unit, and conducting post assembly testing. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 43 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,580, or $60 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the 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 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.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 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:

British Aerospace Regional Aircraft Limited, AVRO International Aerospace Division (Formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Docket 94–NM–126–AD.

Applicability: All Model British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To correct generator control units (GCU) that may have the under-frequency trip level set too high, which could lead to the unwanted shut down of an electrical generator, accomplish the following:

(a) Within 6 months after the effective date of this AD, check the part and serial number on the data plate of each generator control unit (GCU). If the part number is one of those affected and the serial number is listed in Addendum 1 of GEC-Marconi Service Bulletin HGE 24–23, dated March 11, 1994, prior to further flight, conduct a closed loop test to determine the setting of the underfrequency trip level, in accordance with that service bulletin.

(1) If the level exceeds that specified in GEC-Marconi Service Bulletin HGE 24–23, dated March 11, 1994, prior to further flight, adjust the level in accordance with that service bulletin; or replace the GCU with a serviceable unit, in accordance with Avro Service Bulletin S.B. 24–103, dated March 24, 1994.

(2) Prior to further flight, after adjustment or replacement of the GCU as required by paragraph (a)(1) of this AD, conduct the post assembly testing in accordance with Avro Service Bulletin S.B. 24–103, dated March 24, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on November 9, 1994.

S.R. Miller, Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–28245 Filed 11–15–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–ANM–49]

Proposed Realignment of Jet Route J–15

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would realign Jet Route J–15 to include the Twin Falls, ID, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility. This action would enhance traffic flow and reduce controller workload on a frequently used high altitude route.

DATES: Comments must be received on or before January 5, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 94–ANM–49, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and 2 Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ANM–49." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will 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–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. 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 procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign Jet Route J–15 to include the Twin Falls, ID, VORTAC. This would enhance traffic flow and reduce controller workload on a frequently used high altitude route. Jet routes are published in paragraph 2004 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the Order.

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 "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will

only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–15 [Revised]

From Humble, TX, via INT Humble 269° and Junction, TX, 112° radials; Junction; Wink, TX; Chisum, NM; Corona, NM; Albuquerque, NM; Farmington, NM; Grand Junction, CO; Salt Lake City, UT; Twin Falls, ID; Boise, ID; Kimberly, OR; INT Kimberly 288° and Battle Ground, WA, 136° radials; to Battle Ground.

* * * * *

Issued in Washington, DC, on November 7, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–28288 Filed 11–15–94; 8:45 am]

BILLING CODE 4910–13–U

Federal Highway Administration

23 CFR Part 627

[FHWA Docket No. 94–12]

RIN 2125–AD33

Value Engineering

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to issue a regulation on value engineering (VE) that would require its application to selected Federal-aid highway projects, when funded under the FHWA's grant-in-aid process. The proposed regulation would require State highway agencies (SHA) to establish and administer VE programs; it outlines minimum VE program requirements and provides guidance in establishing, administering, and monitoring a VE program. This proposed regulation is considered necessary to implement 23 U.S.C. 106(d), which provides that, in such cases as the Secretary deems advisable, the Secretary may require a value engineering or other cost reduction analysis of plans, specifications, and estimates for proposed projects on any Federal-aid highway.

DATES: Comments must be received on or before January 17, 1995.

ADDRESSES: Submit written and signed comments to the Federal Highway Administration, HCC–10, FHWA Docket No. 94–12, Room 4232, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except for Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Keith Borkenhagen, Office of Engineering, 202–366–4630, or Wilbert Baccus, Office of Chief Counsel, 202–366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FHWA recognizes VE as an effective and proven technique for reducing cost, increasing productivity, and improving quality when applied in the development of highway projects. This document solicits public comments regarding the VE requirements being considered by the FHWA.

In 1991, the Congress required the FHWA to study its VE program. Section 1091 of the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, 105 Stat. 1914 (Dec 18, 1991), required the Secretary of Transportation to "study the effectiveness and benefits of value engineering review programs applied to Federal-aid highway projects," and to "report to Congress on the results of the study * * * including recommendations on how value engineering could be utilized and improved in Federal-aid highway projects."

The FHWA's evaluation of the effectiveness of its VE program, as described in a report submitted to Congress in June 1993,[1] concluded that the application of VE in the development of highway projects has the potential to result in substantial cost savings without adversely affecting any of the highway projects' design, aesthetics, or construction standards while assuring that environmental and ecological goals are maintained. During the study made to prepare this report, the FHWA examined VE data covering fiscal year (FY) 1988 to FY 1991 and found that only a limited number of States had active and effective VE programs.

The study found that FHWA's policy of the past 20 years of promoting VE through education, encouragement, and technical assistance has had limited success in persuading all States to implement VE programs on a continuing basis. This finding is despite overwhelming evidence that VE can be a very effective way to improve projects and control costs from States with active VE programs. The FHWA has, therefore, concluded that in order to improve the effectiveness of the VE program nationwide, all States need to have active VE programs. As a result, the FHWA proposes to require the use of VE in all States on selected Federal-aid highway projects.

This regulation, if promulgated, would significantly improve the effectiveness of VE in the Federal-aid highway program by requiring VE to be applied in all States, thereby ensuring that the requirements of 23 U.S.C. 106(d) are met. The regulation would provide nationwide application of VE to the FHWA's grant program in the same way that the FHWA's direct federally funded VE program is covered by the Office of Management and Budget (OMB) Circular A–131 (Revised June 8, 1993, 58 FR 32964 (June 14, 1993)). The OMB Circular A–131 requires "Federal Departments and Agencies to use value engineering (VE) as a management tool, where appropriate, to reduce program and acquisition costs."

Discussion of Major Sections

The regulation would require States to establish, administer, and monitor VE programs. Each State would determine

[1] "Value Engineering on Federal-aid Projects," a report to Congress by the Secretary of Transportation is available for inspection and copying as prescribed in 49 CFR part 7 appendix D. A copy is in the file for FHWA Docket No. 94–12.

the administrative details of its VE program and institute VE program requirements to carry out the VE program. States would have up to 1 year from the effective date of the final rule to establish VE programs.

Section-by-Section Analysis

Section 627.1 Purpose and Applicability

The purpose of this regulation is to improve project quality and productivity, foster innovation, eliminate unnecessary and costly design elements, and ensure economical costs by requiring the application of VE in the design and construction of selected Federal-aid highway projects. The regulation would apply to contracts for early project development, design, and construction of selected projects funded with Federal-aid highway funds and may include studies of project elements, project procedures, specifications, and standard plans.

Section 627.3 Definitions

This section would define the VE terms of "Function," "Life-Cycle Cost," "Total Quality Management," "Value Engineering," "Value Engineering Change Proposal," "Value Engineering Incentive Clause," "Value Engineering Job Plan," and "Worth."

Section 627.5 General Principles and Procedures

This section would require States to establish VE programs which meet minimum VE program requirements and to develop procedures to administer and monitor their VE programs. This section would require States to be adequately staffed to effectively manage and monitor their VE programs, allow States to employ VE consultants to perform VE studies, and authorize the cost of the VE studies as eligible for Federal-aid participation. In addition, this section would require VE program staffs to receive VE training. Value engineering training is available through courses and workshops offered by the National Highway Institute (NHI), various VE consulting firms, and some SHAs with active VE programs.

Section 627.7 Reports

This section would require States to report to the FHWA the yearly results achieved through the application of VE to projects financed with Federal-aid highway funds. This information should be readily available from the SHA's internal tracking and documenting of its VE program. The FHWA is required to report certain data and other information about its VE program to the Department of Transportation (DOT), which then forwards the information to the OMB. The information provided in the State reports would provide the data and information needed for FHWA's report and would help the FHWA and States monitor the effectiveness of State VE programs. The information contained in the report will be made available to FHWA field offices and State agencies.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the docket closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that a savings of more than $100 million per year is likely to occur as a result of the implementation of the regulation. Therefore, this action is a significant regulatory action within the meaning of Executive Order 12866 and significant within the meaning of DOT regulatory policies and procedures. Because it is anticipated that the economic impact of this rulemaking will be significant, the FHWA has prepared the following regulatory evaluation.

The FHWA collected and evaluated considerable amounts of VE data in 1992 while preparing and writing its VE Report to Congress. During FHWA's 1992 evaluation of the effectiveness of its VE program, the FHWA analyzed data for all SHAs (50 States plus Puerto Rico and the District of Columbia) describing their VE usage for the 4-year period from fiscal year (FY) 1988 to FY 1991. The data showed that the SHAs performed over 1500 VE studies, recommended an accumulative $3.6 billion in VE savings, and implemented VE savings worth $615 million. The majority (71 percent) of these 1,500 VE studies were made by just seven States. These seven SHAs, with "active" VE programs, averaged 39 studies per year. Nearly all of the remaining VE studies were made by 27 other SHAs, an average of only 4 VE studies per year, with the 18 remaining SHAs performing only 12 VE studies over the 4-year study period. The overall results showed the SHAs implementing an average of $154 million per year in VE savings.

In order to evaluate the reported VE savings, the FHWA analyzed the FY 1991 bid information reported and published in its Bid Opening Report (Pub. No. FHWA-PD–92–017). In FY 1991, the SHAs accumulatively awarded $10 billion worth of Federal-aid highway construction projects. The seven "active" VE States awarded construction contracts worth $2.5 billion, the 27 "limited" VE States awarded construction contracts worth $5.0 billion, and the 18 "inactive" VE States awarded construction contracts worth $2.5 billion.

The FHWA has concluded that because the seven SHAs (accounting for 25 percent of FHWA's construction program) with "active" VE programs and the 27 States (accounting for 50 percent of FHWA's construction program) with "limited" VE programs were able to save $154 million per year, that an opportunity exists to save significant additional Federal-aid highway funds if all SHAs develop "active" VE programs. With 25 percent of FHWA's $10 billion construction program not exposed to any VE analysis and 50 percent of its program having only a "limited" exposure to the VE process, the FHWA believes that additional savings of more that $100 million would occur by requiring all States to develop and administer VE programs as proposed in this regulation.

The additional annual savings that would result from the implementation of this regulation would remain with the affected SHAs. The funds saved through VE could then be used to design or construct additional highway projects, thereby allowing SHAs to get additional work accomplished each year with the same overall amount of Federal-aid highway funds. By being able to expand the amount of work accomplished with their Federal-aid highway funds, SHAs would also be able to save or free-up State funds for other projects.

Based on more recent VE information collected by FHWA field offices for FY 1993, the FHWA found that during FY 1993, 27 SHAs had performed at least 1 VE study, while 18 of these 27 SHAs performed at least 5 studies, and 9 of the 27 SHAs performed 10 or more studies. The FHWA believes that these States either have VE programs in place or are familiar with the VE process that would be required under this regulation.

This rule will not significantly increase the burden upon State governments. This regulation would require SHAs to develop VE programs

where a sufficient number of projects, representing at least 50 percent of the Federal-aid highway funds expended by the State, will be identified for VE studies each year. An average VE study takes 4 to 5 days to complete and requires a 4 to 6 person team. In FY 1993, 349 VE studies of various highway projects were made by 27 SHAs. According to the information provided to the FHWA, the average cost per project for the 349 VE studies was $9,600 while the recommended savings (if all recommendations were accepted) was $3.4 million per project. Assuming a recommendation acceptance rate of 25 percent, implementation of the VE recommendations would result in a cost savings of approximately $0.86 million per study. The VE cost savings should more than offset any VE study or redesign costs to the agency.

In the past, some State highway agencies have resisted establishing VE programs for various reasons. Many were concerned about the additional staffing requirements and potential delays to projects. Some considered the application of VE to be superfluous in light of the review processes already applied in developing projects. These concerns have been considered and addressed in this rulemaking.

Under an established VE program (which operates on a continuing basis), the application of VE to the highway projects need not adversely affect or delay any project because the VE studies are normally performed in the early project development phase, where they can be integrated into the process. In addition, the overall effect of employing VE is generally positive, rather than duplicative of the engineering analysis already completed on any project, because VE uses a multi-disciplinary team, creative thinking, and functional analysis to improve quality and productivity, foster innovation, eliminate unnecessary and costly design elements, and ensure that projects are cost effective. The regulation may affect staffing levels in SHAs that do not currently utilize VE. Establishing, administering, and monitoring a VE program will require each SHA to assign staff to carry out specific VE functions, although it is expected that staffing assignments will be minimal. States with existing VE programs probably already have adequate staff assigned to carry out the VE functions. Individuals serving as VE study team leaders or members should be selected from existing SHA staffs that are trained in VE. Agencies may also hire VE consultants to perform the VE studies. In either case the study costs are eligible for reimbursement with Federal-aid funds at the appropriate pro-rata share for the type of project studied.

Historically, any additional costs due to the need to hire or reassign staff to manage the VE program have been more than offset by the overall monetary savings resulting from the application of VE studies to highway projects. In general, States with active VE programs report return on VE investments of between 30 to 1 and 50 to 1, giving the opportunity for substantial overall savings. In 1993, California, Florida, and Massachusetts reported savings in excess of $100 million as a result of VE study recommendations.

Since VE programs would be geared primarily toward analyzing the larger and more complex projects, most local agencies (those receiving small amounts of Federal-aid highway funds) would find themselves exempt from the process. Large local agencies receiving substantial amounts of Federal-aid highway funds would have to apply VE to some of their larger projects in the same manner as the SHAs and would achieve analogous benefits. Like State highway agencies, local agencies that are required to perform VE studies may perform the studies themselves or hire a VE consultant to perform the study. The cost to local agencies of performing VE studies is project related and is therefore eligible for reimbursement with Federal-aid highway funds, as stated above.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant impact on a substantial number of small entities. The FHWA has determined that most small entities (those receiving small amounts of Federal-aid highway funds) will probably not perform VE studies because their projects are small and do not fit the project selection criteria set forth in this proposal for performing VE studies. Still, due to the many benefits that accrue through applying the VE process, States should encourage local agencies to use VE in the development of Federal-aid highway projects.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Under the Federal-aid highway program, the FHWA reimburses States for costs incurred in highway construction projects. This regulation would simply provide that, as a condition of receiving such grants, States must ensure that project costs are controlled and project quality is maintained. This regulation recognizes the role of the States in employing VE. It gives States wide latitude in establishing, administering, and monitoring their VE programs and in selecting projects to be constructed using VE. Therefore, the FHWA has determined that this action does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment.

Paperwork Reduction Act

This action contains a collection of information for the purpose of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The reporting and recordkeeping requirement associated with this rule is being submitted to the OMB for approval in accordance with 44 U.S.C. Chapter 35 under DOT NO: _____; OMB NO: _____; Administration: Federal Highway Administration; Title: Value Engineering; Proposed Use of Information: Project data and cost information representing the outcome of the VE studies will be used for determining if the respondents are in compliance with the legislative requirements and to report VE savings to the Department of Transportation, which then forwards the information to the OMB; Frequency: Yearly; Burden Estimate: 1,248; Respondents: 52; Form(s): Appendix A to Part 627; Average Burden Hours per Respondent: 24.

FOR FURTHER INFORMATION CONTACT: The Information Requirements Division, M–34, Office of the Secretary, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–4735 or the FHWA desk officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, (202) 395–7340. It is requested that comments sent to the OMB also be sent to the FHWA rulemaking docket for this action.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 627

Government procurement, Grant programs—transportation, Highways and roads, reporting and recordkeeping requirements.

Issued on: November 9, 1994

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to add part 627 to 23 CFR chapter I to read as follows:

PART 627—VALUE ENGINEERING

Sec.

Authority: 23 U.S.C. 106(d), 302, 307, and 315; 49 CFR 18.

§ 627.1 Purpose and applicability.

(a) This part will improve project quality and productivity, foster innovation, eliminate unnecessary and costly design elements, and ensure efficient investments by requiring the application of value engineering (VE) to selected highway projects financed with Federal-aid highway funds. This part requires each State highway agency (SHA) to establish a VE program, outlines minimum VE program requirements, and provides guidance on establishing, administering, and monitoring VE programs. State programs shall be in effect no later than [one year after the effective date of the final rule].

(b) This part applies to contracts involving the early development, design, and construction of selected Federal-aid highway projects. States shall develop VE programs that will apply the VE review process to selected highway projects. States may exempt certain projects, such as railroad and utility work, projects financed with highway planning and research funds, certain projects authorized under the State's highway safety program, and emergency relief projects from the VE project selection phase.

§ 627.3. Definitions.

Contractor. The individual or firm providing material, supplies, personal property, nonpersonal services, or professional services as a party to the design or construction contract.

Function. Any performance characteristic that a product or service accomplishes.

Life-cycle cost. The total cost of an item's ownership, computed over its useful life. This includes initial capital costs (right-of-way, planning, design, construction), user costs, and the cost of operation, maintenance, modification, replacement, demolition, financing, taxes, and disposal associated with the facility as applicable.

Value engineering. The systematic application of recognized techniques by a multidisciplined team to identify the function of a product or service; establish a worth for that function; generate alternatives through the use of creative thinking; and provide the needed functions, reliably, at the lowest life-cycle cost without sacrificing safety, necessary quality, and environmental project attributes.

Value engineering change proposal (VECP). A proposal submitted by a contractor under a VE incentive clause included in the provisions of a construction contract that, through a change in the plans, design, or specifications would yield an improved or equal product and reduce the project cost (initial and/or life-cycle) to the contracting agency. The net savings from the proposal are shared with the contractor in accordance with the distribution provided in the VE or cost reduction incentive clause.

Value engineering incentive clause. A construction contract provision which encourages the contractor to propose changes in the contract plans and/or requirements which will accomplish the project's functional requirements at less cost (without adversely affecting the project) and allows the contractor to share in the resultant cost savings.

Value engineering job plan. An organized plan of action for accomplishing a VE study that divides the study into a distinct set of work phases. The phases normally found in a VE job plan include: Project selection, investigation, speculation, evaluation, development, presentation, implementation, and audit.

Worth. An estimate of the least expensive way of performing a function, irrespective of its application to the project.

§ 627.5 General principles and procedures.

(a) *State VE programs.* Applying the VE process to projects will improve project quality and productivity, foster innovation, eliminate unnecessary and costly design elements, reduce impact costs on users, ensure the safe operation of the facility, advance environmental and ecological interests, and ensure economical construction costs on selected highway projects financed with Federal-aid highway funds. State highway agencies shall prepare written procedures establishing continuing VE programs. These procedures shall be acceptable to the FHWA and consistent with the American Association of State Highway and Transportation Officials (AASHTO) "Guidelines for Value Engineering." [1]

(1) The VE program shall include procedures to insure that the VE process is actively applied to applicable Federal-aid highway projects. The VE procedures shall require the identification of candidate projects for VE studies early in the development of the State's annual Federal-aid program. As a minimum, a sufficient number of projects representing at least 50 percent of the Federal-aid highway funds expended by the State shall be identified for VE studies each year.

(2) The VE program should establish specific criteria and guidelines for selecting Federal-aid highway projects for a VE review. Consideration should be given to projects that have shown recent substantial cost increases; projects with complex designs or construction phases; projects involving major structures; projects with unique specifications, standards, or processes; multi-modal projects; projects with repetitive work elements; projects with high right-of-way costs; projects with unique or experimental features; projects with high maintenance, user impact, or traffic control costs; and projects specifically requested for review by State agency program offices or management.

(3) The VE program should establish specific criteria and procedures for granting waivers of the VE study requirement on certain types of projects or programs. The agency's procedures

[1] AASHTO's "Guidelines for Value Engineering," 1987, is available for inspection as prescribed in 49 CFR part 7, appendix D and may be purchased by writing to the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 225, Washington, DC 20001.

may allow for certain types of projects to be eliminated from consideration for VE when there is little likelihood that they would yield any opportunity for improvements or savings.

(4) Value engineering studies should follow the systematic problem-solving process defined by the VE job plan. Value engineering studies should be performed using a team consisting of individuals from different disciplines, such as: Design, construction, environment, maintenance, planning, right-of-way, and other specialty areas depending upon the project being reviewed. Individuals from the public and other agencies may also be included as team members when their inclusion is found to be in the public interest. The study leader should be trained in VE, understand the VE process, and be able to serve as the coordinator and facilitator of the VE team.

(i) Studies should be employed as early as possible in the project development or design process so that valid VE recommendations can be implemented without delaying the progress of the project.

(ii) Each study should conclude with a formal report outlining the study team's recommendations for improving the project and reducing its overall cost. As a part of the formal report process, a presentation of the VE team's recommendations should be made to upper management and documentation of the presentation included with the final report.

(5) The VE program should include procedures to ensure that the VE recommendation approval process involves appropriate reviews and concurrences from applicable staff offices, such as: Design, construction, environment, air quality, safety, materials, traffic operations, right-of-way, and other offices when the proposed VE change impacts their specialty areas. All reviews by external staff offices should be performed promptly to minimize delays to the project.

(6) The VE program should promote the development and submission of VECPs by construction contractors, provide for their prompt review, assure their prompt approval or disapproval and, if approved, assure the implementation of the proposed changes. State highways agencies shall include a VE or cost reduction incentive clause in their standard specifications or project special provisions that clearly allows construction contractors to submit VECPs. This clause should include a provision allocating, by percentage, the cost savings that is to be shared between the agency and the contractor. States should retain the right to accept or reject all VECPs and acquire the rights to use accepted VECPs in current and future projects without restrictions.

(7) The VE program should include procedures for monitoring the implementation of the recommendations to ensure that proper documentation is maintained for accepted and rejected VE and VECP recommendations, the projected or actual cost savings associated with the recommendations, and the total costs involved in performing the VE studies. The monitoring procedures should also include a mechanism to assure that applicable VE alternatives employed on one projects are included in other similar projects.

(b) *State VE coordinators.* Each State highway agency shall be adequately staffed with individuals knowledgeable in VE to effectively coordinate and monitor its VE efforts. Individuals assigned to administer and monitor the VE program should have sufficient authority to insure the vigorous implementation of the VE program and be actively involved in all phases of the VE program including the development of the agency's annual VE plan.

(c) *VE training.* The VE program should include procedures for identifying formal VE training needs and for coordinating training efforts to ensure that an adequately trained staff is available to perform the number of VE studies required in the annual VE plan and to assure a continuing VE program. Key VE program managers, VE team leaders and members, and individuals involved in the VECP review and approval process shall receive VE training.

(d) *Use of consultants.* Consultants that have experience in VE may be retained by SHAs to conduct VE studies on Federal-aid projects or elements of Federal-aid projects. Members of consultant VE study teams should be experienced in VE, have completed a recognized VE course or workshop, and have participated in previous VE studies. A consultant firm should not be retained to conduct a VE study of its own design unless the firm maintains separate and distinct organizational separation of its VE and design sections.

(e) *Funding eligibility.* The cost of performing VE studies is project related and is therefore eligible for reimbursement with Federal-aid highway funds at the appropriate pro-rata share for the project studied.

§ 627.7 Reports.

Each SHA shall report yearly the results it achieved through the application of VE to selected highway projects financed with Federal-aid highway funds. States should report data for the Federal fiscal year, the twelve month period beginning October 1 and ending September 30. States should submit these reports to the FHWA division office by November 10 of the calendar year. This information may be transmitted to the FHWA electronically. The suggested report format is provided in appendix A of this part.

(Approved by the Office of Management and Budget under control number 2125-_____.)

Appendix A to Part 627.—Annual Federal-Aid Value Engineering (VE) Summary Report

[Report only Federal-aid funded projects—State: _____ Fiscal year: _____]

1. Total dollars invested in VE Studies by the SHA this fiscal year (include in-house costs only, such as, VE coordinator and staff salaries; study costs; salary, travel and incidental costs for persons making studies). ..... $_____M
2. Total dollars paid to VE contractors for performing VE Studies this fiscal year (include such costs as VE staff salaries for monitoring contractor and VE study costs). ..... $_____M
3. Total dollars invested in VE Training by the SHA this fiscal year (include in-house costs for VE coordinator and staff salaries for organizing and monitoring; NHI training costs; salary, travel and incidental costs for persons attending training). ..... $_____M
4. Total dollars paid to VE contractors for VE Training usedthe SHA this fiscal year (include training costs; salary, travel, and incidental costs for persons attending training). ..... $_____M
5. Total number of individuals trained in VE during this fiscal year.
   Over 8 hours FHWA _____ State _____ Other _____
   Under 8 hours FHWA _____ State _____ Other _____

Project Development and Design Phase

6. Total number of VE studies completed this fiscal year. ..... _____

Appendix A to Part 627.—Annual Federal-Aid Value Engineering (VE) Summary Report—Continued

[Report only Federal-aid funded projects—State: _____ Fiscal year: _____]

a. Total number of VE recommendations made.	_____
b. Total number of VE recommendation approved.	_____
7. Total estimated construction cost of all the projects *before* the VE studies were performed.	$_____M
a. Total dollar value of the VE recommendations made.	$_____M
b. Total dollar value of the VE recommendations approved for implementation.	$_____M
8. Total estimated construction cost of all the projects after the VE studies were performed and the VE recommendations were approved for implementation.	$_____M
Project Construction Phase	
(Value Engineering Change Proposals)	
9. Total number of VECP received this fiscal year.	_____
10. Total value of VECP received this fiscal year.	$_____M
11. Total number of VECP approved this fiscal year.	_____
12. Total value of VECP approved this fiscal year.	$_____M
13. Total amount of VECP approved savings provided to contractors.	$_____M
Life-Cycle Cost Savings	
14. Total estimated value of life-cycle (cost avoidance) cost savings for approved VE and VECP recommendations this fiscal year.	$_____M

[FR Doc. 94–28290 Filed 11–15–94; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment includes changes to §§ 480–03–19.816/817.102(e) of the Virginia program relative to the disposal of coal processing waste and underground development waste in mined-out areas. The amendment is intended to clarify what provisions of the coal mine waste disposal regulations apply when disposal of coal processing waste or underground development waste occurs in mined-out areas for the purpose of backfilling a disturbed area.

DATES: Written comments must be received by 4 p.m., e.s.t. on December 16, 1994. If requested, a public hearing on the proposed amendment will be held on December 12, 1994. Requests to speak at the hearing must be received by 4 p.m., e.s.t. on December 1, 1994.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated October 31, 1994 (Administrative Record No. VA–839), Virginia submitted a proposed amendment to its program pursuant to SMCRA. Virginia proposes to amend § 480–03–19.816/817.102(e) to clarify the Virginia regulations that are applicable when coal processing waste and underground development waste is used as backfill material for mined-out areas. If approved the proposed amendment will settle interpretational differences between Virginia and OSM relative to how the coal mine waste regulations apply to waste materials placed in backfills. The text of the existing regulation is presented below with proposed changes italicized:

Section 480–03–19.816/817.102 Backfilling and Grading: General Requirements

* * * * *

(e) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with § 480–03–19.816/817.81 and 83 *as provided in subparagraphs (1) and (2) of this section,* except that a long-term static safety factor of 1.3 shall be achieved.

(1) Disposal of coal processing waste and underground development waste in the mined-out area to backfill disturbed areas shall be in accordance with 480–03–19.816/817.81.

(2) Disposal of coal processing waste and underground development waste in the mined-out area as a refuse pile and not to backfill disturbed areas shall be in accordance with 480–03–19.816/

817.81 and 480–03–19.816/817.83. The Division may approve a variance to 480–03–19.816/817.83(a)(2) if the applicant demonstrates that the area above the refuse pile is small and that appropriate measures will be taken to direct or convey runoff across the surface area of the pile in a controlled manner.

* * * * *

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on December 1, 1994. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under **ADDRESSES**. A written summary of each public meeting will be made part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

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

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 946

Intergovernment relations, Surface mining, Underground mining.

Dated: November 7, 1994.

Richard J. Seibel,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–28226 Filed 11–15–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. 1

[FRL–5106–4]

Notice and Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate a rule to reduce air emissions from small nonroad engines. The meeting is open to the public without advance registration. Agenda items for the meeting include reports from the task groups and discussions of the draft "single text" strawman.

DATES: The committee will meet on December 1, 1994 from 10:00 a.m. to 6:00 p.m., and on December 2, 1994 from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The location of the meeting will be the Courtyard by Marriott, 3205 Boardwalk, Ann Arbor, MI 48108; phone: (313) 995–5900.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Lucie Audette, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, (313) 741–7850. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street SW., Washington, DC 10460, (202) 260–5495, or the Committee's facilitator's, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501, (505) 982–9805.

Dated: November 9, 1994.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 94–28296 Filed 11–15–94; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 52

[CO9–3–5603; FRL–5106–6]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Regulation 7

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Colorado Ozone State Implementation Plan (SIP) submitted by the Governor on September 27, 1989, and August 30, 1990. The revisions consist of amendments to Regulation No. 7, "Regulation To Control Emissions of Volatile Organic Compounds." In its review of the September 27, 1989 State submittal, EPA identified several areas where the regulation still did not meet EPA requirements. On August 30, 1990, the State submitted additional revisions to Regulation No. 7 to address these deficiencies. This **Federal Register** action applies to both of these submittals. The amendments were made to conform Regulation No. 7 to federal requirements, and to improve the clarity and enforceability of the regulation. EPA's approval will serve to make the revisions federally enforceable and was requested by the State of Colorado.

DATES: Comments must be received on or before December 16, 1994.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466 (303) 293–1814.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(H)(i) of the Clean Air Act (CAA), as amended in 1990, provides the State the opportunity to amend its SIP from time to time as may be necessary. The State is utilizing this authority of the CAA to update and revise existing regulations which are a part of the SIP.

I. Background

On March 3, 1978, EPA designated the Denver-Boulder metropolitan area as nonattainment for the National Ambient Air Quality Standards (NAAQS) for ozone (43 FR 8976). This designation was reaffirmed by EPA on November 6, 1991 (56 FR 56694) pursuant to section 107(d)(1) of the CAA, as amended in 1990. Furthermore, since the Denver-Boulder area had not shown a violation of the ozone standard during the three-year period from January 1, 1987 to December 31, 1989, the Denver-Boulder area was classified as a "transitional" ozone nonattainment area under section 185A of the amended Act. In order to meet the Reasonably Available Control Technology (RACT) requirements of the CAA, transitional areas must correct any RACT deficiencies regarding enforceability.

The current Colorado Ozone SIP was approved by EPA in the **Federal Register** on December 12, 1983 (48 FR 55284). The SIP contains Regulation No. 7 (Reg 7), which applies RACT to stationary sources of Volatile Organic Compounds (VOC). Reg 7 was adopted to meet the requirements of Section 172(b)(2) and (3) of the 1977 CAA (concerning the application of RACT to stationary sources.[1]) However, the approved Ozone SIP did not rely on the emissions reduction credit that Reg 7 would produce in order to demonstrate attainment; rather, the SIP relied only on mobile source controls in order to demonstrate attainment.

During 1987 and 1988, EPA Region VIII conducted a review of Reg 7 for consistency with the Control Techniques Guidelines documents (CTGs) and regulatory guidance, for enforceability and for clarity. The CTGs, which are guidance documents issued by EPA, set forth measures that are presumptively RACT for specific categories of sources that emit VOCs. A substantial number of deficiencies were identified in Reg 7. In 1987, EPA published a proposed policy document that included, among other things, an interpretation of the RACT requirements as they applied to VOC nonattainment areas (52 FR 45044, November 24, 1987, Post-87 Policy). On May 25, 1988, EPA published a guidance document entitled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of the November 24, 1987 **Federal Register** Notice" (the "Blue Book"). A review of Reg 7 against these documents uncovered additional deficiencies in the regulation.

On May 26, 1988, EPA notified the Governor of Colorado that the Carbon Monoxide (CO) SIPs for Colorado Springs and Fort Collins were inadequate to achieve the CO NAAQS. In that letter, EPA also notified the Governor that the Ozone SIP had significant deficiencies in design and implementation, and requested that these deficiencies be remedied. EPA did not make a formal call for a revised Ozone SIP in the May 1988 letter,[2] even though the Denver-Boulder area was, and continues to be, designated nonattainment for ozone. The reason for this decision was that no violations of the ozone NAAQS had been recorded in the nonattainment area for the previous three years. However, EPA indicated that the deficiencies, if uncorrected, could jeopardize the area's ability to obtain eventual redesignation as an attainment area for ozone.

1. 1989 SIP Revision Submittal

In a letter dated September 27, 1989, the Governor of Colorado submitted revisions to Reg 7 to partially address EPA's concerns with the Ozone SIP. A detailed description of the specific revisions to the regulation is contained in the Docket for this **Federal Register** document. Revisions were made to the following sections of Reg 7:

7.I Applicability
7.II General Provisions

[1] The requirement to apply RACT to existing stationary sources of VOC emissions was carried forth under the amended Act in section 172(c)(1).

[2] Under the pre-amended Act, EPA had the authority under section 110(a)(2)(H) to issue a "SIP Call" requiring a State to correct deficiencies in an existing SIP. Section 110(a)(2)(H) was not modified by the 1990 Amendments. In addition, the amended Act contains new section 110(k)(5) which also provides authority for a SIP Call.

7.III General Requirements for Storage and Transfer of Volatile Organic Compounds
7.IV Storage of Highly Volatile Organic Compounds
7.V Disposal of Volatile Organic Compounds
7.VI Storage and Transfer of Petroleum Liquid
7.VIII Petroleum Processing and Refining
7.IX Surface Coating Operations
7.X Use of Solvents for Degreasing and Cleaning
7.XI Use of Cutback Asphalt
7.XII Control of VOC Emissions from Dry Cleaning Facilities Using Perchloroethylene As a Solvent
7.XIII Graphic Arts
7.XIV Pharmaceutical Synthesis
7.XV Control of Volatile Organic Compound Leaks from Vapor Collection Systems Located At Gasoline Terminals, Bulk Plants, and Gasoline Dispensing Facilities
Appendix A Criteria for Control of Vapors from Gasoline Transfer to Storage Tanks
Appendix B Criteria for Control of Vapors from Gasoline Transfer at Bulk Plants (Vapor Balance System)
Appendix D Test Procedures for Annual Pressure/Vacuum Testing of Gasoline Transport Trucks

In addition, the following new emission sources and appendices were added to Reg 7:

7.IX.A.7 Fugitive Emission Control
7.IX.N. Flat Wood Paneling Coating
7.IX.O. Manufacture of Pneumatic Rubber Tires
7.XI.D. Coal Tar
Appendix E Emission Limit Conversion Procedure

In a letter dated September 27, 1989, the Governor of Colorado submitted revisions to Reg 7 to address EPA's concerns with how the State was addressing RACT for major non-CTG sources of VOC. A detailed description of the specific revisions to the regulation is contained in the Docket for this **Federal Register** document. Based upon the reasons stated below, EPA is approving the State's non-CTG rule for its strengthening effect on the SIP.

Areas of the country which requested extensions of the attainment date for the ozone NAAQS beyond the initial 1982 target specified in the CAA, as amended in 1977, were required to submit SIP revisions by July 1, 1982 (46 FR 7182, January 22, 1981). This requirement applied to the Denver-Boulder metropolitan area. The 1982 submittal was required to include RACT regulations for all sources of VOC covered by a CTG and for all remaining stationary sources in the nonattainment area with potential to emit VOC emissions (before control) of 100 tons per year or greater ("major non-CTG sources").

This 1982 Ozone SIP revision was submitted to EPA on June 24, 1982. Among other deficiencies, the SIP did not contain regulations requiring RACT on major non-CTG sources of VOC. EPA noted this deficiency in February 3, 1983, but proposed approval of the submitted SIP revision (48 FR 5030). The State responded by committing to adopt RACT for any VOC sources covered by a CTG and EPA approved this revision on December 12, 1983 (48 FR 55284).

EPA's review of the Ozone SIP during 1987 and 1988 revealed that the intent of the requirement for RACT for major non-CTG sources had not been met. EPA tentatively identified several stationary sources which should have applied RACT since 1982, but were as yet unregulated. Reg 7 contained no mechanism for requiring control of these sources, other than a "General Emission Limitation," for sources not specifically regulated by Reg 7, of 450 pounds per hour or 3000 pounds per day. This general limitation allowed sources to have actual emissions of up to nearly 550 tons per year before control was required. This provision clearly did not meet the 1982 SIP requirement, which was reiterated in the May 25, 1998, Appendix D Clarification document.

To address this concern, the State revised Reg 7 to delete the existing "General Emission Limitation" and to require RACT for stationary sources with potential emissions of VOC of 100 tons per year or more, under certain conditions. Section 7.II.C. applies this new RACT requirement to sources not specifically covered by the regulation as follows:

(a) Sources with actual emissions of 100 tons per year or more of VOCs must apply RACT.

(b) Sources with potential emissions of 100 tons per year or more of VOCs, but with actual emissions of less than 100 tons per year, may avoid having to apply RACT by obtaining a federally enforceable permit to limit production or hours of operation to keep actual emissions below 100 tons per year.

(c) Sources with potential emissions of 100 tons per year or more of VOCs, but with actual emissions of less than 50 tons per year on a 12-month rolling average, may avoid RACT and permit requirements by: (1) Submitting a report each year demonstrating that the 50 tons per year threshold has not been exceeded; and (2) maintaining monthly records of VOC usage and emissions to enable the State to verify these reports.

The State developed this approach to regulating 100 tons per year non-CTG sources after receiving comments on the proposed Reg 7 revisions from several industries in the Denver-Boulder area. These sources indicated that their processes involved a number of non-CTG category operations that are performed infrequently (such as painting letters on four production units per year), resulting in low actual emissions, but which would result in large potential emissions when calculated on an 8760 hour per year basis.

EPA is approving section 7.II.C. of the State's rules for its strengthening effect on the SIP. The submitted rule is stronger than the pre-existing non-CTG RACT rule because it specifically applies to sources that have a potential to emit more than 100 tons per year of VOCs and that are not yet covered by a CTG. The rule requires those sources to adopt RACT on a case-by-case basis. The previous rule, which was a commitment of the State and did not directly affect non-CTG sources, only applied to those sources for which EPA subsequently issued a CTG. Therefore, the submitted rule strengthens the SIP because it applies to major sources not covered by a CTG. It should be noted that EPA is not addressing whether this rule establishes RACT for major stationary sources not subject to a CTG.

The Denver-Boulder metropolitan area is classified as "transitional" for ozone under the CAA. This means that the area is legally designated as an ozone nonattainment area, although it did not experience violations of the ozone NAAQS during the 1987–1989 period used to classify areas under the 1990 CAA amendments. Therefore, the Denver-Boulder metropolitan area is not subject to the RACT fix-up requirement of Section 182(a)(2)(A) of the CAA.

Under the transitional ozone classification, EPA must review the available ambient air quality data and make a determination whether the Denver-Boulder metropolitan area has, in fact, attained the ozone NAAQS. In a letter dated October 22, 1992, from Jack McGraw, EPA Region VIII Acting Regional Administrator, to Governor Roy Romer, EPA Region VIII advised the State that EPA had reviewed ambient air quality data which had been entered by the State into the Aerometric Information and Retrieval System (AIRS) national database. EPA further advised that these data indicated that the Denver-Boulder metropolitan transitional ozone area, as defined in the November 6, 1991 **Federal Register** (56 FR 56694, codified at 40 CFR 81.306), had not violated the ozone NAAQS during the period beginning January 1, 1987, and ending on December 31, 1991. EPA's October 22, 1992 letter was not a

determination that the Denver-Boulder nonattainment area had met the CAA's Section 107(d)(3)(E) criteria for redesignation to attainment, but rather served as an affirmation that no violation of the ozone standard for this area was found.

The State has indicated, in the current State-EPA Agreement (SEA), that it will begin developing an ozone redesignation request and maintenance plan for the Denver-Boulder metropolitan area. The maintenance plan must demonstrate that the ozone NAAQS will be maintained for an initial period of 10 years after the redesignation request is approved by EPA. The maintenance plan must be updated, after 8 years into the initial 10-year period, to demonstrate that the NAAQS will be maintained for an additional 10 years. During the development of the maintenance plan, the State may consider additional revisions to the ozone control strategy in order to demonstrate maintenance of the ozone standard; such revisions could include further modification of the VOC control requirements of Reg 7. For a maintenance plan to be approved and the Denver-Boulder metropolitan area to be redesignated as attainment pursuant to Section 107(d)(3)(E), the State may have to develop specific RACT regulations for major non-CTG sources. Information available to EPA suggests that there has been growth in emissions from some non-CTG sources in the area; RACT regulations for these sources may be necessary to ensure maintenance of the NAAQS for the initial 10-year redesignation attainment period, as is required by Section 175A of the Act.

2. 1990 SIP Revision Submittal

In general, the revised Reg 7 (as submitted by the Governor on September 27, 1989) met the CAA requirements, which were interpreted in the CTGs, the Blue Book, and the Post-87 Policy. However, in its review, EPA identified two remaining issues where the regulation did not explicitly follow EPA guidance: A. The compliance schedule, and B. Clarification of the Graphic Arts definition for potential to emit. These remaining two issues were addressed by the State in its August 30, 1990 submittal and are described below.

In a letter dated August 30, 1990, the Governor of Colorado submitted revisions to Reg 7 to address EPA's remaining concerns with the September 27, 1989 Ozone SIP revision. A detailed description of the additional specific revisions to Reg 7 is contained in the Docket for this **Federal Register** document. Revisions were made to the following sections of Reg 7:

7.I Applicability
7.XI Use of Cutback Asphalt
7.XIII Graphic Arts

A. Compliance Schedule: Reg 7 did not contain an explicit deadline for compliance with the revised regulation. In response to EPA comments, the State adopted additional revisions (Section 7.I.B. and 7.I.C.) to Section 7.I. (Applicability) of Reg 7, requiring all sources to come into compliance with the revised Reg 7 by October 31, 1991. EPA considered a 2-year timeframe for compliance with the Reg 7 revisions to be acceptable because no ozone SIP Call was made in 1988 (no violations of the ozone NAAQS have been monitored in the Denver-Boulder area since 1984) and thus, the revisions were not immediately necessary for the area to attain the NAAQS. The 2-year compliance timeframe applies only to the regulation revisions, and not to requirements which existed prior to October 30, 1989. Sources which were in existence prior to the regulation revisions and which were covered by the regulations at that time were required to maintain compliance with those provisions.

B. Graphic Arts definition: The Graphic Arts definition of potential to emit, contained in Section 7.XIII.A.2. of Reg 7, was somewhat unclear. The definition referenced the EPA requirement that potential to emit be determined at maximum capacity before control (per the Appendix D Clarification document), but also included a requirement that potential emissions be based on historical records of solvent and ink consumption (per the previous regulatory guidance document, Guidance to State and Local Agencies in Preparing Regulations to Control Volatile Organic Compounds from Ten Stationary Source Categories, September, 1979). As a result, the definition could have been interpreted to require potential to emit to be calculated at both maximum and historical operating rates, which in most cases will be different. EPA's interpretation of this definition was that potential to emit should be calculated at maximum capacity before control; historical records of solvent and ink consumption should be used to determine VOC emissions at a given operating rate, not to determine the historical maximum operating rate. The Reg 7 revisions, submitted by the Governor on August 30, 1990, addressed this concern by not including a reference to the historical records.

C. Capture Efficiency: As a final issue, on January 13, 1992, EPA notified the State that, prior to proposing this action, it was necessary to document the State's position with regard to capture efficiency (CE) determination. During earlier reviews of the State's VOC regulations, EPA Region VIII indicated that, because EPA had not issued final, generally-applicable CE test methods, an acceptable State approach to CE was a commitment to develop test methods consistent with the most recent EPA guidance on CE testing on a case-by-case basis as needed, and a commitment to adopt test methods after EPA issued final CE test methods. The CE provision adopted by the State in Section IX.A.5.e of Reg 7 does address the requirement that testing for CE be performed on a case-by-case basis, and that this testing be consistent with EPA guidance. In a letter dated February 5, 1992, from John Leary, Acting Director, Colorado Air Pollution Control Division, to Douglas Skie, Chief, Air Programs Branch, EPA Region VIII, the State committed to adopt and use all new CE methods as they are developed and promulgated by EPA's rule-making process. In that same letter, the State indicated that until changes are promulgated, the Air Pollution Control Division will use the CE protocols that were published by EPA on June 29, 1990 (55 FR 26814, codified at 40 CFR 52.741(a)(4)(iii) and Appendix B).

Due to additional information received after the adoption of revisions to Reg 7 in September, 1989, the State reconsidered its regulation of coal tar under Section 7.XI. (Use of Cutback Asphalt). In revisions submitted on August 30, 1990, Section 7.XI.D., covering coal tar, was deleted. Regulation of coal tar is not covered by the CTG for cutback asphalt use; EPA believes that it is not needed to meet the RACT requirement of the CAA.[3]

In this action, EPA is proposing to approve the State's VOC definition as submitted in the 1989 and 1990 revisions to Reg 7. However, on February 3, 1992, EPA published a revised definition of volatile organic compounds (57 FR 3941). The definition excludes a number of organic compounds from the definition of VOC on the basis that they are of negligible reactivity and do not contribute to

[3] Under section 193 of the amended CAA, States cannot delete control requirements in effect prior to enactment of the amendments unless the modification ensures equivalent or greater emission reductions of the same air pollutant. By this same submittal, the State has submitted additional control requirements that more than compensate for any greater emissions that may result from the deletion of the coal tar regulation.

tropospheric ozone formation. The State's definition excludes some, but not all, of these compounds. Therefore, the State's definition of VOC provides for the regulation of some compounds which are no longer considered VOCs by EPA. In light of EPA's most recent definition of VOC, EPA will not enforce against sources for failure to control the emission of compounds that are exempt from the federal VOC definition. EPA has informed the Region VIII States of the revised definition of VOC and will request that future SIP revisions reflect the most recent federal VOC definition.

Based on the above revisions, EPA believes that Colorado has met the ozone RACT requirement of the CAA as it applies to the Denver-Boulder metropolitan area. Colorado has corrected its RACT rule deficiencies regarding enforceability.

This action was previously published as a Direct Final Rule on June 26, 1992 (57 FR 28614). This Direct Final Rule was withdrawn on August 12, 1992 (57 FR 36004) as EPA Region VIII received a letter, dated July 16, 1992, from William Owens, Executive Director of the Colorado Petroleum Association (CPA), to Jeff Houk of EPA Region VIII, expressing adverse comments. These comments will be considered by EPA during the comment period, along with any other comments that are received on this proposed rule.

II. Proposed Action

EPA proposes to approve Colorado's Ozone SIP revisions, submitted by the Governor on September 27, 1989, and August 30, 1990. These revisions consist of amendments to Reg 7.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to any State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments to the Clean Air Act enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Interested parties are invited to comment on all aspects of this proposed action.

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1980.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 13, 1994.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–28291 Filed 11–15–94; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 170

[OPP–250096; FRL–4900–4]

Worker Protection Standards Safety Training; Grace Period and Retraining Interval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a proposed rule under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The proposed rule proposes to modify the grace period for training employees and to shorten the retraining interval. This notification is required under FIFRA sec. 25(a)(2).

FOR FURTHER INFORMATION CONTACT: Jeanne Heying, Certification and Training, Occupational Safety Branch (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132B, CM #2, 1921 Jefferson Davis Highway, Arlington. VA., (703) 305–7371.

SUPPLEMENTARY INFORMATION: Section 25(2)(2) of FIFRA provides that the Administrator shall provide the Secretary of Agriculture with a copy of any proposed rule at least 60 days before signing the proposed rule for publication in the **Federal Register**. If the Secretary comments in writing regarding the proposed rule within 30 days after receiving it, the Administrator shall issue for publication in the **Federal Register**, with the proposed rule, the comments of the Secretary of Agriculture, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. The Administrator has forwarded a copy of a proposed rule to the Secretary of Agriculture proposing to modify the grace period for training employees and to shorten the retraining interval.

List of Subjects in 40 CFR Part 170

Environmental protection, Pesticides and pest, Intergovernmental relations, Occupational safety and health, Reporting and recordkeping requirements.

Dated: November 4, 1994

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–28143 Filed 11–15–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 60

RIN 0905–AS87

Health Education Assistance Loan Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend existing regulations governing the Health Education Assistance Loan (HEAL) program to establish performance standards against which lender and holder default rates would be measured, as mandated by the Health Professions Education Extension Amendments of 1992. The proposal also amends the regulations to reflect various statutory provisions related to HEAL performance standards for schools, lenders, and holders, including the following: The formula for calculating default rates; the requirement that certain schools develop default management plans; the borrower's option to reduce his or her insurance premium by obtaining a credit worthy cosigner; the waiver of penalty fees for schools, lenders, and holders with a low volume of loans; and the option to pay off defaulted loans to reduce default rates.

DATES: Comments on this proposed rule are invited. To be considered, comments must be received by December 16, 1994.

ADDRESSES: Respondents should address written comments to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 8A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Heningburg, Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301–443–1173.

SUPPLEMENTARY INFORMATION: Section 707(a) of the Public Health Service Act (the Act) requires that, not later than 1 year after enactment of the Health Professions Education Extension Amendments of 1992 (Pub. L. 102–408), the Secretary shall establish performance standards for lenders and holders of HEAL loans, including fees to be imposed for failing to meet such standards. In the report accompanying Public Law 102–408, the Congress stated that it expects "* * * schools, lenders, and holders to assume and share the responsibility for minimizing HEAL defaults * * *" (Conference Report 102–925, p. 112).

In accordance with the above, this Notice of Proposed Rulemaking (NPRM) proposes to amend the HEAL regulations to establish performance standards for lenders and holders of HEAL loans. Under this proposal, the Secretary would establish requirements and fees to be imposed on a HEAL lender or holder based on the lender or holder's HEAL default rate. The default rate for lenders and holders would be calculated in accordance with the statutory default formula set forth in section 719(5) of the Act, except that loans made to students at Historically Black Colleges and Universities (HBCUs) prior to the end of the first 3 years that the lender/holder performance standard is in effect would be excluded from the default rate calculation. The proposed performance standard requirements, including the risk-based fee to be assessed on each lender and holder, are described below.

In developing these proposals, the Department has relied heavily on section 708 of the Act, which sets forth fees and performance requirements for HEAL schools with default rates greater than 5 percent. Schools, lenders, and holders all play a significant role in helping to assure the collectibility of HEAL loans, and all benefit from participation in the HEAL program. Accordingly, this approach is designed to assure similar measures of accountability for all parties involved in the HEAL program.

This proposal also clarifies various statutory provisions related to HEAL performance standards for schools, lenders, and holders, including the following: (1) The formula for calculating default rates; (2) the requirement that certain schools develop default management plans; (3) the borrower's option to reduce his or her insurance premium by obtaining a credit worthy cosigner: (4) the waiver of penalty fees for schools, lenders, and holders with a low volume of loans; and (5) the option to pay off defaulted loans to reduce default rates. The specific amendments proposed are described below according to the subparts, section numbers, and headings of the HEAL regulations affected.

Subpart A—General Program Description

Section 60.2 HEAL Default Rate

The Department is proposing to add a new section to the HEAL regulations which would address the HEAL default rate. Paragraph (a) of this section, "Default rate formula," would explain that the default rate of each school, lender, and holder is calculated in accordance with the formula set forth in section 719(5) of the Act, except that for lenders and holders, loans made to students at HBCUs prior to the end of the first 3 years that the lender/holder performance standard is in effect would be excluded from the default rate calculation.

This approach for calculating lender and holder default rates is consistent with the statutory school performance standard set forth in section 708 of the HEAL stature. Section 708(d)(3) provides HBCUs with a 3-year period during which they remain eligible for participation in the HEAL program regardless of their default rates. In granting HBCUs a 3-year reprieve from termination due to high default rates, the Congress indicated concern that the performance standard provision not cause these schools to lose access to HEAL funding during the initial years of its implementation.

In developing this proposed rule, the Department was concerned that lenders and holders, in an effort to maintain low default rates, might choose not to make or purchase loans for students at HBCUs, which historically have higher than average default rates. To assure that the lender/holder performance standard provisions do not unwittingly undermine the Congress' expressed desire that access to HEAL loans be maintained for HBCUs, the proposed rule exempts any loans made to students at HBCUs prior to the end of the first 3 years that the standard is in effect from being included when lender/holder default rates are calculated.

Paragraph (b) of this section would establish the effective dates of the default rate calculations, for purposes of determining risk-based insurance premiums and program eligibility. The

Department is proposing in this paragraph that default rates be calculated as of September 30 of each year, and that these rates be used to determine risk-based insurance premiums and program eligibility, for purposes of loans made or purchased on or after July 1 of the following year. These timeframes are designed to provide adequate time for schools, lenders, and holders to pay off defaulted loans, if desired, in order to reduce their risk category or maintain eligibility, and to plan for the costs associated with continued HEAL activity if their default rates are greater than 5 percent. The Department developed this provision in response to concerns that the initial implementation of the school risk-based premiums on January 1, 1993, did not provide adequate time for schools with default rates greater than 5 percent to evaluate their options regarding the pay off of defaulted loans and to prepare for the costs of continued participation in the HEAL program.

Paragraph (c) of this section would set forth the procedures for schools, lenders, and holders to follow if they want to pay off defaulted HEAL loans to reduce their risk category or maintain eligibility. This proposal would require that if a school, lender, or holder chooses to pay off one or more HEAL loans, it must, for each borrower it chooses, pay off the outstanding principal and interest of all HEAL loans held by the Department for that borrower. This proposal is designed to prevent the confusion that is likely to arise during the collection process if a borrower's HEAL portfolio were divided, with a portion sold to the purchasing entity and a portion remaining with the Department. The proposal also would clarify that any defaulted HEAL loans paid off by a school, lender, or holder are assigned to that entity and may be collected by that entity using any collection methods available to it. Finally, this provision would require that a payoff be completed by May 31 in order to reduce the school, lender, or holder's default rate that would be used to determine the risk category (or program eligibility) for loans made or purchased on or after July 1 of the same year.

Subpart B—The Borrower

Section 60.8 What Are the Borrower's Major Rights and Responsibilities?

Paragraph (b)(1) of this section would be amended to clarify that the borrower must pay the borrower's insurance premium, as more fully described in § 60.14(b)(1).

Subpart C—The Loan

Section 60.10 How Much Can be Borrowed?

Paragraph (b)(1) of this section would be amended to clarify that the non-student borrower may not receive a loan that is greater than the sum of the borrower's insurance premium plus the interest that must be paid on the borrower's HEAL loans during the period for which the new loan is intended.

Section 60.13 Interest

The Department is proposing to delete paragraph (a)(4) of this section, which states that the Secretary announces the HEAL interest rate on a quarterly basis through a notice published in the **Federal Register**. Since the Department notifies all lenders of the HEAL interest rate at the beginning of each quarter, and since students and schools can contact either the Department or a HEAL lender for information on the HEAL interest rate, the **Federal Register** notice is no longer necessary.

Section 60.14 The Insurance Premium

The Department is proposing to change the heading of this section to "Risk-based insurance premiums." The section would be amended to reflect the new statutory provisions for determining borrower and school insurance premiums and to include the proposed lender and holder premiums.

Paragraph (a)(1) of this section would be redesignated as paragraph (a), and would be amended to state that a risk-based insurance premium is charged to the borrower, school, lender, and holder, in accordance with the procedures set forth in paragraph (b) of this section.

The reference in paragraph (a)(1) to the date that the premium is due to the Secretary would be moved to newly designated paragraph (c), described below, which would address procedures for collecting insurance premiums. In addition, existing paragraphs (a)(2) through (5), which also deal with the collection of the insurance premiums, would be moved to newly designated paragraph (c) and amended as described below.

Paragraph (b), which addresses the insurance premium rate, would be amended to reflect the various insurance premium rates for borrowers, schools, lenders, and holders. Paragraphs (b)(1) and (2) would set forth the statutory insurance premium rates that apply to borrowers and schools, including the borrower's option to reduce the insurance premium by 50 percent by obtaining a credit worthy cosigner, and the 3-year special consideration provided for Historically Black Colleges and Universities.

Paragraphs (b)(1) and (2) also would include clarification of the statutory provision which provides special consideration in determining the borrower and school insurance premium rate for schools with a low volume of HEAL loan activity. Under this proposal, any school which, for purposes of the default rate calculation, has made a total of 50 or less loans would be placed in the low-risk category, regardless of its default rate. In establishing the low volume threshold, the Department first considered the Conference report language accompanying Public Law 102–408, which states the following:

"The Secretary may grant an institution a wavier of the requirements of the risk categories only if the Secretary determines that the default rate is not an accurate indicator because the volume of loans has been insufficient. For example, some schools of public health may have default rates that exceed 30%. However, since these default rates are based on a small number of loans (in some cases, only two to five loans) they may be a misleading measure of the institution's ability to control defaults." (Conference Report 102–925, p.111)

It seems apparent from this language that the Congress, while not defining "low volume," intended for this exclusion to be limited to schools with a small amount of HEAL activity. The Department next considered the Department of Education's (ED) low-volume threshold for default penalties. ED uses a threshold of 30 loans for determining whether schools are subject to modified procedures for determining default rates. However, the ED procedures involve a comparison of data over a 3-year period for low volume entities, whereas the HEAL statute requires that any entity not meeting the low volume exclusion be subject to the same default formula applied to high volume entities. As a result, the Department determined that it would be most equitable to allow a higher threshold for the HEAL "low volume" definition. At the same time, given the Conference report language, the Department could not justify a level that would be so high as to reduce the effectiveness of the performance standard requirements. Further analysis of HEAL school data supported a threshold of 50 loans, since this level resulted in 34.6% of HEAL schools, representing only 1.3% of HEAL loans in repayment, being excluded from the performance standard penalties during Fiscal Year 1993. Based on the above, the Department considers a threshold of

50 loans to be more than adequate to prevent unfair penalties being imposed on schools with a small volume of HEAL activity, while at the same time assuring that this exemption is not so lenient as to make the performance standard requirements meaningless.

Paragraphs (b)(3) and (4) would describe the proposed insurance premium rates for lenders and holders. The proposed rates for lenders included in paragraph (b)(3) would be as follows:

Low-risk: A lender with a default rate of not to exceed 5 percent would not be required to pay an insurance premium. In addition, a lender whose volume of HEAL loans made (for purposes of the default rate calculation) is 50 or less, would not be required to pay an insurance premium.

Medium-risk: A lender with a default rate in excess of 5 percent but not to exceed 10 percent would be assessed an insurance premium equal to 5 percent of the principal amount of any new loans made.

High-risk: A lender with a default rate in excess of 10 percent but not to exceed 20 percent would be assessed an insurance premium equal to 10 percent of the principal amount of any new loans made.

Ineligible: A lender with a fault rate in excess of 20 percent would not be eligible to make new HEAL loans.

The proposed rates for holders included in paragraph (b)(4) would be as follows:

Low-risk: A holder with a default rate of not to exceed 5 percent would not be required to pay an insurance premium. In addition, a holder whose volume of HEAL loans held (for purposes of the default rate calculation) is 50 or less, would not be required to pay an insurance premium.

Medium-risk: A holder with a default rate in excess of 5 percent but not to exceed 10 percent would be assessed an insurance premium equal to 5 percent of the original principal amount of any loans newly purchased.

High-risk: A holder with a default rate in excess of 10 percent but not to exceed 20 percent would be assessed an insurance premium equal to 10 percent of the original principal amount of any loans newly purchased.

Ineligible: A holder with a default rate in excess of 20 percent would not be eligible to purchase new HEAL loans.

The proposed lender and holder insurance premiums are the same as the school insurance premiums which were enacted as part of Public Law 102–408 and became effective January 1, 1993. The proposal to make lenders and holders with default rates greater than 20 percent ineligible for the HEAL program is also consistent with Public Law 102–408, which generally prohibits students at schools with default rates in excess of 20 percent from borrowing from the HEAL program at all. Since schools, lenders, and holders all play an important role in assuring the collectibility of HEAL loans, and all benefit from participation in the HEAL program, the Department considers it most equitable for all parties to be subject to the same basic insurance premium rate structure. This is also consistent with the Conference report language accompanying Public Law 102–408, which indicated that schools, lenders, and holders should assume and share the responsibility for minimizing HEAL defaults.

Although the Department's proposed approach is modeled after the school risk-based insurance premiums established in the HEAL statute, the Department is interested in comments on an alternate approach which would create a more gradual continuum of risk-based premiums for lenders and holders. This alternate approach would be structured such that lenders and holders with default rates: (1) Greater than 5 percent but less than 6 percent pay a 1 percent premium; (2) Greater than 6 percent but less than 7 percent pay a 3 percent premium; (3) Greater than 7 percent but less than 8 percent pay a 5 percent premium; (4) Greater than 8 percent but less than 9 percent pay a 7 percent premium; and (5) Greater than 9 percent but less than 10 percent pay a 9 percent premium. This approach would still result in an average risk premium of 5 percent for lenders and holders in the 5–10 percent range, but would phase the penalties in more gradually and provide less harsh penalties for lenders and holders at the lower end of the default rate spectrum. The Department is interested in comments regarding whether this alternate approach would be considered preferable to the "notched" approach that is being proposed.

A new paragraph (b)(5) would prohibit schools, lenders, or holders from passing their insurance premium costs to borrowers.

Existing paragraphs (c) (1) and (2), which address the method of calculating the insurance premium for loans made before July 22, 1986, when premium amounts were determined based on the amount of time remaining until graduation, would be deleted and replaced by a new paragraph (c), which would set forth procedures for the collection of insurance premiums. New paragraph (c)(1), dealing with the borrower premium, would address provisions previously included in paragraphs (a) (1) and (2). This paragraph would state that the premium charged to the borrower must be collected by the lender through a deduction from the HEAL loan proceeds and is due to the Secretary, along with documentation identifying the loan for which the premium is being paid, no later than 30 days after the date of disbursement of the HEAL loan. It also would require the lender to identify clearly to the borrower the amount of the borrower's insurance premium.

New paragraph (c)(2), addressing the school premium, would state that for schools required to pay an insurance premium, in accordance with paragraph (b)(2) of this section, the premium would be collected by the Secretary on a quarterly basis, and would be due to the Secretary no later than 30 days after the date of the quarterly billing notice.

New paragraph (c)(3), addressing the lender premium, would state that for lenders required to pay an insurance premium, in accordance with paragraph (b)(3) of this section, the premium, including documentation identifying the loan for which the premium is being paid, would be due to the Secretary 30 days after the date of disbursement of the HEAL loan.

New paragraph (c)(4), addressing the holder premium, would state that for holders required to pay an insurance premium, in accordance with paragraph (b)(4) of this section, the premium, including documentation identifying the loan for which the premium is being paid, would be due to the Secretary 30 days after the date that the loan transfer takes place.

Existing paragraph (a)(3), which establishes penalties for late payment of the insurance premium, would be redesignated as paragraph (c)(5)(i). As amended, this paragraph would require that if the insurance premium due from a school, lender, or holder is not paid by the due date, a late fee will be charged in accordance with the Department's Claims Collection Regulation (45 CFR part 30). This paragraph also would prohibit the late fee from being passed on to the borrower.

Existing paragraph (a)(4) would be redesignated as paragraph (c)(5)(ii). As amended, this paragraph would state that if the borrower or lender insurance premium is not paid within 60 days of disbursement of the loan, the Secretary may deny insurance coverage on the loan. This paragraph also would state that if the school premium is not paid within 60 days of the date of the quarterly billing notice, the Secretary may immediately suspend the school and may initiate termination

proceedings against the school. Finally, if the holder premium is not paid within 60 days of the loan transfer, the Secretary may cancel the insurance coverage on the loan.

Existing paragraph (a)(5), which addresses refunds of premiums, would be redesignated as paragraph (c)(6) and would be amended to clarify that premiums are not refundable except in cases of error, or unless the loan, including any accrued interest, is canceled within 120 days of the date of disbursement. Previously, the regulations did not provide for the refund of the insurance premium once a loan was disbursed, even if it was canceled soon thereafter. Accordingly, this amendment is intended to assure that if cancellation of the loan, including any accrued interest, occurs within a reasonable period of time, a full refund of the premium(s) may be made. This is consistent with Department of Education policies governing the Federal Family Education Loan (FFEL) programs.

Existing paragraph (c)(3), which addresses the charging of premiums for loans disbursed in multiple installments, would be redesignated as new paragraph (d).

Section 60.15 Other Charges to the Borrower

Paragraph (c) of this section would be amended to clarify that, in making a HEAL loan, the lender may pass on to the borrower only the cost of the borrower's insurance premium.

Section 60.17 Security and Endorsement

Paragraph (b) of this section would be amended by deleting the first sentence, which requires a HEAL loan to be made without endorsement unless the borrower is a minor. In addition, a new paragraph (c) would be added to this section to state that a credit worthy parent or other responsible individual, other than a spouse, may cosign the loan note. This is consistent with section 708(c) of the Act, which allows a HEAL borrower to obtain a cosigner to reduce the cost of the borrower insurance premium by 50 percent.

Subpart D—The Lender and Holder

Section 60.31 The Application To Be a HEAL Lender or Holder

A new paragraph (e) would be added to this section to state that any lender or holder which is in the medium- or high-risk categories, as described in § 60.14, must submit a default management plan with its HEAL application. The default management plan must specify the detailed short-term and long-term procedures that the lender or holder will have in place to minimize defaults on loans to HEAL borrowers. Under the plan the lender or holder must, among other measures, assure that borrowers receive information concerning repayment options, deferments, forbearance, and the consequences of default. This requirement is consistent with a statutory provision which requires default management plans from schools in the medium- or high-risk categories.

A new paragraph (f) would be added to this section to state that a lender or holder with a HEAL default rate, as calculated in accordance with § 60.2, that exceeds 20 percent (except for lenders or holders with a total loan volume, for purposes of the default rate calculation, of 50 loans or less) would be ineligible to make or purchase HEAL loans.

Section 60.33 Making a HEAL Loan

Existing paragraphs (g) and (h) would be redesignated as paragraphs (h) and (i), respectively, and a new paragraph (g) would be added to this section to set forth requirements for cosigners. This paragraph would provide clarification of procedures for implementing the statutory provision which allows a borrower to reduce the insurance premium by 50 percent by obtaining a credit worthy cosigner. Under this provision, a lender would be required to follow procedures similar to those used in making commercial or private loans without a Federal guarantee to determine whether a cosigner is credit worthy.

Section 60.35 HEAL Loan Collection

This section would be amended to clarify that, in collecting a HEAL loan with a cosigner, the lender or holder must apply to the cosigner, collection procedures that are at least as stringent as those it would follow in attempting to collect a commercial or private loan with a cosigner. In addition, this section would be amended to more clearly delineate that the lender or holder must apply to the cosigner due diligence procedures similar to those that are applied to the borrower.

Subpart E—The School

Section 60.50 Which Schools Are Eligible To Be HEAL Schools?

A new paragraph (a)(3) would be added to this section to require that any school in the medium- or high-risk categories, as set forth in § 60.14, must submit a default management plan annually in accordance with timeframes established by the Secretary. The default management plan must specify the detailed short-term and long-term procedures that the school will have in place to minimize defaults on loans to HEAL borrowers. Under the plan the school must, among other measures, assure that borrowers receive information concerning repayment options, deferments, forbearance, and the consequences of default. This provision is consistent with section 708(b) of the Act.

A new paragraph (a)(4) would be added to this section to state that a school must have a HEAL default rate that does not exceed 20 percent in order to be eligible to make HEAL loans, except as follows: (1) A default rate in excess of 20 percent does not affect the eligibility of a Historically Black College or University until after October 13, 1995; and (2) a default rate in excess of 20 percent does not affect the eligibility of any school that has 50 or less loans in repayment, for purposes of the HEAL default rate calculation described in § 60.2. This provision is consistent with section 708(d) of the Act and with the low volume threshold proposed in § 60.14(b).

Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis. The Regulatory Flexibility Act requires that we analyze regulatory proposals to determine whether they create a significant impact on a substantial number of small entities.

The Department believes that the resources required to implement the proposed requirements in these regulations are minimal. The proposed rule would establish performance standards against which lender and holder default rates would be measured, and would establish fees which would be paid by lenders and holders with default rates over 5 percent as a condition for continued program participation. Since most active HEAL lenders and holders do not have default rates over 5 percent, these provisions should not require significant additional resources for the majority of lenders and holders. Therefore, in accordance with the Regulatory Flexibility Act of 1980, the Secretary certifies that these

regulations will not have a significant impact on a substantial number of small entities.

OMB has reviewed this proposed rule under Executive Order 12866. The Department requests comments on whether there are any aspects of this proposed rule which can be improved to make the HEAL program more effective, more equitable, or less costly.

Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collections are shown below with an estimate of the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Health Education Assistance Loan (HEAL) Program: Lender and Holder Performance Standards.

Description of Respondents: Non-profit institutions and Businesses or other for-profit.

Description: Lenders and holders must provide the Secretary with documentation identifying the loan for which a premium is being paid. Lenders and schools with default rates greater than 5 percent must submit annual default management plans to the Secretary.

Estimated Annual Reporting and Recordkeeping Burden:

Section	No. of respond.	Responses per respond.	Total annual response	Hours per response	Total burden hours
60.14(c)(1)	20	1,500	30,000	1min.	500 hrs.
60.14(c)(3)[1]	0	0	0	0 min.	0 hrs.
60.14(c)(4)[1]	0	0	0	0 min.	0 hrs.
60.31(e)[1]	0	0	0	0 min.	0 hrs.
60.35(a)(1)[2]	20	500	10,000	.083 hrs.	(833 hrs.)
60.50(a)(3)	87	1	87	10 hrs.	*870 hrs.*
Total Burden Hours					1370 hrs.

[1] No burden is estimated for these sections, since it is anticipated that any lender or holder required to pay an insurance premium will cease participation in the program.

[2] This recordkeeping burden has been approved under OMB No. 0915–0108. There is no change in the burden because this OMB approval includes burden for all borrowers who are in default regardless of whether the loan is held by a lender or holder.

We have submitted a copy of this proposed rule to OMB for its review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503.

List of Subjects in 42 CFR Part 60

Educational study programs, Health professions, Loan programs-education, Loan programs-health, Medical and dental schools, Reporting requirements, Student aid.

Accordingly, the Department of Health and Human Services proposes to amend 42 CFR part 60 as follows:

Dated: February 9, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Approved: August 5, 1994.

Donna E. Shalala,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.108, Health Education Assistance Loan Program)

PART 60—HEALTH EDUCATION ASSISTANCE LOAN PROGRAM

1. The authority citation for 42 CFR part 60 continues to read as follows:

Authority: Section 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 727–739A, Public Health Service Act, 90 Stat. 2243, as amended, 93 Stat. 582, 99 Stat. 529–532, 102 Stat. 3122–3125 (42 U.S.C. 294–2941–1); renumbered as secs. 701–720, as amended by 106 Stat. 1994–2011 (42 U.S.C. 292–292p).

2. A new section 60.2, in subpart A, is added to read as follows:

Subpart A—General Program Description

* * * * *

§ 60.2 HEAL default rate.

(a) *Default rate formula.* The HEAL default rate for each school, lender, and holder is calculated in accordance with the formula set forth in section 719(5) of the Public Health Service Act (42 U.S.C. 292o), except that for lenders and holders, loans made to students at Historically Black Colleges and Universities prior to [insert date 3 years after date of publication of final rule] are excluded from the default rate calculation.

(b) *Effective date of default rate calculations.* HEAL default rates are calculated as of September 30 of each year. These rates are used to determine risk-based insurance premiums and program eligibility, for purposes of loans made or purchased on or after July 1 of the following year.

(c) *Payoff of defaulted loans to reduce default rate.* A school, lender, or holder may pay off the defaulted loans of one or more HEAL borrowers to reduce its default rate. If a school, lender, or holder chooses to exercise this option, it must, for each defaulted HEAL borrower chosen, pay the outstanding principal and interest for all of the borrower's HEAL loans held by the Secretary. Any defaulted HEAL loans paid by a school, lender, or holder are assigned to that entity, and may be collected using only collection methods available to that entity. In order to reduce the school, lender, or holder default rate used to determine the level of the risk-based insurance premium (or program eligibility) for loans made or purchased on or after July 1 of any year, a payoff must be completed by May 31 of that same year.

3. Section 60.8, in subpart B, is amended by revising paragraph (b)(1) to read as follows:

Subpart B—The Borrower

* * * * *

§ 60.8 What are the borrower's major rights and responsibilities?

* * * * *

(b) * * *

(1) The borrower must pay the borrower's insurance premium as more fully described in § 60.14(b)(1).

* * * * *

4. Section 60.10, in subpart C, is amended by revising paragraph (b)(1) to read as follows:

Subpart C—The Loan

§ 60.10 How much can be borrowed?

* * * * *

(b) * * *

(1) In no case may an eligible non-student borrower receive a loan that is greater than the sum of the borrower's insurance premium plus the interest that must be paid on the borrower's HEAL loans during the period for which the new loan is intended.

* * * * *

§ 60.13 [Amended]

5. Section 60.13 is amended by removing paragraph (a)(4).

6. Section 60.14 is revised to read as follows:

§ 60.14 Risk-based insurance premiums.

(a) *General.* The Secretary insures each lender or holder for the losses of principal and interest it may incur in the event that a borrower dies; becomes totally and permanently disabled; files for bankruptcy under chapter 11 or 13 of the Bankruptcy Act; files for bankruptcy under chapter 7 of the Bankruptcy Act and files a complaint to determine the dischargeability of the HEAL loan; or defaults on his or her loan. For this insurance, the Secretary charges an insurance premium to the borrower, and to the school, lender, and subsequent holder, if any, in accordance with the procedures outlined in this section.

(b) *Rate of insurance premium.* The rate of the HEAL insurance premium charged to a HEAL borrower, school, lender, and holder shall be determined in accordance with the procedures outlined in this paragraph.

(1) *Borrower insurance premium.* (i) *Low-risk rate.* A borrower attending a school with a default rate of not to exceed 5 percent, or attending a school for which the volume of HEAL loans made for purposes of the default rate calculation is 50 or less, shall be assessed a risk-based premium in an amount equal to 6 percent of the principal amount of the loan.

(ii) *Medium-risk and high-risk rate.* A borrower attending a school with a default rate in excess of 5 percent but not exceeding 20 percent (excluding schools for which the volume of HEAL loans made for purposes of the default rate calculation is 50 or less) shall be assessed a risk-based premium in an amount equal to 8 percent of the principal amount of the loan.

(iii) *Reduction of borrower premium.* A borrower shall have his or her insurance premium reduced by 50 percent if a credit worthy parent or other responsible party co-signs the loan note.

(2) *School insurance premium.* (i) *Low-risk rate.* A school with a default rate of not to exceed 5 percent, or for which the volume of HEAL loans made for purposes of the default rate calculation is 50 or less, shall not be assessed an insurance premium.

(ii) *Medium-risk rate.* A school with a default rate in excess of 5 percent but not exceeding 10 percent (excluding schools for which the volume of HEAL loans made for purposes of the default rate calculation is 50 or less) shall be assessed a risk-based premium in an amount equal to 5 percent of the principal amount of each HEAL loan approved by the school and disbursed to the borrower.

(iii) *High-risk rate.* A school with a default rate in excess of 10 percent but not exceeding 20 percent (excluding schools for which the volume of HEAL loans made for purposes of the default rate calculation is 50 or less) shall be assessed a risk-based premium in an amount equal to 10 percent of the principal amount of each HEAL loan approved by the school and disbursed to the borrower.

(iv) *Special consideration for Historically Black Colleges and Universities.* An Historically Black College or University with a default rate in excess of 20 percent may continue to make HEAL loans to its borrowers until October 13, 1995. A borrower at such a school will be subject to the high-risk insurance premium rate set forth in paragraph (b)(1)(ii) of this section, and the school will be subject to the high-risk insurance premium rate set forth in paragraph (b)(2)(iii) of this section.

(3) *Lender insurance premium.* (i) *Low-risk rate.* A lender with a default rate of not to exceed 5 percent, or for which the volume of HEAL loans made for purposes of the default rate calculation is 50 or less, shall not be assessed an insurance premium.

(ii) *Medium-risk rate.* A lender with a default rate in excess of 5 percent but not exceeding 10 percent (including lenders for which the volume of HEAL loans made for purposes of the default rate calculation is 50 or less) shall be assessed a risk-based premium in an amount equal to 5 percent of the principal amount of each HEAL loan made.

(iii) *High-risk rate.* A lender with a default rate in excess of 10 percent but not exceeding 20 percent (excluding lenders for which the volume of HEAL loans made for purposes of the default rate calculation is 50 or less) shall be assessed a risk-based premium in an amount equal to 10 percent of the principal amount of each HEAL loan made.

(4) *Holder insurance premium.* (i) *Low-risk rate.* A holder with a default rate of not to exceed 5 percent, or for which the volume of HEAL loans held for purposes of the default rate calculation is 50 or less, shall not be assessed an insurance premium.

(ii) *Medium-risk rate.* A holder with a default rate in excess of 5 percent but not exceeding 10 percent (excluding holders for which the volume of HEAL loans held for purposes of the default rate calculation is 50 or less) shall be assessed a risk-based premium in an amount equal to 5 percent of the principal amount of each HEAL loan purchased.

(iii) *High-risk rate.* A holder with a default rate in excess of 10 percent but not exceeding 20 percent (excluding holders for which the volume of HEAL loans held for purposes of the default rate calculation is 50 or less) shall be assessed a risk-based premium in an amount equal to 10 percent of the principal amount of each HEAL loan purchased.

(5) *Rules regarding insurance premium costs.* Schools, lenders, and holders are prohibited from requiring the borrower to pay the school, lender, or holder portion of the insurance premium.

(c) *Collection of insurance premiums.* HEAL insurance premiums due from borrowers, schools, lenders, and holders shall be collected in accordance with the procedures outlined in this paragraph.

(1) *Borrower insurance premium.* The premium charged to the borrower must be collected by the lender through a deduction from the HEAL loan proceeds. The borrower premium, including documentation identifying the loan for which the premium is being paid, is due to the Secretary no later than 30 days after the date of each HEAL loan disbursement. The lender must clearly identify to the borrower the amount of the insurance premium.

(2) *School insurance premium.* For schools required to pay an insurance premium, in accordance with paragraph (b)(2) of this section, the premium shall be collected by the Secretary on a quarterly basis, and is due to the Secretary no later than 30 days after the date of the quarterly billing notice.

(3) *Lender insurance premium.* For lenders required to pay an insurance premium, in accordance with paragraph (b)(3) of this section, the premium, including documentation identifying the loan for which the premium is being

paid, is due to the Secretary no later than 30 days after the date of each HEAL loan disbursement.

(4) *Holder insurance premium.* For holders required to pay an insurance premium, in accordance with paragraph (b)(4) of this section, the premium, including documentation identifying the loan for which the premium is being paid, is due to the Secretary no later than 30 days after the date of each HEAL loan purchase.

(5) *Penalties for late payment.* (i) If the insurance premium is not paid by the due date a late fee will be charged to the school, lender, or holder, as appropriate, in accordance with the Department's Claims Collection Regulation (45 CFR part 30). These late fees may not be passed on to the borrower.

(ii) If the borrower or lender insurance premium is not paid within 60 days of disbursement of the loan, the insurance shall cease to be effective on the loan. If the school premium is not paid within 60 days of the date of the quarterly billing notice, the Secretary will immediately suspend the school and initiate termination proceedings against the school. If the holder premium is not paid within 60 days of the loan transfer, the Secretary will cancel the insurance coverage on the loan.

(6) *Refund of premiums.* Premiums are not refundable except in cases of error, or unless the loan, including any accrued interest, is canceled within 120 days of the date of disbursement.

(d) *Multiple installments.* In cases where the lender disburses the loan in multiple installments, the insurance premium is calculated for each disbursement.

7. Section 60.15 is amended by revising paragraph (c) to read as follows:

§ 60.15 Other charges to the borrower.

* * * * *

(c) *Other loan making costs.* A lender may not pass on to the borrower any cost of making a HEAL loan other than the costs of the borrower's insurance premium.

8. Section 60.17 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 60.17 Security and endorsement.

* * * * *

(b) If a borrower is a minor and cannot under State law create a legally binding obligation by his or her own signature, a lender may require an endorsement by another person on the borrower's HEAL note. For purposes of this paragraph, an "endorsement" means a signature of anyone other than the borrower who is to assume either primary or secondary liability on the note.

(c) A credit worthy parent or other responsible individual (other than a spouse) may cosign the loan note.

9. Section 60.31, in subpart D, is amended by adding new paragraphs (e) and (f) to read as follows:

Subpart D—The Lender and Holder

§ 60.31 The application to be a HEAL lender or holder.

* * * * *

(e) Any lender or holder in the medium-risk or high-risk categories, as described in § 60.14, must submit a default management plan with its application to be a HEAL lender or holder. The default management plan must specify the detailed short-term and long-term procedures that the lender or holder will have in place to minimize defaults on loans to HEAL borrowers. Under the plan the lender or holder must, among other measures, assure that borrowers receive information concerning repayment options, deferments, forbearance, and the consequences of default.

(f) A lender with a default rate that exceeds 20 percent (except for a lender with a total loan volume, for purposes of the default rate calculation, of 50 loans or less) is ineligible to make HEAL loans. A holder with a default rate that exceeds 20 percent (except for a holder with a total loan volume, for purposes of the default rate calculation, of 50 loans or less) is ineligible to purchase HEAL loans.

10. Section 60.33 is amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively; and by adding a new paragraph (g) to read as follows:

§ 60.33 Making a HEAL loan.

* * * * *

(g) *HEAL loans with cosigners.* In determining whether a cosigner is creditworthy, a lender must follow procedures for determining creditworthiness that are at least as stringent as those it would follow in making commercial loans or private loans without a Federal guarantee. If a lender does not make commercial loans or private loan without a Federal guarantee, it must obtain and follow creditworthiness procedures that are used by a commercial lender who does make such loans.

* * * * *

11. Section 60.35 is amended by revising the introductory paragraph, paragraphs (a)(1) and (2), and paragraphs (e) and (f) to read as follows:

§ 60.35 HEAL loan collection.

A lender or holder must exercise due diligence in the collection of a HEAL loan with respect to both a borrower and any endorser or cosigner. In collecting a loan with an endorser or cosigner, the lender or holder must apply to the endorser or cosigner collection procedures that are at least as stringent as those it would follow in attempting to collect a commercial or private loan with an endorser or cosigner. At a minimum, in order to exercise due diligence, a lender or holder must implement the following procedures when a borrower fails to honor his or her payment obligations:

(a)(1) When a borrower is delinquent is making payment, the lender or holder must remind the borrower within 15 days of the date the payment was due by means of a written contact. If payments do not resume, the lender or holder must contact both the borrower and any endorser or cosigner at least 3 more times at regular intervals during the 120-day delinquent period following the first missed payment of that 120-day period. The second demand notice for a delinquent account must inform the borrower that the continued delinquent status of the account will be reported to consumer credit reporting agencies if payment is not made. Each of the required four contacts must consist of at least a written contact which has an address correction request on the envelope. The last contact must consist of a telephone contact, in addition to the required letter, unless the borrower and any endorser or cosigner cannot be contacted by telephone. The lender or holder may choose to substitute a personal contact for a telephone contact. A record must be made of each attempt to contact and each actual contact, and that record must be placed in the borrower's file. Each contact must become progressively firmer in tone. If the lender or holder is unable to locate the borrower and any endorser or cosigner at any time during the period when the borrower is delinquent, the lender or holder must initiate the skip-tracing procedures described in paragraph (a)(2) of this section.

(2) If the lender or holder is unable to locate either the borrower or any endorser or cosigner at any time, the lender or holder must initiate and use skip-tracing activities which are at least as extensive and effective as those it uses to locate borrowers delinquent in the repayment of its other loans of comparable dollar value. To determine the correct address of the borrower and any endorser or cosigner, these skip-tracing procedures should include, but

need not be limited to, contacting any other individual named on the borrower's HEAL application or promissory note (or the endorser or cosigner's application), using such sources as telephone directories, city directories, postmasters, drivers license records in State and local government agencies, records of members of professional associations, consumer credit reporting agencies, skip locator services, and records at any school attended by the borrower. All skip-tracing activities used must be documented. This documentation must consist of a written record of the action taken and its date and must be presented to the Secretary when requesting preclaim assistance or when filing a default claim for HEAL insurance.

* * * * *

(e) If a lender or holder does not sue the borrower or any endorser or cosigner, it must send a final demand letter to the borrower and the endorser or cosigner at least 30 days before a default claim is filed.

(f) If a lender or holder sues a defaulted borrower or endorser or cosigner, it may first apply the proceeds of any judgment against its reasonable attorney's fees and court costs, whether or not the judgment provides for these fees and costs.

* * * * *

12. Section 60.50, in subpart E, is amended by adding new paragraphs (a) (3) and (4) to read as follows:

Subpart E—The School

§ 60.50 Which schools are eligible to be HEAL schools?

(a) * * *

(3) If the school is in the medium-risk or high-risk categories, as set forth in § 60.14, it must submit a default management plan to the Secretary on an annual basis in accordance with timeframes established by the Secretary.

(4) The school must have a HEAL default rate that does not exceed 20 percent, except as follows:

(i) A default rate in excess of 20 percent shall not affect the eligibility of a Historically Black College or University until after October 13, 1995; and

(ii) A default rate in excess of 20 percent shall not affect the eligibility of a school that has 50 or less loans in repayment, for purposes of the HEAL default rate calculation described in § 60.2.

* * * * *

[FR Doc. 94-28321 Filed 11-15-94; 8:45 am]

BILLING CODE 4160-15-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94-26]

Radio Broadcasting Services; Pago Pago, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Commission, on its own motion, withdraws the proposed rule for the unoccupied and unapplied-for Channel 266C1 from Pago Pago, American Samoa. See 59 FR 13920, March 24, 1994. With this action, this proceeding is terminated.

DATES: The proposed rule is withdrawn December 27, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94-26, adopted Nov. 2, 1994, and released Nov. 10, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94-28267 Filed 11-15-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearings and Reopening of Comment Period on Proposed Endangered Status for the Cumberland Elktoe, Oyster Mussel, Cumberlandian Combshell, Purple Bean, and Rough Rabbitsfoot

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that two public hearings will be held on the proposed determination of endangered status for five freshwater mussels (Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*)) and that the comment period on the proposal is being reopened. These mussels are found at various locations in the Cumberland and Tennessee River basins in Kentucky, Tennessee and Virginia.

DATES: Public hearings on the proposal will be held on December 13, 1994, from 7 p.m. to 10 p.m. central standard time in Jamestown, Tennessee, and on December 15, 1994, from 7 p.m. to 10 p.m. central standard time in Lewisburg, Tennessee. The comment period is reopened on the proposal from November 23, 1994, through December 30, 1994.

ADDRESSES: The December 13, 1994, public hearing will be held in the Auditorium at the York Institute, Route 127 North, Jamestown, Tennessee. The December 15, 1994, public hearing will be held in the 3rd floor Circuit Courtroom, Marshall County Courthouse, Public Square, Lewisburg, Tennessee. Comments should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above field office address (704/665-1195, Ext. 228).

SUPPLEMENTARY INFORMATION:

Background

All five mussels have undergone significant reductions in range and now exist as relatively small, isolated populations. The Cumberland elktoe exists in very localized portions of the upper Cumberland River system in Kentucky and Tennessee. The oyster mussel and Cumberland combshell persist at extremely low numbers in portions of the Cumberland and Tennessee River basins in Kentucky, Tennessee, and Virginia. The purple bean and rough rabbitsfoot currently survive in a few river reaches in the Tennessee River system in Tennessee and Virginia. These species were historically eliminated from much of

their range by impoundments. Presently, they and their habitat are impacted by water quality and habitat deterioration resulting from siltation contributed by poor land use practices and coal mining practices and by other water pollutants. The mussels' limited distribution also makes them vulnerable to toxic chemical spills.

On July 14, 1994, the Service published in the **Federal Register** (59 FR 35900) a proposal to list these five mussels. Section 4(b)(5)(E) of the Act provides for a public hearing on a proposed listing if requested within 45 days of the proposal's publication. The Service received several public hearing requests during the allotted time period from within the following counties: Fentress, Cumberland, and Marshall Counties, Tennessee; and McCreary County, Kentucky.

In response to the public hearing requests, the Service is reopening the comment period and has scheduled two public hearings on the proposal to list these five mussels as endangered species. The comment period on the proposal originally closed on September 12, 1994. The comment period is being reopened from November 23, 1994, through December 30, 1994, to accommodate the hearings and to allow additional time for written comments. Written comments received during this time period will become a part of the administrative record and will be given the same consideration as oral comments presented at the hearings.

The first public hearing will be held December 13, 1994, in the Auditorium at the York Institute, Route 127 North, Jamestown, Tennessee, from 7 p.m. to 10 p.m. central standard time. The second hearing will be held December 15, 1994, in the 3rd floor Circuit Courtroom, Marshall County Courthouse, Public Square, Lewisburg, Tennessee, from 7 p.m. to 10 p.m. central standard time. Those parties wishing to make an oral statement for the record are encouraged to provide a copy of their statement to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. However, there is no restriction on the length of written statements.

Written comments mailed to the Service should be submitted to the office indicated in the **ADDRESSES** section. Legal notices announcing the dates, time and location of the hearings will be published in newspapers at least 15 days prior to the hearings.

Author: The primary author of this notice is Mr. Richard Biggins, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina, 28806 (telephone 704/665–1195, Ext. 228).

Dated: November 8, 1994.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 94–28238 Filed 11–15–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 59, No. 220
Wednesday, November 16, 1994

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

DASH Mining Project; Humboldt National Forest, Elko County, NV

AGENCY: Forest Service.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will be directing the preparation of an Environmental Impact Statement (EIS) for the proposed development of an open pit and underground gold mining project in Elko County, Nevada. This EIS will be prepared by contract and funded by the proponent, Independence Mining Company Inc. (IMC).

DATES: A public scoping meeting will be held December 12, 1994 at the Red Lion Inn and Casino, 2065 E. Idaho St., Elko, Nevada at 7:00 p.m. Two informal open houses will also be held. The first will be held at the Independence School, Tuscarora, Nevada on December 13, 1994 between 4 and 7 p.m. The second open house will be held at the Holiday Inn, 1000 6th Street, Reno, Nevada on December 14, 1994 between 3 and 7 p.m. Written comments concerning the scope of the analysis should be received by December 19, 1994 to ensure timely consideration.

ADDRESSES: Send written comments to: R.M. "Jim" Nelson, Acting Forest Supervisor, Humboldt National Forest, 2035 Last Chance Road, Elko, Nevada 89801.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed project and preparation of the EIS to Mary Beth Marks, Project Team Leader, Humboldt National Forest, 2035 Last Chance Road, Elko, Nevada 89801. Telephone: 702–738–5171.

SUPPLEMENTARY INFORMATION: IMC has submitted to the Humboldt National Forest, a Proposed Plan of Operations (POO) for additional mining activities at its Jerritt Canyon Mine in Elko County, Nevada. The POO describes the proposed mining development activities and operational and reclamation procedures for the DASH Mining Project. The proposal includes developing two open pits and mining of reserves by underground methods. Waste rock dumps, soil stockpiles, pit backfills, ore stockpiles, haul roads and support facilities would also be developed. Ore would be processed at the existing Jerritt Canyon Millsite located on BLM administered lands adjacent to the project site. The proposal would affect approximately 700 acres of public and private lands. Preliminary internal scoping has identified several issues which would be addressed in the analysis process. The following list of issues is not intended to be all inclusive. They are: impacts to ground and surface water resources; impacts to grazing resources; impacts to Waters of the United States including wetlands; mine economics; threatened, endangered, and sensitive plant and wildlife species; and visual resources. These issues and any others identified during the scoping process may be used to develop alternatives to the proposed action. In addition, the No Action alternative will be considered in the analysis.

Public participation is important during the EIS scoping process. As part of the scoping process, the Forest Service will be seeking information and comments from Federal, State, County and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions. This input will be used in the preparation of the draft EIS and final EIS.

Several government agencies will be invited to participate in this project as cooperating or participating agencies. These agencies include, but are not limited to, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Nevada Division of Environmental Protection, Nevada Division of Wildlife, and Elko County Board of Commissioners. In addition to the Plan of Operations, various Federal, State, and local permits and licenses may be required to implement the proposed action. These may include, but are not limited to, a Section 404 permit, Water Pollution Control Permit, Reclamation Permit for Mining Operations, and a General Discharge Permit for Stormwater.

The Forest Service is the lead agency for this project and R.M. "Jim" Nelson, Acting Forest Supervisor of the Humboldt National Forest is the responsible official. He will make a decision to approve the proposed Plan of Operations or one of the alternatives analyzed. IMC's rights under the 1872 Mining Law as amended, applicable Forest Service regulations and the Humboldt National Forest Land and Resource Management Plan (1986) will be taken into account throughout the analysis.

The Draft EIS is expected to be filed with the U.S. Environmental Protection Agency (EPA) and be available for review in June of 1995. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.**

The comment period on the Draft EIS will be at least 45 days from the date the EPA's notice of availability appears in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on

the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated or discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 9, 1994.

R.M. "Jim" Nelson,

Acting Forest Supervisor, Humboldt National Forest.

[FR Doc. 94-28237 Filed 11-15-94; 8:45 am]

BILLING CODE 3410-11-M

Hells Canyon National Recreation Area Comprehensive Management Plan Amendment, Wallowa-Whitman National Forest, Baker and Wallowa Countries in Oregon and Adams, Idaho, and Nez Perce Counties in Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service will prepare an environmental impact statement (EIS) to amend the Land and Resource Management Plan to incorporate new and modified management direction in the Hells Canyon National Recreation Area (HCNRA) Comprehensive Management Plan (CMP). The EIS will tier to the Wallowa-Whitman Land and Resource Management Plan (Forest Plan) & Final EIS for the Wallowa-Whitman National Forest. The HCNRA CMP is incorporated into the Forest Plan.

The need for action is based on: Forest Service monitoring and evaluation reports indicating a need for change in programmatic direction to ensure resource protection pursuant to the HCNRA Act; alignment of programmatic direction with new private and public land use regulations (36 CFR part 292); revised Forest Service directives; changed social values; and agency emphasis on ecosystem sustainability.

The purpose of the action is to amend existing programmatic direction within the Forest Plan and CMP to align management goals, objectives, standards and guidelines, management area direction, and monitoring and evaluation with the intent of the Act establishing the Hells Canyon NRA (Pub. L. 94-199).

The Wallowa-Whitman National Forest invites written comments and suggestions on the scope of the analysis in addition to comments already received as a result of local and regional public participation activities (meetings, newsletters, surveys) in the past.

The agency also gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by December 16, 1994.

ADDRESSES: Submit written comments and suggestions concerning this proposal to Kurt Wiedenmann, Planning Team Leader, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Kurt Wiedenmann, Planning Team Leader, telephone (503)-523-1296.

SUPPLEMENTARY INFORMATION: The Wallowa-Whitman National Forest proposes to amend the Forest Land and Resource Management Plan (Forest Plan) to modify management direction for the Hells Canyon National Recreation Area (HCNRA) and affirm continuation of other existing management direction. The planning process will be guided by the National Environmental Protection Act (NEPA) with implementation scheduled for January 1, 1996.

This modified or affirmed management direction will provide programmatic management direction for the next 10 to 15 years. The changes will reflect the intent of the Hells Canyon National Recreation Area Act (HCNRA Act) (Pub. L. 94-199), public and private land use regulations (LUR) (36 CFR part 292), Forest Service directives, changing social values, agency emphasis on ecosystem sustainability, new information and research findings, and results from the monitoring and evaluation process.

The Eastside Ecosystem Management Project, (EEMP) headquartered in Walla Walla, Washington, is expected to produce management direction on a large landscape scale based upon ecosystem management concepts. The Wallowa-Whitman National Forest expects to coordinate with the EEMP project managers to ensure that those concepts are brought forward for analysis in this NEPA process.

The scope of the proposed action focuses on only those specific items identified for needing change through the monitoring and evaluation process. Reviewers are encouraged to review the CMP Monitoring and Evaluating Report (on file at the Forest Supervisors Headquarters) for a complete understanding of the existing CMP management direction that is affirmed or proposed for change or deletion.

The proposed action recognizes the resolution of issues through recent NEPA decisions for the Wild and Scenic Snake River Recreation Management Plan, Imnaha Wild and Scenic River Management Plan, Noxious Weed Management, Prescribed Natural Fire Program, and Outfitting and Guiding for Cougar and Bear that provide improved management direction for the HCNRA. The issues surrounding these previous decision will not be considered in this EIS unless specifically addressed in the proposed action or the scoping or analysis process identifies new issues not resolved in those previous NEPA analyses.

The proposed action would integrate management direction for the HCNRA within the framework of Forest Plan decisions and would establish:

Management Goals

Goals are a concise statement that describe a desired condition to be achieved sometime in the future (36 CFR 219.3). Goal statements form the principal basis from which objectives are developed. Goal statements are intended to implement and perpetuate the intent of the HCNRA Act and LUR.

Management Objectives

HCNRA management objectives would be established to describe the incremental progress that is expected to be made over a ten-year period toward the management goals/desired conditions listed above. These objectives would provide a basis to estimate quantities of services and accomplished acres that are expected during the Forest and Rangeland Renewable Resources Planning Act (RPA) ten-year planning periods (36 CFR 219.11 (b)) to achieve the desired conditions.

Standards and Guidelines

Standards and guidelines (S&Gs) are principles that specify desired conditions or levels of environmental quality that facilitate the achievement of management goals and objectives of the HCNRA Act and LUR.

Specific management goals, management objectives, and standards and guidelines are presented as follows

in relationship to the objectives set forth in Section 7 of the HCNRA Act:

HCNRA Act Section 7. * * * the Secretary shall administer the recreation area in accordance with the laws, rules and regulations applicable to the national forests for public outdoor recreation in a manner compatible with the objectives set forth in Section 7 of the HCNRA Act.

Recreation

Goals

Manage for a broad range of high-quality recreation settings and opportunities in a manner compatible with the primary objectives set forth in the HCNRA Act.

Manage outdoor recreation to ensure that recreational and ecological values and public enjoyment of the area are enhanced and compatible with the objectives of the HCNRA Act.

Provide for a broad range of education and resource interpretation opportunities for visitors to learn about HCNRA resources, protection, and management.

Objectives

Develop a recreation-related capital investment project schedule which includes campground rehabilitation, and compliance with health and safety requirements and the American with Disabilities Act.

Standards and Guidelines

Modify S&Gs to refine recreation opportunity spectrum (ROS) classifications that emphasize maintaining the level of available recreation opportunities and focus on more refined standards for:

—Motorized/non-motorized use,
—Limits of acceptable change for recreational capacities within the HCNRA,
—And administrative and recreation facilities development and maintenance, including site furniture, information boards, and interpretation.

Develop S&Gs that establish a minimum and maximum number of special use permits for outfitting and guiding (including, but not limited to: aviation, horsepacking, backpacking, auto tours, hunting, and fishing), within the HCNRA that are compatible with the limits of acceptable change listed under Recreation and the primary objectives of the HCNRA Act.

Develop S&Gs to evaluate new recreation activities to ensure compatibility with the primary objectives of the HCNRA Act.

Access and Facilities

Goals

Manage the transportation system (roads, trails, airstrips, and waterways) to meet the primary objectives for which the HCNRA was established and to provide a wide range of experiences.

Manage the transportation system to provide safe and efficient access for the movement of people and materials involved in the use and protection of the HCNRA. Right-of-way acquisition will continue to be actively pursued.

Provide and manage facilities that permit access to a variety of HCNRA settings, opportunities, and experiences, regardless of visitor's physical abilities.

Manage recreation facilities so they are in compliance with health and safety regulations and meet regional ROS standards.

Manage water developments and water rights in compliance with applicable laws to meet resource objectives of the HCNRA.

Objectives

Develop a right-of-way acquisition plan.

Develop a road-related capital investment schedule.

Develop a trail-related capital investment needs.

Develop a water use/water rights plan.

Develop a facilities capital investment schedule.

Standards and Guidelines

Develop S&Gs that emphasize maintaining the level of available access/transportation opportunities, including over-snow travel, and provide for the long-term management of the transportation system (roads, trails, airstrips, airspace, and waterways) to meet management goals and objectives.

Develop S&Gs that implement the LURs prohibiting motorized and mechanical equipment from using designated roads, trails and airstrips.

Modify S&Gs to establish construction and maintenance standards for the transportation system.

Develop S&Gs for selection, placement, and management of electronic transmission sites.

HCNRA Act Section 7(1) the maintenance and protection of the free-flowing nature of the rivers within the recreation area.

Wild and Scenic Rivers

Goals

Manage wild and scenic rivers within the HCNRA in a manner compatible with protecting and enhancing the values for which the river was designated.

Manage use of motorized and mechanical equipment to be compatible with the outstandingly remarkable values of each river designated recreation, scenic, and wild.

Manage use of motorized and non-motorized rivercraft on the Wild and Scenic Snake River in a manner compatible with the protection and enhancement of the river's outstanding remarkable values.

Perpetuate forested stands within wild and scenic rivers in "scenic" and "recreational" designations to protect and enhance the river's outstandingly remarkable values and compatibility with the primary objectives of the HCNRA Act. Forested areas within "wild" designations would only be treated to provide for recreational facilities, such as trails, to reduce the risk of hazard trees, or to provide for the desired ecosystem function as a result of natural events provided the activity is consistent with the Wild and Scenic Rivers Act.

Manage recreation and administrative facilities in a manner compatible with protecting and enhancing the values for which the river was designated.

Objectives

No proposed changes.

Standards and Guidelines

No proposed changes.

HCNRA Act Section 7(2) conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit.

Scenery

Goals

Manage the scenery resources for which the HCNRA was created to ensure their conservation and preservation.

Objectives

Develop a scenery management plan.

Standards and Guidelines

Develop S&Gs for sight sensory objectives and acceptable management techniques based on the new scenery management system (Agriculture Handbook 701).

Wilderness

Goals

Preserve the Hells Canyon Wilderness for the use and enjoyment of the American people in such a manner as will leave it unimpaired for future use and enjoyment as a wilderness, and so as to provide for its protection and preservation of its natural conditions and unique character.

Manage those historic sites that typify the economic and social history of the region and the American West for preservation and/or restoration.

Objectives

Development a wilderness management plan.

Standards and Guidelines

Reference proposed changes under Management Area Direction.

Heritage Resources

Goals

Manage heritage resources on the HCNRA for their protection from damage or destruction. Manager heritage resources for scientific research, public education, and enjoyment to the extent consistent with protection.

Consult with the Nez Perce Tribe of Idaho to ensure tribal concerns are addressed and treaty rights are protected.

Objectives

Establish management direction for the various categories of heritage resources, i.e. pre-historic and historic.

Standards and Guidelines

Develop S&Gs to establish heritage resource limits of acceptable change for facilities development and management.

Develop S&Gs to establish limits of acceptable change for recreational impacts, defining when impacting activity must be mitigated and/or be curtailed.

Scientific

Goals

Provide research opportunities designed to optimize the discovery of useful information for management and for the advancement of scientific knowledge.

Manage research natural areas (RNA) to preserve the significant natural ecosystems for comparison with those influenced by man; for provision of ecological and environmental studies; and preservation of gene pools for threatened and endangered plants and animals.

Objectives

Develop a schedule for research natural area establishment reports.

Standards and Guidelines

Refine existing S&Gs for scientific research to meet HCNRA-wide management goals and objectives.

HCRNA Act Section 7 (3) preservation, especially in the area generally known as Hells Canyon, of all features and peculiarities believed to be biologically unique including, but not limited to rare and endemic plant species, rare combinations of aquatic, terrestrial, and atmospheric habitats, and the rare combinations of outstanding and diverse ecosystems and parts of ecosystems associated therewith.

On a landscape scale ensure the sustainability of ecosystem function. Manage the HCNRA ecosystem to ensure that: (1) Living organisms interacting with each other and their physical environment are well represented: (2) population viability is maintained; (3) ecosystem processes are sustained; and (4) the system displays resilience to short and long term disturbance effects.

Vegetation

Goals

Manage forest and rangeland vegetation to maintain viable and healthy ecosystems that: Ensure the protection and enhancement of fish and wildlife habitats; conservation of scenic, wilderness, and scientific values; preservation of biologically unique habitats and rare combinations of outstanding ecosystems; protection and enhancement of a wild and scenic river's outstandingly remarkable values; and compatible public outdoor recreation.

Provide for restoration of ecosystem function in a manner compatible with the primary objectives of the HCNRA Act.

Manage insects and diseases to function in a natural healthy ecosystem. Maintain insect and disease levels within a range of historic variability, consistent with the Section 7 objectives of the HCNRA Act.

Objectives

Identify vegetation patterns, fish and wildlife habitat and function outside the natural range of variability.

Develop vegetation restoration/improvement needs.

Develop an allotment management planning schedule.

Adjust allotment boundaries in corporating vacant allotments.

Standards and Guidelines

Develop S&Gs that define vegetation desired conditions (rangeland and forested) and appropriate vegetation management techniques for the use of forested stand manipulation by commercial or non-commercial practices, grazing (domestic and big game), and fire (prescribed fire and prescribed natural fire) to maintain a viable and healthy ecosystem.

Develop S&Gs to protect the integrity of the natural processes and function inherent in old-growth associated stands and other unique habitat areas.

Develop S&Gs to ensure vegetation management proposals would be designed to maintain components of late-successional conditions (i.e., snags, downed large woody material, large trees, canopy gaps, multiple tree layers, and diverse species composition). Silvicultural tools available to achieve these desired conditions include: prescribed fire and selection timber harvest methods. Stand density management options would be limited to the application of uneven-aged management principles (single tree and group selection), sanitation, intermediate and salvage prescriptions.

Develop S&Gs for vegetation management proposals designed to improve the health and vigor of sapling to pole-sized stands, to eliminate the "regimented spacing" concerns and ensure compatibility with the primary objectives of the HGNRA Act.

Develop S&Gs for vegetation management proposals to ensure consistency with PACFISH interim strategies for managing anadromous fisheries (anticipated to be finalized during this planning process) and the Wallowa County Salmon Recovery Plan.

Develop S&Gs that establish an acceptable range of variability for insects and diseases to ensure sustainability of ecosystem process, function, and health.

Refine S&Gs to define compatibility for the biological and social thresholds of domestic livestock and wild ungulate grazing.

Develop S&Gs that allow for adjustment of domestic grazing allotment boundaries to incorporate and/or delete current vacant allotments.

Develop S&Gs for managing plant resources of cultural significance to the Nez Perce Tribe of Idaho within the overall objectives of ecosystem management.

Biologically Unique Habitat

Goals

Within the HCNRA lands ensure the preservation of rare and endemic plant species, rare combinations of aquatic, terrestrial, and atmospheric habitats, and the rare combinations of outstanding and diverse ecosystems and parts of ecosystems. Protect and manage habitat for the perpetuation and recovery of plants which are listed as threatened or endangered, and prevent sensitive species from reaching a point where they will become listed.

Objectives

Develop an action plan for threatened, endangered, and sensitive plant species.

Develop an action plan to identify biologically unique species and habitat.

Standards and Guidelines

Develop S&Gs to provide for the identification and protection of biologically unique species and habitat.

Develop and/or refine S&Gs for threatened and endangered species to meet recovery plan objectives and assist in recovering classified species to a point where they can be delisted.

Develop S&Gs for sensitive, rare and endemic species to meet conservation agreement goals and objectives of the HCNRA Act and/or prevent sensitive species from reaching a point where they will become listed.

Soil

Goals

Manage soil resources in a manner compatible with the conservation, preservation, and protection of those values for which the HCNRA was established.

Objectives

No proposed changes.

Standards and Guidelines

Modify S&Gs to establish allowable detrimental soil disturbance (now at 20%) and distribution for recreation and vegetation management activities to ensure accordance with HCNRA goals and objectives.

Develop S&Gs for the long-term management of down woody material to meet soil productivity objectives.

Air

Goals

Preserve the atmospheric habitats in a manner compatible with the preservation of rare combinations of outstanding and diverse ecosystems and parts of ecosystems associated within the HCNRA. Manage the Hells Canyon Wilderness Class I airshed to meet the requirements of the Clean Air Act.

Objectives

No proposed changes.

Standards and Guidelines

Establish as S&Gs, limits of acceptable change for the following Hells Canyon Wilderness air quality related values (AQRV): scenery, water quality, fauna, flora, and heritage resources.

Fire

Goals

Within the Hells Canyon Wilderness, as nearly as possible, ensure that fire plays its natural role. In other parts of the HCNRA, manage natural and prescribed fire to emulate historic function of fire, where compatible with the Section 7 objectives of the HCNRA Act. Provide basic protection to human life and property.

Objectives

Develop a fire-related improvement project schedule.

Standards and Guidelines

Modify S&Gs to implement the prescribed natural fire program across the entire HCNRA in a manner compatible with the objectives of the HCNRA Act.

HCNRA Act Section 7 (4) protection and maintenance of fish and wildlife habitat.

Fish Habitat

Goals

Protect and maintain watersheds to be dynamic, resilient, and consistent with local climate, geology, land-forming processes, and potential natural vegetation. To ensure quality fish habitat, maintain excellent water quality and physical attributes which are complex, well distributed, and similar to those in healthy, unimpacted watershed ecosystems. Manage subwatersheds as interconnecting units, providing a diverse network of riparian and aquatic habitats throughout the overall watershed.

Protect and manage fish habitat for the perpetuation and recovery of fish which are listed as threatened, endangered, or sensitive. Manage aquatic and riparian habitats so that fisheries may naturally produce at levels reflecting the potential productive capability.

Objectives

Develop fisheries habitat restoration/improvement needs.

Develop an action plan for threatened, endangered, and sensitive fish species.

Standards and Guidelines

Modify S&Gs to provide higher levels of protection to reflect new management emphasis/direction, and to ensure consistency with the interim management direction establishing riparian, ecosystem, and wildlife standards for timber sales (Regional Forester's Forest Plan Amendment 1), and PACFISH Interim Strategies for Managing Anadromous Fisheries (anticipated to be finalized during this planning process).

Develop and/or modify S&Gs for threatened and endangered species and their habitat to meet additional direction for listed anadromous species that may be a part of PACFISH and/or to meet recovery plan objectives and assist in recovering classified species to a point where they can be delisted.

Develop S&Gs for sensitive, rare, and endemic species to meet conservation agreement goals and objectives of the HCNRA Act and/or to prevent sensitive species from reaching a point where they will become listed.

Wildlife Habitat

Goals

Ensure the protection and maintenance of wildlife habitat in a manner compatible with the other primary objectives for which the HCNRA was established.

Provide habitat for viable and functioning populations of all existing native and desired non-native vertebrate wildlife species and invertebrate organisms to maintain or enhance the overall quality of wildlife habitat.

Protect and manage wildlife habitat for the perpetuation and recovery of animals and invertebrates which are listed as threatened, endangered, or sensitive.

Objectives

Develop wildlife habitat restoration/improvement needs.

Develop an action plan for threatened, endangered, and sensitive wildlife species.

Standards and Guidelines

Develop and/or modify S&Gs that provide refined management direction to incorporate new information and research concerning late and old forest structure, snag habitat, and the species associated with that habitat.

Modify S&Gs to reflect new management emphasis/direction to incorporate ecosystem management concepts and to allow for functioning levels of wildlife and other living organisms.

Develop and/or refine S&Gs for threatened and endangered species and their habitat to meet recovery plan objectives and assist in recovering classified species to a point where they can be delisted.

Develop S&Gs for sensitive, rare, and endemic species to meet conservation agreement goals and objectives of the HCNRA Act and/or to prevent sensitive species from reaching a point where they will become listed.

HCNRA Act Section 7 (5) protection of archeological and paleontologic sites and interpretation of these sites for the public benefit and knowledge insofar as it is compatible with protection.

Heritage Resources/Pre-Historic Sites

Goals

Provide for the protection of the pre-historic sites from damage or destruction. Manage pre-historic sites for scientific research, public interpretation, education, and enjoyment to the extent consistent with protection.

Objectives

Reference Heritage Resources in this section.

Standards and Guidelines

Reference Heritage Resources in this section.

Geologic

Goals

Provide for the protection of paleontological and unique geologic resources from damage or destruction. Manage paleontological resources for scientific research to the extent consistent with protection. Provide for interpretation and education of unique geologic events.

Objectives

Develop a paleontological/geologic management plan that stresses protection of those sites with greatest sensitivity and scientific value.

Standards and Guidelines

Develop S&Gs for scientific research consistent with their protection.

Develop S&Gs for the management and interpretation that ensure the protection of paleontological and unique geologic resources.

HCNRA Act Section 7 (6) preservation and restoration of historic sites associated with and typifying the economic and social history of the region and the American West.

Heritage Resources/Historic-Sites

Goals

Evaluate historic sites for preservation and restoration that typify the economic and social history of the region and the American West. Preserve and restore selected sites which typify the economic and social history of the region and the American West.

Objectives

Reference Heritage Resources in this section.

Standards and Guidelines

Reference Heritage Resources in this section.

HCNRA Act Section 7 (7) such management, utilization, and disposal of natural resources on federally owned lands, including, but not limited to, timber harvesting by selective cutting, mining, and grazing and the continuation of such existing uses and developments as are compatible with the provisions of the Act.

Minerals

Goals

Prohibit all mining activities with the exception of valid existing mineral rights as of December 31, 1975. Mining and its associated activities of valid existing mineral rights will emphasize meeting the objectives for which the HCNRA was established.

Manage common mineral materials for the sole purpose of construction and maintenance of facilities, emphasizing common mineral material sources outside of the HCNRA.

Objectives

No proposed changes.

Standards and Guidelines

Develop S&Gs for the use of common variety mineral materials in the construction and maintenance of facilities, pursuant to the LURs.

Develop S&Gs for site reclamation upon termination of the extraction of common variety mineral materials.

Landownership

Goals

Manage landownership patterns to best meet the objectives for which the HCNRA was established and by implementing the standards established for the use and development of private lands within the HCNRA.

Coordinate with affected county governments in the implementation of private LURs.

Objectives

Modify the land and scenic easement acquisition plan.

Standards and Guidelines

There would be no changes in S&Gs for landownership. Implementation would be based on the land and scenic easement acquisition plan addressed in Objectives.

Management Area Direction

Management area descriptions provide the multiple-use direction for managing specific areas to facilitate achieving management goals and objectives. Each existing management area would be described in terms of (1) a description which defines specific managment area goals, objectives and resources priorities, and (2) direction.

The following are proposed changes to management areas within the HCNRA:

Management Area 4—Wilderness

Develop S&Gs that establish specific management requirements for the Hells Canyon Wilderness, pursuant to Forest Service Manual 2320.

Modify S&Gs for interface areas between the Hells Canyon Wilderness and the Wild and Scenic Snake River.

Modify S&Gs for management and maintenance of administrative facilities and range improvements.

Modify vegetation S&Gs for forage allocation and utilization standards to ensure achievement of the wilderness goals and objectives.

Management Area 7—Wild and Scenic Rivers

Modify vegetation S&Gs for forage allocation and utilization standards to ensure the protection and enhancement of the outstandingly remarkable values for which the river was designated.

Modify vegetation S&Gs to reflect the scenic and recreational portions of these management areas would no longer be a component of the Forest allowable timber sale quantity.

Management Area 8—Wild and Scenic Snake River

No proposed changes to recreational based activities. Management direction would follow the record of decision and recreation management plan, issued in November 1994.

Modify vegetation S&Gs for forage allocation and utilization standards to ensure the proection and enhancement of the outstandingly remarkable values for which the river was designated.

Management Area 9—Dispersed Recreation/Native Vegetation

Modify the title of this management area to "Dispersed Recreation/Primitive/Semi-Primitive."

Modify vegetation S&Gs for forage allocation and utilization standards to ensure achievement of the HCNRA-wide goals and objectives.

Modify access S&Gs for over-snow travel to ensure achievement of the HCNRA-wide goals and objectives.

Management Area 10—Dispersed Recreation/Forage

Modify the title and management area description to reflect the changes embodied in the public LURs. The title

of this management area would be changed to "Dispensed Recreation/ Semi-Primitive."

Modify vegetation S&Gs for forage allocation and utilization standards to ensure achievement of the HCNRA-wide goals and objectives.

Modify access S&Gs to establish road densities to ensure achievement of the HCNRA-wide goals and objectives.

Management Area 11—Dispersed Recreation/Timber Management

Modify the title and management area description to reflect the changes embodied in the public LURs. The title of this management area would be changed to "Dispersed Recreation/ Roaded Natural-Roaded."

Modify the management area description to reflect the intent of the public LURs.

Modify vegetation S&Gs for forage allocation and utilization standards to ensure achievement of the HCNRA-wide goals and objectives.

Modify access S&Gs to establish road densities to ensure achievement of the HCNRA-wide goals and objectives.

Management Area 12—Research Natural Areas

Modify vegetation S&Gs for forage allocation and utilization standards to ensure achievement of the HCNRA-wide goals and objectives.

Develop S&Gs for scientific research consistent with the objectives for these areas.

Management Area 16—Administrative and Recreation Site Retention

Identify sites for allocation to administrative and recreation site retention compatible primary objectives of the HCNRA Act and compatible with management area objectives.

Develop S&Gs for management, development, and maintenance of administrative and recreation sites, including ROS classes.

Monitoring and Evaluation

The monitoring and evaluation program for the HCNRA would be refined to be compatible with the above changes in management direction to ensure that the goals and objectives for the HCNRA are achieved; assess the effectiveness of achieving desired conditions and results; ensure quality consistency and cost effectiveness of monitoring data and information in order to support maintenance of changes in management direction; and maintain viable Forest Plans.

The existing Forest Plan Monitoring and Implementation Plan and CMP Monitoring Plan would serve as the foundation in which to develop a refined monitoring plan that would best monitor the implemented management plan. The format for each monitoring element, whether it is implementation, effectiveness, or validation monitoring would address the following:

—Monitoring Goal
—Purpose of Monitoring
—Unit of Measure
—Threshold of Variability
—Frequency of Monitoring
—Costs
—Responsibilities

This EIS will tier to the Final EIS and Forest Plan. The CMP is incorporated into the Forest Plan. The CMP provides the programmatic management direction for the HCNRA. The Forest Plan provides goals and objectives, standards and guidelines, management area direction, and monitoring and evaluation for the various lands on the Forest and HCNRA. Both the Forest Plan and CMP provide programmatic management direction for site-specific management practices that will be utilized during the implementation of the Forest Plan and CMP.

The HCNRA consists of an estimated 652,488 acres. The HCNRA is comprised of the following management areas: wilderness, wild and scenic rivers, dispersed recreation/native vegetation, forage, dispersed recreation/timber management, research natural areas, and developed recreation and administrative facilities.

The analysis will consider a range of alternatives, including no-action.

Public participation will be especially important at several points during the analysis, beginning with the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals, organizations, or governments who may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying issues which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.
7. Notifying interested publics of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (i.e., newsletters, correspondence, etc.).

The draft EIS will be filed with the Environmental Protection Agency (EPA) and is expected to be available for public review by April, 1995. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is expected to be available for public review by September, 1995.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process.

First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully be considered and responded to in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Public workshops are scheduled in Boise and Grangeville, Idaho and Enterprise and Portland, Oregon on November 28 through December 1. Please contact Kurt Wiedenmann, Planning Team Leader, at (503) 523–1296 for additional information.

The final EIS is scheduled to be completed by September, 1995. In the final EIS, the Forest Service is required to respond to comments and responses

received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the proposal. R.M. Richmond, Forest Supervisor, is the Responsible Official. As the Responsible Official, he will decide whether to implement the proposal or a different alternative. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: November 7, 1994.

R.M. Richmond,

Forest Supervisor.

[FR Doc. 94–28236 Filed 11–15–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census Test – Update/Leave Operation.

Form Number(s): DG–105A, B, C, D.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,278 hours.

Number of Respondents: 51,100.

Avg Hours Per Response: 1.5 minutes.

Needs and Uses: The Census Bureau will use two methods to collect population and housing data in the 1995 Census Test: mail–out/mai–back in the two urban sites (Oakland, CA, and Patterson, NJ) and update/leave in the rural site which is made up six parishes in Northwest Louisiana. An address list will be compiled for the rural site in November 1994 during a prelist operation. During update/leave, census enumerators will canvass the site to update that address list and Census' TIGER database of geographic features, and leave a census test questionnaire at each housing unit for the residents to fill out and return. Enumerators' only contact with residents will be to verify name and address information and to hand them the questionnaire. Utilizing update/leave procedures allows Census to improve its address list and housing coverage in rural areas.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 9, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–28304 Filed 11–15–94; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office.

Title: Statutory Invention Registration.

Form Number(s): PTO/SB/94.

Agency Approval Number: None.

Type of Request: New collection. This collection was previously approved as part of the Secrecy/License to Export collection (0651–0034) and is now being submitted as a separate collection.

Burden: 41 hours.

Number of Respondents: 103.

Avg Hours Per Response: 0.4 hours.

Needs and Uses: Patent applicants may request to have their applications published as a statutory invention registration. This collection includes that indformatin needed by PTo to review and decide such requests.

Affected Public: Individuals or households, farms, ousinesses or other for profit institutions, Federal agencies or employees, non–profit insitutions, small businesses or organizations.

Frequency: When filing for consideration.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maya A. Bernstein, OMB Desk Officer, room 10236, New Executive Office Building, Washington, DC 20503.

Dated: November 9, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–28305 Filed 11–15–94; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–570–831]

Antidumping Duty Order: Fresh Garlic From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 16, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Stagner, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., 20230; telephone (202) 482–1673.

Scope of Order

The products subject to this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing and level of decay.

The scope of this order does not include: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.[1]

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs

[1] *Fresh Garlic from the People's Republic of China*, Inv. No. 731–TA–683 (Final), USITC Pub. 2825 (November 1994).

purposes, our written description of the scope of this proceeding is dispositive.

In order to be excluded from the antidumping duties ordered in this notice, garlic entered under the HTSUS subheadings listed above, that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use; or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed, must be accompanied by declarations to the Customs Service to that effect. We invite interested parties to provide suggested language for the certifications within ten days after publication of this order.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on September 19, 1994, the Department of Commerce (the Department) made its final determination that fresh garlic from the People's Republic of China (PRC) is being sold at less than fair value (59 FR 49058, September 26, 1994).

On November 7, 1994, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its final determination in this investigation. In its determination, the ITC found three like products: (1) Fresh garlic, defined as garlic that has been manually harvested and is intended for use as fresh produce; (2) dehy garlic, defined as garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; and (3) seed garlic, defined as garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The ITC determined that the industry in the United States producing fresh garlic, as defined by the ITC, is materially injured by reason of less than fair value (LTFV) imports from the PRC, but that critical circumstances do not exist with regard to such imports. The ITC further determined that the industries in the United States producing dehy and seed garlic are not materially injured nor threatened with material injury by reason of LTFV imports from the PRC.

Regarding fresh garlic, since the ITC determined that imports of such merchandise are materially injuring a U.S. industry, but that critical circumstances do not exist with regard to such imports, retroactive imposition of antidumping duties is not necessary. All unliquidated entries of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption on or after July 11, 1994, the date on which the Department published its preliminary determination (59 FR 35310), will be liable for the assessment of antidumping duties. The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption before July 11, 1994, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

In accordance with section 736(a)(1) of the Act, we are directing the Customs Service to assess antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United State price for entries of fresh garlic from the PRC. These antidumping duties will be assessed on all unliquidated entries of fresh garlic from the PRC, as defined in the "Scope of Order" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after July 11, 1994. The Customs Service must require, at the same time as importers would normally deposit estimated duties, the following cash deposit for the subject merchandise:

Manufacturer/Producer/Exporter	Weighted-average margin percent
All Manufacturers/Producers/Exporters	376.67

This notice constitutes the antidumping duty order with respect to fresh garlic from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping orders currently in effect.

This order is published in accordance with section 736(a) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.21.

Dated: November 10, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–28462 Filed 11–15–94; 8:45 am]

BILLING CODE 3510–DO–P

[A–549–810]

Notice of Postponement of Final Antidumping Duty Determination; Disposable Pocket Lighters from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 16, 1994.

FOR FURTHER INFORMATION CONTACT: David Boyland, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4198.

Postponement of Final Determination

On October 18, 1994, the Department of Commerce (the Department) issued its preliminary determination in the antidumping duty investigation of disposable pocket lighters from Thailand (59 FR 53414 October 24, 1994).

On November 3, 1994, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), respondent requested that the Department postpone its final determination in this investigation until 135 days after the date of publication of the preliminary determination. Under section 735(a)(2) of the Act and section 353.20(b) of the Department's regulations (19 CFR 353.20(b)) if, subsequent to an affirmative preliminary determination, the Department receives a written, substantiated request for postponement of the final determination from producers or resellers of a significant proportion of the merchandise, the Department will, absent compelling reasons for denial, grant the request. Accordingly, we are postponing our final determination in this investigation until March 8, 1995.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must now be submitted to the Assistant Secretary for Import Administration no later than February 13, 1995, and rebuttal briefs, no later than February 21, 1995. We have received requests for a hearing by the petitioner and, therefore, under 19 CFR 353.38(f), we will hold a public hearing to allow parties to comment on arguments raised in the case or rebuttal briefs. Tentatively, the hearing will be held on February 28, 1995, at 1:00 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the

time, date, and place of the hearing, 48 hours before the scheduled time. This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: November 9, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–28316 Filed 11–15–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–836]

Preliminary Determination of Sales at Less than Fair Value: Glycine from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 16, 1994.

FOR FURTHER INFORMATION CONTACT: Susan Strumbel, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1442.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of glycine from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 28, 1994 (59 FR 38435), the following events have occurred.

On August 15, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On August 18, 1994, the China Chamber of Commerce for Metals, Minerals, and Chemicals (CCCMMC) was given a questionnaire presentation. At this time, the DOC requested CCCMMC to provide a list of the producers and exporters of glycine in the PRC.

On September 7, 1994, the CCCMMC requested an extension of the questionnaire responses until September 23, 1994. Counsel on behalf of Sinochem Shanghai Pudong Trading Corporation (Sinochem) and Dastech Inc. (Dastech) requested a further extension until October 3, 1994. On October 3, 1994, the Department once again requested that CCCMMC identify the universe of glycine producers and exporters in the PRC.

On October 5, 1994, the Department contacted counsel for Sinochem and Dastech and was informed that these companies no longer intended to participate. On October 6, 1994, counsel for the petitioners requested that the Department issue an expedited preliminary determination. On October 17, 1994, the Department sent a letter to the CCCMMC requesting confirmation of the glycine producers' and exporters' intention not to participate in this investigation. On October 18, 1994, we received a letter in response to the Department's October 3, 1994 letter, stating that "until now nobody wanted to defend the case." The letter did not provide any information with regard to the universe of glycine producers and exporters in the PRC. We have received no response to our October 17, 1994, letter.

Scope of Investigation

The product covered by this investigation is glycine which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff schedule of the United States ("HTSUS"). The scope of this investigation includes glycine of all purity levels.

Although the HTSUS subheading is provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is February 1994, through July 1994.

Best Information Available

Because no producers or exporters of glycine responded to our questionnaire, we are basing our determination on best information available (BIA) pursuant to section 776(c) of the Act, which provides that the Department shall use BIA when a company identified by the Department as a respondent refuses to provide requested information.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to this methodology, as outlined in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium, 58 FR 37083 (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of 1) the highest margin alleged in the petition, or 2) the highest calculated rate of any respondent in the investigation. (See *Allied Signal Aerospace Co.* v. *United States*, 996 F. 2d 1185, 1191–92 (Fed. Cir. 1993).) Because there were no cooperative respondents in this investigation, we are assigning to all exporters, as BIA, a margin of 155.89 percent, the highest margin calculated in the petition, adjusted for methodological errors as explained in the Department's initiation notice.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of glycine from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
All Companies	155.89

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department

of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. If this investigation proceeds normally, we will make our final determination within 75 days of the signing of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: November 8, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–28306 Filed 11–15–94; 8:45 am]

BILLING CODE 3510–DS–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 94–064R. *Applicant:* University of California, Physics Department, Berkeley, CA 94720. *Instrument:* Superconducting Solenoid. *Manufacturer:* Atomimpex, CIS. *Intended Use:* Original notice of this resubmitted application was published in the FEDERAL REGISTER of June 17, 1994.

Docket Number: 94–124. *Applicant:* U.S. Geological Survey, Box 25046, MS 963 Denver Federal Center, Denver, CO 80225. *Instrument:* Open Split Interface Attachment for Mass Spectrometer. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* The instrument will be used for studies of sulfates from the stratosphere and ice cores and CO_2 gases from ice cores and sulfides from rocks and minerals from variety of geologic sites and contexts. Using laser microsampling techniques, samples as small as 1 nanomole of CO_2 or SO_2 will be analyzed in the mass spectrometer through the open split interface. *Application Accepted by Commissioner of Customs:* October 13, 1994.

Docket Number: 94–125. *Applicant:* University of California, San Diego, Scripps Institution of Oceanography, 8655 Production Avenue, San Diego, CA 92121. *Instrument:* Seasor System. *Manufacturer:* Chelsea Instruments Ltd., United Kingdom. *Intended Use:* The instrument will be used for investigations of the temperature, salinity, density and optical properties of the upper 400 m of the ocean. The objectives of these surveys are: to quantify the interaction between the atmosphere and the ocean, to quantify the importance of oceanic fronts in this interaction, to identify the effects of the physical processes on optical properties, etc. In addition, the instrument may be used in a course on sea-going observational oceanography to introduce students to modern techniques of oceanographic data collection. *Application Accepted by Commissioner of Customs:* October 19, 1994.

Docket Number: 94–126. *Applicant:* The Ohio State University, Department of Geological Sciences, 104 W. 19th Avenue, Columbus, OH 43210. *Instrument:* Mass Spectrometer, Model 215-50. *Manufacturer:* Mass Analyser Products Limited, United Kingdom. *Intended Use:* The instrument will be used for the measurement of the amounts and isotopic compositions of noble gases (He, Ne, Ar, Kr, and Xe) for geological and geochemical studies. In addition, the instrument will be used for teaching the theory and practice of isotope geochemistry and geochronology to advanced undergraduate and graduate students. *Application Accepted by Commissioner of Customs:* October 18, 1994.

Docket Number: 94–127. *Applicant:* California Institute of Technology, Pasadena, CA 91125. *Instrument:* Telescope System. *Manufacturer:* Astrophysical Laboratory of National Tsing Hau University, Republic of China. *Intended Use:* The instrument will be used for the study of solar oscillations to gain knowledge of the internal structure and dynamics of the Sun. Information will be obtained that will provide new understanding of nuclear physics and the prediction of solar activity such as solar flares which direct terrestrial effects. The data will also be used in classwork. *Application Accepted by Commissioner of Customs:* October 26, 1994.

Docket Number: 94–129. *Applicant:* University of Nebraska, Center for Materials Research & Analysis, Room 12C Walter Scott Engineer Center, Lincoln, NE 68588. *Instrument:* Scanning Electron Microscope, Model JEM2010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used for the studies of many solid state materials, including metals, ceramics, semiconductors and novel materials, and in particular magneto-optical multilayers, rare earth permanent magnets, thin metallic films and catalyst particles. Experiments will include characterization of defects of crystal structures, of interfaces and of other regions of varying chemical composition and atomic arrangement associated with different methods of preparing and processing the materials. In addition, the instrument will be used for educational purposes in electron microscopy courses. *Application Accepted by Commissioner of Customs:* October 26, 1994.

Docket Number: 94–033R. *Applicant:* Simpson College, 701 North C Street, Indianola, IA 50125. *Instrument:* Rapid Kinetics Accessory, Model SFA-12. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the FEDERAL REGISTER of April 6, 1994.

Pamela Woods

Acting Director, Statutory Import Programs Staff

[FR Doc. 94–28307 Filed 11–15–94; 8:45 am]

BILLING CODE 3510–DS–F

DEPARTMENT OF DEFENSE

Corps of Engineers

Intent To Prepare an Environmental Impact Statement for Columbia River Channel Deepening Feasibility Study, Oregon-Washington

AGENCY: U.S. Army Corps of Engineers, Portland District, DOD.

ACTION: Notice of Intent.

SUMMARY: The proposed action is to determine the feasibility of improving navigation in the existing Columbia and Lower Willamette Rivers Federal navigation project by potential modifications, including the potential deepening of up to 3 feet.

This feasibility study has been authorized by Congress pursuant to appeals by local port authorities for navigation assistance.

The existing navigation channel depth does not allow some of the deeper draft vessels using the channel to fully load. Prospective traffic and potential economies of scale are such that the lower Columbia River ports could

operate more safely, effectively and economically with a deeper channel.

The EIS is being prepared to address the comparative impacts for alternative actions related to navigation channel modifications.

ADDRESSES: U.S. Army Corps of Engineers, Portland District, Environmental Resources Branch, P.O. Box 2946, Portland, Oregon 97208–2946.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS can be answered by Steven J. Stevens, (503) 326–6094.

SUPPLEMENTARY INFORMATION: The proposed study, authorized under House Document 452, Eighty-Seventh Congress, Second Session, is being conducted to determine the feasibility for improvements to the existing Columbia and Lower Willamette Rivers deep-draft navigation project. The study was modified by the Energy and Water Appropriations Act of 1994 which specified that no alternatives deeper than 43 feet would be considered and that a concurrent Dredged Material Management Study of the existing project be conducted.

Alternatives identified in the reconnaissance phase study, public and agency comments and port authority input include:

(1) Channel deepening ranging from 1 to 3 feet;

(2) One-way channel;

(3) Deepening selected reaches by increments ranging from 1 to 3 feet;

(4) Tiered channel with an outbound land deeper than the inbound lane;

(5) Development of a regional port closer to the mouth of the Columbia River;

(6) No action.

Existing upland and inwater disposal sites would be used for disposal of a large portion of material dredged for channel deepening. New upland and inwater sites would be investigated for disposal of deepening and future maintenance dredging material. The feasibility study and EIS will also address the long term effects of additional channel maintenance dredging. EIS scoping will formally commence in November 1994 with the issuance of a scoping letter. Federal, state and local agencies, Indian tribes and interested organizations and individuals will be asked to comment on the significant issues related to the potential effects of the alternatives. Potentially significant issues to be addressed in the EIS which are currently identified include: fisheries impacts (particularly anadromous species); wildlife impacts at upland disposal sites; water quality impacts in the vicinity of port docks; salinity intrusion; indirect effects from increased port dredging and modified shipping activity. Additional environmental review and consultation requirements to be addressed in conjunction with the EIS include:

(1) Clean Water Act of 1977;

(2) Fish and Wildlife;

(3) Coastal Zone Management Act of 1972, as amended;

(4) Endangered Species Act of 1973, as amended;

(5) Marine Protection, Research and Sanctuaries Act of 1972, as amended;

(6) Cultural Resources Acts;

(7) Executive Order 11988, Flood Plain Management, 24 May 1977;

(8) Executive Order 11990, Protection of Wetlands, 24 May 1977;

(9) Analysis of Impacts on Prime and Unique Farmlands.

Formal public meetings have been scheduled to obtain input from the general public.

Comments received at these meetings will be considered during preparation of the Feasibility Study/EIS. As previously stated, a scoping letter will be issued in November 1994, providing additional opportunity for comment. The Draft EIS is scheduled for public review in October 1997.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–28218 Filed 11–15–94; 8:45 am]

BILLING CODE 3710–AR–M

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: Department of Education, White House Initiative on Historically Black Colleges and Universities.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

Date and Time: December 5–6, 1994, 9:00 a.m. until 5:00 p.m.

Place: Sheraton City Centre Hotel and Towers, 1143 New Hampshire Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Nancy Davis, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 600 Independence Avenue, SW., room 3682, ROB–3, Washington, DC 20202, telephone: (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established in accordance with Executive Order 12876, signed November 1, 1993. The Board is established to provide advice and make recommendations on developing an annual plan to increase participation by historically Black colleges and universities in federally sponsored programs and on how to increase the private sector's role in strengthening historically Black colleges and universities. The Board is also responsible for developing alternative sources of faculty talent, particularly in the fields of science and technology; and for providing advice on how historically Black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques.

The full Board will convene to address its mandate of providing advice to the President regarding historically Black colleges and universities. The President's Board of Advisors will continue its review and discussion of recommendations by the PBA Task Force. The agenda will also include a report by the Executive Director on the White House Initiative office, and presentations by representatives from historically Black colleges and universities' organizations.

Interested parties will be given time to comment on issues discussed during the Board meeting.

Records are kept of all Board meetings and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, Room 3682, ROB–3, Washington, D.C. from the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–28231 Filed 11–15–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

DOE Response to Recommendation 94–2, Conformance With Safety Standards at DOE Low-Level Nuclear Waste and Disposal Sites of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Section 315(b)(2) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b) requires the Department of Energy to publish its response to Defense Nuclear Facilities Safety Board recommendations for notice and public comment. The defense Nuclear Facilities Safety Board published Recommendation 94–2, concerning conformance with Safety Standards at DOE Low-Level Nuclear Waste and Disposal Site, in the **Federal Register** on September 14, 1994 (59FR 47309). The Secretary's response follows.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before December 16, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, D.C., on October 19, 1994.

Mark B. Whitaker,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Honorable John T. Conway, Chairman
Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

October 28, 1994.

Dear Mr. Chairman:

Thank you for your letter of September 8, 1994, forwarding Defense Nuclear Facilities Safety Board Recommendation 94–2, concerning Conformance with Safety Standards at Department of Energy (DOE) Low-Level Nuclear Waste and Disposal Sites. Recommendation 94–2 is accepted by the Department.

The Department will undertake a complex-wide baseline assessment of DOE low-level radioactive waste disposal requirements and practices with the objective of identifying problems affecting worker and public safety. In addition, the Implementation Plan for Recommendation 94–2 will address such issues as forecasting future disposal needs, including waste from decontamination and decommissioning and environmental restoration activities; the need for additional requirements, standards, or guidance on low-level radioactive waste management; the scope of planned studies for improving modeling and predictive capability of low-level radioactive waste impacts; an assessment of studies for enhancing stability of waste forms, deterring intrusion, and inhibiting radionuclide migration; and studies of enhanced volume reduction methods. The Implementation Plan will also address an assessment of the safety merits and demerits of privatization of facilities for low-level radioactive waste disposal for exclusive use by DOE.

The Department is taking steps to accelerate the completion of performance assessments for all active low-level radioactive waste burial sites as required by DOE Order 5820.2A. The Department recognizes the importance of assessing the potential cumulative impacts to the public health and safety and the environment of all low-level radioactive waste facilities on a site, including waste disposed prior to 1988. We will address these issues in the Implementation Plan for this recommendation.

We look forward to working closely with you and your staff to develop a responsive Implementation Plan. The Implementation Plan will be forwarded to you in accordance with 42 U.S.C. 2286d. If you have further questions please contact me or Mr. Thomas Grumbly, Assistant Secretary for Environmental Management at (202) 586–7710.

Sincerely,

Hazel R. O'Leary

[FR Doc. 94–28298 Filed 11–15–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG95–6–000, et al.]

Dartmouth Power Associates Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

November 4, 1994.

Take notice that the following filings have been made with the Commission:

1. Dartmouth Power Associates Limited Partnership

[Docket No. EG95–6–000]

Take notice that on November 1, 1994, Dartmouth Power Associates Limited Partnership ("Dartmouth"), c/o Dennis J. Duffy, Esq., Partridge, Snow & Hahn, 180 South Main Street, Providence, Rhode Island 02903, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

According to its application, Dartmouth owns and operates an approximately 67.6 MW electric generating facility located in Dartmouth, Massachusetts. The Facility's electricity is sold exclusively at wholesale.

Comment date: November 21, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the applicant.

2. EI Power (China) I, Inc.

[Docket No. EG95–8–000]

Take notice that on November 2, 1994, EI Power (China) I, Inc. ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365.

Applicant describes itself as a Delaware corporation formed to acquire an indirect ownership interest in a proposed approximately 125 MW coal-fired electric generating facility to be located in the Peoples Republic of China and to engage in project development activities with respect thereto.

Comment date: November 28, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Ming Jiang Power Partners Limited Partnership

[Docket No. EG95–9–000]

Take notice that on November 2, 1994, Ming Jiang Power Partners Limited Partnership ("Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365.

Applicant describes itself as a Delaware limited partnership formed to acquire an indirect ownership interest in a proposed approximately 125 MW coal-fired electric generating facility to be located in the Peoples Republic of China and to engage in project development activities with respect thereto.

Comment date: November 28, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Alabama Power Co.

[Docket No. ER94–1441–000]

Take notice that on October 28, 1994, Alabama Power Company amended its

filing in this docket by submitting a letter that clarifies the intent of the parties with respect to certain aspects of the subject agreements, provides additional information in support of certain charges contained therein, and proposes a means to maintain the status quo with regard to the return on common equity component utilized in the formula rates. The letter also requests a second extension (to November 1, 1994) of the deadline within which the Commission must act on the filing.

Comment date: November 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Imprimis Corp.

[Docket No. ER94–1672–000]

Take notice that on October 27, 1994, Imprimis Corporation (Imprimis), tendered for filing, pursuant to Rule 207 of the Commission's Rules and Regulations, 18 CFR 385.207, an amendment to its Petition for Order Approving Rate Schedule and Granting Waivers. The amendment adds provisions to a proposed rate schedule which prohibits sales to affiliated entities.

Comment date: November 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. WestPlains Energy

[Docket No. ER95–66–000]

Take notice that on October 24, 1994, WestPlains Energy, a division of UtiliCorp United, Inc., tendered for filing a tariff providing for sales of power and energy to its Colorado subdivision at variable rates at or below the fully allocated costs of the units providing the power and energy but not less than WestPlains Energy-Kansas' incremental energy costs. The tariff provides for unit power sales and system incremental capacity and energy sales.

Comment date: November 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. WestPlains Energy

[Docket No. ER95–67–000]

Take notice that on October 24, 1994, WestPlains Energy, a division of UtiliCorp United, Inc., tendered for filing a tariff providing for sales of power and energy by its Kansas subdivision at variable rates at or below the fully allocated costs of the units providing the power and energy but not less than WestPlains Energy-Kansas' incremental energy costs. The tariff provides for unit power sales and system incremental capacity and energy sales.

Comment date: November 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Colorado

[Docket No. ER95–88–000]

Take notice that on October 28, 1994, Public Service Company of Colorado filed with the Commission notices of cancellation for Rate Schedule Nos. 55 and 56, which are proposed to be effective on January 1, 1995. Public Service also filed a new service agreement between Public Service and the Municipal Energy Agency of Nebraska, which is also proposed to be effective on January 1, 1995.

Public Service states that it served copies of its filing on the customers to Rate Schedule Nos. 55 and 56, Holy Cross Electric Association, Inc., and the Colorado Public Utilities Commission.

Comment date: November 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Co.

[Docket No. ER95–89–000]

Take notice that on October 28, 1994, Florida Power & Light Company (FPL), tendered for filing proposed Service Agreements with Rainbow Energy Marketing Corporation for transmission service under FPL's Transmission Tariff Nos. 2 and 3.

FPL requests that the proposed Service Agreements be permitted to become effective on December 1, 1994, or as soon thereafter as practicable.

FPL states that this filing is in accordance with § 35 of the Commission's regulations.

Comment date: November 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER95–91–000]

Take notice that on October 28, 1994, PacifiCorp, tendered for filing in accordance with 18 CFR Section 35.13 of the Commission's Rules and Regulations, supplements to its Rate Schedule FERC Nos. 310, 313 and 328.

Copies of this filing were supplied to Western Area Power Administration, the Arizona Power Pooling Association, the Utah Public Service Commission, the Public Utility Commission of Oregon, the Washington Utility and Transportation Commission and the Public Utilities Commission of the State of California.

Comment date: November 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Weyerhaeuser Co.

[Docket No. QF94–124–000]

On September 8, 1994 and September 19, 1994, Weyerhaeuser Company tendered for filing supplements to its filing in this docket.

The supplements pertain to the ownership structure and technical aspects of the facility. No determination has been made that the submittals constitute a complete filing.

Comment date: November 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28203 Filed 11–15–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–178–003, et al.]

Howell Power Systems, et al.; Electric Rate and Corporate Regulation Filings

November 8, 1994.

Take notice that the following filings have been made with the Commission:

1. Howell Power Systems

[Docket No. ER94–178–003]

Take notice that on October 31, 1994, Howell Power Systems, Inc. (HPS) filed certain information as required by the Commission's January 14, 1994, letter order in Docket No. ER94–178–000. Copies of HPS's informational filing are on file with the Commission and are available for public inspection.

2. Tenaska Power Services Company

[Docket No. ER94–389–002]

Take Notice that on October 18, 1994, Tenaska Power Services Company filed certain information as required by the

Commission's May 26, 1994, letter order in Docket No. ER94–389–000. Copies of informational filing are on file with the Commission and are available for public inspection.

3. Eclipse Energy, Inc.

[Docket No. ER94–1099–002]

Take notice that on October 31, 1994, Eclipse Energy, Inc. (EEI) filed certain information as required by the Commission's June 15, 1994, letter order in Docket No. ER94–1099–000. Copies of EEI's informational filing are on file with the Commission and are available for public inspection.

4. NorAm Energy Services

[Docket No. ER94–1247–001]

Take Notice that on October 21, 1994, NorAm Energy Services filed certain information as required by the Commission's July 25, 1994, letter order in Docket No. ER94–1247–000. Copies of informational filing are on file with the Commission and are available for public inspection.

5. MidCon Power Services Corporation

[Docket No. ER94–1329–001]

Take notice that on October 26, 1994, MidCon Power Services Corporation (MPS) filed certain information as required by the Commission's August 11, 1994, letter order in Docket No. ER94–1329–000. Copies of MPS's informational filing are on file with the Commission and are available for public inspection.

6. Electrade Corporation

[Docket No. ER94–1478–002]

Take notice that on October 28, 1994, Electrade Corporation (EC) filed certain information as required by the Commission's October 12, 1994, letter order in Docket No. ER94–1478–000. Copies of EC's informational filing are on file with the Commission and are available for public inspection.

7. Selkirk Cogen Partners, L.P.

[Docket No. QF89–274–011]

On November 3, 1994, Selkirk Cogen Partners, L.P. (Applicant), tendered for filing an amendment to its filing in this docket.

The amendment provides certain revisions to the text of the application for recertification filed on October 18, 1994. No determination has been made that the submittal constitutes a complete filing.

Comment date: November 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Cmex Energy, Inc.

[Docket No. ER94–1328–001]

Take Notice that on October 14, 1994, Cmex Energy, Inc (Cmex) filed certain information as required by the Commission's July 12, 1994, letter order in Docket No. ER94–1328–000. Copies of Cmex's informational filing are on file with the Commission and are available for public inspection.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28260 Filed 11–15–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. 2318, 2482, 2616 & 2539, 2318 and 2554]

Niagara Mohawk Power Corp., et al; Notice of Intent To Prepare an Environmental Impact Statement and to Conduct Site Visits

November 9, 1994.

The Federal Energy Regulatory Commission (Commission) has received applications for new license (relicense) from the current owners and operators of six existing hydropower projects located on the Hudson River and its tributaries, the Sacandaga, Hoosic, and Mohawk rivers, in Warren, Saratgoa, Albany, Rensselaer, and Washington counties, New York. The Niagara Mohawk Power Corporation (NiMO) filed applications for four projects: the E.J. West Project, FERC No. 2318, located in Saratoga County on the Sacandaga River; the Hudson River Project, FERC No. 2482, consisting of the Spier Falls and Sherman Island developments in Warren and Saratoga counties on the Hudson River; the Hoosic River Project, FERC No. 2616, consisting of the Johnsonville and Schaghticoke developments in Rensselaer and Washington counties on the Hoosic River, and the School Street Project, FERC No. 2539, located Albany and Saratoga counties on the Mohawk River. Finch, Pruyn and Company, Inc. filed an application for the Glens Falls Project, FERC No. 2385, located in Warren and Saratoga counties on the Hudson River. Moreau Manufacturing Corporation filed an application for the Feeder Dam Project, FERC No. 2554, located in Warren and Saratoga counties on the Hudson River.

Upon review of the applications, supplemental filings, and intervenor submittals, the Commission staff has concluded that relicensing these six projects would constitute a major federal action significantly affecting the quality of the human environment.

Moreover, given the location and interaction of the projects, staff is considering preparing one multi-project Environmental Impact Statement (EIS) that describes and evaluates the probable impacts of the applicants' proposed and alternative operating procedures, new generating facilities, environmental enhancement measures, and associated facilities for the eight developments that comprise the six hydropower projects.

The staffs EIS will consider both site specific and cumulative environmental impacts of relicensing the six projects, and will include economic and financial analyses.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will by analyzed by the Commission staff and considered in a final EIS.

One element of the EIS process is scoping and site visits. These activities are initiated early to:

- Identify reasonable alternative operational procedures and environmental enhancement measures that should be evaluated in the EIS;
- Identify significant environmental issues related to the operation of the existing projects;
- Determine the depth of the analysis for issues that will be discussed in the EIS; and
- Identify resource issues that are of lesser importance and, consequently, do not require detailed analysis in the EIS.

Site Visits

Site visits to the eight developments that comprise the six projects will be held during the three-day period, December 12, 13, and 14, 1994. The purpose of these visits is for interested persons to observe existing area resources and site conditions, learn the locations of proposed new facilities, and

discuss project operational procedures with representatives of NiMO, Finch, Pruyn and Company, Inc., Moreau Manufacturing Corporation, and the Commission.

For details concerning the site visits, please contact Jerry Sabattis of NiMO in Syracuse, New York at (315) 428–5582, David Manny of Finch, Pruyn and Company, Inc. in Glens Falls, New York at (518) 793–2541, and Kenneth Oriole of Moreau Manufacturing Corporation in Syracuse, New York at (315) 471–2881.

Scoping Meetings

The Commission staff will conduct two scoping meetings: the evening meeting will be designed to obtain input from the general public, while the morning meeting will focus on resource agency concerns. These meetings will be held in Glens Falls, New York, sometime in March, 1995. The dates and locations of these meetings will be the subject of future announcement.

For further information, please contact Edward R. Meyer in Washington D.C. at (202) 208–7998.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28210 Filed 11–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–46–000, et al.]

Big Sandy Gas Co., et al.; Natural Gas Certificate Filings

November 7, 1994

Take notice that the following filings have been made with the Commission:

1. Big Sandy Gas Co.

[Docket No. CP95–46–000]

Take notice that on October 31, 1994, Big Sandy Gas Company (Big Sandy), 15375 Memorial Drive, Houston, Texas 77079, filed a petition for declaratory order in Docket No. CP95–46–000, requesting that the Commission declare that Big Sandy's proposed acquisition, ownership, and operation of certain natural gas gathering systems and other facilities currently owned by CNG Transmission (CNGT) would not subject Big Sandy or any portion of its facilities or services to the jurisdiction under the Natural Gas Act (NGA), all as more fully set forth in the application on file with the Commission and open to public inspection.

Big Sandy seeks a declaratory order finding that the facilities Cabot wishes to acquire from CNGT will be gathering facilities exempt from the Commission's jurisdiction pursuant to Section 1(b) of the NGA. CNGT filed on October 21, 1994 in Docket No. CP95–32–000, a proposal to abandon these facilities located in Boone, Kanawha, and Raleigh Counties, West Virginia. While Cabot is the party having agreed to purchase these assets from CNGT, the parties anticipate that if this petition is granted, the pipeline and compressor facilities will actually be conveyed to Cabot's subsidiary Big Sandy, and the reserves and wells will be conveyed to Cabot.

The Commission, in Docket Nos. CP93–198–000 and CP93–200–000, issued an order on July 21, 1994, (68 FERC 61,194, currently pending rehearing) preliminarily approving CNGT's application to abandon certain other gathering facilities Big Sandy proposes to acquire from CNGT. In that same order, the Commission declared that upon their acquisition by Big Sandy, the gathering facilities would be exempt from the Commission's jurisdiction under the NGA ("Big Sandy I").

Big Sandy says that it is a wholly-owned subsidiary of Cabot Oil & Gas Corporation (Cabot) and that Big Sandy owns no jurisdictional facilities.

Big Sandy argues that the facilities to be transferred to Big Sandy meet the physical and non-physical criteria for determining gathering as set forth in *Farmland Industries, Inc.*, 23 FERC 61,063 (1983), as modified by subsequent Commission orders. Big Sandy states that the diameters and lengths of the facilities to be acquired are consistent with the conclusion that the facilities are primarily gathering facilities. Most of the lines are less than 1 mile in length. More than three-fourths of the pipe to be acquired are 12 inches or less in diameter. Most is six inches or less in diameter. There are no processing plants on or connected to the facilities. There is one compressor station, Whitesville, that functions as a field compressor. The wellhead pressure feeding into the Whitesville System is very low, operating at approximately 50 pounds per square inch-gauge. The Whitesville Compressor Station is at the terminus of a portion of the facilities to be acquired. It is in the middle of another CNGT production area and is connected to CNGT's 12" TL–263 line which, Big Sandy argues, likely would also be found to be gathering. Big Sandy says that when considered in the context of the entire area in which they are located, the facilities are in the central portion of a producing region surrounded by and connected to wells and other gathering lines. Big Sandy states that the system is akin to a "spider web" and that the facilities to be acquired do not even comprise the whole spider web. Only a part of CNGT's facilities in this area are being acquired by Big Sandy.

With respect to non-physical criteria, Big Sandy notes that it operates exclusively in West Virginia, and when it acquires the Big Sandy I facilities that are currently pending rehearing, it will own exclusively gathering facilities. Big Sandy argues that in *Koch Hydrocarbon Co.*, 56 FERC 61,374, 62,432 (1991), and *Tom Brown, Inc.*, 57 FERC 61,103, 61,400 (1990), the Commission declared both facilities in question to be gathering facilities, noting that Koch previously had limited its service in the area to gathering, and that Brown had limited its activities in the area to exploration and production. Further, Big Sandy states that the Commission found as well that Brown neither owned nor provided any jurisdictional service nor owned any jurisdictional facilities.

Big Sandy has agreed in writing to provide non-jurisdictional gathering services on an open-access basis for all of CNGT's existing customers at rates no higher than those currently being charged by CNGT. Big Sandy says that it intends to operate the facilities to be acquired in Big Sandy I in conjunction with the facilities that are the subject of the instant petition. As a result, Big Sandy states that shippers shall only pay a single rate for gathering services regardless of the distance and facilities over which the gas must flow. Big Sandy says that those entities now relying upon service will be assured of continuing to receive such service by execution of a gathering agreement neither materially different from nor more expensive than they currently receive from CNGT. As for service to Hope Gas, Inc., (Hope) an affiliate distribution company with sales meters on the facilities to be acquired, Big Sandy states that service will be continued through a gas sales contract between a Big Sandy affiliate and Hope.

Comment date: November 28, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Williston Basin Interstate Pipeline Co.

[Docket No. CP95–47–000]

Take notice that on November 2, 1994, Williston Basin Interstate Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed a prior notice request with the Commission in Docket No. CP95–47–000 pursuant to Section 157.211(a)(1) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to deliver natural gas to Montana-Dakota Utilities Company (Montana-Dakota) under the

blanket certificate issued in Docket No. CP82–487–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to transport up to 50 Mcf per day of natural gas to Montana-Dakota, a local distribution company, for ultimate use by the residents of the Trestle Valley Heights Subdivision (Trestle alley), southwest of Minot, North Dakota. Williston Basin would provide natural gas transportation deliveries to Montana-Dakota under Rate Schedules FT–1 and/or IT–1 of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1. The delivery point for the gas to serve Trestle Valley is an existing tap, so there would be no construction costs.

Comment date: December 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Co.

[Docket No. CP95–48–000]

Take notice that on November 2, 1994, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP95–48–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a 4-inch tap, approximately 2,000 feet of 6-inch-diameter lateral pipeline, measuring and appurtenant facilities to deliver transportation gas to Ag Processing Inc. (Ag Processing) in Buchanan County, Missouri, under WNG's blanket certificate issued in Docket No. CP82–479–000 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.

WNG proposes to install the facilities on WNG's 8-inch-diameter line XS–2 in Section 30, Township 57 South, Range 35 West, Buchanan County, Missouri to deliver transportation gas to Ag Processing for its soybean processing plant. The annual volume delivered is estimated by WNG to be approximately 126,000 Dth initially and increase to 1,440,000 Dth by the third year. The initial peak day volume is estimated by WNG to be 1,030 Dth and increase to 6,890 Dth by the third year. WNG states that the total volume to be delivered to Ag Processing will not exceed the total volume authorized prior to this request. WNG states the cost to construct the facilities is approximately $74,900 which will be reimbursed by Ag Processing.

WNG states that this change is not prohibited by an existing tariff, and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

WNG also states that this proposal will not significantly affect a sensitive environmental area.

Comment date: December 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Equitrans, Inc.

[Docket No. CP95–53–000]

Take notice that on November 3, 1994, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP95–53–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a delivery tap in Waynesburg, Pennsylvania under Equitrans's blanket certificate issued in Docket No. CP83–508–000 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.

Equitrans proposes to install one delivery tap in Waynesburg, Pennsylvania to provide gas transportation service to Equitable Gas Company. Equitrans states that the projected quantity of gas to be delivered will be approximately 1 Mcf on a peak day.

Comment date: December 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. Equitrans, Inc.

[Docket No. CP95–54–000]

Take notice that on November 3, 1994, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP95–54–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install one delivery tap under Equitrans' blanket certificate issued in Docket No. CP83–508–000 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.

Equitrans proposes to install a delivery tap in Braxton County, West Virginia, to provide natural gas transportation service to Equitable Gas Company, a division of Equitable Resources, Inc. Equitrans states that the quantity of gas to be delivered through the proposed delivery tap will be 1 Mcf on a peak day.

Comment date: December 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are 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 applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed

for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28202 Filed 11–15–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–42–000, et al.]

NorAm Gas Transmission Co., et al.; Natural Gas Certificate Filings

November 8, 1994.

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Co.

[Docket No. CP95–42–000]

Take notice that on October 31, 1994, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–42–000 a request pursuant to §§ 157.205, 157.208 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.208, 157.216) for authorization to construct and operate facilities and to abandon facilities under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.*, 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.

NGT proposes to replace and rearrange certain marketing lateral segments located in Stephens County, Oklahoma. NGT describes the pipe segments as generally being old and deteriorated.[1] NGT advises that delivery points for two of Arkla's domestic customers and one 6-inch check meter on Line 10 would be relocated to the new Line 10 segment.

NGT states that the project would involve the installation of approximately 5,050 feet of 10-inch pipe (replacement Line 10 segment) and 20 feet of 8-inch pipe (to connect Line ADT–8 to Line 11–3 at pipeline station no. 611+20). NGT states that it would abandon in place the following:

(1) Two segments of Line 10, totaling 5,034 feet of 6-inch pipe,

(2) Two segments of Line 10–1, totaling 2,035 feet of 8-inch pipe,

(3) A segment of Line 11–3, totaling 2,980 feet of 10-inch pipe, except for the Hell Creek crossing which would be used as part of replacement Line 10,[2] and

(4) A segment of Line ADT–8, totaling 610 feet of 8-inch pipe.

NGT explains that the project would permit it to consolidate the operations of the abandoned segments to continue service within the existing certificated entitlement to Arkla, through the new 10-inch segment of Line 10. NGT estimates that the total cost of the replacement facilities would be $244,743.

Comment date: December 23, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Co.

[Docket No. CP95–49–000]

Take notice that on November 3, 1994, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–49–000 a request pursuant to Sections 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for authorization to operate three existing delivery point facilities that were initially constructed under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA), all as more fully set forth in the request on file with the Commission and open to public inspection.

The request for authorization states that Tennessee has constructed a number of delivery points under Section 311(a) of the NGA for use in the transportation of natural gas under Subpart B of Part 284 of the Commission's Regulations. Since Tennessee now renders significant transportation of natural gas under its Subpart G blanket certificate, it states it is imperative that maximum flexibility be attained so that its facilities can be used for the benefit of all customers on Tennessee's system.

Tennessee states that the location of the delivery points are in Tuscarawas County, Ohio, Plaquemines Parish, Louisiana and Albany County, New York.

It is stated that delivery volumes through the existing delivery points would not impact Tennessee's peak day and annual deliveries; that the proposed activity is not prohibited by its existing tariff; and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Tennessee's other customers.

Comment date: December 23, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. National Fuel Gas Supply Corp.

[Docket No. CP95–50–000

Take notice that on November 3, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed an application with the Commission in Docket No. CP95–50–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to refunctionalize 33 pipeline segments with 14 appurtenant metering and regulating stations in the Commonwealth of Pennsylvania from production and gathering to transmission effective March 1, 1995, all as more fully set forth in the application which is open to the public for inspection.

National proposes to refunctionalize 33 pipeline segments with 14 appurtenant metering and regulating stations in Clarion, Crawford, Elk, Erie, and Jefferson Counties, Pennsylvania. The pipeline segments vary between 78 and 47,183 feet in length and between two and eight inches in diameter. National states that it currently classifies these facilities as production and gathering for accounting purposes. National proposes to reclassify these facilities as transmission. National also states that the total net book value of the pipeline segments, associated metering and regulating stations, and rights-of-way that it proposes to refunctionalize amounts to $2,575,600.

Comment date: November 29, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corp.; Columbia Gulf Transmission Co.; Texas Gas Transmission Corp.

[Docket No. CP95–60–000]

Take notice that on November 4, 1994, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, Columbia Gulf Transmission Company (Columbia Gulf), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314–1599, and Texas Gas Transmission Corporation (Texas Gas) 3800 Frederica Street, Owensboro, Kentucky 42301, jointly as the Companies, filed in Docket No. CP95–60–000, an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon certain exchange of gas by Columbia and Texas Gas into their systems which obviated the need to construct and replace

---

[1] NGT states that Lines 10, 10–1, and 11–3 were acquired through a merger with Consolidated Gas Utilities Corporation (24 FPC 91 (1960)), and deliver gas to townborder stations served by Arkla, a division of NorAm Energy Corp (Arkla).

[2] NGT advises that the Hell Creek crossing on Line 11–3 was replaced in 1990.

certain facilities located in the South Bosco Field, Acadia Parish, Louisiana and the North Chalkley Field, Calcasieu Parish, Louisiana and provide certain operational benefits for Texas Gas' system. The Companies state that the exchanges are no longer required, as Columbia has terminated the gas purchase agreements and any operational benefits to Texas Gas provided under these exchanges have ceased to exist. The exchange authority for which the Companies are seeking abandonment authority are as follows:

Docket No.	Volume (Mcfd)	Company	Rate schedule
CP71–86	15,000	Columbia	X–11
CP71–86	15,000	Columbia Gulf	X–4
CP71–86	15,000	Texas Gas	X–36
CP71–317	2,000	Columbia	X–32
CP71–317	2,000	Columbia Gulf	X–7
CP71–317	2,000	Texas Gas	X–38

Comment date: November 29, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are 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 applicant to appear or be represented at the hearing.

G. 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 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28261 Filed 11–15–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–59–000]

El Paso Natural Gas Co.; Notice of Request Under Blanket Authorization

November 9, 1994.

Take notice that on November 4, 1994, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP95–59–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point in Yavapai County, Arizona for Citizens Utilities Company (Citizens) 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 that is on file with the Commission and open to public inspection.

El Paso proposes to construct and operate a new delivery point on the 20-inch Maricopa County Line to permit the firm transportation and delivery of natural gas to Citizen's residential and commercial requirements in and near the City of Prescott, Arizona.

El Paso says that the proposed delivery to Citizens will be accomplished without deteriment or disadvantage to El Paso's other customers and that upon receipt of the requested authorization it will amend Exhibit B of the Transportation and Service Agreement between El Paso and Citizens (dated August 28, 1991; initial transportation report filed October 29, 1991 in Docket No. ST92–371–000).

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 § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28212 Filed 11–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11139–001 Alaska]

Kodiak Electric Association; Notice of Surrender of Preliminary Permit

November 9, 1994.

Take notice that Kodiak Electric Association, Permittee for the Terror Lake Release-Water Project No. 11139,

has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11139 was issued January 30, 1992, and would have expired February 28, 1995. The project would have been located in Kodiak National Wildlife Refuge, on the Terror River, on Kodiak Island, Alaska.

The Permittee filed the request on October 24, 1994, and the preliminary permit for Project No. 11139 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28208 Filed 11–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11361–001 Washington]

May Creek, Inc.; Notice of Surrender of Preliminary Permit

November 9, 1994.

Take notice that May Creek, Inc., Permittee for the May Creek Project No. 11361, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11361 was issued April 14, 1993, and would have expired March 31, 1996. The project would have been located on Lake Isabel, in the Mount Baker-Snoqualmie National Forest, in Snohomish, County, Washington.

The Permittee filed the request on October 11, 1994, and the preliminary permit for Project No. 11361 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28206 Filed 11–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Project 2645–045–NY]

Niagara Mohawk Power Corp.; Notice to Conduct Site Visits

November 9, 1994.

The Federal Energy Regulatory Commission (Commission) has received an application for new license (relicense) from Niagara Mohawk Power Corporation (NiMO), the current owner and operator of the Beaver River Project. The project consists of eight existing hydropower developments located on the Beaver River in the towns of Webb (Herkimer County), Watson and Croghan (Lewis County), New York. (NiMO filed an application for the Beaver River Project on November 29, 1991.

The Commission staff is in the process of reviewing the application. As part of this review, site visits to the eight developments that comprise the project will be held during a three day period, December 5, 6 and 7, 1994. The purpose of these site visits is for interested persons to observe existing area resources and site conditions and discuss project operational procedures and proposed enhancements with representatives of NiMO and the Commission.

For details concerning the site visits, please contact Gregg Carrington of NiMO in Syracuse, New York at (315) 428–5583.

For further information, please contact Tom Camp at (202) 219–2832.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28209 Filed 11–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11299–001 California]

Peak Power Corp.; Notice of Surrender of Preliminary Permit

November 9, 1994.

Take notice that Peak Power Corporation, Permittee for the West Mesa Modular Pumped Storage Project No. 11299, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11299 was issued September 2, 1992, and would have expired October 31, 1995. The project would have been located in the Fish Creek Mountains, approximately 23 miles northwest of El Centro, California.

The Permittee filed the request on October 26, 1994, and the preliminary permit for Project No. 11299 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28207 Filed 11–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–916–000]

Southern Indiana Gas and Electric Co.; Notice of Filing

November 9, 1994.

Take notice that on October 21, 1994, Southern Indiana Gas and Electric (SIGECO) tendered for filing cost information in support of its December 21, 1993, filing in the captioned docket, which requested a one (1) year extension of the FPC Rate Schedule No 29 between SIGECO and Alcoa Generating Corporation (AGC).

The filing of the cost information is in response to the Commission's request for information concerning SIGECO's Rate Schedule RS, which was used as a price cap on standby electrical energy sales from SIEGO to AGC under FPC Rate Schedule No. 29.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of January 12, 1994, as was requested in the December 21, 1993 filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 21, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28211 Filed 11–15–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95-4-29-000]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

November 9, 1994.

Take notice that on November 4, 1994, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eighteenth Revised Fourth Revised Sheet No. 50, which tariff sheet is proposed to be effective November 1, 1994.

TGPL states that the purpose of the filing is to track a fuel change attributable to the transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT, which service underlies the service provided by TGPL under its Rate Schedule FT-NT. This tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule FT-NT.

TGPL states that copies of the instant filing are being mailed to its FT-NT customers and interested state commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 17, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-28205 Filed 11-15-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95-40-000]

Koch Gateway Pipleline Co.; Request Under Blanket Authorization

November 9, 1994.

Take notice that on October 27, 1994, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP95-40-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to acquire a six-inch metering and regulating station from Gulf South Pipeline Company (Gulf South), under Koch Gateway's blanket certificate issued in Docket No. CP82-430-000 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.

Koch Gateway states that the metering and regulating station is located on its Index 198-3 transmission line in Calcasieu Parish, Louisiana. Koch Gateway proposes to acquire and operate as its own jurisdictional facility, a skid-mounted dual six-inch metering and regulating station and appurtenances from Gulf South, an intrastate pipeline company. The meter station currently serves Vista Chemical Corporation (Vista), and end user, near Lake Charles in Calcasieu Parish, Louisiana with natural gas deliveries under Koch Gateway's ITS Rate Schedule which was authorized in Docket No. ST94-3043.

Koch Gateway states that the acquisition will not require any construction or ground disturbance. There is not to be any impact on Koch Gateway's curtailment plan since there are no changes proposed in the existing level of service. The service provided through these facilities will remain within the current entitlements provided in the existing ITS agreement with Koch Gateway. The capacity is sufficient enough for Koch Gateway to render the proposed service without detriment or disadvantage to its other existing customers.

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 § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-28213 Filed 11-15-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00396; FRL 4921-2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting; change on meeting location.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with a draft proposal rule for 40 CFR part 158, Pesticide Registration Data Requirements. Much of the proposed rule would implement changes in practice already made by the Office of Pesticide Programs in the course of registration and reregistration.

DATES: The meeting will be held on Tuesday and Wednesday, November 29 and 30, 1994, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202, (703) 979-6332.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 815B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5369 or 7351.

Copies of documents may be obtained by contacting: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460. Office location and telephone number: Rm. 1128 Bay, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5805 or 5454.

SUPPLEMENTARY INFORMATION: Please note the change in the meeting location and the change in the telephone number for the Public Docket from the original **Federal Register** Notice published September 21, 1994 (59 FR 48416).

List of Subjects

Environmental protection.

Dated: November 7, 1994.

Stephanie R. Irene,

Director, Health Effects Division Office of Pesticide Programs.

[FR Doc. 94–28144 Filed 11–15–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180952; FRL 4919–2]

Receipt of Application for Emergency Exemption to use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use the pesticide imidacloprid (CAS 105827–78–9) to treat up to 50,000 acres of tomatoes to control the sweet potato whitefly (also referred to as the silverleaf whitefly.) The Applicant proposes the first food use of an active ingredient; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before December 1, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180952," should be submitted by mail to: Public Response and Program Resource Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8791).

SUPPLEMENTARY INFORMATION: Pursuant to Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on tomatoes to control the sweet potato, or silverleaf whitefly. Information in accordance with 40 CFR part 166 was submitted as part of this request.

Whiteflies have been a problem in the "desert-cropping systems" in California and Arizona for some time, but in the late 1980s, a new strain was discovered, which appears to be much more prolific than the standard strain, and resistant to many insecticides. Whiteflies are common on many wild and cultivated crops such as tomatoes, cotton, cucurbits and solanaceae. The Applicant states that this pest first caused economic impacts in Florida in 1987, and since then, its impacts have rapidly expanded over the total production area. This whitefly causes direct damage to the tomato plant through its feeding activity and the production of honeydew which enhances sooty mold development. This pest also causes a physiological disorder resulting in irregular ripening of fruit, believed to be caused by transmission of a geminivirus. The Applicant claims that significant economic losses will occur without adequate control, which is not being achieved with the currently registered compounds.

Along with this request, the Applicant has also requested a specific exemption for use of a different chemical (fenpropathrin) on tomatoes, also for control of whiteflies. The Applicant justifies requests for two chemicals, by stating that the imidacloprid would be applied at or near transplanting, as a soil-incorporated treatment; since imidacloprid is a systemic, it would be taken up by the small tomato transplants, and protect them from whitefly feeding during this early stage of development. The Applicant states that fenpropathrin, being nonsystemic, is only of use as a foliar spray, which is of little value during the early phase of development, as there is limited leaf area at that time. Thus the Applicant proposes that use of fenpropathrin be allowed later in the crop season, as a foliar treatment, to maintain season-long control. The Applicant indicates that imidacloprid would not be of use as both a soil treatment and a foliar spray, because its mode of action is such that resistance development is a concern. The Registrant of imidacloprid will not support the use of this chemical further into the growing season for this reason. The Applicant claims that without control of this pest, individual fields could experience 100 percent yield loss. Irregular ripening can reduce yields by 36 to 100 percent; and direct feeding losses can be as much as 10 to 15 percent.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.25 lb. (dry) active ingredient (16 fluid oz. of product) per acre with a maximum of one application per crop season on up to 50,000 acres of tomatoes. Therefore, use under this exemption could potentially amount to a maximum total of 12,500 lbs. of active ingredient, or 6,250 gal. of product. This is the second time that the Applicant has applied for the use of imidacloprid on tomatoes, and an exemption was issued for this use last year. Additionally, the Applicant requested, and was granted, specific exemptions for the use of fenpropathrin for whitefly control in tomatoes for the past 4 years (this is the fifth consecutive year for this request for fenpropathrin).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing the first food use of an active ingredient. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Florida Department of Agriculture and Consumer Services.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: October 31, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–28297 Filed 11–15–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30362A; FRL–4918–5]

PMC Specialties Group Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by PMC Specialties Group, Inc., to conditionally register four pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6600).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of April 29, 1994 (59 FR 22160), which announced that PMC Specialties Group, Inc., 501 Murray Road, Cincinnati, OH 45217, had submitted four applications to conditionally register the pesticide products ReJeX-iT AP-50, ReJeX-iT TP-40, ReJeX-iT MA, and ReJeX-iT AG-36 (File Symbols 58035–A, 58035–T, 58035–I, and 58035–O), containing the active ingredient methyl anthranilate (CAS No. 134–20–3) at 50, 40, 100, and 14.5 percent respectively, an active ingredient not included in any previously registered products.

The applications listed below were approved on September 16, 1994, for the following products:

1. ReJeX-iT AP-50 for the reduction of bird activity on temporary pools of water, except those bordering airports (EPA Reg. No. 58035–6).

2. ReJeX-iT AP-40 for the reduction of bird activity on landfills, tailing ponds, and impoundments (EPA Reg. No. 58035–7).

3. ReJeX-iT MA for formulation use only of registered, end-use products for bird control (EPA Reg. No. 58035–8).

4. ReJeX-iT AG-36 for use to repel birds such as Canada geese from golf courses and other turf areas (EPA Reg. No. 58035–9).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of methyl anthranilate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of methyl anthranilate during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

These products are conditionally registered in accordance with FIFRA section 3(c)(7)(C). Only the first two studies listed below are required for these products, except for ReJeX-iT AG-36 which requires all three studies. Within 1-year of registration, or October 1, 1995, the following studies must be submitted:

1. Avian Acute Oral (Guideline Reference Number 154–6).

2. Acute Freshwater Fish LC_{50} (154–8).

3. Beneficial Insect (Honey Bee Acute Contact LD_{50} Study (141–1).

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on methyl anthranilate.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: October 25, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 9428145 Filed 11–15–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34066; FRL 4913–1]

Reregistration Eligibility Decision Documents; Completion of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), concludes the comment period for the reregistration eligibility decision documents for several chemical cases.

ADDRESSES: Copies of these REDS are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, ATTN: Order Desk; telephone no. 703–487–4650. To obtain copies you must provide the publication number that has been assigned to the RED listed in the table below.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED documents listed below should be

directed to the appropriate Chemical Review Managers:

Pronamide - Karen Jones - 703–308–8047

Tebuthiuron - Linda Propst - 703–308–8165

SUPPLEMENTARY INFORMATION: During fiscal year 1994, EPA published Notices in the Federal Register announcing the availability of Reregistration Eligibility Decision Documents for the listed pesticide active ingredients. These REDs were issued as final documents, with a 60–day comment period. In these REDs, EPA provided its regulatory position on the current registered uses of these pesticides and set forth certain requirements for product reregistration eligibility. There were no comments for the following REDs: Pronamide and Tebuthiuron.

The NTIS publication number for REDs subject to this notice are presented below:

Chemical Name	Case Number	RED Date	RED NTIS Number
Pronamide	0082	06/13/94	PB94–204112
Tebuthiuron	0054	06/15/94	PB94–187259

List of Subjects

Environmental protection.

Dated: October 25, 1994.

Louis P. True,

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

[FR Doc. 94–28018 Filed 11–15–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5106–7]

Draft Soil Screening Guidance

AGENCY: Environmental Protection Agency.

ACTION: Notice of informational meeting on Draft Soil Screening Guidance.

SUMMARY: The Environmental Protection Agency (EPA) will hold an informational meeting on December 1, 1994, to present a document entitled "Draft Soil Screening Guidance." This guidance is intended to serve as a tool to expedite the evaluation of contaminated soils at sites addressed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund. While the guidance is intended to be used as a screening tool to determine if further study is warranted at a site, it does not represent clean-up standards for a site. Such guidance is not intended to have the force of a regulation and today's notice is not a proposed rule. A subsequent **Federal Register** notice, forthcoming in several weeks, will announce the availability of and seek public comment on this draft guidance and a supporting Technical Background Document.

DATES: An Informational Meeting, open to the public, will be held on December 1, 1994.

ADDRESSES: The Informational Meeting will be held from 2 p.m. to 4 p.m. (EST) at the Sheraton Washington Hotel, 2660 Woodley Road at Connecticut Ave. NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: David Cooper, Remedial Operations and Guidance Branch, Hazardous Site Control Division, Office of Emergency and Remedial Response (5203G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, at (703) 603–8820, or the RCRA/Superfund Hotline at (800) 424–9346 (in the Washington, DC metropolitan area, (703) 412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 553–7672 (in the Washington, DC metropolitan area, (703) 412–3323).

SUPPLEMENTARY INFORMATION:

Introduction

The Environmental Protection Agency (EPA) responds to uncontrolled releases of hazardous substances under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. CERCLA or Superfund, as it is commonly known, requires that the response to hazardous substances be performed in accordance with regulations found in the National Oil and Hazardous Substances Pollution Contingency Plan or NCP. The NCP process requires that a remedial investigation be performed to identify the nature and extent of contamination at National Priorities List (NPL) sites. From sampling results, as well as site observations obtained in the field, specific contaminants and exposure pathways of concern are identified and used in a baseline risk assessment performed to determine whether remedial action is warranted.[1,2]

Today's **Federal Register** notice announces an informational public meeting to introduce a draft of a new tool called the "Draft Soil Screening Guidance." This guidance may reduce significantly the time it takes to complete soil investigations and cleanup actions, as well as improve the consistency of these actions across the nation. The draft guidance has been written for remedial investigation/feasibility study (RI/FS) work at Superfund National Priorities List (NPL) sites. This guidance on developing soil screening values is expected to assist site managers in quickly identifying contaminated soil of potential concern and in screening out from further consideration those soils that do not warrant additional study.

The Draft Soil Screening Guidance will present three methods which may be used to develop risk based, soil screening level values. These values are then compared to on-site soil contaminant levels. The framework provides the three methods for developing soil screening levels, but focuses on a simple, site-specific approach. Areas of a site which fall below such levels may be screened out from further assessment, while areas above the SSL values must undergo further assessment. While the guidance is intended to be used as a screening tool to determine if further study is warranted at a site, it does not represent clean-up standards for a site. The formulae and most of the exposure assumptions upon which the draft guidance is based have been taken from the Risk Assessment Guidance for Superfund [1,2] and have been widely accepted in the Superfund program for a number of years.

Dated: November 9, 1994.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 94–28293 Filed 11–15–94; 8:45 am]

BILLING CODE 6560–50–P

[1] U.S. EPA. 1989. Risk Assessment Guidance for Superfund: Volume 1: Human Health Evaluation Manual, Part A, Interim Final. EPA/540/1–89/002. Office of Emergency and Remedial Response, Washington D. C. NTIS PB90–155581/CCE.

[2] U.S. EPA. 1991. Risk Assessment Guidance for Superfund, Volume 1: Human Health Evaluation Manual (Part B, Development of Risk-Based Preliminary Remediation Goals). Publication 9285.7–01B. Office of Emergency and Remedial Response, Washington, D.C. NTIS PB92–963333.

[FRL–5104–5]

National Capacity Assessment Report; Availability of Draft

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 104(c)(9) of CERCLA requires states to provide an assurance in a contract or cooperative agreement of the availability of hazardous waste treatment or disposal capacity to manage the hazardous wastes expected to be generated within their State for 20 years before EPA can expend any Superfund remedial action Trust funds in the States. The 1993 Guidance for Capacity Assurance Planning (OSWER Directive 9010.02) presented a national approach for determining capacity to treat and dispose of hazardous wastes reasonably expected to be generated during this period. This notice announces the availability of the draft National Capacity Assessment Report. Based on the preliminary assessment that the draft Report presents, the Agency believes there is sufficient national capacity to manage all hazardous wastes projected to be generated through 2013. EPA will utilize the draft assessment, together with other data that becomes available, in evaluating whether the assurance requirement of CERCLA Section 104 (c)(9) has been met when entering into contracts or cooperative agreements with States. Based on the comments received on this draft Report, the Agency will modify, as appropriate, the National Assessment and make available any revised assessment by publishing a notice of availability in the **Federal Register**. If any revised assessment identifies a shortfall in any management categories, those states contributing to the shortfall(s) will be notified by the Agency to submit additional information that addresses any identified shortfall(s). Methods for obtaining a copy of the draft Assessment Report are described below. The information collection activities for the 1993 Capacity Assurance Planning process have been approved by the Office of Management and Budget (OMB) under OMB Control Number 2050–0099.

DATES: Comments on the draft Assessment Report must be received on or before January 17, 1995.

ADDRESSES: Commenters must send an original and two copies of their comments to: RCRA Docket Information Center, Office of Solid Waste (5305), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW., Wash., DC 20460. Comments must include the docket number F–94–CARA-FFFFF. The public docket is located at EPA HQ, room M2616 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. Public review of the docket materials is by appointment only. Call (202) 260–9327 for appointments. Copies cost $.15/page.

Comments may also be submitted electronically by sending electronic mail (e-mail) through Internet to: RCRA-Docket@epamail.epa.gov. All comments in electronic format should be identified by the docket number F–94–CARA-FFFFF. Further information on submitting comments electronically is provided below in the section entitled "Electronic Filing of Comments."

FOR FURTHER INFORMATION CONTACT: The draft Assessment Report will be available in electronic format on the Internet System through the EPA Public Access Server at gopher.epa.gov. For a paper copy of the draft Assessment Report, please contact the National Technical Information Service (NTIS) at 1–703–487–4650. The document number is PB95–105 417 (EPA530–R–94–040). Copies of the draft Report's Executive Summary (EPA530–S–94–040) are free, and may be obtained by calling the RCRA Hotline at 1–800–424–9346. For information on specific aspects of the draft Assessment Report, contact Robert Burchard, Office of Solid Waste (5302W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8450.

Electronic Filing of Comments

As part of an interagency "streamlining" initiative, EPA is experimenting with submission of public comments on selected actions electronically through the Internet in addition to accepting comments in traditional written form. This notice is one of the actions selected by EPA for this experiment. From the experiment, EPA will learn how electronic commenting works and any problems that arise can be addressed before EPA adopts electronic commenting more broadly in its rulemaking activities.

Electronic comment through the Internet raises some novel issues that are discussed below in this Section. Persons who comment on this document should be aware that this experimental electronic commenting is administered on a completely public system. Therefore any personal information included in comments and the electronic mail addresses of those who make comments electronically are automatically available to anyone else who views these comments.

Commenters should not submit electronically any information which they believe to be Confidential Business Information (CBI). Such information should be submitted only in writing in triplicate directly to the EPA. Comments containing CBI should be submitted to: Document Control Officer, Office of Solid Waste (5305), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all documents received electronically, into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document. (Comments submitted on paper will not be transferred to electronic format. These comments may be viewed only in the RCRA docket as described above.)

Because the electronic comment process is still experimental, EPA cannot guarantee that all electronic comments can be accurately converted to printed, paper form. If EPA becomes aware of any problems with the receipt of the electronic file or with its transfer to paper, EPA will attempt to contact the commenter to ask the commenter to resubmit the comment in electronic or written form. Some commenters may choose to submit identical comments in both electronic and written form to ensure accuracy. In that case, EPA requests that comments clearly note in both the electronic and written submissions that the comments are duplicated in the other medium. This will assist EPA in processing and filing the comments during the open comment period. As with written comments, electronic comments on the draft Assessment Report must be received on or before January 17, 1995.

As with written comments, EPA will not attempt to verify the identities of electronic commenters or to review the accuracy of electronic comments. EPA will take such commenters and comments at face value. Electronic and written comments will be placed in the official record without any editing or change by EPA except to the extent changes occur in the process of converting electronic comments to printed, paper form.

If it chooses to respond officially to electronic comments on this notice, EPA will do so either in a notice in the Federal Register or in a response to comments document placed in the official record for this docket. EPA will not respond to commenters

electronically other than to seek clarification of electronic comment that may be garbled in transmission or conversion to printed, paper form as discussed above. Any communications from EPA employees to electronic commenters, other than those described in this paragraph, either through Internet or otherwise are not official responses from EPA.

EPA is interested in learning whether people have obtained these documents electronically, and what their experiences were in doing so. People who are interested in providing feedback on the electronic availability of these documents are encouraged to comment by sending email to OSW-Pilot@epamail.epa.gov. Direct any substantive questions to the contacts listed below.

Accessing Internet

Through Gopher:

Go to: gopher.epa.gov
From the main menu, choose "EPA Offices and Regions."
Next, choose "Office of Solid Waste and Emergency Response (OSWER)."
Finally, choose "Office of Solid Waste."

Through FTP:

Go to: ftp.epa.gov
Login: anonymous
Password: Your Internet Address
Files are located in /pub. All OSW files are in directories beginning with "OSW."

Through Telnet:

Go to: gopher.epa.gov
Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions." Next, choose "Office of Solid Waste and Emergency Response (OSWER)" Then, choose "Office of Solid Waste."

Through MOSAIC:

Go to: http://www.epa.gov
Choose the EPA Public Access Gopher. From the main (Gopher) menu, Choose "EPA Office and Regions." Next, choose "Office of Solid Waste and Emergency Response (OSWER)."Finally, choose "Office of Solid Waste."

"Through dial-up access: Dial 919–558–0335. Choose EPA Public Access Gopher. From the main (Gopher) menu, choose "EPA Offices and Regions." Next choose "Office of Solid Waste and Emergency Response (OSWER)." Then choose "Office of Solid Waste."

Dated: November 1, 1994.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 94–28151 Filed 11–15–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No.: 203–011473.

Title: Aruba, Bonaire, Curacao Discussion Agreement.

Parties:

Crowley American Transport, Inc.
King Ocean Line S.A.
Kirk Line Service
Genesis Container Line

Synopsis: Notice is hereby given that the Federal Maritime Commission pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1701–1720) has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 203–011473 as required by the Act. This action extends the review period as provided in section 6(c) of the Act.

Dated: November 9, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–28247 Filed 11–15–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citicorp, New York, NY; Application to Engage in Nonbanking Activities

Citicorp, New York, New York (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through Citicorp Futures Corporation, New York, New York (Company), a futures commission merchant (FCM) registered under the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), in executing and clearing, clearing withoutxecuting, executing without clearing, purchasing and selling through the use of omnibus trading accounts, and providing investment advisory services with regard to Sour Crude Oil Futures, Light Sweet Crude Oil Futures, Options on Light Sweet Crude Oil Futures, Gulf Coast Unleaded Gasoline Futures, New York Harbor Unleaded Gasoline Futures, Options on New York Harbor Unleaded Gasoline Futures, Natural Gas Futures, Options on Natural Gas Futures, Heating Oil Futures, Options on Heating Oil Futures and Propane Futures on the New York Mercantile Exchange; World Sugar No. 11 Futures, Options on World Sugar No. 11 Futures, Coffee "C" Futures, Options on Coffee "C" Futures, Cocoa Futures and Options on Cocoa Futures on the Coffee, Sugar & Cocoa Exchange, Inc.; Hard Red Winter Wheat Futures and Options on Hard Red Winter Wheat Futures on the Kansas City Board of Trade; Soybean Futures and Options on Soybean Futures on the MidAmerica Commodity Exchange; Corn Futures, Options on Corn Futures, Soybean Futures, Options on Soybean Futures, Soybean Oil Futures, Options on Soybean Oil Futures, Soybean Meal Futures, Options on Soybean Meal Futures, Wheat Futures and Options on Wheat Futures on the Chicago Board of Trade; Live Cattle Futures, Options on Live Cattle Futures, Feeder Cattle Futures, Options on Feeder Cattle Futures, Live Hog Futures, Options on Live Hog Futures on the Chicago Mercantile Exchange; and High Sulphur Fuel Oil Futures on the Singapore International Monetary Exchange. Applicant proposes that Company become a clearing member of the New York Mercantile Exchange, Kansas City Board of Trade, MidAmerica Commodity Exchange and Singapore International Monetary Exchange. These activities will be conducted world wide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Applicant states that the Board previously has approved providing the proposed FCM execution, clearance and advisory services with respect to nonfinancial commodity contracts. *See* Bank of Montreal, 79 Federal Reserve Bulletin 1049 (1993); *J.P. Morgan & Co. Incorporated*, 80 Federal Reserve Bulletin 151 (1994)(*J.P. Morgan*). Applicant has stated that Company would provide the proposed services in accordance with *J.P. Morgan*, except that Company would provide FCM services to commodity pools that are owned or sponsored by, or otherwise affiliated with, Applicant.

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. § 1843(c)(8). Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance competition and enable Applicant to offer its customers a broader range of products. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 2, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, November 9, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–28249 Filed 11–15–94; 8:45 am]

BILLING CODE 6210–01–F

Community Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 5, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Community Bancorp., Inc., Norwalk, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Community State Bank, Norwalk, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dakota Bancshares, Inc., Mendota Heights, Minnesota; to merge with St. Paul Bancshares, Inc., St. Paul, Minnesota, and thereby indirectly acquire The Phalen Bank, St. Paul, Minnesota.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Chalybeate Springs Corporation-S, Hughes Springs, Texas; to become a bank holding company by acquiring 1 percent of the voting shares of First National Bank, Hughes Springs, Texas. In addition Chalybeate Springs, L.C., Hughes Springs, Texas, also has applied to become a bank holding company by acquiring 1 percent of the voting shares of First National Bank, Hughes Springs, Texas.

Board of Governors of the Federal Reserve System, November 9, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–28250 Filed 11–15–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Jacqueline Edberg, Villanova University: The Division of Research Investigations of the Office of Research Integrity (ORI) reviewed an investigation conducted by Villanova University into possible scientific misconduct on the part of Jacqueline Edberg, a former Master's degree student in the Psychology Department at Villanova University. ORI conducted that Ms. Edberg committed scientific misconduct by fabricating data on two experiments for a project supported by the National Institute of Mental Health. Ms. Edberg has been debarred from eligibility for and involvement as a principal in grants, other assistance awards and contracts from the Federal government and has been excluded from serving on Public Health Service advisory committees, board, or peer review groups for a three year period beginning October 20, 1994. The fabricated data did not appear in any scientific publications.

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301 443–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 94–28319 Filed 11–15–94; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

[Docket No. 81N–0096]

Biological Products; Allergenic Extracts Classified in Category IIIB; Final Order; Revocation of Licenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final order concerning most allergenic extracts classified in Category IIIB. FDA is also announcing the revocation of product licenses and the authorization to manufacture specific products under U.S. licenses for allergenic extracts, as applicable, for most allergenic extracts classified in Category IIIB. FDA is revoking the licenses of such allergenic extract products for which the manufacturers have not requested hearings. The agency has not, at this time, determined whether to grant the one pending hearing request concerning Category IIIB injectable Poison Ivy Extract. The license at issue in this hearing request is not at this time being revoked.

DATES: The revocation of licenses is effective December 16, 1994. Labeling changes were to be submitted to and approved by the Director, Office of Biologics Research and Review by February 5, 1986, as stated in the notice of opportunity for hearing of August 9, 1985.

ADDRESSES: Submit any additional labeling changes to the Director, Center for Biologics Evaluation and Research (HFM–481), 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

FOR FURTHER INFORMATION CONTACT:
Regarding this notice: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–3074.
Regarding licenses and labeling changes: Susan Barkan, Center for Biologics Evaluation and Research (HFM–481), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–594–2090.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 23, 1985 (50 FR 3082), FDA announced its intention to revoke product licenses (hereinafter referred to as the 1985 proposal), or the authorization of manufacturers to produce individual products under their licenses for the manufacture of allergenic extracts, for any allergenic extract classified into Category IIIB. The proposed action was based on the conclusions and recommendations of the Panel on Review of Allergenic Extracts (the Panel), including the Panel's conclusions that data were insufficient to classify certain products as safe and effective and that the products have an unfavorable benefit-to-risk potential. The conclusions and recommendations of the Panel are contained in a report to the Commissioner of Food and Drugs which was reprinted in the 1985 proposal. Those products with insufficient data and an unfavorable benefit-to-risk potential, which the Panel believed should not continue to be marketed during the development of data to resolve whatever safety and effectiveness questions exist, were classified in Category IIIB.

FDA also announced in the 1985 proposal that the Panel recommended that two products be classified into Category II (unsafe, ineffective, or misbranded). However, the license for one of the products was revoked at the request of the manufacturer during the Panel's review. The other product had been classified as Category II for a specific indication for immunotherapy that had not previously been approved by FDA, and the agency is not aware of such immunotherapeutic use of the product. Therefore, no action was proposed on the two products.

Many allergenic extracts were classified by the Panel in Category IIIA, designating products for which the available data are insufficient to determine whether the product license should be revoked or affirmed and which may be marketed pending the completion of further testing. Under § 601.26 (21 CFR 601.26), all biological products recommended for Category IIIA are to be reclassified into Category I or Category II. The Panel established to reclassify Category IIIA allergenic extracts has completed its review and submitted its recommendations to FDA. The agency will announce its proposed response to the recommendations for reclassification of Category IIIA allergenic extracts in a future issue of the **Federal Register**.

In the **Federal Register** of August 9, 1985 (50 FR 32314), FDA published a notice of opportunity for hearing (hereinafter referred to as the 1985 notice), concerning specified allergenic extracts that the agency had proposed for inclusion in Category IIIB in the 1985 proposal. Approximately 280 of the 1,600 generic allergens representing almost 6,000 individual company allergenic extracts reviewed by the Panel had been classified into Category IIIB. The 1985 notice included a listing of all licensed manufacturers and the products classified as Category IIIB.

A. Requests for Hearings

In response to the 1985 notice, FDA received four requests for hearings from licensed manufacturers of allergenic extracts. The following manufacturers submitted requests:

1. Antigen Laboratories, Inc., 30–34 South Main, P.O. Box 123, Liberty, MO 64068, submitted a request for hearing dated August 30, 1985, on several unspecified products placed into Category IIIB for diagnostic use. In a subsequent letter dated March 22, 1988, Antigen Laboratories, Inc., withdrew its hearing request.

2. Barry Laboratories, Inc., P.O. Box 1967, Pompano Beach, FL 33061, submitted a request for hearing dated December 11, 1985, on its Poison Ivy-Oak-Sumac Extracts, combined, injection in almond oil (Rhus-All Antigen™), License No. 119. At the manufacturer's request, the establishment and product licenses issued to Barry Laboratories, Inc., were revoked on January 19, 1988. The pending request for hearing would have determined whether the product and establishment licenses issued to Barry Laboratories, Inc., should be revoked. The request for license revocation constitutes a withdrawal of the request for a hearing, and consideration of the data is unnecessary.

3. Mulford Colloid Laboratories, Division of Lemmon Co., Inc., Cathill and Lonely Rds., Sellersville, PA 18960, submitted a request for hearing dated September 5, 1985, on the Category IIIB classification of its Poison Ivy Extract, injection in hydro-alcoholic solution (Rhustox Antigen™), License No. 102. At the manufacturer's request, the establishment and product licenses issued to Mulford Colloid Laboratories, Division of Lemmon Co., Inc., were revoked on January 28, 1992. The pending request for hearing would have determined whether the product and establishment licenses issued to Mulford Colloid Laboratories, Division of Lemmon Co., Inc., should be revoked. The request for license revocation constitutes a withdrawal of the request for a hearing, and consideration of the data is unnecessary.

4. Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950, submitted a request for hearing dated September 6, 1985, on the Category IIIB classification of its Poison Ivy Extract, injection in almond oil, License No. 1. Parke-Davis submitted data to support its request for hearing on its injectable Poison Ivy Extract. FDA is reviewing the data submitted and has not yet reached a decision on the request for hearing. Therefore, under 21 CFR 12.38(b), FDA will issue a separate notice regarding the hearing request on the injectable Poison Ivy Extract produced by Parke-Davis, Division of

Warner-Lambert Co. The effective date of this notice does not apply to this product.

B. Comments

The 1985 notice also requested comments regarding the 1985 proposal to revoke product licenses for all allergenic extracts classified into Category IIIB. FDA received approximately 1,700 comments in response to the 1985 notice. All of the comments received concerning the Category IIIB classifications were evaluated by FDA in developing the agency's conclusions set forth in this order and notice. Summaries of the comments and the agency's responses follow:

1. The majority of comments concerning the classification of products into Category IIIB were testimonial in nature, most of them form letters submitted by physicians and their patients. Most of the comments expressed concern that some of the Category IIIB products would no longer be available for medical use. No new and relevant data that had not been previously available to the Panel or FDA were submitted by the comments. A summary of these general comments related to Category IIIB classifications follows:

a. Several comments supported the Category IIIB classification of winged whole body hymenoptera insect extracts; several comments opposed the classification of these products. Data were submitted in support of the Category IIIB classification of these whole body extracts and in support of the use of pure venom extracts rather than whole body extracts for the diagnosis and treatment of insect sting allergy.

b. Over 1,000 of the comments, a majority of which were form letters, opposed the Category IIIB classification of food extracts. Some of the comments made reference to specific food extracts, including food extracts not proposed for classification in Category IIIB, and other comments referred to food extracts in general.

The 1985 proposal discussed the Panel report, which stated that extracts of manufactured foods or undefined source materials which are mixtures or whose composition may vary from time-to-time should be discontinued (50 FR 3082 at 3247). The comments did not appear to recognize that native, single food extracts were not classified in Category IIIB and will remain on the market until reclassification procedures are completed. All Category IIIB food extracts are derived from processed foods or mixtures. Examples of processed foods or mixtures are those that are canned or contain added chemicals or preservatives.

Five of the comments opposing the Category IIIB classification of food extracts referred to information in published journal articles. None of the articles contained data or information demonstrating that any food extract classified in Category IIIB is safe and effective for the uses described in the products' labeling. The journal articles failed to cite data with satisfactory controls, did not identify the manufacturers of the food extracts, or used allergenic products in the studies that were not Category IIIB products.

c. Many of the same comments that opposed the Category IIIB classification of food extracts also opposed the Category IIIB classification of trichophyton, oidiomycin, and epidermophyton (T.O.E.)[1] molds involved in dermatomycosis. A small number of the comments opposed the Category IIIB classification of certain extracts of animal epidermals, plant oleoresins, insects other than winged whole body hymenoptera insects, and miscellaneous inhalants. Several of the comments referred to specific products that were not classified in Category IIIB and were not subject to the 1985 notice.

Until data from further studies are developed to resolve questions of safety and effectiveness, FDA cannot agree with the comments opposing the final classification of Category IIIB allergenic extracts. The Panel, with public participation, carefully reviewed the available data on these products. The Panel concluded that further testing was required and that because of questionable benefit and/or potential risk, these products should be removed from the market until the questions concerning their safety and effectiveness were resolved. The comments submitted no additional data to resolve the remaining questions. Applicable provisions of the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act and implementing regulations require that biological drug products be demonstrated to be safe and effective through adequate studies and that such products not be misbranded. In the absence of adequate data, FDA cannot determine, based on testimonials alone, that the statutory requirements have been met.

2. One comment questioned whether sheep wool extract that is prepared from unprocessed sheep shearings, rather than from processed wool, should be classified as Category IIIB. Manufacturers of sheep wool extract did not provide any data on the safety and effectiveness of their products for diagnostic or therapeutic use. FDA is not aware of any data to support distinguishing the safety and effectiveness of extracts prepared from processed sheep wool from the extracts prepared from freshly clipped sheep shearings. The 1985 proposal discussed suggestions by the Panel that unprocessed source materials from sheep be investigated (50 FR 3082 at 3179). Until appropriate studies are performed to establish the safety and effectiveness of these extracts, all sheep wool and other sheep epidermal extracts are classified as Category IIIB.

3. Washington Homeopathic Pharmacy, Inc., submitted a comment to the 1985 notice, asking FDA to permit the firm to market its preparation of Poison Ivy Extract, License No. 392, (Homeopathic Rhus Tox. 3X Pills) as a homeopathic preparation and not as a licensed biological product. Subsequently, at the manufacturer's request, the establishment and product licenses were revoked on August 5, 1994.

The Panel recommended placing this product in Category IIIB because there was no evidence of effectiveness of the product for either prophylactic treatment or treatment of active contact dermatitis. However, the Panel stated that FDA may wish to consider this product differently because it is a homeopathic remedy that is highly diluted in accordance with homeopathic principles (50 FR 3082 at 3271).

In the 1985 proposal the agency recognized the Panel's suggestion that FDA may wish to consider this homeopathic product differently. FDA responded by proposing that "* * * this biological product should be subject to the same regulatory procedures as other Category IIIB biologicals" (50 FR 3082 at 3282). The 1985 proposal stated "* * * The regulations in § 601.25 (21 CFR 601.25) make no separate provision for standards of effectiveness for homeopathic drugs" (50 FR 3082 at 3271). Because FDA has reviewed the data concerning the safety and efficacy of Poison Ivy Extract, manufactured by Washington Homeopathic Pharmacy, Inc., License No. 392, and determined that there was no evidence of effectiveness for either prophylactic treatment or treatment of active contact dermatitis, FDA is denying the manufacturer's request to permit the firm to market its Poison Ivy Extract, License No. 392, as an over-the-counter (OTC) homeopathic preparation.

[1] T.O.E. is a mixture of various species of the three genera of dermatophytes: Trichophyton, Epidermophyton, and Microsporum.

4. Several comments expressed the view that some Panel members were biased regarding their recommendations for Category IIIB classification of certain extracts and that the Panel did not represent a wide divergence of responsible medical and scientific opinion from various medical groups or societies.

FDA disagrees with these comments. The Panel members were selected on the basis of their qualifications to review allergenic extracts to determine if they are safe, effective, and not misbranded for their labeled uses. The members were not selected as representatives of various medical societies. The members have had experience with allergenic extracts and are exceptionally well qualified in the fields of allergy, immunology, pediatrics, and the proper methodology for conducting scientific investigations. Most of the members are physicians who were engaged in active medical practice during their Panel membership. FDA believes that the expertise of the Panel members qualified them to review the safety and effectiveness data related to all allergenic extracts. FDA finds no reason to believe that the members did not represent an appropriate divergence of responsible viewpoints.

5. A number of comments acknowledged the need for additional studies to be performed on certain Category IIIB products. Several of the comments stated that certain food extract products are effective when used with techniques that are not indicated in the approved labeling of the products.

Additional studies need to be performed on any allergenic extract classified as Category IIIB. The Panel reviewed allergenic extracts to determine whether the licensed products are safe and effective for their labeled uses. There are allergenic extracts currently approved by FDA for use in the diagnosis and immunotherapy of immunoglobulin E-mediated (IgE-mediated) allergy to the respective ingested food. The Panel was not charged with reviewing food extracts for uses not contained in the approved product labeling. Nevertheless, the Panel considered the use of food extracts in both IgE and non-IgE-mediated allergy. Food extracts were discussed at 16 of the 32 Panel meetings and all persons who requested an opportunity to appear were given time to appear before the Panel. Although the non-IgE-mediated uses discussed in the comments were contained in the approved product labeling, the lack of available data on such uses justifies the Category IIIB classification of those food extracts of processed foods or extract mixtures prepared from undefined and variable source materials. If studies are conducted to determine the safety and effectiveness of an allergenic extract for uses not indicated in the current labeling, the data accumulated from the studies as well as revised labeling and other necessary information should be submitted in the license application. Guidance on study design may be found in the recommendations of the Panel, as discussed in the 1985 proposal concerning further testing (50 FR 3082 at 3116 to 3123), and FDA's "Draft Guideline for the Design of Clinical Trials for Evaluation of the Safety and Efficacy of Allergenic Products for Therapeutic Uses" (53 FR 48727, December 2, 1988). Any person who is considering performing further studies may wish to consult with the agency concerning requirements.

6. One comment asked FDA to use the same standards for reviewing Category IIIB products that reclassification panels used to reclassify Category IIIA products, including establishing a new panel to review them, if necessary.

The issue raised by this comment was addressed in the final rule establishing the reclassification procedures under § 601.26, which was published in the **Federal Register** of October 5, 1982 (47 FR 44062 at 44065). The agency's position has not changed since publication of that final rule. Products placed in Category IIIB differ from products that had been placed in Category IIIA in that the Category IIIB designation represents a finding that the potential risks of marketing a product outweigh the potential benefits and, therefore, the Category IIIB products should not be marketed pending the completion of additional studies. However, interested persons may at any time submit to the agency for evaluation evidence that would be appropriate to support the relicensing of a Category IIIB product.

C. Manufacturers and Products Affected

The 1985 notice included a listing of the Category IIIB products, most of which were classified by allergen, rather than by manufacturer generically. Where the extract is licensed to a particular manufacturer under a specific product license or the specific manufacturer's product was reviewed by the Panel, the listing includes the name of the manufacturer along with that specific extract. The other Category IIIB classifications for products listed generically represent Category IIIB classifications for the corresponding specific company products of each licensed manufacturer of allergenic extracts. Some products were listed generically in Category IIIB for therapy and in a different category (Category I or Category IIIA) for diagnosis. Other products are manufactured and approved only for immunotherapy. Some of the companies produce only a few Category IIIB extracts or none at all. A company is subject to this notice only to the extent that the company produces a product or products classified in Category IIIB. The currently licensed manufacturers of allergenic extracts are again being listed below, for informational purposes only:

Licensed manufacturer of allergenic extracts	License number
Allergologisk Laboratorium A/S	License No. 927[1]
Allergy Laboratories of Ohio, Inc.	License No. 407
Allergy Laboratories, Inc.	License No. 103
Allermed Laboratories, Inc.	License No. 467
Antigen Laboratories, Inc.	License No. 468
ALK Laboratories, Inc.	License No. 334
Delmont Laboratories, Inc.	License No. 299
EM Industries, Inc., Center Laboratories Division	License No. 193
Greer Laboratories, Inc.	License No. 308
Iatric Corp., Inc.	License No. 416
Meridian Bio-Medical, Inc.	License No. 448
Miles Inc.	License No. 008
Nelco Laboratories, Inc.	License No. 459
Parke-Davis, Division of Warner-Lambert Co., Inc.	License No. 001

[1] Approved by FDA on January 9, 1985.

Since the Panel completed its review, Cutter Laboratories, Inc., including its Hollister-Stier Laboratories Division, has become a part of Miles Inc., and the combined operations are now licensed under License No. 008. In the following discussions and listings the references to specific products manufactured by Hollister-Stier Laboratories, or by Miles Inc., apply to the products manufactured by those companies at the time the Panel completed its review and prior to the merger of the two companies. This notice of revocation of licenses concerning any products manufactured by either of the two companies during the Panel's review applies to the current company (Miles Inc.) licensed under License No. 008.

In addition, 11 manufacturers that each held a license for the manufacture of allergenic extracts when the Panel was meeting, requested that their establishment and product licenses be revoked as follows:

Manufacturer	Date of establishment and product licenses revocation
Purex Laboratories, Inc., (License No. 306)	August 4, 1977
Endo Laboratories, Inc., (License No. 147)	August 20, 1981
Pharmacia Laboratories, Division of Pharmacia, Inc., (License No. 556)	February 24, 1982
Riker Laboratories, Inc., (License No. 372)	July 3, 1985
Barry Laboratories, Inc., (License No. 119)	January 19, 1988
Pharmacia AB, Inc., (License No. 752)	October 1, 1991
3M Diagnostic Systems, Inc., (License No. 896)	November 12, 1991
Mulford Colloid Laboratories, Division of Lemmon Co., Inc., (License No. 102).	January 28, 1992
Washington Homeopathic Pharmacy, Inc., (License No. 392)	August 5, 1994
Merck Sharp & Dohme, Division of Merck and Co. (License No. 002)[1]	December 6, 1978
Lederle Laboratories Division of American Cyannamid Co., (License No. 17)[1].	August 11, 1976

[1] These two firms remain licensed for other types of biological products.

On November 2, 1984, Optimal, Inc., was approved for licensure of allergenic extracts (License No. 992). At the request of Optimal, Inc., its establishment and product licenses were revoked on January 28, 1992.

On April 20, 1988, Hermal Kurt Herrmann was approved for licensure of the Allergen Patch Test (License No. 1056). Similarly, on July 12, 1990, Kabi Pharmacia Operations AS (now known as Kabi Pharmacia Services A/S, as of November 2, 1993), was approved for licensure of the Allergen Patch Test (License No. 1110). Neither Hermal Kurt Herrmann nor Kabi Pharmacia Services A/S, holds a license for allergenic extracts.

The following listing represents the agency's final determination of products designated as Category IIIB except for the IIIB product discussed earlier for which a hearing request is pending. Products listed in Category IIIB Extracts of Food are foods that are processed, mixtures, or have undefined ingredients.

The allergenic extracts placed in Category IIIB for their particular uses are listed as follows:

Category IIIB Extracts of Mammalian Origin

Diagnosis	Immunotherapy
Angora Wool, Rabbit and Antelope Hair Mix	Angora Wool, Rabbit and Antelope Hair Mix
Beaver Fur	Beaver Fur
Caracul Fur	Caracul Fur
Chamois Skin	Chamois Skin
Chinchilla Fur	Chinchilla Fur
Ermine Fur	Ermine Fur
Fox Fur	Fox Fur
Fur Mix	Fur Mix
Gerbil Fur	Gerbil Fur
Kolinsky Fur	Kolinsky Fur
Lamb, Black	Lamb, Black
Leopard Fur	Leopard Fur
Marmot Fur	Marmot Fur
Mink Fur	Mink Fur
Mole Fur	Mole Fur
Muskrat Fur	Muskrat Fur
Muskrat Fur (Hudson Seal)	Muskrat Fur (Hudson Seal)
Nutria Fur	Nutria Fur
Opossum Fur	Opossum Fur
Persian Lamb Fur	Persian Lamb Fur
Pony Fur	Pony Fur
Rabbit Hair (Fur)	Rabbit Hair (Fur)
Raccoon Fur	Raccoon Fur
Sable Fur	Sable Fur
Seal Fur, Alaskan	Seal Fur, Alaskan
Seal Fur	Seal Fur
Sheep Wool	Sheep Wool
Skunk Fur	Skunk Fur
Squirrel Fur	Squirrel Fur

Category IIIB Extracts of Food

Diagnosis	Immunotherapy
Anchovy/Herring/Sardine	Anchovy/Herring/Sardine
Angostura Bitters	Angostura Bitters
Apple Mix	Apple Mix
Bacon	Bacon
Bean Sprouts	Bean Sprouts
	Beechnut (Fagus sylvatica)
Beer	Beer
Buttermilk	Buttermilk
Cascara Bark (Rhamnus purshiana)	Cascara Bark (Rhamnus purshiana)
Caviar	Caviar
Cheese, American	Cheese, American
Cheese, Camembert	Cheese, Camembert
Cheese, Cheddar (American)	Cheese, Cheddar (American)
Cheese, Cottage	Cheese, Cottage
Cheese, Limburger	Cheese, Limburger
Cheese, Mozzarella	Cheese, Mozzarella
Cheese, Parmesan	Cheese, Parmesan
Cheese, Pimento	Cheese, Pimento
Cheese, Provolone	Cheese, Provolone
Cheese, Romano	Cheese, Romano
Cheese, Roquefort	Cheese, Roquefort
Cheese, Swiss	Cheese, Swiss
Cherry, Mix	Cherry, Mix
Chewing Gum Base	Chewing Gum Base
Chili Powder	Chili Powder
Chocolate	Chocolate
Cider, Apple	Cider, Apple
Cocoa	Cocoa
Cocoa (Hersheys)	Cocoa (Hersheys)
Coca-Cola	Coca-Cola
	Coffee(Coffea arabica)
Cola	Cola
	Cola-Glyoune
Cream of Tartar	Cream of Tartar
Curry Powder	Curry Powder
Dr. Pepper	Dr. Pepper
Gelatin	Gelatin
Grape/Raisin Mix	Grape/Raisin Mix
Grape, Raisin	Grape, Raisin
Ham, Smoked	Ham, Smoked
Honey	Honey
Honey, Pure	Honey, Pure
Lactalbumin	Lactalbumin
Lactalbumin, Cow's Milk	Lactalbumin, Cow's Milk
Lettuce Mix (Lactuca sativa)	Lettuce Mix (Lactuca sativa)
	Licorice (Glycyrrhiza glabra)
Liver	Liver
Milk, Condensed	Milk, Condensed
Milk (evaporated)	Milk (evaporated)
Mint Mix (Peppermint (Mentha piperita) and Spearmint (Mentha spicata)).	Mint Mix (Peppermint (Mentha piperita) and Spearmint (Mentha spicata))
Mull-Soy	Mull-Soy
Molasses	Molasses
Muskmelon Mix (Cantaloupe/Casaba/Honeydew/Persian) (Cucumis melo).	Muskmelon Mix (Cantaloupe/Casaba/Honeydew/Persian) (Cucumis melo)
Mustard, Prepared	Mustard, Prepared
Oatmeal	Oatmeal
Olive Mix	Olive Mix
Onion Mix	Onion Mix
Pablum	Pablum
Mixed Peppers (Red and Green)	Mixed Peppers (Red and Green)
Pepsi-Cola	Pepsi-Cola
Plum/Prune Mix	Plum/Prune Mix
Popcorn Seed (Zea Mays)	Popcorn Seed (Zea Mays)
Postum	Postum
Prune, Dried	Prune, Dried
Raisin	Raisin
Root Beer	Root Beer
Saccharose	Saccharose
Saccharin	Saccharin
Seven-up	Seven-up
Squash (Cucurbita pepo) varieties	Squash (Cucurbita pepo) varieties

Category IIIB Extracts of Food—Continued

Diagnosis	Immunotherapy
Squash Mix	Squash Mix
Sugar (Beet) (Beta vulgaris)	Sugar (Beet) (Beta vulgaris)
Sugar (Cane) (Saccharum officinarum)	Sugar (Cane) (Saccharum officinarum)
Sugar (Maple) (Acer saccharum)	Sugar (Maple) (Acer saccharum)
Sweetbreads	Sweetbreads
Syrup, Pure Maple	Syrup, Pure Maple
Tea, Black	Tea, Black
Tea, Green	Tea, Green
Tea, Mixed	Tea, Mixed
Tuna Mix	Tuna Mix
Vinegar	Vinegar
Worcestershire Sauce	Worcestershire Sauce
Yeast (Saccharomycetaceae)	Yeast (Saccharomycetaceae)
Yeast Mix (Bakers/Brewers)	Yeast Mix (Bakers/Brewers)

Category IIIB Extracts of Miscellaneous Inhalants

Diagnosis	Immunotherapy
Animal Feed Mix	Animal Feed Mix
Balsam Sawdust	Balsam Sawdust
Binder Twine	Binder Twine
Cattail	Cattail
Chalk	Chalk
Cleansing Tissue	Cleansing Tissue
	Cottonseed
Dacron	Dacron
	Derris Root
Dust, Alfalfa Hay	Dust, Alfalfa Hay
Dust, Alfalfa Mill	Dust, Alfalfa Mill
Dust, Auto Upholstery	Dust, Auto Upholstery
Dust, Barley	Dust, Barley
Dust, Barn	Dust, Barn
Dust, Brome Corn	Dust, Brome Corn
Dust, Chicken House	Dust, Chicken House
Dust, Clover Hay	Dust, Clover Hay
Dust, Combined	Dust, Combined
Dust, Furniture Upholstery	Dust, Furniture Upholstery
Dust, Hay	Dust, Hay
Dust, Prairie Hay	Dust, Prairie Hay
Dust, Kafir	Dust, Kafir
Dust, Lespedeza Hay	Dust, Lespedeza Hay
Dust, Milo	Dust, Milo
Dust, Oat	Dust, Oat
Dust, Pea	Dust, Pea
Dust, Pencil	Dust, Pencil
Dust, Poultry	Dust, Poultry
Dust, Rice	Dust, Rice
Dust, Road	Dust, Road
Dust, Rye	Dust, Rye
Dust, Soy Bean	Dust, Soy Bean
Dust, Timothy Hay	Dust, Timothy Hay
Dust, Wheat	Dust, Wheat
Excelsior	Excelsior
Fiber Glass	Fiber Glass
	Flaxseed
Glue	Glue
Glue, Animal	Glue, Animal
Glue, Fish	Glue, Fish
Glue, Liquid	Glue, Liquid
Glue, Powdered	Glue, Powdered
Lampblack	Lampblack
Linen	Linen
Newspaper	Newspaper
Newspaper Mix (Printed)	Newspaper Mix (Printed)
Newspaper/Newspaper Print	Newspaper/Newspaper Print
Nylon	Nylon
Paper, Carbon	Paper, Carbon
Paper, Mix	Paper, Mix
Paper, Pulp	Paper, Pulp
Rayon	Rayon

Category IIIB Extracts of Miscellaneous Inhalants—Continued

Diagnosis	Immunotherapy
Rug	Rug
Smoke, Cigar	Smoke, Cigar
Smoke, Cigarette	Smoke, Cigarette
Smoke, Tobacco	Smoke, Tobacco
Tobacco Smoke Mixture	Tobacco Smoke Mixture
Snuff, Mix	Snuff, Mix
Spanish Moss	Spanish Moss
Tobacco, Cigar	Tobacco, Cigar
Tobacco, Cigarette	Tobacco, Cigarette
Tobacco, Mix	Tobacco, Mix
Tobacco, Pipe	Tobacco, Pipe

Category IIIB Extracts of Plant Oleoresins

Diagnosis	Immunotherapy
	Poison Ivy Extract, injection in olive oil (Ivyol™), manufactured by Merck Sharp & Dohme, Division of Merck and Co. At the request of the manufacturer, this product license was revoked on December 6, 1978.
	Poison Ivy Extract, Poison Oak Extract, and Poison Ivy-Poison Oak Extracts (combined), injections in alcohol, manufactured by Hollister-Stier Labs., Division of Miles Inc.
	Poison Ivy Extract, Alum Precipitated (Aqua Ivy ap™), injection, manufactured by Miles Inc.
	Poison Ivy Extract by Washington Homeopathic Pharmacy, Inc.
	Plant Oleoresin (for oral use only); Plant Oleoresins Used for Patch Testing and Oral Immunotherapy; Wild Plants, as follows:
	Aster (*Callistephus*)
	Bitterweed (*Helenium tenuifolium*)
	Black-eyed Susan (*Rudbeckia hirta*)
	Burdock (*Arctium*)
	Burweed marshelder (*Iva xanthifolia*)
	Chicory (*Chichorium Intybus L.*)
	Cocklebur (*Xanthium commune*)
	Dandelion (*Taraxacum officinale*)
	Dog fennel (*Anthemis cotula*)
	Fleabane (*Erigeron*)
	Goldenrod (*Solidago*)
	Ironweed (*Veronia*)
	Ragweed, false (*Franseria acanthicarpa*)
	Ragweed, giant (*Ambrosia trifida*)
	Ragweed, western (*Ambrosia psilostachya*)
	Sagebrush (*Artemesia tridentata*)
	Sneezeweed (*Helenium microcephalum*)
	Wild feverlew (*Parthenium hysteroporus*)
	Wormwood (*Artemesia absinthium*)
	Yarrow (*Achillae lanulosa*)
	Domesticated plants, as follows:
	Chrysanthemum (*Chrysanthemum x-morifolium*)
	Coreopsis (*Coreopsis*)
	Corn flower
	Cosmos (*Cosmos*)
	Dahlia (*Dahlia*)
	Feverlew (*Chrysanthemum parthenium*)
	Gaillardia (*Gaillardia*)
	Lettuce (*Latuca sativa L.*)
	Marigold (*Tagetes*)
	Shasta Daisy (*Chrysanthemum maximum*)
	Sunflower (*Heliantheae*)
	Tansy (*Tanacetum vulgare L.*)

Category IIIB Extracts of Molds Involved in Dermatomycosis

Diagnosis	Immunotherapy
Dermatophytin, Hollister-Stier Labs., Division of Miles Inc.	Dermatophytin, Hollister-Stier Labs., Division of Miles Inc.
Dermatophytin "O," Hollister- Stier Labs., Division of Miles Inc.	Dermatophytin "O," Hollister- Stier Labs., Division of Miles Inc.
"T.O.E.," Hollister-Stier Labs., Division of Miles Inc.	"T.O.E.," Hollister-Stier Labs., Division of Miles Inc.
"T.O.E.," Antigen Laboratories, Inc.	"T.O.E.," Antigen Laboratories, Inc.

Category IIIB Extracts of Insects (Whole Body)

Diagnosis	Immunotherapy
.....	Bedbugs
Bee, Bumble	Bee, Bumble
Bee, Honey; used for stinging insect anaphylaxis	Bee, Honey; used for stinging insect anaphylaxis
Bee, Sweat	Bee, Sweat
.....	Beetle, Blister
.....	Beetle, Dermestid
.....	Beetle, Japanese
.....	Beetle, Ladybug
Black-fly	Black-fly
Box Elder Bugs	Box Elder Bugs
.....	Butterfly
Caterpillar	Caterpillar
Caterpillar (tent)	Caterpillar (tent)
Citrus Mealy Bugs	Citrus Mealy Bugs
Clear Lake Gnats	Clear Lake Gnats
.....	Cricket
.....	Cicada/Locust
.....	Cockroach (species not defined)[1]
.....	Cockroach, mixed (species not defined)[1]
.....	Daphnia
.....	Flea
.....	Flea, Dog
.....	Flea, Cat
.....	Flea, Mixed
Flea, Sand	Flea, Sand
.....	Flea, Water (Daphnia pulex)
.....	Fruit Flies
Gnat	Gnat
Gnat, Black	Gnat, Black
Grasshopper	Grasshopper
Hornet	Hornet
Hornet, Bald Face	Hornet, Bald Face
Hornet, Black and Yellow Mix	Hornet, Black and Yellow Mix
Hornet, Japanese	Hornet, Japanese
Horsefly	Horsefly
Horsefly/Stable Fly	Horsefly/Stable Fly
.....	Housefly
Household Insects	Household Insects
.....	Leafhopper
.....	Locust
.....	Mosquito
.....	Mosquito Mix
.....	Moth
.....	Moth/Miller
Sandfly	Sandfly
.....	Screwworm Fly
.....	Sow Bugs
.....	Spider
.....	Spider Mix
Stable Flies	Stable Flies
Tick Seeds	Tick Seeds
.....	Triatoma
Wasp	Wasp
Wasp Mix	Wasp Mix
Yellow Jacket	Yellow Jacket
Stinging Insect Mix	Stinging Insect Mix

[1] This does not include properly labeled Cockroach extracts, e.g., Cockroach, American; Cockroach, German; Cockroach, Oriental. (See discussion of reclassification below.)

D. Category IIIB Alum Precipitated Extracts

In addition, alum precipitated allergenic extracts (Center-Al™), licensed for use in immunotherapy only, to Center Laboratories, Division, EM Industries, Inc., Hawthorne, NY 11050, are placed in Category IIIB whenever the corresponding aqueous products are classified as Category IIIB.

Alum precipitated allergenic extracts, (Allpyral™) licensed to Miles Inc., are placed in Category IIIB if the corresponding aqueous products are classified as Category IIIB. The only exception to this statement is that Alum-precipitated Allpyral short ragweed pollen extract is classified as Category IIIB because the Allpyral short required pollen extracts have been studied most extensively and information suggests that this product is not effective even though the corresponding aqueous extract is currently classified in Category IIIA.

E. Extracts Recommended for Category IIIB by the Panel, but Placed in Category IIIA by FDA, Subject to Reclassification

The Panel recommended that extracts of Cockroach, American; Cockroach, German; and Cockroach, Oriental be placed into Category IIIB for immunotherapy and Category I for diagnosis. However, after the Panel completed its review, new relevant data were published that justify reconsideration of the generic classification of these products. A copy of these published data has been placed on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. The Panel on Review of Allergenic Extracts (Reclassification Panel) recommended that Cockroach, American; Cockroach, German and Cockroach, Oriental extracts be placed in Category I for immunotherapy. Accordingly, licenses for Cockroach, American; Cockroach, German; Cockroach, Oriental; and mixtures consisting of such extracts are not at this time being revoked pending reclassification into either Category I or Category II.

In addition, the Panel recommended that extracts of beechnut (Fagus sylvatica), coffee (Coffea arabica), licorice (Glycyrrhiza glabra), and butterfly be placed into Category IIIB for both diagnosis and therapy. However, the data relating to these products were rereviewed by the Reclassification Panel, which has recommended reclassification of these products into Category I for diagnostic use. Therefore, FDA believes that the licenses for these products for diagnostic use should not be revoked at this time, pending review by the agency of the final report of the advisory committee containing the recommendations for reclassification.

II. Findings

Based on the Panel's report and recommendations published in the 1985 proposal, and the agency's review of comments received regarding the 1985 proposal and affected products, the product licenses for Category IIIB allergenic extracts affected by this notice and the authorization of manufacturers to produce the specific products under a general product license for allergenic extracts are revoked. Except for the outstanding request for a hearing from Parke-Davis, Division of Warner-Lambert Co., Inc., concerning its injectable Poison Ivy Extract, injection in almond oil, and the pending reclassification of specific cockroach extracts and extracts of beechnut, coffee, licorice, and butterfly for diagnostic use, the revocation of licenses for the Category IIIB products listed or discussed above represents the agency's final action on these allergenic extracts recommended by the Panel for classification into Category IIIB. Any allergenic extract placed into Category IIIB and subject to this notice may not be lawfully marketed for its Category IIIB indication(s) (diagnosis and/or therapy). However, if a product is approved for diagnosis but classified into Category IIIB for therapy, a manufacturer may continue to produce and market that product for diagnostic use if the labeling for the product is amended to reflect only the approved diagnostic use of the product. Specifically, the container and package labels and the "Indications and Usage" section of the package insert must state prominently, "FOR DIAGNOSTIC USE ONLY." This statement should immediately follow the proper name "Allergenic Extract" or "Allergenic Extract Alum Precipitate," in the same size and type of print as the proper name. The "Indications and Usage" section of the package insert must also include a statement that the product has not been shown by adequate data to be safe and effective for therapeutic use. These labeling requirements will be reconsidered by FDA if a manufacturer presents acceptable evidence obtained from future studies demonstrating that such labeling is no longer appropriate. Labeling amendments for such products were required to be submitted to and approved by the Director, Office of Biologics Research and Review (HFN–825), Center for Drugs and Biologics, by February 5, 1986. Under an organizational change separating the Center for Drugs and Biologics, labeling amendments are now submitted to the Director, Center for Biologics Evaluation and Research (HFM–481), 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The authorization for a manufacturer to produce a product for which the labeling is not changed will be revoked upon the effective date of this order. Any biological product marketed without an approved license is subject to regulatory action.

FDA notes that the lists of allergens in the published documents related to the Panel's recommendations may not include all marketed specific products, partially because of the various systems of classifications that have been used. For example, because of the large number of pollen extracts available (at least 777 different pollen extracts are listed in manufacturers' catalogs), those extracts were reviewed by the Panel according to the botanical family of the plant producing the pollen. The list of products in the 1985 proposal did not include each specific pollen extract marketed. Consistent with the Panel's own review, FDA will consider the data and information that are available for any product not included in the Panel's list of products in determining the classification of such a product. Any manufacturer that is uncertain whether one of its products is included in the Category IIIB classification should request a decision on the product's status from FDA. The request should be submitted in writing to the Center for Biologics Evaluation and Research (address above).

Except for an outstanding request for a hearing from Parke-Davis, Division of Warner-Lambert Co., Inc., concerning its injectable Poison Ivy Extract, injection in almond oil, and the pending reclassification of specific cockroach extracts and extracts of beechnut, coffee, licorice, and butterfly for diagnostic use, the revocation of licenses for the Category IIIB products listed or discussed above represents the agency's final action on those allergenic extracts recommended by the Panel for classification into Category IIIB. FDA advises that any allergenic extracts placed into Category IIIB shall not be introduced or delivered for introduction into interstate commerce for its IIIB indications on or after (*insert date 30 days after date of publication in the* **Federal Register**).

This notice is issued under the Public Health Service Act (sec. 351 as amended (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701 as amended, 1050–1053 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 355, 371)) 21 CFR part 12, 21 CFR 314.200, 21 CFR 601.7, 601.8, 601.25, and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: November 3, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–28193 Filed 11–15–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94E–0332]

Determination of Regulatory Review Period for Purposes of Patent Extension; Zerit®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Zerit®

and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Zerit® (stavudine). Zerit® is indicated for the treatment of adults with advanced human immunodeficiency virus (HIV) infection who are intolerant of approved therapies with proven clinical benefit or who have experienced significant clinical or immunologic deterioration while receiving these therapies or for whom such therapies are contraindicated. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Zerit® (U.S. Patent No. 4,978,655) from Yale University, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 28, 1994, FDA advised the Patent Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Zerit® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Zerit® is 1,984 days. Of this time, 1,805 days occurred during the testing phase of the regulatory review period, while 179 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: January 19, 1989. The applicant claims March 1, 1989, as the date investigational new drug application (IND) for Zerit® (IND 32,486) became effective. However, FDA records indicated that IND 32,486 was received by the agency on December 16, 1988. It was placed on clinical hold on January 3, 1989, and was removed from hold on January 19, 1989. Therefore, the IND effective date was January 19, 1989.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: December 28, 1993. FDA has verified the applicant's claim that the new drug application (NDA) for Zerit® (NDA 20–412) was initially submitted on December 28, 1993.

3. *The date the application was approved*: June 24, 1994. FDA has verified the applicant's claim that NDA 20–412 was approved on June 24, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 188 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 17, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 15, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 4, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–28194 Filed 11–15–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline

will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Gastrointestinal Drugs Advisory Committee

Date, time, and place. December 1, 1994, 9 a.m., and December 2, 1994, 8:30 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, December 1, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, December 2, 1994, 8:30 a.m. to 4 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211, or Valerie M. Mealy, Advisors and Consultants Staff, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Gastrointestinal Drugs Advisory Committee, code 12538.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 16, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 1, 1994, the committee will discuss new drug application (NDA) 20–406, TAP Pharmaceuticals, Prevacid® (lansoprazole), to be indicated for the treatment of reflux esophagitis, maintenance of healing of reflux esophagitis, duodenal ulcer and hypersecretory conditions including Zollinger-Ellison syndrome. On December 2, 1994, the committee will discuss NDA 19–810, Astra-Merck, Prilosec® (omeprazole) for maintenance treatment of gastroesophageal reflux disease.

Circulatory System Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. December 5, 1994, 8:30 a.m., Holiday Inn—Gaithersburg, Goshen and Whetstone Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the Holiday Inn—Gaithersburg. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate based on availability.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4:30 p.m.; Ramiah Subramanian, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Circulatory System Devices Panel of the Medical Devices Advisory Committee, code 12625.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 26, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general issues relating to the review of two premarket approval applications, one for a ventricular assist device and one for a dysrhythmia treatment device.

Dental Drug Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. December 5 and 7, 1994, 9 a.m., Renaissance Hotel at Tech World, Salons A and B of the Renaissance Ballroom, 999 Ninth St. NW., Washington, DC.

Type of meeting and contact person. Open committee discussion, December 5, 1994, 9 a.m. to 1 p.m.; open public hearing, 1 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 5 p.m.; open committee discussion, December 7, 1994, 9 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 4 p.m.; Jeanne L. Rippere or Stephanie Mason, Center for Drug Evaluation and Research (HFD–813), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1003, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dental Products Panel of the Medical Devices Advisory Committee, code 12518.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee functions at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 25, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The subcommittee will continue with its discussions held during the October 11, 1994, and June 28 and 29, 1994, meetings as follows: (1) The possible relationship of alcohol-containing mouthwashes to the development of oral and pharyngeal cancers, (2) the drug/cosmetic status of antiplaque products and claims, and (3) work on developing general guidelines for determining the safety and effectiveness of antiplaque and antiplaque-related

drug products. The committee will also work on a draft document to be presented at a joint meeting of the Dental Drug Products Panel and the Dental Drug Products Panel Plaque Subcommittee on December 6, 1994 (see meeting announcement elsewhere in this issue of the Federal Register).

Joint Meeting of the Dental Drug Products Panel and the Dental Drug Products Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. December 6, 1994, 9 a.m., Renaissance Hotel at Tech World, Salons A and B of the Renaissance Ballroom, 999 Ninth St. NW., Washington, DC.

Type of meeting and contact person. Open committee discussion, 9 a.m. to 1 p.m.; open public hearing, 1 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 5 p.m.; Jeanne L. Rippere or Stephanie Mason, Center for Drug Evaluation and Research (HFD–813), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1003, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Dental Products Panel of the Medical Devices Advisory Committee, code 12518.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee functions at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 25, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The panel and subcommittee will discuss: (1) Definitions and general information related to antiplaque and antiplaque-related drug products and claims, (2) the possible relationship of alcohol-containing mouthwashes to the development of oral and pharyngeal cancers, (3) the drug/cosmetic status of antiplaque products and claims, and (4) general guidelines for determining the safety and effectiveness of antiplaque and antiplaque-related drug products.

Oncologic Drugs Advisory Committee

Date, time, and place. December 12 and 13, 1994, 8 a.m., Parklawn Bldg, conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, December 12, 1994, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 4:30 p.m.; open public hearing, December 13, 1994, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 4:30 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Oncologic Drugs Advisory Committee, code 12542.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 5, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 12, 1994, the committee will discuss: (1) NDA 20–212, Zinecard™ (dexrazoxane for injection, Pharmacia, Inc.) "for preventing/reducing the incidence and severity of cardiomyopathy associated with doxorubicin administration in patients who have received potentially cardiotoxic doses of doxorubicin and who, in their physician's opinion, would benefit from continuing therapy with doxorubicin," and (2) NDA 20–221, Ethyol (amifostine injection, U.S. Bioscience, Inc.) "as a cytoprotective agent against both the acute and cumulative hematologic and renal toxicities associated with alkylating agents such as cyclophosphamide, and platinum agents such as cisplatin, in patients with ovarian cancer." On December 13, 1994, the committee will discuss: (1) NDA 20–449, Taxotere® (docetaxel, Rhone-Poulenc Rorer), for treatment of "patients with locally advanced or metastatic breast carcinoma in whom previous therapy has failed; prior therapy should have included an anthracycline unless clinically contraindicated," and "patients with locally advanced or metastatic non-small cell lung cancer even after failure of platinum-based chemotherapy," and (2) NDA 20–438, Vesanoid™ (tretinoin, all-trans retinoic acid, Hoffmann-La Roche, Inc.) "for the treatment of patients with acute promyelocytic leukemia (APL)" * * * "for induction of remission in patients who are resistant to or are contraindicated for anthracycline-based chemotherapy or have relapsed after entering remission induced by chemotherapy."

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public

advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 14, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–28449 Filed 11–15–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPO–128–N]

Medicare and Medicaid Programs; Delay in Implementation of the Medicare-Medicaid Coverage Data Bank Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of our delay of the implementation of section 1144 of the Social Security Act, which requires employers to report information about all individuals covered by group health plans to a newly established Medicare-Medicaid Coverage Data Bank.

FOR FURTHER INFORMATION CONTACT: Lisa Priborsky, (410) 966–3137.

SUPPLEMENTARY INFORMATION: On October 7, 1994, we published the information below in the Commerce Business Daily concerning delaying the implementation of the Medicare-Medicaid Coverage Data Bank. We are repeating the information here for general information.

Section 1144 of the Social Security Act requires the Secretary of Health and Human Services to establish the Medicare-Medicaid Data Bank to be composed of information supplied by employers for the purpose of establishing third party liability for health care costs. Initial reports by employers were required to be filed by February 28, 1995. The Conference Report accompanying the Department's Appropriation Act for Fiscal Year 1995 indicated Congressional intention that no funds be expended by the Department in the fiscal year to implement this requirement. H.R. Rep. No. 103–733, 103rd Congress, 2nd Session, page 22. In light of this statement, we have agreed to stay any administrative action to implement the current requirements, including the promulgation of reporting forms and instructions. Therefore, we will not expect employers to compile the necessary information or file the required reports. Likewise, of course, no sanctions will be imposed on employers for failure to file such reports.

Authority: Section 1144 of the Social Security Act (42 U.S.C. 1320b–14).

Dated: October 28, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–28320 Filed 11–15–94; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on December 5–7, 1994. The meeting will be held in the 11th floor solarium, Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on December 5 from 9:15 a.m. to 12 p.m. and from 1 p.m. to 2:15 p.m. On December 6 the meeting will be open from 8:30 a.m. until 9:40 a.m. During the open sessions, the permanent staff of the Laboratory of Immunoregulation will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in Sec. 552b(c)(6), Title 5, U.S.C. and Section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 5 from 8:30 a.m. until 9:15, from 12 p.m. until 1 p.m., and from 2:15 p.m. until recess; on December 6 from 9:40 a.m. until recess; and on December 7 from 8 a.m. until adjournment, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Franklin A. Neva, Acting Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 4A31, telephone 301–496–3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93–301, National Institutes of Health.)

Dated: November 8, 1994.

Margery G. Grugg,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–28301 Filed 11–15–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Committee Name: Developmental Therapeutics Contracts Review Committee.
Date: December 8–9, 1994.
Time: 8 am.
Place: Conference Room D, 6130 Executive Blvd., Rockville, MD 20852.
Contact Person: Dr. Courtney Michael Kerwin, Executive Plaza North, Room 601A, Telephone: (301) 496–7421.
Purpose/Agenda: To review and evaluate contract proposals.

Committee Name: Cancer Clinical Investigation Review Committee.
Date: December 13–14, 1994.
Time: 8 am.
Place: The Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20815
Contact Person: Dr. John L. Meyer, Executive Plaza North, Room 611C, Telephone: (301) 496–7721.
Purpose/Agenda: Review and evaluate grant applications.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: November 8, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–28300 Filed 11–15–94; 8:45 am]

BILLING CODE 4140–01–M

Genome Research Review Committee; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Genome Research Review Committee, National Center for Human Genome Research, November 17, 1994, Hyatt Regency Hotel, Bethesda, Maryland which was published in the **Federal Register** on October 19, 1994 (59 FR 52797).

The meeting was cancelled due to complications of other commitments of several members of the committee and will be rescheduled at a later date.

Dated: November 9, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–28299 Filed 11–15–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Partially Exclusive Patent License

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a partially exclusive license in a limited field of use to practice the inventions embodied in U.S. Patent 5,104,977 (formerly U.S. Patent Application 06/423,203) entitled "Purified Transforming Growth Factor Beta" and its foreign counterparts, including inventions deriving priority from U.S. Patent Applications 06/500,832 and 06/500,927, to Celtrix Pharmaceuticals Inc. having a place of business at Santa Clara, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective partially exclusive license will be for the field of ophthalmology. It will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

The prospective partially exclusive license may be granted unless, within sixty days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

This invention relates to a protein known as transforming growth factor-beta (TGF-beta) and its uses. The U.S. patent (5,104,977) issued on April 14, 1992 and has a divisional (USPA 07/816,563) and two continuations (08/048,956 and 08/267,227) currently pending at the U.S. PTO. The invention contains both composition of matter and method of using claims to TGF-beta. The invention facilitates studies relating TGF-β's normal physiological function, and structural analysis, which could provide information on cloning of the TGF-β protein. Production of TGF-β in mass quantities might have useful therapeutic application in enhancement of wound healing and tissue repair. Requests for a copy of the above identified patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Dr. Carl Floyd, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Box 13, Rockville, Maryland 20852–3804 (telephone: (301) 496–7735 ext. 246; FAX: (301) 402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent application(s). Properly filed competing applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before January 17, 1995 will be considered.

Dated: October 29, 1994.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 94–28302 Filed 11–15–94; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–796135

Applicant: Zoological Society of San Diego, San Diego, California.

The applicant requests a permit to import one female Francois' leaf monkey (*Presbytis francoisi francoisi*) from Nogeyama Zoological Gardens of Yokohama, Japan, for the purpose of enhancement of survival of the species through breeding.

PRT–796329

Applicant: Steven J. Rohrback, Wheaton, IL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. L. Kock, Verborgenfontein, Richmond, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–796328

Applicant: Roger L. Gregg, Turlock, CA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by E.V. Pringle, Huntley Glen, Bedford, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–796145

Applicant: Patricia Wainright, New Burnswick, NJ.

The applicant requests a permit to import dropped feathers taken from captive Cuban parrots (*Amazona leucocephala*) in New Providence Island, Bahamas, for the purpose of enhancement of the survival of the species through scientific research.

PRT–795522

Applicant: Regional Director, Region 2, USFWS, Albuquerque, NM.

The applicant request a permit to export four Whooping crane (*Grus americana*) to the Devonian Wildlife Conservation Centre, Calgary, Alberta, Canada for the purpose of enhancement of the survival of the species through propagation.

Emergency Exemption: Issuance

On November 8, 1994, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–796422) to S.O.S. Care, San Diego, California, to import (and eventually reexport) up to three newborn captive-born tigrina (*Felis tigrina*) from the Conservation Project at the Sao Paulo Zoo, Sao Paulo, Brazil. The 30-day public comment period required by section 10(c) of the Endangered Species Act was waived. The Service determined that an emergency affecting the survival of the tigrina kittens existed and that no reasonable alternative was available to the applicant. The tigrina kittens needed immediate medical attention in order to survive since the mother had rejected them before the 30-day comment period elapsed.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 10, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–28248 Filed 11–15–94; 8:45 am]

BILLING CODE 4310–55–M

Maine Mammals; Stock Assessment Reports

AGENCY: Fish and Wildlife Service (Service), Interior.

ACTION: Extension of comment period on draft stock assessments and Potential Biological Removal (PBR) workshop report.

SUMMARY: The Service is extending the comment period on the stock assessments for Service marine mammal species and the PBR workshop report in consideration of the complexity of the issues surrounding both the stock assessments and the PBR workshop report.

DATES: Comments on the draft stock assessments for Service species and the report of the PBR workshop must be received by December 1, 1994.

ADDRESSES: Copies of the draft stock assessments for Service species and PBR workshop report are available from the Division of Fish and Wildlife Management Assistance, Fish and Wildlife Service, Room 820–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203, Telephone (703) 358–1718.

Comments on the draft stock assessment for polar bears, Pacific walrus, and northern sea otters in Alaska, along with comments on the report of the PBR workshop, should be sent to Dave McGillivary, Supervisor, Office of Marine Mammals Management, Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; FAX: (907) 786–3816.

Comments on the draft stock assessments for West Indian manatees, along with comments on the report of the PBR workshop, should be sent to Robert Turner, Manatee Coordinator, Fish and Wildlife Service, 6620 South Point Drive, South, Suite 310, Jacksonville, Florida 32216; FAX: (904) 232–2404.

Comments on the draft stock assessments for the California sea otter, and the northern sea otter in Washington State, along with comments on the report of the PBR workshop, should be sent to Carl Benz, Sea Otter Coordinator, Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003; FAX: (818) 904–6288.

FOR FURTHER INFORMATION CONTACT: Jeff Horwath in the Fish and Wildlife Service's Division of Fish and Wildlife Management Assistance, Arlington, Virginia at (703) 358–1718. For information about the Alaska marine mammals identified in the **ADDRESSES** Section above, contact Dave McGillivary at (907) 786–3800. For information about West Indian manatees as identified in the **ADDRESSES** Section above, contact Robert Turner at (904) 232–2580. For information about California sea otters, and northern sea otters in Washington State as identified in the **ADDRESSES** Section above, contact Carl Benz at (805) 644–1766.

SUPPLEMENTARY INFORMATION: On August 23, 1994, the Service published a **Federal Register** notice announcing the availability of draft stock assessments for Service species (i.e., polar bear, Pacific walrus, northern sea otter in Alaska, West Indian manatees, California sea otter, and northern sea otter in Washington State) and the PBR workshop report (59 FR 43353). The stock assessments are required under new Section 117 of the Marine Mammal Protection Act as amended in 1994 (Pub. L. 103–238). A summary of the draft stock assessments specifying geographical range, regional designation, minimum abundance estimate, PBR level, estimated annual average human-caused mortality, and whether or not the stock would be regarded as strategic or nonstrategic was included in the **Federal Register** notice. The PBR workshop, composed of National Marine Fisheries Service and Service scientists, was convened to develop an initial approach for promoting consistent national interpretation of parameters to be used in draft stock assessments, including the calculation of PBR levels.

The initial comment period for draft stock assessments for Service species and PBR workshop was scheduled to end on November 21, 1994. In response

to concern that the public comment period was inadequate, given the scope of the issues surrounding the stock assessments and the PBR workshop reports, the Service hereby extends the comment period and welcomes comments received by December 1, 1994. Subsequent to the close of the extended period, the Service will provide copies of public comments to members of the Alaska, Pacific, and Atlantic Scientific Review Groups, as appropriate, for their consideration prior to the next scheduled meeting of these groups.

Comments must be received in the appropriate office as identified in the **ADDRESSES** Section above by December 1, 1994, to be fully considered. Therefore, those submitting comments close to that date should FAX their comments or call to ensure receipt of their comments.

Dated: November 8, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94-28230 Filed 11-15-94; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Blackfeet Irrigation Project O&M Rate Increase, Montana Bureau of Indian Affairs, Department of the Interior

ACTION: Notice of Proposed Rate Increase.

SUMMARY: The Bureau of Indian Affairs is proposing to increase the Blackfeet Irrigation Project's operation and maintenance assessment rate to $11 per assessable acre for the 1995 irrigation season and subsequent seasons. The $3 increase to the current rate of $8 per acre will help offset cost increases for personnel, supplies, materials and services.

DATES: Comments must be submitted on or before December 16, 1994.

ADDRESSES: Written comments on rate changes should be sent to: Assistant Secretary—Indian Affairs, Attention: Branch of Irrigation and Power, MS#4559–MIB, Bureau of Indian Affairs, 1849 "C" Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Area Director, Billings Area Office, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101. Telephone number: (406) 657–6315.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385), and has been delegated to the Assistant Secretary—Indian Affairs pursuant to Part 209 Departmental Manual Chapter 8.1 A and Memorandum, from Chief of Staff, Department of the Interior, to Assistant Secretaries, Heads of Bureaus and Offices, dated January 25, 1994. The operation and maintenance assessment per assessable acre is based on the estimated normal operating cost of the Project for one fiscal year. Normal operation and maintenance is defined as the cost of all activities involved in delivering irrigation water, including labor, materials, equipment and services for irrigation canals, dams, flow control gates, pumps and other facilities.

Dated: November 7, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94-28308 Filed 11-15-94; 8:45 am]

BILLING CODE 4310-02-P

Colorado River Indian Irrigation Project

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of Proposed Rate Increase.

SUMMARY: The BIA is proposing to increase the Colorado River Indian Irrigation Project's operation and maintenance assessment rate per assessable acre for the first 5 acre feet of water to $30.00 in 1995, $31.50 in 1996, $33.00 in 1997, $34.50 in 1998, and $36.00 in 1999 and thereafter until further notice. The $3.00 increase to the current rate of $27.00 per acre in 1995 and the $1.50 increase per acre per year for the next four years 1996 through 1999 will offset cost increases for personnel, supplies, materials and services. The charge per acre foot of water in excess of this annual apportionment will be $11.00 per acre foot in 1995, $12.50 per acre foot in 1996, $14.00 per acre foot in 1997, $15.50 per acre foot in 1998, and $17.00 per acre foot in 1999 and thereafter, until further notice. The $3.00 increase to the current rate of $8.00 per acre foot in 1995 and the $1.50 increase per acre foot per year for the next four years 1996 through 1999 will offset cost increases for personnel, supplies, materials and services.

The energy costs for pumped water will not be paid by the Project but will be billed directly to those receiving pumped water by the electric utility.

DATES: Comments must be submitted on or before December 16, 1994.

ADDRESSES: Written comments on rate changes should be sent to: Assistant Secretary—Indian Affairs, Attention: Branch of Irrigation and Power, MS#4559–MIB, Code 210, Bureau of Indian Affairs, 1849 "C" Street, NW, Washington, DC, 20240.

FOR FURTHER INFORMATION CONTACT: Area Director, Phoenix Area Office, Bureau of Indian Affairs, One North First Street, Phoenix, Arizona 85001, telephone number (602) 379–6600.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385) and has been delegated to the Assistant Secretary - Indian Affairs pursuant to Part 209 Departmental Manual Chapter 8.1 A and Memorandum, dated January 25, 1994, from the Chief of Staff, Department of the Interior, to Assistant Secretaries and Heads of Bureaus and Offices. The assessment is based on an estimate of the cost of normal operation and maintenance of the irrigation Project. Normal operation and maintenance is defined as the cost of all activities involved in delivering irrigation water, including the actual costs for labor, materials, equipment, services, energy, equipment replacement and reserves to cover emergency expenses.

The Colorado River Indian Tribes (CRIT) and water users were notified of the proposed changes in the operation and maintenance assessment and excess water rates by letter to CRIT dated March 25, 1994, at the March 16, 1994, CRIT Irrigation Committee Meeting, and at the Pink Boll Worm and White Fly Eradication Committee Meeting for Parker Valley growers on March 22, 1994.

The current operation and maintenance assessment rate of $27.00 became effective January 1, 1994. Since January 1, 1984, when the operation and maintenance assessment rate was raised to $22.00, there had been no other increases in the assessment rate or the excess water rate. The 1994 increase was not sufficient to offset the accumulated annual cost increases for labor, materials, equipment, energy, and services. Costs have depleted reserves and continue to exceed revenue from current assessments. The basic operation and maintenance assessment for a given year is calculated by using the estimated cost of Project operation for that calendar year divided by the assessable acreage.

Basic Assessment

The basic assessment rate against the land to which water can be delivered under the Colorado River Indian Irrigation Project, Arizona, for operation

and maintenance of the Project is hereby fixed at $30.00 per acre for 1995, $31.50 per acre for 1996, $33.00 per acre for 1997, $34.50 per acre for 1998, and $36.00 per acre for 1999 and thereafter until further notice. The assessment is due whether water is used or not. Payment of this assessment will entitle the water user to up to 5 acre-feet of water per year per assessable acre of land.

Excess Water Charge

If and when available, water in excess of the basic allotment may be delivered upon written request to the Superintendent by landowners or users at the following rates per acre foot or fraction thereof: $11.00 per acre foot in 1995, $12.50 per acre foot in 1996, $14.00 per acre foot in 1997, $15.50 per acre foot in 1998, and $17.00 per acre foot in 1999 and thereafter until further notice. The excess water charge is payable at the time of written request for such water and must be paid prior to delivery.

Pumped Water Energy Charges

The energy costs for pumped water will not be paid by the Project but will be billed directly to those receiving pumped water by the electric utility.

Effective Period

The assessments and water charges above shall become effective for each Calendar Year 1995 through 1999 and thereafter until further notice.

Distribution and Apportionment

All Project water is considered a common water supply in which all assessable lands of the Project are entitled to share equally. Such water will be distributed to the lands of the Project as equitably as physical conditions permit.

Dated: November 7, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–28310 Filed 11–15–94; 8:45 am]

BILLING CODE 4310–02–P

San Carlos Indian Irrigation Project (Joint Works) O&M Assessment Rates, Arizona

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice of Proposed Assessment Rate Change.

SUMMARY: The BIA is proposing to decrease the San Carlos Indian Irrigation Project (Joint Works) Operation and Maintenance assessment rate to $30.00 per assessable acre for the 1995 irrigation season and subsequent seasons. This is a decrease of $5.00 from the current rate of $35.00 per assessable acre.

DATES: Comments must be submitted on or before December 16, 1994.

ADDRESSES: Written comments on rate changes should be sent to: Assistant Secretary—Indian Affairs, Attention: Branch of Irrigation and Power, MS#4559–MIB, Bureau of Indian Affairs, 1849 "C" Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Project Manager, San Carlos Indian Irrigation Project (Joint Works), P.O. Box 250, Coolidge, Arizona 85228. Telephone: (602) 723–5439.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385), and has been delegated to the Assistant Secretary—Indian Affairs pursuant to Part 209 Departmental Manual Chapter 8.1 A and Memorandum, from Chief of Staff, Department of the Interior, to Assistant Secretaries, Heads of Bureau's and Offices, dated January 25, 1994. The assessment rate is based on an estimate of the cost of normal operation and maintenance of the irrigation project divided by the project acreage. Normal operation and maintenance is defined as the cost of all activities involved in delivering irrigation water, including labor, materials, equipment and services for irrigation canals, dams, flow control gates, pumps and other facilities.

DATES: The effective date of the annual assessment rate adjustment is October 1, 1994. The basic assessment rate was set at $35 for Fiscal Year 1994. This rate was set with the understanding that the BIA was implementing Public Law 102–231, which called for divestiture of the power division at San Carlos Indian Irrigation Project. That divestiture effort has been terminated and the costs associated with it have been removed from the assessment rate calculations. Pursuant to the Act of June 7, 1924, (43 Stat. 476) and supplementary acts, the Repayment Contract of June 8, 1931, as amended, between the United States and San Carlos Irrigation and Drainage District, and in accordance with applicable provisions of the Order of the Secretary of the Interior of June 15, 1938, the basic assessment rate for the operation and maintenance of the Joint Works of the San Carlos Irrigation Project for Fiscal Year 1995 is hereby fixed at $30 for each assessable acre of land. The assessment is due and payable on or before the 15th of May prior to the fiscal year the assessment is for, as provided in the Act of June 7, 1924 (43 Stat. 475–476), as implemented by the Repayment Contract between the United States and the San Carlos Irrigation and Drainage District, (as supplemented on November 12, 1935 and May 29, 1947) and the Secretarial Order defining the Joint, District and Indian Works of the San Carlos Federal Irrigation Project, turning over Operation and Maintenance of District Works to the San Carlos Irrigation and Drainage District.

Dated: November 7, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–28309 Filed 11–15–94; 8:45 am]

BILLING CODE 4310–02–P

Power Rate Adjustment: Mission Valley Power Utility, Montana

ACTION: Notice of Proposed Rate Increase.

SUMMARY: The Bureau of Indian Affairs is proposing to increase the cost of electric power (energy) to customers of Mission Valley Power (MVP), the entity operating the power facility of the Flathead Indian Irrigation Project of the Flathead Reservation. The Bureau of Indian Affairs (BIA) has been informed that the Montana Power Company (MPC), which sells electric power to MVP, has raised its wholesale power rates by approximately 2.0 percent. The MPC increase went into effect on September 5, 1994, and is based on adjustments in the Consumer Price index pursuant to the Federal Energy Regulatory Commission license for MPC's Kerr Dam Hydroelectric Facility. Accordingly, the BIA is proposing to adjust the local retail power rates charged by MVP to reflect the increased cost of purchased power.

DATES: Comments must be submitted on or before December 16, 1994.

ADDRESSES: Written comments on rate changes should be sent to: Assistant Secretary—Indian Affairs, Bureau of Indian Affairs, Attn: Branch of Irrigation and Power, MS#4559–MIB, 1849 "C" Street NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Area Director, Bureau of Indian Affairs, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702; or, General Manager, Mission Valley Power, P. O. Box 890, Polson, Montana 59860–0890. Telephone (406)883–5361 or 1–800–823–3758 (in-State Watts).

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by

5 U.S.C. 301; the Act of August 7, 1946, c. 802, Section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8. 1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices. The approximate 2.0 percent MPC increase causes the BIA to raise its retail rates to recover $24,529 which is the financial impact of that increase. Accordingly, the proposed rate increase will flow through MVP to MPC to offset the increased cost of wholesale energy. This proposed adjustment is the result of an increase in the electric power rates charged by MPC, one of three sources of electric power marketed by MVP. The MPC increase, which went into effect on September 5, 1994, is based on adjustments in the Consumer Price index pursuant to the Federal Energy Regulatory Commission license for MPC's Kerr Dam Hydroelectric Facility. The following table illustrates the financial impact of the new retail rates on each rate class.

Rate class	Present rate	New rate
Residential:		
Basic Charge.	$11.00/mo. (includes 127kwh).	No Change.
Energy Charge.	$0.04719/kwh (over 127 kwh).	$0.04724
#2 General:		
Basic Charge.	$11.00/mo. (includes 109 kwh).	No Change.
Energy Charge.	$0.05505/kwh (over 109 kwh).	$0.05511
Irrigation:		
Horsepower Charge.	$10.84/HP	No Change.
Energy Charge.	$0.03600/kwh	$0.3605
Minimum Seasonal Charge.	$132.00 or $6.00/HP, whichever is greater.	No Change.
Small & Large Commercial:		
Basic Charge.	None	No Change.
Monthly Minimum.	$38.00	No Change.
Demand Rate.	$4.34/KW of billing demand.	No Change.
Energy Rate.	$0.04264/kwh—First 18,000 kwh.	$0.04269
	$0.03547/kwh—Over 18,000 kwh.	$0.03551
Area Lights:		
Area light installed on existing pole or structure:		
7,000 lumen unit, M.V.*	$6.94	$6.98
20,000 lumen unit, M.V.*	$9.67	$9.73
9,000 lumen unit, H.P.S	$6.26	$6.30
22,000 lumen unit, H.P.S.	$8.53	$8.58

	Present monthly rate	New rate
Area light installed with new pole:		
7,000 lumen unit, M.V.*		
20,000 lumen unit, M.V.*	$8.64	$8.70
9,000 lumen unit, M.V.*	$11.37	$11.43
22,000 lumen unit, H.P.S.*	$7.96	$8.01
	$10.23	$10.28
Street Lighting (Unmetered).	This rate class applies to municipalities or communities where there are ten or more lighting units billed in a group. This rate schedule is subject to a negotiated contract with MVP.	No change.
Street Lighting (Metered).	$11.00/mo. (includes 109 kwh).	No change.
Basic Charge	$0.05505 (over 109 kwh).	$0.05511

*Continuing service only.

Dated: November 7, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94-28311 Filed 11-15-94: 8:45 am]

BILLING CODE 4310-02-P

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Arizona State Capitol Museum, Phoenix, AZ

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate a cultural item presently in the possession of the Arizona State Capitol Museum, Phoenix, AZ, that meets the definition of "sacred object" under section 2 of the act.

The coiled basket has a flared shape, plaited rim, and dark brown design of connected diamonds on a light brown background. Four sets of 12 carved and painted sticks are sewn equidistant around the interior of the basket. The basket was purchased by the State of Arizona in 1938 from photographer Edward Curtis. The basket was transferred from the Research Library, Department of Library, Archives & Public Records in 1982 to the Museum Division. Museum records identify the basket with accession number 1982.035.035.

Representatives of the Navajo Nation have identified the basket as one needed by Navajo religious leaders for the practice of the Yeibichai ceremony by present day adherents.

Based on the above mentioned information, officials of the Arizona State Capitol Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the basket and the Navajo Nation. Officials of the Arizona State Capitol Museum have also determined that the basket meets the definition of sacred object pursuant to 25 U.S.C. 3001 (3)(C).

This notice has been sent to officials of the Navajo Nation, Ramah Navajo Chapter, and the Colorado River Indian Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this cultural item should contact Michael Carman, Museum Director, Arizona State Capitol Museum, 1700 W. Washington, Phoenix Arizona 85007 (602)542-4675 before December 16, 1994. Repatriation of the cultural item to the Navajo Nation may

begin after that date if no additional claimants come forward.

Dated: November 10, 1994

Francis P. McManamon

Departmental Consulting Archeologist
Chief, Archeological Assistance Division

[FR Doc. 28294 Filed 11–15–94; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–683; Final]

Fresh Garlic From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that the industry in the United States producing fresh garlic [2] is materially injured by reason of imports from the People's Republic of China (China) of fresh garlic, as defined by the Department of Commerce (Commerce), that have been found by Commerce to be sold in the United States at less than fair value (LTFV).[3, 14] The Commission also determines, pursuant to section 735(b)(4)(a), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.

Chairman Watson, Vice Chairman Nuzum, and Commissioners Bragg, Rohr, and Newquist find that the industry in the United States producing dehy garlic [5] is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of LTFV imports from China.[6] Chairman Watson, Vice Chairman Nuzum, and Commissioners Bragg, Rohr, and Newquist also find that the industry in the United States producing seed garlic [7] is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of LTFV imports from China.[8]

Background

The Commission instituted this investigation effective July 11, 1994, following a preliminary determination by the Department of Commerce that imports of fresh garlic from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing 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 August 3, 1994 (59 F.R. 39674). The hearing was held in Washington, DC, on September 27, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 7, 1994. The views of the Commission are contained in USITC Publication 2825 (November 1994), entitled "Fresh Garlic from the People's Republic of China: Investigation No. 731–TA–683 (Final)."

Issued: November 7, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–28279 Filed 11–15–94; 8:45 am]

BILLING CODE 7020–02–P

[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] Defined as garlic that has been manually harvested and is intended for use as fresh produce.

[3] For purposes of this investigation, Commerce has defined "fresh garlic" as all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or by heat processing, the foregoing used principally as a food product and for seasoning. Fresh garlic is provided for in subheadings 0703.20.00, 0710.80.70, 0710.80.97, 0711.90.60, and 2005.90.95 of the Harmonized Tariff Schedule of the United States.

[4] Commissioner Crawford finds one like product corresponding to the scope of this investigation as defined by Commerce, and finds that the industry in the United States producing garlic is materially injured by reason of LTFV imports from the People's Republic of China.

[5] Defined as garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use.

[6] Because Commissioner Crawford finds one like product corresponding to the scope of this investigation as defined by Commerce, she does not make a separate injury finding for this industry.

[7] Defined as garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

[8] Because Commissioner Crawford finds one like product corresponding to the scope of this investigation as defined by Commerce, she does not make a separate injury finding for this industry.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32598]

Illinois Central Railroad Company and New Orleans Public Belt Railroad—Joint Relocation Project Exemption—In New Orleans, LA

On October 17, 1994, Illinois Central Railroad Company (IC) and New Orleans Public Belt Railroad (NOPB) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate lines of railroad in New Orleans, LA. The joint relocation project is an integral component of the Tchoupitoulas Corridor Project (TCP), a major public works program between state and local governmental agencies, to relieve traffic congestion and to improve access to New Orleans' port facilities. Consummation has been scheduled to take place no earlier than October 24, 1994.

IC is a class I railroad, operating approximately 2,600 miles of rail line in six midwestern states, and NOPB is a class III terminal switching railroad owned by the City of New Orleans. NOPB operates approximately 25 miles of rail line in and around New Orleans.

Within the City of New Orleans, IC and NOPB own and operate adjacent parallel mainlines lying in the city-owned Leake Avenue right-of-way, which is not used as a street or roadway in the project area (Leake Avenue ROW). Part of the TCP involves the reconfiguration of railroad tracks and operations on the Leake Ave ROW.[1] IC and NOPB will exchange ownership of certain tracks in the Leake Avenue ROW between Octavia and Jena Streets.

Under the joint project, IC and NOPB propose the following transactions: (1) IC will acquire NOPB's line of railroad along the northern edge of the Leake Avenue ROW between approximately Octavia Street and Valence Street, a distance of approximately .78 miles; (2) NOPB will acquire IC's parallel double track line to the south of the aforementioned line between approximately Octavia Street and Jena Street, a distance of approximately .86 miles; (3) IC will grant NOPB trackage rights over IC's new mainline between a point near Valence Street (station 175+68.09) and the connection with NOPB's locomotive maintenance facility

[1] Neither IC nor NOPB owns any of the right-of-way underlying the Leake Avenue trackage. IC and NOPB each possess servitudes from the City of New Orleans to locate and operate rail lines on the Leake Avenue ROW. City officials are in the process of amending city ordinances granting those servitudes to accommodate the rearrangement of IC and NOPB lines and trackage.

lead track near Upperline Street, including head room (station 163+80), a distance of approximately .23 miles; (4) NOPB will grant IC trackage rights over NOPB's existing River Main between the end of IC's track near Valence Street (station 175+68.09) and the connection with new IC yard lead tracks (station 182+02.44), a distance of approximately .12 miles, and over NOPB's existing parallel City Main between the end of IC's track near Valence Street (station 175+68.09) and the connection with the western Hayes Dockside Warehouse lead track, including head room (station 214+60), a distance of approximately .74 miles; (5) IC will abandon and remove its spur track between station 240+00 and the connection with the eastern Hayes Dockside Warehouse lead track (station 232+37), a distance of approximately .14 miles; and (6) IC and NOPB will perform such incidental construction and relocation of trackage at various locations along the Leake Avenue ROW as necessary to complete the proposed reconfiguration of tracks contemplated under the TCP.

This transaction will simplify rail operations through the affected area and accommodate the goals of the TCP. No shippers will be adversely affected by this relocation or lose access to any rail service currently provided by IC or NOPB.

The Commission will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, *generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation Over BN*, 4 I.C.C.2d 95 (1987). The Commission has determined that line relocation projects may embrace trackage rights transactions such as the one involved here. See *D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Under these standards, the embraced incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: William C. Sippel, Two Prudential Plaza, 45th Floor, 180 North Stetson Ave., Chicago, IL 60601 and Raymond J. Salassi, Jr., 202 St. Charles Ave., 50th Floor, New Orleans, LA 70170–5100.

Decided: October 25, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–28195 Filed 11–15–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32605]

Missouri Pacific Railroad Company, Union Pacific Railroad Company, and Central Kansas Railway L.L.C.—Joint Relocation Project Exemption—in Kansas

On October 20, 1994, Missouri Pacific Railroad Company (MP) and Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad at Salina, in Saline County, KS.[1] The joint relocation project involves the: (1) acquisition by MP/UP of overhead trackage rights on approximately 1.7 miles of parallel line belonging to the Central Kansas Railway L.L.C. (CK) between mileposts 20.4 and 22.1; (2) construction of a new connection at milepost 186.63 on UP's east-west main line, just to the south of the jointly owned CK/UP Union Depot, to give MP/UP access to the CK trackage rights; and (3) incidental abandonment and discontinuance by MP of a 0.78-mile portion of its Trigo Industrial Lead between milepost 494.65 and milepost 495.43. The parties have stated their intention to consummate the transaction on or after the October 27, 1994 effective date of the exemption. The Railway Labor Executives' Association petitioned for imposition of labor protective conditions.

MP/UP contend that service to shippers will not be disrupted and otherwise that there will be no adverse effect on shippers. The proposed joint relocation project is intended to facilitate their interchange capabilities, and the connecting track will give them access to the Trigo Industrial Lead to ensure continued rail service to MP's customers. Citing *Denver & R.G.W.R. Co.-JT. Proj.-Relocation Over BN*, 4 I.C.C.2d 95 (1987) (*Joint Project*), they further contend that the proposed joint relocation project will not involve a change in service to shippers, an expansion into new territory, or a change in existing competitive situations.

The Commission generally does not assume jurisdiction over the incidental abandonment, discontinuance, and construction components of a relocation project if, as alleged here, none of the criteria set out in *Joint Project* will be triggered. Accordingly, the proposed abandonment, discontinuance, and construction are not subject to Commission jurisdiction.

The remainder of the joint relocation project involves UP/MP's acquisition of overhead trackage rights from CK. The Commission has determined that line relocations may also embrace trackage rights transactions such as the one proposed here. *See D.T. & I.R.—Trackage Rights*, 363 I.C.C. 878 (1981). Because the joint relocation project will not disrupt service to shippers, the proposed trackage rights qualify for exemption under the class exemption procedures at 49 CFR 1180.2(d)(5).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operation*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Joseph D. Anthofer, and Jeanna L. Regier, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Dated: November 4, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–28196 Filed 11–15–94; 8:45 am]

BILLING CODE 7035–01–P

---

[1] UP, a class I rail carrier, owns a main line that extends generally in an east-west route through Salina. Another UP line extends generally in a southern route from the east-west UP route near Salina.

MP, a class I rail carrier and UP's corporate affiliate, owns and operates the Trigo Industrial Lead, a line that partially parallels UP's east-west route. The Trigo Industrial Lead also crosses the UP southern route at Salina.

CK, a limited liability rail carrier, owns a short line of railroad at Salina that parallels to the south UP's east-west route and is near the jointly owned UP/CK Union Depot.

[Docket No. AB–290 (Sub-No. 154X)]

Norfolk and Western Railway Company—Abandonment Exemption—Between Wenonah Spur Junction and Wenonah, WV

Norfolk and Western Railway Company[1] (NW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.4-mile line of track between milepost BW–20.1 at Wenonah Spur Junction and milepost BW–21.5 at Wenonah, in Mercer County, WV.[2]

NW has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line and, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 16, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29[5] must be filed by November 28, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 6, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

NW has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 21, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–28197 Filed 11–15–94; 8:45 am]

BILLING CODE 7035–01–P

[1] NW is a subsidiary of Norfolk Southern Railway Company.

[2] NW filed an exemption for discontinuance of service over 31.8 miles of its railroad located in Mercer County, WV, in *Norfolk and Western Railway Company—Discontinuance Exemption—In Mercer County, WV*, Docket No. AB–290 (Sub-No. 83X) (ICC served May 17, 1990). In this filing, NW is seeking to abandon a portion of the 31.8 miles.

[3] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[4] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[5] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, notice is hereby given that a proposed partial consent decree in *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, Case No. 89 C 7748, was lodged on November 1, 1994, with the United States District Court for the Northern District of Illinois.

The proposed partial consent decree resolves claims of the United States against several direct defendants and third party defendants in *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, brought under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended, for the recovery of past costs incurred by the United States at the Acme Solvents Reclaiming hazardous waste site ("Acme Site") in Winnebago County, Illinois. Under the terms of the proposed decree, the settling defendants will pay the United States $775,000 in settlement of the United States' past costs claims against them.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Acme Solvents Reclaiming, Inc., et al.*, DOJ Ref. # 90–11–2–177.

The proposed partial consent decree may be examined at the Office of the United States Attorney, 219 S. Dearborn Street, Chicago, Illinois 60604; the Region 5 Office of the United States Environmental Protection Agency 77 W. Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please refer to the case referenced above and enclose a check in the amount of $7.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environment and Natural Resources Division.

[FR Doc. 94–28219 Filed 11–15–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy, 28 CFR 50.7 and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United*

States v. *AMF Reece, et al.*, Civil Action No. 94–12153 (EFH) was lodged on October 28, 1994, with the United States District Court for the District of Massachusetts. The consent decree settles an action brought under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, for injunctive relief and reimbursement of costs. The PSC Resources Superfund Site was operated as a waste oil recycling facility from 1970 to 1978 and is located in Palmer, Massachusetts. As a result of the waste oil operations, the Site became contaminated with hazardous substances and was placed on the National Priorities List. The Environmental Protection Agency performed a removal action and a remedial investigation and feasibility study to identify the nature and extent of the contamination at the Site and to examine how best to remediate the Site.

Under the terms of the proposed decree, eleven defendants ("Performing Settling Defendants") will perform the required remediation of the Site. The remediation is today estimated to cost $7.35 million. A remedial trust fund will be established to fund the remedy. Approximately one hundred and forty-five (145) *de minimis* settling defendants will contribute $3,755,484 to the remedial trust fund. The New Jersey Department of Transportation will contribute $3.5 million and the federal agencies will contribute $625,152, respectively, to the remedial trust fund. The Performing Settling Defendants and settling federal agencies will pay $3,175,000 to the Environmental Protection Agency and Commonwealth of Massachusetts for costs incurred in performing the RI/FS, removal activities and for other past costs and interest, totalling $4,291,333. The Performing Settling Defendants within 30 days of entry of the decree will also pay $153,720 to the Department of Interior in compensation for natural resource damages. Additionally, over the course of the remediation, the Performing Settling Defendants will pay $537,500 of an estimated $575,000 in oversight costs to the Environmental Protection Agency and the Commonwealth.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to the *United States* v. *AMF Reece, et al.*, DOJ reference #90–11–2–922.

The proposed consent decree may be examined at: The Office of the United States Attorney for the District of Massachusetts. 1003 J.W. McCormack Post Office and Courthouse, Boston, Massachusetts; the Region I Office of the Environmental Protection Agency, J.F. Kennedy Federal Building, Boston, Massachusetts; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005. In requesting a copy of the Consent Decree (without signature pages or attachments), please enclose a check in the amount of $36.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–28220 Filed 11–15–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decrees Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that proposed consent decrees with defendants Peora Coal Company ("Peora"), and RPM Resources, Inc. ("RPM"), defendants in *United States* v. *Peora Coal Company and RPM Resources, Inc.*, Civil Action No. 90–104–C, were lodged on October 24, 1994, with the United States District Court for the Northern District of West Virginia. The proposed consent decrees resolve an action for civil penalties and injunctive relief brought by the United States under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for violations of the National Emission Standards for Hazardous Air Pollutants (NESHAP) (Asbestos). The violations occurred in 1990 during an asbestos removal project at a coal preparation plant owned by Peoria in Enterprise, West Virginia.

The proposed settlement with Peora provides that Peora will pay a civil penalty of $32,500 and take steps to ensure future compliance with the NESHAP requirements. The proposed settlement with RPM provides that RPM will pay a civil penalty of $10,000 and ensure future compliance. In May, 1992 RPM filed a voluntary petition for bankruptcy under Chapter 7 of the Bankruptcy Code (Bankruptcy Ct., W.D. Pa.).

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Peora Coal Company and RPM Resources, Inc.*, DOJ Ref. #90–5–2–1–1517. The proposed consent decrees may be examined at the Office of the United States Attorney for the Northern District of West Virginia, Room 326, Federal Building, 300 3rd Street, Elkins, West Virginia 26241; the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting copies, please refer to the referenced case and enclose a check in the amount of $4.50 for the Peora consent decree and $5.00 for the RPM consent decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–28221 Filed 11–15–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. General Electric Co., et al.; Proposed Termination of Final Decree

Notice is hereby given that defendant General Electric Company (GE) has filed with the United States District Court for the Northern District of Ohio, Eastern Division, a motion to terminate the Final Decree in *United States* v. *General Electric Company, et al.*, In Equity No. 8120, which was entered on October 12, 1911, and the Department of Justice (Department), in a stipulation also filed with the Court, has tentatively consented to termination of the Final Decree, but has reserved the right to withdraw its consent based on public comments and for other reasons.

The complaint in *United States* v. *General Electric Company, et al.*, filed on March 3, 1911 and brought against GE and other lamp manufacturers, alleged, *inter alia*, that GE acquired

interests in and control over other lamp companies, but concealed its ownership interests in them in order to give the impression of competition among numerous, independent lamp manufacturers. The complaint also alleged conspiracies to restrain trade and to monopolize. The conduct was charged as violating the Sherman Act of 1890.

The Final Decree prohibits GE from conducting its incandescent lamp business except in its own name, and enjoins certain practices, including price fixing, resale price maintenance, price discrimination, tying and exclusive dealing arrangements.

The United States has filed with the Court a memorandum setting forth the reasons why the United States believes that termination of the Final Decree would serve the public interest. Copies of the complaint and Final Decree, motion papers, the stipulation containing the United States' consent, the United States' memorandum and all further papers filed with the Court in connection with this motion will be available for inspection at Room 3235, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202–514–2481), and at the Office of the Clerk of the United States District Court for the Northern District of Ohio, Eastern Division, 201 Superior Avenue, Cleveland, OH 44114 (telephone 216–522–4355). Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Final Decree to the United States. Such comments must be received within the sixty day period established by court order, and will be filed with the court by the United States. Comments should be addressed to J. Robert Kramer, II, Chief, Litigation II Section, Antitrust Division, Department of Justice, 1401 H Street, NW., Washington, DC 20530 (telephone 202–307–0924).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 94–28222 Filed 11–15–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

November 8, 1994.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the ICRs listed below 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/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10102, Washington, DC 20503 ((202) 395–7316).

Type of Review: *EXTENSION*
Agency: Employment Standards Administration
Title: Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act
OMB Number: 1215–0160
Agency Number: ESA–100, LS–200, LS–201, LS–203, LS–204, LS–262, LS–267, LS–271, LS–274, LS–513
Affected Public: Individuals or households; Businesses or other for-profit; Small businesses or organizations

Form/requirement and frequency	Number respondents	Burden per response (minutes)
ESA–100—Recordkeeping	42,000	1
LS–200—Annually	20,000	10
LS–201—On occasion	24,000	15
LS–203—On occasion	13,670	15
LS–204—On occasion	120,400	30
LS–262—On occasion	275	15
LS–267—On occasion	1,300	2
LS–271—On occasion	60	120
LS–274—On occasion	375	60
LS–513—Annually	850	30
702.162—On occasion	10	30
702.174—On occasion	5	45
702.175—On occasion	2	30
702.242—On occasion	7,600	120
702.321—On occasion	500	300

Total Burden Hours: 92,422

Description: This information collection covers submission of information relating to claims processing under the Longshore Workers' Compensation Act and extensions.

Type of Review: *EXTENSION*
Agency: Employment Standards Administration
Title: Request for Employment Information
OMB Number: 1215–0105
Agency Number: CA–1027
Frequency: On occasion
Affected Public: Businesses or other for-profit; Small businesses or organizations
Number of Respondents: 1,000
Estimated Time Per Respondent: 15 minutes per response
Total Burden Hours: 250

Description: This report is used to collect information regarding Federal employees' wage earning capacities. The information is necessary for determination of continued eligibility for compensation payments under the Federal Employees' Compensation Act (FECA).

Type of Review: *EXTENSION*
Agency: Employment Standards Administration
Title: 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
OMB Number: 1205–0036
Agency Number: WH–514 and 514a
Frequency: Annually
Affected Public: Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations
Number of Respondents: 1,320
Number of Responses Per Respondent: 3
Estimated Time Per Respondent: 45 minutes
Total Burden Hours: 2,970

Description: The Migrant and Seasonal Agricultural Worker 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.

Type of Review: *EXTENSION*
Agency: Employment Standards Administration
Title: Notice of Issuance of Insurance Policy
OMB Number: 1215–0059
Agency Number: CM–921
Frequency: Annually

Affected Public: Businesses or other for-profit

Formal No. and frequency	Number of respondents	Number of responses	Average time per response (minutes)
CM 921—On Occasion	6	800	10
CM 921—On Occasion	54	22	10

Total Burden Hours: 1,000

Description: The CM–921 provides insurance carriers with the means to supply the Division of Coal Mine Workers' Compensation with information showing that a responsible coal mine operator is insured against its Federal black lung compensation liability pursuant to the requirements established in the Black Lung Benefits Act.

Type of Review: *NEW*
Agency: Bureau of Labor Statistics
Title: January 1995 Contingent Work Supplement
OMB Number: not yet assigned
Frequency: One-time current population survey
Affected Public: Individuals or households
Number of Respondents: 72,000
Estimated Time Per Respondent: .1333 (8 minutes)
Total Burden Hours: 9,598

Description: There is a belief that employment arrangements have become more contingent, thus forcing workers into jobs offering poor security and compensation. No current survey provides the information needed to evaluate the issue. The Current Population Survey (CPS) supplement would measure for the first time the extent and nature of contingent work, enabling the Bureau of Labor Statistics to conduct research into the issue.

Type of Review: *REVISION*
Agency: Bureau of Labor Statistics
Title: Consumer Price Index Housing Survey
OMB Number: 1220–0034
Affected Public: Individuals or households; Businesses or other for-profit; Small businesses or organizations

Form No. and frequency	Number of respondents	Average time per response (minutes)
222S—Once	2,100	2
222I—Once	1,000	6
222NC—Once	1,800	2
222R—Semi-annually	38,000	6
222R—Biannually	26,000	5
Lab Research—Once	400	1
Simulated Test Once	3,600	2

Total Burden Hours: 10,511

Description: These forms are for the Consumer Price Index Housing Survey which measures price changes for the Rent and Owners' Equivalent Rent Components of the Consumer Price Index, which accounts for 25 percent of its total weight.

Kenneth A. Mills,
Departmental Clearance Officer.
[FR Doc. 94–28269 Filed 11–15–94; 8:45 am]
BILLING CODE 4510–27–P

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of November, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,112; Atlas Building Systems, Inc., Marlton, NJ
TA–W–30,206; Schlegel of Maryland, Inc., Chestertown, MD
TA–W–29,950; S.D. Warren Co., Westbrook, ME
TA–W–30,269; Highland Yarn Mills, High Point, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–30,443; Shimazaki Corp., Port Newark, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,422; Rome Cable Corp., Rome, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,312; Carr Well Service, Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,265; LAN Technologies, Inc., Bedford, MA

The predominate reason for the layoff of workers at LAN Technologies, Inc., Bedford, MA was due to a corporate decision to move its production facility from Bedford, MA to Pueblo, CO in October 1994.

TA–W–30,185; General Dynamics Land System, Inc., Sterling Heights, MI

The investigation revealed that the US Government does not purchase battle tanks from foreign manufacturers.

TA–W–30,332; Intera Information Technologies, Inc., Denver, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,134; Sea Farm Washington, Inc., DBA Stolt Sea Farm, Inc., Port Angeles, WA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–30,175; Bayflux Fabrics, Inc., Lincoln Park, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–30,340; Moran Towing of Pennsylvania, Philadelphia, PA

TA-W-30,341; McAllister Brothers, Inc., Camden, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,330; National Oilwell, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-30,288; Beth Energy Mines Corp., Cambria Slope, Mine #33, Ebensburg, PA

Aggregate US imports of coal are negligible during the relevant period.

TA-W-30,342; Linmar Petroleum Co., Roosevelt, UT

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations for Worker Adjustment Assistance

TA-W-30,278; Ward Paper Co., A Div. of International Paper, Merrill, WI

A certification was issued covering all workers separated on or after August 23, 1993.

TA-W-30,395; Charter Production Co., Wichita, KS

A certification was issued covering all workers separated on or after September 27, 1993.

TA-W-30,318; Carmen Dress Co., Inc., Luzerne, PA

A certification was issued covering all workers separated on or after August 31, 1993.

TA-W-30,186; Owens-Illinois, Waco, TX

A certification was issued covering all workers separated on or after July 24, 1993.

TA-W-30,282; Ohmeda Medical Devices, Inc., Oxnard, CA

A certification was issued covering all workers separated on or after August 19, 1993.

TA-W-30,227; Syntrex Technologies, Inc (formerly Syntrex, Inc), Eatontown, NJ

A certification was issued covering all workers separated on or after August 12, 1993.

TA-W-30,304; Paulsen Wire Rope Corp., Sunbury, PA

A certification was issued covering all workers separated on or after September 1, 1993.

TA-W-30,372; Excelled Sheepskin & Leather Coat Co., Edison, NJ

A certification was issued covering all workers separated on or after September 20, 1993.

TA-W-30,389; Case Corp., Burr Ridge, IL

A certification was issued covering all workers separated on or after September 20, 1993.

TA-W-30,180; Magnetek, Huntington, IN

A certification was issued covering all workers engaged in the production of magnetic components separated on or after July 26, 1993. Also, workers engaged in the production of electronic components are denied.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of November, 1994.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(A) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(B) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased.

(C) That the increase in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(2) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA-TAA

NAFTA-TAA-00249; Steuben Foods, Inc., Elma, NY

The investigation revealed that criteria (3) and criteria (4) were not met. A survey of major customers of Steuben Foods, Inc. revealed that none of the respondents purchased any imported puddings from Mexico or Canada in 1993 compared to 1992, or in the first nine months of 1994 compared to the same period of 1993.

NAFTA-TAA-00245; Coombs Vermont Natural Products, Wilmington, VT

The investigation revealed that criteria (3) and criteria (4) were not met. A survey of major customers of Coombs Vermont Natural Products revealed that none of the respondents purchased imported maple syrup from Mexico or Canada in 1993 compared to 1992, or in the first nine months of 1994 compared to the same period of 1993.

NAFTA-TAA-00240; Lyon Fashion, Inc., Mifflintown and McAlisterville Plants, Mifflintown and McAlisterville, PA

The investigation revealed that criteria (3) and criteria (4) were not met. A survey of major customers that decreased their purchases from Lyon Fashion, Inc revealed that none of the respondents purchased any imported women's, misses' or junior's dresses from Mexico or Canada in 1993 compared to 1992, or in the first nine months of 1993 compared to the same period of 1994.

NAFTA-TAA-00241; BASF Corp., Nylon Hosiery Div-Lowland Plant, Lowland, TN

The investigation revealed that criteria (3) and criteria (4) were not met. A survey of major customers that decreased their purchases from the Lowland Plant of the Nylon Hosiery Div of BASF Corp revealed that most of the respondents did not increase imports of polyester filament or polyester chips for nylon yarn from Mexico or Canada. Also revealed that the respondents which purchased polyester filament for nylon yarn from Mexico or Canada relied on imports for a minor proportion of their needs during the periods under investigation.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-00244; Midland Brake, Inc., Cuba, MO

A certification was issued covering all workers of Oxford Midland Brake, Inc., Cuba, MO separated on or after December 8, 1993.

NAFTA-TAA-00243; Keyes Fibre Co., Hammond Plant, Hammond, IN

A certification was issued covering all workers of the Hammond Plant of Keyes Fibre Co., Hammond, IN separated on or after December 8, 1993.

NAFTA-TAA-00246; Hamilton Kent Manufacturing Co., Inc., Kent, OH

A certification was issued covering all workers of Hamilton Kent

Manufacturing Co., Inc., Kent, OH separated on or after December 8, 1993.

NAFTA–TAA–00242; Square D Company-Groupe Schneider, Transformer Business Div., Milwaukee, WI

A certification was issued covering all workers of the Transformer Business Div. of Square D Corporation-Groupe Schneider, Milwaukee, WI separated on or after December 8, 1993.

NAFTA–TAA–00230; Bluestone Farming, Inc., San Diego, CA

A certification was issued covering all workers of Bluestone Farming, Inc., San Diego, CA separated on or after December 8, 1993.

NAFTA–TAA–00227; Regency Packing Co., Regency Realty Associates, Naples, FL

A certification was issued covering all workers of Regency Packing Company and Regency Realty Company, Naples, FL separated on or after December 8, 1993.

I hereby certify that the aforementioned determinations were issued during the month of November, 1994. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 8, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–28270 Filed 11–15–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29, 919]

Pennzoil Products Co., Bradford, PA; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated September 14, 1993, Local #6990 of the United Electrical Workers (UE) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on August 16, 1994 and published in the **Federal Register** on September 2, 1994 (59 FR 45711).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation findings show that the workers were primarily engaged in employment related to the production of crude oil. Some natural gas was produced.

The Department's denial was based on the fact that the "contributed importantly" test of the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers.

The Department's survey of the Pennzoil's customers shows that all of its crude oil was shipped to a corporate refinery who does not import crude oil. The Department's survey of the natural gas customers shows that they did not increase their imports of natural gas while reducing their purchases from Pennzoil during the relevant periods.

The union claims that the international price of crude oil affects the price of domestic crude oil and was responsible for the worker separations at Pennzoil.

Price is not a criterion for a worker group certification. Also, Pennzoil shift from domestic production to overseas exploration and production would not form a basis for a worker group certification.

The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by foreign competition but only to those who experienced a decline in sales or production and employment and an increase in imports of like or directly competitive products which "contributed importantly" to declines in sales or production and employment.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 7th day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–28271 Filed 11–15–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,657 and TA–W–29,657A]

Union Pacific Oil and Gas Co. (Formerly Amax Oil and Gas Co.) Houston, TX; Operating in the State of Oklahoma; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 20, 1994, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on July 28, 1994 (59 FR 38495).

At the request of the company, the Department again reviewed its certification for the workers of Union Pacific Oil and Gas in Houston, Texas. New findings show that several workers were laid off in Oklahoma.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending its certification to include worker separations in Oklahoma.

The amended notice applicable to TA–W–29,657 is hereby issued as follows:

"All workers of Union Pacific and Gas, formerly Amax Oil and Gas Company, Houston, Texas and in the state of Oklahoma who were engaged in employment related to the production of crude oil and natural gas who became totally or partially separated from employment on or after March 16, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 7th day of November, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–28272 Filed 11–15–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of

Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C., provided such request is filed in writing with the Director of OTAA not later than November 28, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than November 28, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 8th day of November, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade, Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received at Governor's Office	Petition No.	Articles produced
Zenith Electronics Corp.; Plant #9 (IBEW).	Springfield, MO	10/12/94	NAFTA–00254	Plastic molded cabinets.
Zenith Electronics Corp.; Part Sales (UIEWA).	Chicago, IL	10/12/94	NAFTA–00255	Warehousing and shipping of parts.
Lockheed Fort Worth Company; Kingsley Field, Air Defense Site (Wkrs).	Klamath Falls, OR	10/12/94	NAFTA–00256	Aircrew training devices.
Plantronics (Co.)	Santa Cruz, CA	10/17/94	NAFTA–00257	Telephone headsets.
Kimberly-Clark Corporation; Memphis Mill (Wkrs).	Memphis, TN	10/19/94	NAFTA–00258	Kleenex facial tissue & Kleenex Huggies diapers.
Timbercraft Products; Div. of Fulton & Lightly, Inc. (Wkrs).	Hayden Lake, ID	10/19/94	NAFTA–00259	CCA pressure treated lumber & posts (chromic acid copper arsenate).
IMC Magnetics; Eastern Div. (IAE)	Hauppauge, NY	10/21/94	NAFTA–00260	Electric motors and fans.
Larry Mahan; Leather & Heel Division (Wkrs).	El Paso, TX	10/18/94	NAFTA–00261	Boot heels.
Emerson Electric Company; Copeland Corporation (Co.).	Wichita, KS	10/24/94	NAFTA–00262	Copelametic compressors.
Robert Shaw Control Company; El Paso Division (Wkrs).	El Paso, TX	10/24/94	NAFTA–00263	Control valves for residential and commercial natural and LP gas water heaters.
NETP, Inc. (Wkrs)	Niagara Falls, NY	10/24/94	NAFTA–00264	Electrical wire harnesses, 5 & 7 circuit assemblies.
T.E. Dee (Wkrs)	Allentown, PA	10/24/94	NAFTA–00265	Three dimensional container decorating.
Al Tech Specialty Steel Corporation; Waterliet Plant (USWA).	Waterliet, NY	10/27/94	NAFTA–00266	Steel manufacturing; rolling, forging, melting, and finishing.
Corcom, Inc. (Wkrs)	Torrance, CA	10/28/94	NAFTA–00267	Radio frequency interference facility filters.
Gist—Brocades (Co.)	East Brunswick, NJ	10/28/94	NAFTA–00268	Bakers yeast.
Baxter Healthcare Corporation (Co.)	Kingstree, SC	11/02/94	NAFTA–00269	Medical procedure trays.
Niagara Mohawk Power Corporation (IBEW).	Syracuse, NY	10/31/94	NAFTA–00270	Electric (hydro) power.
Nalley's Fine Foods; Curtice Burns Foods, Inc. (AFL–CIO).	Tacoma, WA	11/02/94	NAFTA–00271	Snack foods; corn chips, tortilla chips, salsa chips.
Component Technology Corporation (Wkrs).	Erie, PA	11/03/94	NAFTA–00272	Dispenser molding and assembly.
Continental Apparel Manufacturing Co. (Co.).	Defuniak Springs, FL.	11/03/94	NAFTA–00273	Apparel (jeans).
EFR Corporation (Co.)	Everett, WA	11/03/94	NAFTA–00274	Timber thinning; raw logs.
Xerox Corporation; Oakbrook (ACTW)	Oakbrook, IL	11/03/94	NAFTA–00275	Duplicating equipment; new and refurbished.

[FR Doc. 94–28273 Filed 11–15–94; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: National Communications System (NCS), Office of Technology and Standards.

ACTION: Notice for comment on proposed Federal Standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1037C,

"Telecommunications: Glossary of Telecommunications Terms."

DATES: Comments are required by close of business March 20, 1994.

ADDRESSES: Send comments to: Glenn Hanson, NTIA/ITS.N4, 325 Broadway, Boulder, Colorado 80303–3328.

SUPPLEMENTARY INFORMATION:

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the NCS as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the draft proposed Federal Telecommunications Standard 1037C, Telecommunications: Glossary of Telecommunication Terms" should be directed to: Mr. Glenn Hanson, NTIA/ITS, Boulder, Colorado, Telephone (303) 497–5449, or e-mail: glenn@its.bldrdoc.gov. Electronic access to the document may be accomplished through the following procedures:

Run your FTP software and connect to: sneffels.its.bldrdoc.gov
Log-in as "anonymous", with a password of: (your e-mail address)
Change to subdirectory "fs1037"
The /pfs1037c subdirectory contains the files

OR

Use a World Wide Web client such as Mosaic for Windows
Connect to a URL of http://ntia.its.bldrdoc.gov/its.html
Select the menu item "Glossary of Telecommunication Terms"
Select the menu item for downloading the glossary related files

Frank M. McClelland,

Deputy Assistant Manager, NCS Office of Technology and Standards.

[FR Doc. 94–27686 Filed 11–15–94; 8:45 am]

BILLING CODE 5000–03–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for Mayors' Institute on City Design

AGENCY: National Endowment for the Arts.

ACTION: Extension of Due Date for Proposals.

SUMMARY: This regards a notice that appeared in the **Federal Register** on August 26, 1994 concerning the availability of Program Solicitation PS 94–14 leading to the award of a Cooperative Agreement to assist in planning, organizing, and implementing the activities of the Mayors' Institute on City Design. The National Endowment for the Arts has decided to extend the due date for proposals for this project until January 3, 1995.

DATES: Proposals will be due on January 3, 1995.

ADDRESSES: National Endowment for the Arts, Contracts Division, Room 217, 1100 Pennsylvania Ave., N.W., Washington, D.C. 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 94–28223 Filed 11–15–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030–02640; 030–31605; and 030–32479 License Nos. 34–00293–02; 34–00293–14; and 34–00293–15 EA 94–215]

The Ohio State University, Columbus, Ohio; Confirmatory Order Modifying License, Effective Immediately

I.

The Ohio State University (Licensee) is the holder of eight NRC materials licenses, including broadscope License No. 34–00293–02; License No. 34–00293–14, authorizing use of cobalt-60 sources in a wet storage irradiator for in-water irradiation studies; and License No. 34–00293–15, authorizing use of a cobalt-60 source in a teletherapy unit for treatment of animals. The broadscope license authorizes the Licensee to possess, in part: (1) Radiopharmaceuticals and brachytherapy sources in quantities as needed for medical diagnosis and therapy; (2) ten curses (370 GBq) of iridium-192 in a remote afterloading brachytherapy device for therapeutic treatments; (3) curie quantities of any byproduct materials (with atomic numbers 1 to 83) in any form for research and development (R&D) pursuant to 10 CFR 30.4, and for student instruction and calibration of instruments; (4) curie quantities of any byproduct material (with atomic numbers 3 to 83) in the form of irradiated metals for R&D; and (5) millicurie to curie quantities of specifically-listed sealed and unsealed byproduct materials for use in analytical instruments, gauging devices, and for instrument calibration, student instruction and R&D. The broadscope license was issued on July 19, 1956, and is due to expire on June 30, 1997. License Nos. 34–00293–14 and 34–00293–15 expire on July 31, 1996 and December 31, 1996, respectively.

II.

Between September 27 and November 4, 1993, the NRC conducted a safety inspection of licensed activities at the Ohio State University authorized under License Nos. 34–00293–02, 34–00293–14 and 34–00293–15. Numerous violations and other concerns were identified during the inspection. The findings of the inspection were documented in Inspection Report Nos. 030–02640/93001, 030–31605/93001 and 030–32479/93001, issued to the Licensee on December 16, 1993.

The problems identified during the inspection were discussed with the Licensee during an Enforcement Conference held at the NRC Region III office on March 7, 1994. During the Enforcement Conference, the Licensee presented various corrective actions that were taken or were planned to be taken to prevent recurrence of the violations, ensure compliance with NRC requirements and strengthen its overall NRC-licensed programs.

On June 10, 1994, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) in the amount of $17,750 (EA 94–032). The Notice listed 32 violations covering numerous areas, including decommissioning funding, radiation safety requirements for irradiators, and medical quality management program requirements. The violations represented a significant breakdown in the management of the radiation safety program and consequently were of significant regulatory concern. The significant of the inspection findings was exacerbated because many of the violations appeared to have been known or suspected to exist by those responsible for the radiation protection program, yet continued uncorrected. Moreover, conditions such as a lack of radiation safety office staff and adequate radiation safety office facilities were also known but were not corrected in a timely fashion. The root cause of the problems identified during the inspection was a lack of effective management involvement with NRC-licensed activities, coupled with a failure to provide sufficient resources for the radiation protection program.

The June 10, 1994, Notice required the Licensee to respond to the specific

violations. In addition to that response, the NRC requested that, within 60 days of the Notice, the Licensee develop and submit a detailed Radiation Safety Improvement Plan (RSIP) that includes a description of the changes to be implemented, the specific improvements in management oversight, and the additional resources to be dedicated to upgrade the radiation safety program. The RSIP was to address several specific topics including a program of audits and surveillances to assess program effectiveness, a schedule for completing all actions described in the plan, and a system for monitoring and tracking the plan's completion status.

III.

On July 8, 1994, the Licensee provided a written response to the Notice and remitted full payment of the $17,750 proposed civil penalties. The Licensee did not contest the violations in the Notice except for one violation pertaining to the failure to complete an evaluation of radiation doses incurred by an individual in September 1991. The NRC responded to the Licensee's July 8, 1994, submittal in a letter dated August 18, 1994.

On August 2, 1994, the Licensee submitted the requested RSIP. Following discussion of the RSIP with the Licensee, the Licensee submitted supplemental information in a letter dated September 15, 1994. Key elements of the RSIP include: (1) A system of ongoing evaluations of the radiation safety program to determine compliance with NRC regulations and license conditions; (2) an assessment of personnel training and improvements in user training including cross-training of radiation safety office health physicists; (3) a compilation of radiation safety deficiencies identified during program evaluations and a description of short term and long term corrective actions necessary to address those deficiencies for lasting corrective action; (4) an increase in health physicist, technician and support staff for the radiation safety office; and (5) enhanced facilities and equipment for the radiation safety office.

In light of the violations underlying the June 10, 1994, enforcement action, the public health and safety require improvement of the Licensee's radiation safety program. The NRC staff has reviewed the Licensee's RSIP, as supplemented, and finds that the commitments as set forth in its letters of August 2, 1994, and September 15, 1994, are acceptable and conclude that if these commitments are effectively implemented, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments in its August 2, 1994, and September 15, 1994, letters be confirmed by this Order.

The Licensee consented to the issuance of this Confirmatory Order during a telephone call between Ms. B.J. Holt and Mr. Wayne Slawinski, of the NRC Region II staff, and Dr. Cecil Smith, Assistant Vice President for Environmental Health and Safety, and Mr. Joseph Allgeier, Radiation Safety Officer, of the Licensee's staff on November 4, 1994. Pursuant to 10 CFR 2.202, I have also determined that, based on the Licensee's consent to this Order and the significance of the necessary program improvements described above, the public health and safety require that this Order be immediately effective.

IV.

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 20, 30 and 35, it is hereby ordered that, effective immediately, License Nos. 34–00293–02, 34–00293–14 and 34–00293–15 are modified as follows:

The Licensee shall complete the specific action items within the time limitations stated in the Radiation Safety Improvement Plan submitted to the NRC in its letter dated August 2, 1994, as supplemented by letter dated September 15, 1994. If additional time is required to meet a step or goal, a prior written request must be submitted with the reason for the request and the new time frame for completion. Until approved in writing by the Regional Administrator, Region III, the previously approved schedule must be met. The Regional Administrator, Region III, may relax or rescind, in writing, any aspect of the above condition upon a showing by the Licensee of good cause.

V.

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person other than the Licensee adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated at Rockville, Maryland, this 8th day of November 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–28256 Filed 11–15–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–352 and 50–353]

Philadelphia Electric Co.; Limerick Generating Station, Units 1 and 2

Exemption

I.

Philadelphia Electric Company (the licensee) is the holder of Facility Operating License Nos. NPF–39 and NPF–85, which authorize operation of the Limerick Generating Station, Units 1 and 2. The licenses provide, among other things, that the license is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facilities consist of two boiling water reactors located in Montgomery County, Pennsylvania.

II.

It is stated in 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," paragraph (a), that "The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

It is specified in 10 CFR 73.55(d), "Access Requirements," paragraph (1), that "The licensee shall control all points of personnel and vehicle access into a protected area." It is specified in 10 CFR 73.55(d)(5) that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort * * *." It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *."

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated August 10, 1994, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III.

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide measures for protection against radiological sabotage provided the licensee demonstrates that the measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

At the LGS units, unescorted access into protected areas is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badge.) The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel, who have been granted unescorted access, are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plant's physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template in the access control system to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badge with them when they depart the site and thus eliminate the process to issue, retrieve and store badges at the entrance stations to the plant. Badges do not carry any information other than a unique identification number.

All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access, i.e. visitors.

Based on a Sandia report entitled, "A Performance Evaluation of Biometric Identification Devices" (SAND91—0276 UC—906 Unlimited Release, Printed June 1991), and on the licensee's experience with the current photo-identification system, the licensee demonstrated that the false-accept rate for the hand geometry system will be better than is achieved by the current system. The biometric system has been in use for a number of years at several sensitive Department of Energy facilities. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plans for Limerick Generating Station, Units 1 and 2 will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The licensee will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and verification of hand geometry. A numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected area.

IV.

Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process and potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas.

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Philadelphia Electric Company an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not

result in any significant adverse environmental impact (59 FR 55863).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 9th day of November, 1994.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–28257 Filed 11–15–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 55–30662–EA, IA–94–007; ASLBP No. 94–694–05–EA]

Atomic Safety and Licensing Board; Re: Kenneth G. Pierce; Shorewood, Illinois; Prohibition of Participation in Licensed Activities, Before Administrative Judges: Peter B. Bloch, Chair, Richard F. Cole, Fred J. Shon; Notice of Hearing

Memorandum and Order

November 9, 1994.

On November 29, 1994, a Hearing shall be held beginning at the Will County Courthouse (Courtroom 100), 14 West Jefferson Street, Joliet, IL 60431. The daily hours of hearing shall be 9:30 am to 5:00 pm. The hearing is expected to last two days but may last four days.

Rockville, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair.

[FR Doc. 94–28258 Filed 11–15–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–390]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1

Order

Tennessee Valley Authority (the permittee) is the current holder of Construction Permit No. CPPR–91, issued by the Atomic Energy Commission on January 23, 1973, for construction of the Watts Bar Nuclear Plant, Unit 1. The facility is currently under construction at the permittee's site on the west bank of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

On September 19, 1994, the permittee filed a request pursuant to 10 CFR 50.55(b) for an extension of the completion date from December 31, 1994 to December 31, 1995. The proposed action is needed because the construction, modification, and preoperational testing of the facility is not yet fully completed. Following completion of hot functional testing, the permittee conducted an extensive review of the remaining scope of work required to complete the unit. The review indicates fuel load for the unit will occur in the spring of 1995. The requested extension period includes contingency in case any adjustments to the schedule are needed. The NRC staff has concluded that good cause has been shown for the delays, and that the extension is for a reasonable period. The basis for these conclusions is set forth in the staff's evaluation. The staff has further concluded that the requested extension involves no significant hazards consideration and that, therefore, no prior public notice is needed.

The NRC staff has prepared an environmental assessment and finding of no significant impact, which was published in the **Federal Register** on November 8, 1994. Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion dates will have no significant impact on the environment.

The applicant's letter dated September 19, 1994, and the NRC staff's letter and Safety Evaluation of the request for extension of the construction permit, dated November 8, 1994, are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Chattanooga-County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

It is hereby ordered That the latest completion date for Construction Permit No. CPPR–91 is extended to December 31, 1995.

Dated at Rockville, Maryland, this 8th day of November 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–28259 Filed 11–15–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Ad Hoc Subcommittee Meeting on NRC Technical Training Center (TTC) Curricula; Notice of Meeting

The ACRS AD Hoc Subcommittee on NRC Technical Training Center (TTC) Curricula will hold a meeting on December 7, 1994, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 7, 1994—12:30 p.m. until the conclusion of business

The Ad Hoc Subcommittee will discuss the new TTC curriculum on PRA, and the status of a new digital instrumentation & control system curriculum for inspectors. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Ad Hoc Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public and questions may be asked only by members of the Ad Hoc Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Ad Hoc Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Ad Hoc Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Douglas Coe (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual on the working day prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: November 9, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–28254 Filed 11–15–94; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Regulatory Commission

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 7, 1994, Room T–2E13, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 7, 1994—8:30 a.m. until 10:30 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. Also, it will discuss status of the appointment of members to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual on the working day prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 9, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–28255 Filed 11–15–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Revision of SF 85, SF 85P, and SF 86

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, chapter 35), this notice announces a proposed revision of three forms that collect information from the public.

The Standard Form 85, Questionnaire for Non-Sensitive Positions, is completed by appointees to Non-Sensitive duties with the Federal Government. Information collected on this form is used by the Office of Personnel Management and by other Federal agencies to initiate the background investigation required to determine basic suitability for Federal employment in accordance with 5 U.S.C. 3301, 3302, and E.O. 10577 (5 CFR Rule V). The number of respondents annually who are not Federal appointees is expected to be 10 with total reporting hours of 5.0.

The Standard Form 85P, Questionnaire for Public Trust Positions, is completed by persons seeking placement in positions currently labeled "public trust" positions because of their enhanced responsibilities, and for certain sensitive positions that do not require access to classified information. Information collected on this form is used by the Office of Personnel Management and by other Federal agencies to initiate the background investigation required to determine suitability for placement in public trust/other sensitive, non-access positions in accordance with 5 U.S.C. 3301, 3302, E.O. 10577 (5 CFR Rule V), and Office of Management and Budget Circular A–130, Management of Federal Information Resources, revised June 25, 1993, and its Appendix III, Security of Federal Automated Computer Systems, issued December 12, 1985. The number of respondents annually who are not Federal employees is expected to be 1500 with total reporting hours of 1500.

The Standard Ford 86, Questionnaire for National Security Positions, is completed by persons performing, or seeking to perform, national security duties for the Federal Government. This information collection also includes Standard Form 86A, Continuation Sheet for Questionnaires SF 86, SF 85P, and SF 85, which is used to provide formatted space to continue answers to questions. Information collected on this form is used by the Office of Personnel Management and by other Federal agencies to initiate the background investigation required to determine placement in national security positions in accordance with 42 U.S.C. 2165, 22 U.S.C. 2584, 50 U.S.C. 781 to 887, and E.O. 10450, Security Requirements for Government Employment, issued April 27, 1953. The number of respondents annually who are not Federal employees is expected to be 172,150 with total reporting hours of 258,225.

For copies of this proposal call Doris Benz on (703) 908–8564.

DATES: Comments on this proposal should be received on or before December 16,1994.

ADDRESSES: Send or deliver comments to: Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 3002, Washington, DC 20503.

Copies of comments sent to OMB may also be sent to: John J. Lafferty, Deputy Associate Director for Investigations, Office of Personnel Management, P.O. Box 886, Washington, DC 20044–0886.

FOR FURTHER INFORMATION CONTRACT: John J. Lafferty, (202) 376–3800.

SUPPLEMENTARY INFORMATION: OPM is proposing for public comment new standard questionnaires that will be used by all Federal agencies as the basis for individual background investigations. The Questionnaire for National Security Positions (SF 86) is designed for use by all Federal agencies as the basis for investigations preliminary to granting an individual access to classified national security information or access to sensitive nuclear information or materials. The Questionnaire for Public Trust Positions (SF 85P) will similarly serve as the basis for investigations concerning suitability for positions requiring special public trust where suitability for positions requiring special public trust where such positions do not involve access to classified national security information, such as those in law enforcement. The third form, the Questionnaire for Non-Sensitive Positions (SF 85), is signed for positions not involving special public trust or requiring access to classified national security information.

The proposed forms where developed both to reduce the intrusiveness of

investigations without compromising security and to facilitate the portability of security clearances within the Federal Community. The forms will replace separate forms currently used by the Department of Defense, the Office of Personnel Management, and other Federal agencies, as well as supplemental forms used by some agencies. They will become the only such questionnaires used by Federal agencies for this purpose.

Use of Less Intrusive Forms

Currently, individuals who have "sensitive" duties as well as individuals who have access to national security information are required to complete the most intrusive forms, such as the current SF 86. We are revising this approach so that only individuals needing a security clearance for access to classified national security information will be required to complete the SF 86. Individuals who perform sensitive duties, such as those who may work in a sensitive facility, that do not require access to classified national security information will use a less intrusive form, the SF 85P.

Use of Existing Forms

During the course of developing the proposed forms, it became apparent that there was some confusion as to the appropriate use of the current forms. In some cases, contractors were inappropriately using the SF 86 as a job application to screen prospective employees. Additionally, some agencies were using the SF 86 where immediate access to classified national security information was not needed. The instructions on each of the new forms have been clarified to show that they will be used only after an individual is employed or has been given a conditional offer of employment. furthermore, each new form explains precisely the types of positions for which the form is to be used. The SF 86 will be used only for those positions requiring access to classified national security information or access to sensitive nuclear information or materials. The SF 85P will be used for positions of public trust where access to classified national security information is not required. The SF 85 will be used for other non-sensitive positions.

Mental Health Inquiries

Questions have also been raised concerning a negative perceptions of mental health counseling to which the existing forms may be contributing. In addition, concerns were raised about the expansive and intrusive nature of current mental health inquiries.

Some individuals apparently have the impression that consulting a mental health professional can jeopardize one's ability to obtain or retain a security clearance. Not only is this impression incorrect, but seeking such help can be a positive factor in a clearance adjudication.

Several revisions have been made to the mental health question to help communicate this message. The mental health question itself has been changed so it does not refer to "problems". Instead, it simply asks about any concerning mental health conditions.

Significantly, the revised forms will reduce the number of people questioned about mental health treatment. This is because an inquiry into past mental health consultations is not relevant in all cases. Where a job's duties include access to classified national security information, the SF 86, which contains the mental health question, will be used. The SF 85P or SF 85, however, do not include mental health questions. If an agency decides that an individual's duties require a mental health inquiry, the agency must justify its need to the Office of Personnel Management. If it successfully does so, it may then use a supplemental form which contains the question.

Where a mental health question is used, certain kinds of counseling need not be reported. Specifically, the question exempts marital, family and grief counseling not related to violent acts by the individual under investigation from being reported. This is because such information is not relevant to a determination as to whether an individual obtains a security clearance. In addition, the mental health question will now refer only to treatment/consultation received within the past seven years, rather than one's entire life.

Finally, even where the mental health question is asked and answered affirmatively, an Investigator's inquiry into the relevant mental consultation will be limited. A separate Authorization for Release of Information must be signed by the subject of the investigation which authorizes an Investigator to seek mental health information from a mental health care provider. That release will only authorize an Investigator to ask three specific questions. This narrower release will place limits on the authority granted to Investigators without depriving them of relevant information.

Drug Use Inquiries

The questions on both the SF 86 and the SF 85P concerning illicit drug use include language that grants the respondent immunity from criminal prosecution based upon a truthful answer to the questions. This addition has been made principally to improve the accuracy of responses to this question, and thus enhance the reported in response to this question has not been used for criminal actions against individuals.

The scope of the question about past drug use has been limited to 7 years on the SF 86, to be consistent with the proposed revised scope of a national security investigation. In addition, the question concerning *past* drug use (more than one year ago), will not be asked on the SF 85P. Like the mental health question, it will only be asked after an agency justifies use of the supplemental form based on the duties of the individual and receives approval from OPM.

Simplification of Other Questions

Several of the forms being replaced inquire into areas such as past drug use, foreign countries visited, charges for minor arrest offenses, or credit records over an individual's entire life. The proposed SF 86 limits the time of inquiry on such questions to the most recent seven years. This change represents a significant reduction in the information required by current forms without depriving adjudicators of relevant, probative information.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94-28343 Filed 11-15-94; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34940; File No. 265-18]

Market Transactions Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission ("Commission") Market Transactions Advisory Committee.

SUMMARY: This is to give notice that the Securities and Exchange Commission Market Transactions Advisory Committee will meet on December 7, 1994, in room 1C30 at the Commission's main offices, 450 Fifth Street N.W., Washington, D.C., beginning at 10 a.m. The meeting will be open to the public. This notice also serves to invite the public to submit written comments to the Commission.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–18. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Ari Burstein, Division of Market Regulations at (202) 942–4881; Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app 10a, the Securities and Exchange Commission Market Transactions Advisory Committee ("Committee") hereby gives notice that it will meet on December 7, 1994, in room 1C30 at the Commission's main offices, 450 Fifth Street, N.W., Washington, D.C., beginning at 10:00 a.m. The meeting will be open to the public.

The Committee was formed under section 17A(f) of the Securities Exchange Act of 1934. The Committee's responsibilities include assisting the Commission in identifying State and Federal laws that may impede the safe and efficient clearance and settlement of securities transactions and in advising the Commission on the use of the Commission's authority under the Market Reform Act of 1990 to adopt uniform federal rules regarding the transfer and pledge of securities.

The purpose of the meeting will be to discuss the progress of the Committee's subgroups and to plan the continued progression of the Committee's work. In addition, the Committee will discuss the status of the project to revise Article 8 of the Uniform Commercial Code undertaken by the National Conference of Commissioners on Uniform State Laws.

Dated: November 4, 1994.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 94–28215 Filed 11–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34917; File No. SR–CBOE–94–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Short Sale of Securities in the Nasdaq National Market.

November 7, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 25, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend the definition of "designated Nasdaq National Market ("Nasdaq/NM") security," contained in CBOE Rule 15.10, to include all Nasdaq/NM securities underlying options classes for which an Exchange options market-maker holds an appointment pursuant to CBOE Rule 8.7. The Exchange also proposes to add Interpretation and Policies .02 and .03 to CBOE Rule 15.10, which in very limited circumstances expand the Nasdaq/NM securities which may qualify for the exemption provided in paragraph (c)(2) of the Rule; specifically, market-maker options transactions which facilitate an off-floor order, and market-maker transactions for nominees of the same market-maker organization.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is amending its Rule 15.10 to expand the definition of "designated Nasdaq/NM security" to include all Nasdaq/NM securities which underlie the options classes for which a market-maker holds an appointment. In practice the CBOE has found the current definition, which limits designated Nasdaq/NM securities to no more than three (3) trading stations of a market-maker, to be unnecessarily restrictive.[2] Although not identical, the expansion of the definition to include underlying Nasdaq/NM securities for all appointed options classes of a market-maker is consistent with the application of the exemption for options market-makers in other similar markets.[3]

Proposed Interpretation .02 to CBOE Rule 15.10 would permit an options market-maker, with prior notice to a Floor Official or Order Book Official, to facilitate an off-floor order and contemporaneously hedge the resulting options position with a short sale in applicable Nasdaq/NM securities as if such securities were designated securities under paragraph (c)(2) of the Rule. This treatment is consistent with the NASD's interpretation concerning the hedging of options facilitation transactions.[4]

Proposed Interpretation .03 to CBOE Rule 15.10 would allow a nominee of a market-maker organization to effect short sales as bid test exempt in a Nasdaq/NM security which the market-maker nominee has not designated as qualifying for the exemption contained in paragraph (c)(2), provided that such security is a designated Nasdaq/NM security for another nominee of the market-maker organization and such other nominee is not also present or represented by a Floor Broker in the applicable trading station at the time of the bid test exempt sale. This interpretation will allow the market-maker organization the ability to manage effectively its obligations when nominees are absent from the trading floor due to illness, personal or other business, and is consistent with the intent of the exemption, in that the exemption continues to be limited to those Nasdaq/NM securities which are used to hedge options transactions in the primary classes in which the

---

[1] 15 U.S.C. 78s(b)(1).

[2] See letter from Michael J. Carusillo, General Partner, O'Connor & Associates, to Jeff Schroer, Vice President, Market Surveillance, CBOE, dated September 21, 1994.

[3] See Securities Exchange Act Release No. 34632 (September 2, 1994), 59 FR 46999. See also American Stock Exchange, Inc., Floor Members Circular 93–1255 (December 29, 1993).

Currently, CBOE Rule 8.3(c) provides that a market-maker's appointment is limited to the options classes trading at no more than five (5) trading stations absent an exemption by the market Performance Committee. The Exchange intends to expand market-maker appointments in a subsequent rule filing.

[4] See letter from Richard G. Ketchum, Chief Operating Officer and Executive Vice President, NASD, to David A. Dami, First Vice President & Associate General Counsel, Global Derivatives, Paine Webber, Inc., dated September 13, 1994.

market-maker organization makes markets.

The CBOE believes that its proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that the rule change will promote maintenance of fair and orderly markets on the CBOE and will contribute to the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CBOE Does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–94–38 and should be submitted by December 7, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–28262 Filed 11–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34948; File Nos. 600–19 and 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing of Application for Extension of Temporary Registration as a Clearing Agency

November 8, 1994.

Notice is hereby given that on November 7, 1994, MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] a request for extension of its registration as a clearing agency under Section 17A of the Act for a period of eighteen months through June 30, 1996.[2] The Commission is publishing this notice to solicit comments on the request for extension of registration from interested persons.

On February 2, 1987, the Commission granted MBS's application for registration as a clearing agency, pursuant to Section 17A(b) and 19(a)(1) of the Act[3] and Rule 17Ab2–1(c)[4] thereunder, on a temporary basis for a period of eighteen months.[5] Subsequently, the Commission issued orders that extended MBS's temporary registration as a clearing agency with the last of which extending MBS's registration through December 31, 1994.[6] MBS provides clearance and settlement services for members in processing transactions in mortgage-backed securities. Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of all written comments will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. All submissions should refer to the File Nos. 600–19 and 600–22 and should be submitted by December 7, 1994.

For the Commission, by the Division of Market Regulation pursuant to delegation authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–28263 Filed 11–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34954; File No. SR–NASD–94–59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Publication of Final NASD Disciplinary Decisions

November 9, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 26, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its Resolution of the Board of Governors—Notice to Membership and Press Suspensions, Expulsions, Revocations, and Monetary Sanctions and Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons ("Resolution") under Article V, Section 1 of the Association's Rules of Fair Practice.[1] Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

---

[5] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(a).

[2] Letter from David T. Rusoff, Foley & Lardner, to Ari Burstein, Attorney, Division of Market Regulation, Commission (November 7, 1994).

[3] 15 U.S.C. 78q–1(b) and 15 U.S.C. 78s(a)(1).

[4] 17CFR 240.17Ab2–1(c).

[5] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218 (order granting MBS registration as a clearing agency for a period not to exceed 18 months).

[6] Securities Exchange Act Release Nos. 25957 (August 2, 1988). 53 FR 29537; 27079 (July 31, 1989), 54 FR 32412; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 505602; 31750 (January 21, 1993), 58 FR 6424; and 33348 (December 15, 1993), 58 FR 68183.

[7] 17 CFR 200.30–3(a)(50).

[1] NASD Manual, Rules of Fair Practice, Art. V, Sec. 1 (CCH) ¶ 2301.

Rules of Fair Practice

Article V Sanctions for Violation of the Rules

Section 1

* * * * *

Resolution of the Board of Governors

Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions and Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons

The Association shall, in response to a written inquiry or telephonic inquiry via a toll-free telephone listing, release certain information as contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with NASD members, all final disciplinary actions taken by federal or state or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and have been reported on Form BD or U–4 and all foreign government or self-regulatory organizations disciplinary actions that are securities or commodities related and reported on Form BD or U–4; and all criminal indictments, informations or convictions reported on Form BD or Form U–4. The Association will also release information concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers.

The Association shall report to the membership and to the press pursuant to the procedures and at the times outlined herein any order of suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of $10,000 or more upon a member or person associated with a member. The Board of Governors may, in its discretion, determine to waive the notice provisions set forth herein as to an order of imposition of monetary sanctions of $10,000 or more upon a member or person associated with a member, under those extraordinary circumstances where notice would violate fundamental notions of fairness or work an injustice.

If a decision of a District Business Conduct Committee is not appealed to or called for review by the NBCC, the order of the District Business Conduct Committee shall become effective on a date set by the Association but not before the expiration of 45 days after the date of decision. Notices of decisions imposing monetary sanctions of $10,000 or more or penalties of expulsion, revocation, suspension and/or the barring of a person from being associated with all members shall promptly be transmitted to the membership and to the press, concurrently; provided, however, no such notice shall be sent prior to the expiration of 45 days from the date of the said decision.

Notwithstanding the preceding paragraph, expulsions and bars imposed pursuant to the provisions of Article II, Sections 10 and 11 of the Code of Procedure shall become effective upon approval or acceptance by the National Business Conduct Committee, and publicity regarding any sanctions imposed pursuant to Article II, Sections 10 and 11 of the Code may be issued immediately upon such approval or acceptance.

If a decision of a District Business Conduct Committee is appealed to or called for review by the Board of Governors, the order of the District Business Conduct Committee is stayed pending a final determination and decision by the Board and notice of the action of the District Business Conduct Committee shall not be sent to the membership or the press during the pendency of proceedings before the Board of Governors.

If a final decision of the Association is not appealed to the Securities and Exchange Commission, the sanctions specified in the decision (other than bars and expulsions) shall become effective on a date established by the Association but not before the expiration of 30 days after the date of the decision, unless the decision specifies otherwise. Notices of decisions imposing monetary sanctions of $10,000 or more on penalties of expulsion, revocation, suspension and/or the barring of a person from being associated with all members shall promptly be transmitted to the membership and to the press, concurrently; provided, however, no such notice shall be sent prior to the expiration of 30 days from the date of *a* [said] decision *imposing sanctions other than expulsion, revocation, and/or the barring of a person from being associated with all members.*

If a decision of the Board of Governors imposing monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members is appealed to the Securities and Exchange Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by the Association of notice from the Securities and Exchange Commission of such appeal and the Association's notice shall whether the effectiveness of the Board's decision has or has not been stayed pending the outcome of proceedings before the Securities and Exchange Commission.

In the event an appeal to the courts is filed from a decision by the Securities and Exchange Commission in a case previously appealed to it from a decision of the Board of Governors, involving the imposition of monetary sanctions of $10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members, notice thereof shall be given to the membership as soon as possible after receipt by the Association of a formal notice of appeal. Such notice shall include a statement that the order of the Commission has or has not been stayed.

Any order issued by the Securities and Exchange Commission of revocation or suspension of a member's broker/dealer registration with the Commission; or the suspension or expulsion of a member from the Association; or the suspension or barring of a member or person associated with a member from association with all broker/dealers or membership; or the imposition of monetary sanctions of $10,000 or more shall be made known to the membership of the Association through a notice containing the effective date thereof sent as soon as possible after receipt by the Association of the order of the Securities and Exchange Commission.

Cancellations of membership or registration pursuant to the Association's By-Laws, Rules or Regulations shall be sent to the membership and, when appropriate, to the press as soon after the effective date of the cancellation as possible.

Notices to the membership and releases to the press referred to above shall identify the section of the Association's Rules and By-Laws or the Securities and Exchange Commission Rules violated, and shall describe the conduct constituting such violation. Notices may also identify the member with which an individual was associated at the time the violations occurred if such identification is

determined by the Association to be in the public interest.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Resolution requires that a final NASD decision of the National Business Conduct Committee ("NBCC") or the Board of Governors of the NASD ("Board") imposing monetary sanctions of $10,000 or more or penalties of expulsion, revocation, suspension and/or the barring of a person from being associated with all members be promptly transmitted to the membership and to the press, concurrently; provided, however, no such notice shall be sent prior to the expiration of 30 days from the date of the said decision. Upon review, the Association has determined that the elimination of the 30 day notification delay regarding NASD final decisions ordering the most serious sanctions (i.e., expulsion, revocation, and/or the barring of a person from being associated with all members) would further investor protection and the public interest and that notification to the membership and to the press should be made promptly upon issuance of such final decisions. The NASD, therefore, proposes to amend the Resolution to provide that no such notice shall be sent prior to the expiration of 30 days from the date of a decision imposing sanctions other than expulsion, revocation, and/or the barring of a person from being associated with all members. Such sanctions generally are imposed immediately.

The proposed rule change would not amend the Resolution's current 30 day notification delay on final decisions of the NBCC or the Board regarding the lesser sanctions, nor amend the procedures with respect to decisions of the District Business Conduct Committees.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act which provides that the rules of the association are designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest, in that the proposed rule change would amend the Resolution to provide that notice of the issuance of a final decision of the NBCC or the Board ordering an expulsion, revocation, and/or the barring of a person from being associated with all members would not be subject to the current 30 day notification delay to the membership and to the press. The NASD believes that prompt notification to the membership and the press of final decisions regarding such sanctions against members or persons associated with members will provide important information to investors and further the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 7, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–28264 Filed 11–15–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34946; File No. SR–PSE–94–18]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Expansion of the Exchange's Auto-Ex System Capacity to 20 Contracts

November 7, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] on June 20, 1994, the Pacific Stock Exchange, Inc. ("PSE" or "exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend PSE Rule 6.87, "Automatic Execution System," to allow the Options Floor Trading Committee ("OFTC") to be authorized to increase, on an issue-by-issue basis, the size of the equity option orders that may be eligible to be executed through the Exchange's Automatic Execution System ("Auto-Ex") up to a maximum of 20 contracts.

The proposal was published for comment in Securities Exchange Act Release No. 34702 (September 22, 1994), 59 FR 49729 (September 29, 1994). The Commission received one comment

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

letter on the proposal,[3] in addition to the PSE's response to the letter.[4]

The Auto-Ex system, a feature of the PSE's Pacific Options Exchange Trading System ("POETS"), permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order.[5] Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves public Limit Order Book ("Book") priority in all options. If Auto-Ex determines that the Book price is at or better than the market quote, the Auto-Ex order is executed against the Book. Automatic executions through Auto-Ex are currently available for public customer orders of 10 contracts or less in all series of options traded on the PSE's options floor.

The Exchanges proposes to amend PSE Rule 6.87 to increase the maximum size of equity option orders eligible for Auto-Ex and to provide the OFTC with the authority to designate such changes on an issue-by-issue basis. Under the proposal, the OFTC is authorized to increase the size of orders eligible for an execution on Auto-Ex to a size of up to 20 contracts without separate approval from the Commission.[6] The PSE states that the proposed rule change is designed to enhance the Exchange's ability to compete for options order flow.

The PSE believes that any implementation of the proposal by the OFTC will not impose any significant additional burdens on the operation and capacity of the POETS system in general or on the Auto-Ex system in particular. In that regard, the Exchange has submitted a separate capacity statement to the Commission setting forth the basis for this contention.[7] The exchange also represents that the OFTC will determine that adequate market making capacity exists prior to increasing Auto-Ex order size eligibility. The OFTC will make such a determination notwithstanding the fact that floor officials may require market makers who are members of a trading crowd to which a particular option class is assigned to log onto Auto-Ex in the event that there is inadequate participation in that options class.

The PSE believes that the proposal is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade.

As noted above, the Commission received one comment letter concerning the proposal.[8] In his September 12 Letter, the commenter argues that the proposal violates certain provisions of the Exchange's Certificate of Incorporation. Specifically, the commenter states that floor brokers in the trading crowd have no opportunity to participate in trades that are eligible for automatic execution through Auto-Ex unless they "book" their orders. Notwithstanding this, because certain types of orders, such as contingent orders and spreads, cannot be placed on the book, book orders represented in the crowd are not eligible for execution against orders entered through Auto-Ex. Therefore, the commenter believes that as a member of the Exchange, he should have an equal opportunity to participate in trades that occur on the Exchange floor. Finally, the commenter questions why the semi-Auto-Ex function, which would solve his concerns, has not been utilized on the PSE.

On October 31, 1994, the PSE submitted a letter responding to the comment letter.[9] In its October 31 Letter, the PSE states that the Commission has approved automatic execution systems on other options exchanges and, in approving POETS, has concluded that POETS provides substantial benefits to public customers. In addition, the Exchange argues that providing floor brokers with the opportunity to participate in all trades on the Exchange floor would require the elimination of Auto-Ex, which would be inconsistent with the Commission's determination to give priority to small public customer orders and would place the PSE at a competitive disadvantage with the other options exchanges. In response to the commenter's statement about semi-Auto-Ex, the PSE notes that the semi-Auto-Ex feature of POETS has never been implemented and that the Exchange continues to study the software and precise mechanism necessary to implement semi-Auto-Ex. Finally, the PSE argues that POETS and Auto-Ex has been approved previously by the Commission, and therefore that the arguments raised by the commenter are untimely.

The Commission has considered carefully the opinions of the commenter and the PSE and finds, for the following reasons, 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. Specifically, the Commission finds that the proposal is consistent with Section 6 and Section 11A of the Act.[10] The Commission continues to believe that the development and implementation of Auto-Ex provides for more efficient handling and reporting of orders in PSE equity options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The Commission believes that Auto-Ex has benefitted public customers by ensuring that a POETS order will be executed at the current disseminated quotation, and by allowing small public customer orders to receive immediate executions and nearly instantaneous confirmations of orders.[11] Accordingly, the Commission believes that expanding the eligibility of Auto-Ex to public customer orders of up to 20 contracts for all PSE-traded equity options is consistent with Section 6(b)(5) in that it will extend the benefits of automatic execution in equity options to a greater number of public customer orders while

[3] See Letter from Jeffery C. Hauke, JMD Trading Co., to the Commission, dated September 12, 1994 ("September 12 Letter"). In a subsequent letter, the commenter clarified that his comments are applicable to File No. SR–PSE–94–18 rather than to File No. SR–PSE–94–19. See Letter from Jeffery C. Hauke, JMD Trading Co., to the Commission, dated October 10, 1994.

[4] See Letter from David P. Semak, Vice President, Regulation, PSE, to Jonathan G. Katz, Secretary, Commission, dated October 31, 1994 ("October 31 Letter").

[5] The Commission recently approved an Exchange proposal setting forth certain standards for market makers participating on Auto-Ex. The standards include restrictions on the number of Auto-Ex trading posts at which market makers may participate and mandatory log-on requirements to assure that market makers do not withdraw from the system during volatile market conditions. See Securities Exchange Act Release No. 32908 (September 15, 1993), 58 FR 49076 (September 21, 1993).

[6] The Commission recently approved an Exchange proposal to allow the OFTC to increase the size of Auto-Ex-eligible orders in one or more classes of multiple traded equity options to the extent that other options exchanges permit such larger-size orders to be entered into their own automated execution systems. The rule provides that if the OFTC intends to increase the Auto-Ex size eligibility pursuant to the rule, the Exchange will submit a proposed rule change to the Commission pursuant to Section 19(b)(3)(A) under the Act. See securities Exchange Act Release No. 34131 (May 27, 1994), 59 FR 29316 (June 6, 1994).

[7] See Letter from Michael D. Pierson, Senior Attorney, PSE, to Richard L. Zack, Branch Chief, Options Regulation, Commission, dated December 20, 1993 (File No. SR–PSE–93–26).

[8] See September 12 Letter, *supra* note 3.

[9] See October 31 Letter, *supra* note 4.

[10] 15 U.S.C. 78f and 78k–1 (1988).

[11] See Securities Exchange Act Release No. 32703 (July 30, 1993), 58 FR 42117 (August 6, 1993) (order approving File No. SR–PSE–92–37) ("POETS Approval Order"). The Commission believes that the rationale in the POETS Approval Order supporting approval of Auto-Ex applies equally to the current proposal, and incorporates that rationale into the current discussion.

continuing to ensure adequate limit order protection.

In regard to the commenter's specific concern, the Commission previously has approved small order execution systems for option exchanges. For all of these systems, the Commission has found that interaction with the limit order book was sufficient to provide limit order protection. Merely increasing the size of Auto-Ex eligible orders to 20 contracts does not change the character of Auto-Ex orders sufficiently to warrant a reexamination of whether Auto-Ex orders should interact with trading crowd orders. Orders of 20 contracts or less are still small sized orders, and truly large orders will continue to interact with the trading crowd.

In addition, the Commission believes that the proposal will facilitate transactions in securities and promote competition among options markets by placing the PSE in an equal competitive posture with the other options exchanges when competing for order flow in equity options. In this regard, the Commission notes that the American Stock Exchange's and the Chicago Board Options Exchange's automatic execution systems both have Commission approval to accommodate public customer equity option orders of up to 20 contracts, and that the Philadelphia Stock Exchange's automatic execution system has Commission approval to accommodate public customer equity option orders of up to 25 contracts.[12] Accordingly, the Commission believes that the PSE's proposal is consistent with the Act because it eliminates constraints in the PSE's rules that restrict the Exchange's ability to compete for order flow in equity options. The Commission believes that enhanced competition among the exchanges for options order flow, in turn, should benefit public investors and the public interest.

Finally, the Commission believes, based on representations by the Exchange, that expanding the order eligibility size of Auto-Ex to 20 contracts for all equity options will not expose the PSE's options markets or equity markets to risk of failure or operational break-down. The Exchange also states that the OFTC will determine that adequate market making capacity exists prior to increasing the order size eligibility for any issue pursuant to the proposal.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PSE–94–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–28216 Filed 11–15–94; 8:45 am]

BILLING CODE 8010–01–M

[12] See Securities Exchange Act Release Nos. 32906 (September 15, 1993) 58 FR 49345 (September 22, 1993) (order approving File No. SR–PHLX–92–38); 28411 (September 6, 1990), 55 FR 49345 (September 13, 1990) (order approving File Nos. SR–CBOE–89–27 and 89–29); and 24899 (September 10, 1987), 52 FR 35012 (September 16, 1987) (order approving File No. SR–Amex–87–21).

[13] 15 U.S.C. 78s(b)(2). (1982).

[14] 17 CFR 200.30–3(a)(12) (1993).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2751]

Maryland; Declaration of Disaster Loan Area

The Independent City of Baltimore and the contiguous counties of Baltimore and Anne Arundel in the State of Maryland constitute a disaster area as a result of damages caused by tornadoes and high winds which occurred on November 1, 1994. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 5, 1995, and for economic injury until the close of business on August 7, 1995, at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 275112 and for economic injury the number is 839400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 5, 1994.

Philip Lader,

Administrator.

[FR Doc. 94–28226 Filed 11–15–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2115]

Laredo Northwest International Bridge (Bridge IV), Laredo, TX: Issuance of Presidential Permit

SUMMARY: The Department of State is announcing the issuance of a Presidential Permit for the Laredo Northwest International Bridge (Bridge IV) project sponsored by the City of Laredo, Texas. The permit was issued on October 7, 1994, pursuant to the International Bridge Act of 1972, (33 U.S.C. 535 *et seq.*) and E.O. 11423, 33 FR 11741 (1968) as amended by E.O. 12847, 58 FR 96 (1993).

ADDRESSES: Copies of the Presidential Permit may be obtained from Stephen R. Gibson, Office of Mexican Affairs, room 4258, Department of State, Washington, D.C. 20502 (Telephone 202–647–8529).

SUPPLEMENTARY INFORMATION: Notice of the application by the City of Laredo, Texas for a permit to build a new bridge, with access road, to be constructed across the Rio Grande river between Laredo, Texas, and Nuevo Laredo, Tamaulipas, Mexico was published in the Federal Register on October 3, 1991, at 56 FR 50148. The bridge will carry pedestrian and commercial vehicular traffic, and is intended to relieve the traffic burden on existing bridges and the downtown area. As a condition for the Presidential Permit, the City of Laredo has agreed to route all commercial traffic to this new bridge or to the Colombia Bridge, which is between the City of Laredo and the State of Nuevo Leon. Further, the City has agreed that all hazardous materials will be directed to Colombia where the U.S. Customs Service has a hazardous materials containment facility. The new bridge is needed because the two existing international bridges between downtown Laredo and Nuevo Laredo cannot accomodate additional traffic without further safety and environmental degradation.

The application for the Presidential Permit was reviewed and approved by over two dozen federal, state, and local agencies. The final application and environmental assessment were reviewed and approved or accepted by the Immigration and Naturalization Service, General Services Administration, Department of Interior,

Department of Agriculture, Department of Commerce, U.S. Customs Service, U.S. Coast Guard, Federal Highway Administration, Food and Drug Administration, International Boundary and Water Commission—U.S. Section, Department of Defense, Department of Transportation, the Environmental Protection Agency, the Department of State, and the appropriate Texas State agencies—the Parks and Wildlife Department, the Department of Transportation, and the Natural Resource Conservation Commission.

Dated: November 3, 1994.

Stephen R. Gibson,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs.

[FR Doc. 94–28225 Filed 11–15–94; 8:45 am]

BILLING CODE 4710–29–M

[Public Notice 2114]

Laredo Northwest International Bridge (Bridge IV), Laredo, TX: Finding of No Significant Impact

AGENCY: Department of State.

ACTION: Notice of a finding of no significant impact with regard to issuance of a permit to build a cross-border bridge.

SUMMARY: The Department of State is announcing a finding of no significant impact on the environment for the Laredo Northwest International Bridge (Bridge IV) project sponsored by the City of Laredo, Texas. An environmental assessment of the proposed Laredo Northwest International Bridge project was prepared by Parsons Brinkerhoff, Quade & Douglas, Inc. of Austin, Texas, for the sponsor, the City of Laredo, Texas. The draft environmental assessment was reviewed by over two dozen federal, state, and local agencies. After revisions based on comments received from interested agencies and other parties, the final assessment was reviewed and approved or accepted by the Immigration and Naturalization Service, General Services Administration, Department of Interior, Department of Agriculture, Department of Commerce, U.S. Customs Service, U.S. Coast Guard, Federal Highway Administration, Food and Drug Administration, International Boundary and Water Commission—U.S. Section, Department of Defense, Department of Transportation, the Environmental Protection Agency, the Department of State, and the appropriate Texas State agencies—the Parks and Wildlife Department, the Department of Transportation, and the Natural Resource Conservation Commission. Based on the environmental assessment, information developed during the review of the City's application and environmental assessment, and comments received, the Department has concluded that issuance of the permit will not have a significant effect on the quality of the human environment within the United States. An environmental impact statement will not be prepared.

ADDRESSES: Copies of the environmental assessment and the finding of no significant impact may be obtained from Stephen R. Gibson, Office of Mexican Affairs, Room 4258, Department of State, Washington, DC 20520 (Telephone 202–647–8529).

SUPPLEMENTARY INFORMATION:

Proposed Action

The City of Laredo, Texas, has requested a permit to build a new bridge, with access road, to be constructed across the Rio Grande between Laredo, Texas, USA, and Nuevo Laredo, Tamaulipas, Mexico. The bridge is to be located 9.35 river miles north along the Rio Grande from the existing Laredo International Bridge I. Initially, it will carry pedestrian and freight traffic only, and is intended to relieve the traffic burden on existing bridges in downtown areas. As a condition of issuance of the Presidential Permit, the City of Laredo has agreed to ban all commercial traffic from the two existing bridges in downtown Laredo. The work will include the following items: The bridge structure, the U.S. Customs Border Import lot facilities, a City Toll Plaza and Export lot facilities, water and sewer facilities and a State Highway facility (Extension of FM 3464) connecting to FM 1472. The new bridge is needed to provide an alternate route for existing commercial truck traffic, which currently passes from the two downtown bridges through the city streets of Laredo and Nuevo Laredo. Increases in truck traffic at Laredo have averaged 19 percent over the past five years, and can reasonably be expected to continue increasing with the entry into force of the North American Free Trade Agreement.

Factors Considered

The Department of State ("the Department") is charged with issuance of Presidential Permits for the construction of international bridges under the International Bridge Act of 1972, 86 Stat. 731; 33 U.S.C. 535 *et seq.*, and Executive Order 11423, 33 FR 11741 (1968), as amended by Executive Order 12847 of May 17, 1993, 33 FR 96 (1993). The Department considered four alternative actions in this case: (1) Denial of a Presidential Permit (the "no action;" alternative), (2) the City providing public transportation services between Laredo and Nuevo Laredo, (3) issuance of a Presidential Permit with a condition requiring diversion of all commercial traffic from the two existing downtown bridges in Laredo and (4) issuance of a Presidential Permit without a condition requiring the diversion of all commercial traffic from the two existing downtown bridges.

In considering the "no action" alternative, and the alternative of the City providing public transportation services between Laredo and Nuevo Laredo, the Department noted the continuing increases in commercial truck traffic on the existing Laredo bridges. Truck traffic (southbound only) increased from 274,743 trucks in 1987 to 781,332 in 1993. It also noted the implementation of NAFTA beginning January 1, 1994, which it believes will further stimulate the growth of truck traffic through Laredo. Approximately 60 percent of the commercial truck traffic between the United States and Mexico already passes through Laredo and Nuevo Laredo. The population of the Laredo Metropolitan Statistical Area increased from 99,258 in 1980 to 133,239 in 1990 and is expected to increase to 259,000 by the year 2010. The City of Nuevo Laredo in Mexico has also seen considerable growth in the last ten years; its population is expected to increase to as much as 350,000 by 2010. The increasing population, urbanization and commerce in the Laredo area mean that existing problems of air pollution, traffic congestion, and danger from hazardous waste caused by heavy truck traffic will continue to cause the quality of the environment of the Laredo/Nuevo Laredo downtown areas to deteriorate if no acceptable alternative route for such traffic is provided.

The third alternative considered and the alternative chosen was to issue a Presidential Permit for construction of a bridge with a condition requiring diversion of all commercial traffic from the two existing downtown bridges in Laredo. The advantage of issuing a permit with such a condition is that it virtually eliminates the above-mentioned problems of air pollution, traffic congestion and danger from hazardous waste from the Laredo downtown area, insofar as these problems are caused by commercial truck traffic. The City has agreed to designate the new facility as a commercial crossing only and to route all commercial traffic from the two existing downtown bridges.

The fourth alternative considered was the issuance of a Presidential Permit without a condition requiring the diversion of all commercial traffic from the two existing downtown bridges. Under this alternative, the environmental effects would be essentially the same as described below, except that benefits to the environment of downtown Laredo would not be as great as in the third alternative, as there is no assurance that commercial trucks would leave the downtown area and use the new bridge. Except as a condition of issuance of a Presidential Permit, the Department of State has no authority to require the City of Laredo to reroute traffic from the downtown bridges. If the new bridge is not constructed, the City of Laredo is under no obligation to ban commercial truck traffic from the downtown bridges at all, and such traffic would not be diverted to other bridges in the area, such as the Colombia/Solidarity bridge.

The Environmental Assessment submitted by the City provides information on the environmental effects of the construction of a new bridge. On the basis of the Environmental Assessment, and information developed by the Department and the other federal and state agencies in the process of reviewing the Environmental Assessment, the Department makes the following conclusions regarding the impact of construction of a new international bridge at the proposed location.

Air Quality

Webb County, Texas, within which the proposed bridge is located, is designated as an attainment area for National Ambient Air Quality Standards (NAAQS). Since Webb County is in attainment, meeting the currently established National Ambient Air Quality Standards, the U.S. Clean Air Act does not mandate that the State Implementation Plan (SIP) address non-attainment requirements. Virtually all the air pollution caused by the City's proposal would be vehicle emissions. As noted above, rerouting commercial truck traffic from downtown Laredo bridges to this bridge and the Colombia/Solidarity bridge will have a positive impact on air quality in downtown Laredo. Overall emissions in Laredo would be reduced because of reductions in idling time, startups and stops associated with long waits for inspection at the existing bridges. Construction of the bridge and related infrastructure will have some transient impacts on air quality but it is not expected that the ambient pollutants will cause violations of the National Ambient Air Quality Standards. Based on the project descriptions provided, the Texas Natural Resource Conservation Commission does not expect that air emissions associated with the project will substantially impact ambient air quality.

River Channel and Floodplains

Construction of the bridge involves placing of concrete piers and may have some minor short-term effects on the Rio Grande channel. However, the City states that the bridge when constructed will not alter the existing hydrogeological characteristics and will not increase backwater elevation in the Rio Grande by more than one foot. The bottom of the structure will be 12.13 feet above the International Boundary and Water Commission's required water surface elevation and will permit passage under the bridge of the 100-year flood of 181,000 cubic feet per second. The proposal was reviewed by the International Boundary and Water Commission (IBWC) and by the Federal Emergency Management Agency, each of which have concurred in the issuance of a Permit. Final design of the bridge will require the approval of the IBWC.

Historical and Archaeological Resources

A programmatic agreement has been executed among the Department of State, the Advisory Council in Historic Preservation, the Texas State Historic Preservation Officer, the Texas Department of Transportation and the City of Laredo, addressing to the satisfaction of those agencies the City's obligation to avoid, minimize or mitigate the effects of the bridge project on known and potential historic and archaeological resources within the construction area. The Presidential Permit contains a provision that the City notify the United States Coast Guard if before or during construction historic or archaeological properties are located and, if construction has already started, cease construction immediately and prepare a Section 4(f) statement.

Land Use

The bridge and border station site are in an undeveloped area within the city limits. The City's Future Land Use Plan shows the project area as open space along the Rio Grande floodplain, retail/office and warehouse/light industrial. The site is predominantly native range and brush land. The general trend of growth of the City of Laredo indicates that the area between the Mines Road and the Rio Grande is likely to be developed for warehouse, industrial and commercial uses even in the absence of a border crossing. The opening of a border crossing will probably accelerate that development. The project will not alter any park or recreational lands or significantly reduce any land suitable for agricultural crops.

Threatened and Endangered Species

Construction of the project and subsequent development will not result in a significant reduction in range and brush land available for habitat. As noted above, given the trends in growth of the City of Laredo, such habitat loss as may occur is likely to occur even without construction of the bridge. Short-term disruption of narrow bands of vegetation and thickets along the Rio Grande may occur in the course of construction of the bridge and supporting piers. However, no permanent structures, other than bridge piers will be placed in this area, and after construction of the bridge, the area is expected to revegetate. The City has committed to maintaining the Rio Grande as a corridor for wildlife. In a seven point mitigation plan accepted by the U.S. Fish and Wildlife Service on August 24, 1994, the City agreed, among other measures, to amend its Land Use Plan, designating the floodplains areas along the Rio Grande and the arroyos located in the vicinity of the proposed project as open space. This was accomplished by City Council resolution of June 27, 1994. The mitigation plan is part of the City's bridge permit application.

Noise

Modeling of the expected traffic noise levels in the years 2000 and 2010 respectively predicts an hourly A-weighted sound level of 71 to 72 dBA, respectively. These levels do not exceed noise abatement criteria established by the FHWA. The closest residential area receptor to the proposed project is a residential unit located approximately 2,050 feet north of the proposed project site. There is a three decibel reduction in noise every time the distance between the noise source and the receptor is doubled. Assuming the noise analysis was conducted on the centerline of a 300 feet wide right-of-way, the predicated 71 dBA would be reduced to approximately 30 dBA at the residential unit. Given reference noise levels of 80 dBA, 77.5 dBA or 75 dBA at 50 feet from trucks accelerating or decelerating, the noise levels anticipated at the residential unit would be 64, 61 and 59 dBA respectively, noise levels that are acceptable for picnic areas, recreation areas, playgrounds, active sports areas and parks.

Water Quality/Public Water Supply

The area of the bridge and associated development will be served by the sewage system of the City of Laredo. Existing water treatment facilities are adequate to handle the increased waste loads anticipated to be produced as a result of the project. Construction activities may result in transient impacts on water quality. The Texas Natural Resource Conservation Commission has stated that its concerns regarding water quality, including any discharges which may originate from the project, have been met.

Wetlands

Some minor wetlands are located along the banks of the Rio Grande. As noted above, construction may have some transient effects on these areas, but no permanent construction other than bridge piers will occur in this area which might reduce or otherwise affect the wetlands.

Finding of the Environmental Assessment

On the basis of the Environmental Assessment, information developed during the review of the City's application and environmental assessment, and comments received, a finding of no significant impact ("FONSI") is adopted and an environmental impact statement will not be prepared.

Dated: October 3, 1994.

Stephen R. Gibson,

Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs.

[FR Doc. 94-28224 Filed 11-15-94; 8:45 am]

BILLING CODE 4710-29-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended November 4, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49862
Date filed: November 2, 1994
Parties: Members of the International Air Transport Association
Subject: TC23 Reso/P 0670 dated October 28, 1994 r-1 to r-5, TC23 Reso/P 0671 dated October 28, 1994 r-6 to r-13, Expedited Middle East-TC3 Resos
Proposed Effective Date: expedited Dec. 31/Jan. 1, 1995

Docket Number: 49863
Date filed: November 2, 1994
Parties: Members of the International Air Transport Association
Subject: TC2 Telex Mail Vote 714, Within Africa Fares, r-1—042c, r-2—052c, r-3—062c
Proposed Effective Date: December 1, 1994

Docket Number: 49864
Date filed: November 2, 1994
Parties: Members of the International Air Transport Association
Subject: Telex TC12 Mail Vote 715, Italy/Portugal/Spain-Mexico Inclusive Tour Fares
Proposed Effective Date: April 1, 1995

Docket Number: 49865
Date filed: November 2, 1994
Parties: Members of the International Air Transport Association
Subject: Telex COMP Mail Vote 713, Amend Rounding Units for Kenya, r-1—024d, r-2—033d
Proposed Effective Date: December 1, 1994

Docket Number: 49870
Date filed: November 4, 1994
Parties: Members of the International Air Transport Association
Subject: COMP Telex Mail Vote 716, Change of Denomination in Rwanda, r-1—010a, r-2—010bb
Proposed Effective Date: December 1, 1994

Docket Number: 49871
Date filed: November 4, 1994
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1624 dated November 1, 1994, South Atlantic-Europe/Mideast Expedited Reso 002u (A summary is attached.)
Proposed Effective Date: expedited January 1, 1995

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-28251 Filed 11-15-94; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended November 4, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49856

Date filed: October 31, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 28, 1994

Description: Application of Korean Air Lines Co., Ltd., pursuant to 49 U.S.C. Section 41301 of the Act and Subpart Q of the Regulations, applies for an amendment to its foreign air carrier permit to engage in the scheduled foreign air transportation of persons, property and mail: (i) all-cargo service between the Republic of Korea and San Francisco, California, Atlanta, Georgia, and Dallas/Ft. Worth, Texas.

Docket Number: 49868

Date filed: November 3, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 1, 1994

Description: Application of Atlant-SV Airlines, pursuant to 49 U.S.C. Section 41302, of the Economic Regulations, and Subpart Q of the Department's Rules of Practice, to engage in charter combination and all-cargo service between Ukraine and the United States.

Docket Number: 49872

Date filed: November 4, 1994

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 2, 1994

Description: Application of Midas Commuter Airlines, C.A., pursuant to 49 U.S.C. Section 41302 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in: (a) nonscheduled foreign air transportation of property and mail between a point or points in Venezuela, on the one hand, and Miami, New York, San Juan, Houston, and Washington/Baltimore, on the other hand, via intermediate points in the Netherlands West Indies, the Dominican Republic, and Jamaica; and (b) charter foreign air transportation of property and mail between points in Venezuela and points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-28252 Filed 11-15-94; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

[Summary Notice No. PE–94–40]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 6, 1994.

ADDRESSES: Send comments on any petition in triplicate to Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on November 9, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations Division.

Petitions for Exemption

Docket No.: 27833
Petitioner: Air Tractor, Inc.
Sections of the FAR Affected: 14 CFR 91.313(d)
Description of Relief Sought: To permit a passenger to be carried in Air Tractor's AT–503A and AT–802 restricted category aircraft without that passenger performing one of the functions described in § 91.313(d).

Docket No.: 27911
Petitioner: Líder Táxi Aéro S.A.
Sections of the FAR Affected: 14 CFR 145.47(b)
Description of Relief Sought: To permit Líder Táxi to substitute the calibration standards of INMETRO (Brazil's national standards organization) for the calibration standards of the U.S. National Institute of Standards and Technology for all of its inspection and test equipment.

Dispositions of Petitions

Docket No.: 25588
Petitioner: Soaring Society of America, Inc.
Sections of the FAR Affected: 14 CFR 45.11 (a) and (d)
Description of Relief Sought/ Disposition: To extend Exemption No. 4988, as amended, which allows owners, operators, and manufacturers of gliders to continue to forgo the requirement to secure an identification plate or display the model and serial number on the exterior of the aircraft at specified locations.
Grant, October 28, 1994, Exemption No. 4988C

Docket No.: 25636
Petitioner: International Aero Engines AG
Sections of the FAR Affected: 14 CFR 21.325(b) (1) and (3)
Description of Relief Sought/ Disposition: To extend Exemption No. 4991, as amended, which allows export airworthiness approvals to be issued for Class I products (engines) assembled and tested in the United Kingdom, and Class II and III products manufactured in the International Aero Engines consortium countries of Italy, West Germany, Japan, and the United Kingdom.
Grant, October 21, 1994, Exemption No. 4991C

Docket No.: 26897
Petitioner: Northwest Aerospace Training Corporation
Sections of the FAR Affected: 14 CFR 121.411 (a)(2), (a)(3), and (b)(2); 121.413 (b), (c), and (d); and appendix H of part 121
Description of Relief Sought/ Disposition: To allow certain Northwest Aerospace Training Corporation (NATCO) instructors listed in its FAA-approved curriculum to serve as simulator instructors or simulator check airmen when under contract with part 121 certificate holders who contract with NATCO, without those persons having received ground and flight training in accordance with a training program approved under subpart N of part 121. Exemption No. 5538 also permits NATCO simulator instructors who serve in advanced simulators without being employed by the certificate holder for 1 year to receive applicable training in accordance with the provisions of this exemption
Grant, October 27, 1994, Exemption No. 5538A

Docket No.: 26945
Petitioner: Seven Stars International, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d) (2) and (3); 61.65 (c), (e)(2) and (e)(3), and (g); 61.67(d)(2); 61.157(d) (1) and (2) and (e) (1) and (2); 61.191(c); and appendix A of part 61
Description of Relief Sought/ Disposition: To renew Exemption No. 5544, which permits Seven Stars to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR.
Grant, October 21, 1994, Exemption No. 5544A

Docket No.: 27052
Petitioner: Petroleum Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)
Description of Relief Sought/ Disposition: To extend Exemption No. 5586, which permits Petroleum Helicopters, Inc., to operate under the provisions of part 135 without having a TSO–C112 (Mode S) transponder installed on its aircraft.
Grant, October 28, 1994, Exemption No. 5586A

Docket No.: 27118
Petitioner: Air Logistics
Sections of the FAR Affected: 14 CFR 135.143(c)
Description of Relief Sought/ Disposition: To permit Air Logistics to operate under the provisions of part 135 without having a TSO–C112

(Mode S) transponder installed on its aircraft.

Grant, October 28, 1994, Exemption No. 5591A

Docket No.: 27205
Petitioner: Federal Express Corporation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To clarify Exemption No. 5711, as amended, which permits Federal Express Corporation (FEX) to operate aircraft owned by FEX and listed on Attachment A of the exemption without complying with § 135.143(c) of the FAR. Exemption No. 5711, as amended, also extended the requested relief to any part 135 certificate holder who may rent, lease, or otherwise use any of the aircraft listed in Attachment A.

Grant, October 31, 1994, Exemption No. 5711B

Docket No.: 27735
Petitioner: Ross Aviation, Inc.
Sections of the FAR Affected: 14 CFR 125.11 (a) and (b)
Description of Relief Sought/ Disposition: To permit Ross Aviation, Inc., to operate three government-owned DC–9–15F aircraft under a part 125 certificate.

Denial, October 27, 1994, Exemption No. 5982

Docket No.: 27756
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583
Description of Relief Sought/ Disposition: To allow Evergreen International Airlines, Inc., (EIA) to transport the employees of Evergreen Air Center who possess an FAA mechanic's certificate onboard their DC–8, DC–9, and B–747 aircraft as if they were EIA employees.

Grant, October 20, 1994, Exemption No. 5979

Docket No.: 27867
Petitioner: The Department of the Navy
Sections of the FAR Affected: 14 CFR 91.209 (a) and (b)
Description of Relief Sought/ Disposition: To allow the Department of the Navy, specifically the United States Marine Corps, to conduct helicopter night flight military training operations without lighted aircraft position lights.

Grant, October 19, 1994, Exemption No. 5978

Docket No.: 27867
Petitioner: The Department of the Navy
Sections of the FAR Affected: 14 CFR 91.209 (a) and (b)
Description of Relief Sought/ Disposition: To amend Exemption No. 5978, which allows the Department of the Navy, specifically the United States Marine Corps, to conduct helicopter night flight military training operations without lighted aircraft position lights. The amendment changes certain conditions and limitations of Exemption No. 5978 to clarify aircraft lighting requirements for Night Vision Device (NVD) flight operations. Specifically, the amendment allows the petitioner to conduct such flight operations with the last aircraft in the flight, with proper lighting, to serve as the observation platform and still function as part of the training mission.

Grant, October 28, 1994, Exemption No. 5978A

Docket No.: 27871
Petitioner: AVIA Training
Sections of the FAR Affected: 14 CFR 63.37 (b)(1) and (b)(2) and appendix C, paragraph (a)(3)(iv)(a), of part 63
Description of Relief Sought/ Disposition: To allow the holder of a mechanic certificate to take the Flight Engineer Certificate practical test without having received a minimum of 5 hours of actual in-flight training in the duties of a flight engineer if the applicant has complied with § 63.37(b)(7) and acquired all 20 hours of flight training required by part 63, appendix C, paragraph (a)(3)(iv) in a simulator approved under Advisory Circular 120–40, as amended.

Denial, October 27, 1994, Exemption No. 5980

Docket No.: 27928
Petitioner: Eastern Shore Flight Academy d.b.a. Bay Land Aviation, Inc.
Sections of the FAR Affected: 14 CFR 141.27(c)(2)
Description of Relief Sought/ Disposition: To permit Bay Land to reapply for a provisional pilot school certificate less than 180 days after the October 31, 1994, expiration date of its certificate.

Grant, October 27, 1994, Exemption No. 5981

[FR Doc. 94–28315 Filed 11–15–94; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at General Mitchell International Airport, Milwaukee, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at General Mitchell International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158)

DATES: Comments must be received on or before December 16, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. C. Barry Batement, Airport Director, of the Milwaukee County Airport Division at the following address: Milwaukee County Airport Division, 5300 S. Howell Avenue, Milwaukee, Wisconsin 53207–6189.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Milwaukee County Airport Division under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Franklin d. Benson, Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, 612–725–4221. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposed to rule and invites public comment on the application to impose and use the revenue from a PFC at General Mitchell International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 1, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Milwaukee County was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 25, 1995.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: May 1, 1995

Proposed charge expiration date: March 31, 1999
Total estimated PFC revenue: $28,785,277
Brief description of proposed project(s): Projects to Impose and Use: Acquire Scattered Homes Within the RPZ and 70 LDN; Noise Monitoring/Flight Track System; Expand Cargo Apron; Replace Snow Removal Equipment; Acquire Undeveloped Land Zoned For Residential Use; Rehabilitate Terminal Apron; Surface Movement Guidance Control System; Replace Perimeter Fencing; Install Pavement Sensors; Rehabilitate West FBO Apron. Projects to Impose Only: Storm Water and Deicing System; Sales Assistance in Runway C–1 Area; Realign Runway 7L–25R.
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the General Mitchell International Airport.

Issued in Des Plaines, Illinois on November 8, 1994.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 94–28287 Filed 11–15–94; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

[Docket S–914]

Notice of Application for Approval, Pursuant to Sections 608, 804(a), and 805(a) of the Merchant Marine Act, 1936, as Amended, for the Transfer of Certain Operating-Differential Subsidy Agreements to OMI Corp. and Operation of Vessels in the Foreign and Domestic Trades, Respectively

Notice is hereby given that by application dated November 3, 1994, OMI Corp. (OMI), acting on its own behalf and as attorney-in-fact for Vulcan Carriers, Ltd. (Vulcan) requests, pursuant to section 608, section 804 and section 805(a) of the Merchant Marine Act, 1936, as amended (Act), 46 U.S.C. sections 1178, 1222 and 1223, Article II–16 of Operating-Differential Subsidy Agreements (ODSAs) MA/MSB–167(a), (b), (c), and (d), and Article 36 of Bareboat Charters between OMI Patriot Transport, Inc. (OMI Transport), OMI Courier Transport, Inc. (OMI Courier Transport), OMI Rover Transport, Inc. (OMI Rover Transport), or OMI Missouri Transport, Inc. (OMI Missouri Transport), and Vulcan, (1) permission to assign the ODSAs to OMI; and (2) following assignment of the ODSAs to OMI, a waiver of section 804(a) for OMI to operate vessels in the foreign trade and permission pursuant to section 805(a) for OMI to operate vessels in the coastwise trade.

Transfer of the ODSAS

Article 36 of the Bareboat Charters dated February 5, 1990, between OMI Patriot Transport, OMI Courier Transport, OMI Rover Transport (formerly subsidiaries of OMI Bulk Transport, Inc. and now subsidiaries of OMI Corp., collectively the "OMI subsidiaries"), or OMI Missouri Transport and Vulcan (collectively, "the Bareboat Charters") authorizes the OMI subsidiaries and OMI Missouri Transport, with the consent of OMI Oriole Transport, Inc. (OMI Oriole Transport) as time charterer, to name a successor bareboat charterer for the vessel named in the Bareboat Charter. The vessels named in the repective Bareboat Charters include the PATRIOT, COURIER, RANGER, ROVER, OMI MISSOURI and OMI SACRAMENTO (Official numbers 571049, 578746, 573810, 577241, 662123, and 662124, respectively.) These vessels operate under a subsidy sharing agreement pursuant to the terms of the ODSAs.

Further, a successor bareboat charterer can be named, without cause, at any time after the first anniversary of the effective date of the Bareboat Charters, upon 90 days written notice.

In support of its instant application, OMI points out that it is an established vessels operator with over 25 years in operating experience. In addition, it is the second largest U.S. independent operator of bulk vessels. OMI notes in this regard that it has the ability, experience, financial resources, and other qualifications necessary to become an ODS operator. OMI is a citizen under the provisions of section 905(c) of the Act, and OMI's citizenship affidavit is on file with the Maritime Administration. OMI states that information on the experience and background of its personnel responsible for the administration of the ODSAs will be submitted prior to approval of the assignment of the ODSAs to OMI.

Waiver of Section 804

In addition to the transfer of the respective ODSAs to OMI, OMI requests a waiver of the provisions of section 804(a) for its continued operation of foreign-flag vessels. OMI requests that this waiver be valid for the duration of the ODSAs. The termination dates are April 2, 1996 (PATRIOT), July 30, 1996 (RANGER), January 26, 1997 (COURIER), and January 28, 1997 (ROVER).

OMI currently operates 34 owned and chartered-in foreign-flag vessels, primarily crude and product tankers and dry bulk vessels. OMI also has one foreign-flag vessel on order. OMI advises that operation of its foreign-flag vessels permits it to help cover administrative expenses related to the operation of U.S.-flag vessels.

OMI believes that authorizing it to continue to operate foreign-flag vessels subsequent to the transfer of the ODSAs will not harm any U.S.-flag service. Moreover, no new service will be provided and no new vessels are being added to a trade.

OMI asserts that given the limited time remaining on the ODSAs, the lack of negative effect of permitting it to continue operating foreign flag vessels and the substantial benefit it can derive by spreading overhead costs associated with its U.S.-flag vessels, good cause and special circumstances should be found for the requested waiver. In order to retain its growth possibilities, OMI requests that its section 804 waiver permit OMI to operate up to 60 foreign-flag vessels for the time remaining on the term of the ODSAs.

Permission To Operate Coastwise Vessels

OMI also requests permission pursuant to Section 805(a) to continue operating vessels in the coastwise trade following OMI's approval as operator of the ODSAs for the limited time remaining on the ODSAs.

OMI currently owns in its U.S.-flag fleet one crude oil tanker, three chemical/product tankers, four product tankers, and three dry bulk carriers. The crude oil tanker operates primarily in the Alaska oil trade. The three chemical carriers are operated through a joint marketing arrangement and carry cargoes primarily from the Gulf of Mexico to the east and west coast. The three dry bulk carriers operate in the cargo preference trade and in the subsidized foreign trade under the subsidy sharing arrangements of the ODSAs. The four product tankers, bareboat operated by Vulcan, participate primarily in the vegetable oil trade in South America.

In OMI's view, simply changing the operator of the ODSAs will not change the competitive marketplace for any U.S.-flag vessel operating in markets

with the U.S.-flag vessels operated by OMI. These vessels, according to OMI, will face exactly the same competitive conditions after the transfer of the ODSAs as they did prior to the transfer.

OMI states that permitting it to continue to operate U.S.-flag vessels following the transfer will not be prejudicial to the objects and policies of the Act. OMI states that it is a well established vessel owner and operator with a history of U.S.-flag operations. Thus, OMI asserts that permitting it to continue in that endeavor for the duration of the ODSAs will further the operation of the U.S. merchant marine.

OMI advises that no subsidy received by it pursuant to the ODSAs will be used to benefit OMI's non-subsidized coastwise operations. In this connection, OMI points out that under current accounting practices, the use of subsidized funds can be audited easily and companies can provide needed assurances that funds will not be used for non-subsidized purposes.

Finally, OMI notes that its request for permission under section 805(a) does not involve any issue of material fact that cannot be resolved on the basis of available information.

Any person, firm, or corporation having any interest in the application for section 804(a) waiver and/or section 805(a) permission and desiring to submit comments concerning the application must file written comments in triplicate, to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, by the close of business on November 30, 1994. The Maritime Administration, as a matter of discretion, will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

If such comments deal with section 805(a) issues, they should be accompanied by a petition for leave to intervene. The petition should state clearly and concisely the grounds of interest and the alleged facts relied on for relief. If no petitions for leave to intervene on section 805(a) issues are received within the specified time, or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate. In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic operations.

(Catalog of Federal Domestic Assistance Programs No. 20.800 Construction-Differential Subsidies (CDS) and No. 20.804 Operating-Differential Subsidies (ODS)).

By Order of the Maritime Administrator.

Dated: November 9, 1994.

Joel C. Richard,

Secretary.

[FR Doc. 94-28268 Filed 11-15-94; 8:45 am]

BILLING CODE 4910-81-P

National Highway Traffic Safety Administration

[Docket No. 94-92; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1972 and 1973 Ferrari Daytona 365 GTB/4 Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of Receipt of petition for decision that nonconforming 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 16, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I)) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable federal motor vehicles safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA published notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then published this decision in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer 90-006) has petitioned NHTSA to decide whether 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars are eligible for importation into the United States. The vehicles that J.K. believes are substantially similar are the 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the non-U.S. certified 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as

their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars are identical to their U.S. certified counterparts with respect to compliance with standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 112 *Headlamp Concealment Devices*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel Systems, Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp lenses which incorporate rear sidemarkers.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window System:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning light and buzzer.

Standard No. 214 *Side Door Strength:* installation of door bars on the 1973 Ferrari Daytona 365 GTB/4.

Additionally, the petitioner states that reinforcement bars may have to be installed behind the bumpers on some non-U.S. certified 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 9, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–28253 Filed 11–15–94; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 220
Wednesday, November 16, 1994

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).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of a meeting of the Defense Nuclear Facilities Safety Board described below concerning the Board's fifth annual report to be submitted to Congress under 42 U.S.C. 2286e note.

TIME AND DATE: 9:30 a.m., December 6, 1994.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.

STATUS: Open. The Board has determined that an open meeting furthers the public interests underlying both the Government in the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: This open meeting will be conducted pursuant to 42 U.S.C. 2286b and is intended to obtain information from the Department of Energy that will assist the Board in preparing its fifth annual report to be submitted to Congress under section 316(a) of the Atomic Energy Act of 1954.

FOR FURTHER INFORMATION CONTACT: Robert M. Anderson, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (202) 208–6387. This is not a toll free number.

SUPPLEMENTARY INFORMATION: An independent agency within the Executive Branch, the Defense Nuclear Facilities Safety Board provides advice and recommendations to the President and the Secretary of Energy regarding public health and safety issues at Department of Energy (DOE) defense nuclear facilities.

Broadly, the Board reviews operations, practices, and occurrences at DOE's defense nuclear facilities and makes recommendations to the Secretary of Energy that are necessary to protect public health and safety. If, as a result of its reviews, the Board determines that an imminent or severe threat to public health or safety exists, the Board is required to transmit its recommendations directly to the President, as well as to the Secretaries of Energy and Defense.

The Board's enabling statute, 42 U.S.C. 2286, requires the Board to review and evaluate the content and implementation of health and safety standards, including DOE'S Orders, rules, and other safety requirements, relating to the design, construction, operation, and decommissioning of DOE's defense nuclear facilities. The Board must then recommend to the Secretary of Energy any specific measures, such as changes in the content and implementation of those standards, that the Board believes should be adopted to ensure that the public health and safety are adequately protected. The Board is also required to review the design of new defense nuclear facilities, and to recommend changes necessary to protect health and safety.

The Board may conduct investigations, issue subpoenas, hold public hearings, gather information, conduct studies, establish reporting requirements for DOE, and take other actions in furtherance of its review of health and safety issues at defense nuclear facilities. The ancillary functions of the Board and its staff all relate to the accomplishment of the Board's primary functions, which is to assist DOE in identifying and correcting health and safety problems at defense nuclear facilities.

This public meeting is being held to obtain information from the Department of Energy that will assist the Board in preparing its fifth annual report to be submitted to Congress under 42 U.S.C. 2286e note. The Board's fifth annual report must include:

"(1) an assessment of the degree to which the overall administration of the Board's activities are believed to meet the objectives of Congress in establishing the Board;

(2) recommendations for continuation, termination, or modification of the Board's functions and programs, including recommendation for transition to some other independent oversight arrangement if it is advisable ; and

(3) recommendations for appropriate transition requirements in the event that modifications are recommended."

The Secretary of Energy, her designated representatives and other witnesses will be called to assist the Board in answering these questions. Among the topics witnesses will be asked to testify on are the following:

1. Whether the Board has assisted the Department of Energy in identifying significant nuclear safety problems and helped the Department in correcting such problems through the recommendation process.

2. Whether DOE believes the objectives of Congress in establishing the Board are being met.

3. Whether the Board's activities over the past five years, or the new mission of the defense nuclear complex, indicate that Congress should provide for some other regulatory or oversight arrangement.

4. The transition requirements if some other regulatory or oversight arrangement is appropriate.

5. Descriptions of the basic safety management system that the DOE currently has in place for satisfying its responsibilities under the Atomic Energy Act "to protect or to minimize danger to life and property."

6. The role of oversight and enforcement of safety requirements in regulating DOE's defense nuclear facilities. This discussion should provide the Board with an understanding of DOE's recently revised policy and programs for oversight and enforcement dealing with contractor noncompliance with DOE's health and safety Orders, rules and regulations. The presentation should include DOE's assessment of the impact DOE's past oversight and enforcement programs have had upon DOE's efforts to protect the public and safety at its defense nuclear facilities and any prospective changes that may be contemplated.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: November 14, 1994.

Robert M. Andersen,

General Counsel.

[FR Doc. 94–28491 Filed 11–14–94; 3:57 pm]

BILLING CODE 6820–KD–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 17, 1994, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. *Regulations*
a. Accounting and Reporting Requirements [12 CFR Part 621] (Interim)

***Closed Session**

a. New Business

1. Reports
a. OSMO Quarterly Report
Date: November 10, 1994.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(9)

[FR Doc. 94–28445 Filed 11–14–94; 12:59 pm]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 21, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 10, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–28369 Filed 11–14–94; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, November 17, 1994.

PLACE: 6th Floor, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Fort Scott Fertilizer—Cullor, Inc. and James Cullor,* Docket Nos. CENT 92–334–M and CENT 93–117–M. (Issues include whether the judge erred in holding that employee misconduct is an affirmative defense to violations of a mandatory safety standard.)
2. *Energy West Mining Company,* Docket Nos. WEST 92–216–R and WEST 92–421. (Issues include whether the judge erred in granting summary decision in resolving a disputed citation of violation of the ventilation plan.)
3. *Jen, Inc.,* Docket Nos. 93–262, et seq. (At issue is a petition for relief from a final order.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

[FR Doc. 94–28406 Filed 11–14–94; 11:26 am]

BILLING CODE 6735–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The National Credit Union Administration Board deleted the following item from the previously announced open meeting (Federal Register, Vol. 59, page 5530, November 7, 1994) scheduled for Thursday, November 10, 1994.

3. Appeal of Denial of Field of Membership Expansion Request by Steel Works Community Federal Credit Union, Weirton, West Virginia.

The Board voted unanimously to delete this item from the open agenda and earlier announcement of this change was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Open Meeting.
2. Final Rule: Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.
4. Final Rule: Amendments to Part 707, NCUA's Rules and Regulations, Truth in Savings, and Addition of Appendix C to Part 707, Official Staff Interpretations.
5. Proposed Interpretive Ruling and Policy Statement on the Establishment of a Supervisory Review Committee.
6. Central Liquidity Facility Bylaws.
7. Central Liquidity Facility Investment Policy.
8. Overhead Transfer Rate Fiscal Year 1995, 1996 and 1997.
9. Fiscal Year 1995 Operating Fee Scale.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–28351 Filed 11–14–94; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME/DATE: 9:00 a.m. to 12 p.m.—Thursday, December 1, 1994.

STATUS: Open.

ADDRESSES: The Madison Hotel, 15th and M Streets, NW., Arlington Room, Washington, D.C. 20005, 202/862–1600.

FOR FURTHER INFORMATION CONTACT: Elsa Mezvinsky, Special Assistant to the Director, Institute of Museum Services, 1100 Pennsylvania Avenue, N.W., Room 510, Washington, D.C. 20506—(202) 606–8536.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Thursday, December 1, 1994 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506—(202) 606–

8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Meeting Agenda

I. NMSB Chairman's Welcome and Approval of Minutes from July 22, 1994 Meeting
II. Agency Director's Report
III. Agency Agenda Reports: Reauthorization
IV. Agency Agenda Reports: Appropriations
V. Agency Agenda Reports: Programs Conservation Project Support Program (CP) Discussion and Evaluation
VI. Agency Agenda Reports: Legislative/ Public Affairs

Dated: November 10, 1994.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and the Humanities, Institute of Museum Services.

[FR Doc. 94–28429 Filed 11–14–94; 12:58 pm]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 14, 21, 28, and December 5, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 14

There are no meetings scheduled for the Week of November 14.

Week of November 21—Tentative

There are no meetings scheduled for the Week of November 21.

Week of November 28—Tentative

There are no meetings scheduled for the Week of November 28.

Week of December 5—Tentative

Wednesday, December 7

10:00 a.m.
Briefing on Cooper Special Evaluation Team and Service Water Inspection Program (PUBLIC MEETING)
2:00 p.m.
Briefing on Status of Reactor Pressure Vessels in Commercial Nuclear Power Plants (PUBLIC MEETING)

Thursday, December 8

2:00 p.m.
Briefing on Proposed Rule—Revision to Appendix J to 10 CFR Part 50 (PUBLIC MEETING)
3:30 p.m.
Affirmation/Discussion and Vote (PUBLIC MEETING) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice.

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates (301) 504–1963.

Dated: November 10, 1994.

Andrew L. Bates,

Chief, Operations Branch Office of the Secretary.

[FR Doc. 94–28396 Filed 11–14–94; 11:25 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 55742, November 8, 1994.

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: November 8, 1994.

CHANGE IN THE MEETING: Time Change/ Additional Item.

The time for the closed meeting, scheduled for Wednesday, November 9, 1994, at 10:00 a.m. was changed to Wednesday, November 9, 1994, at 3:00 p.m. The following item was considered at a closed meeting held on Wednesday, November 9, 1994, at 3:00 p.m.

Consideration of *amicus* participation.

Commissioner Wallman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

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: The Office of the Secretary (202) 042–7070.

Dated: November 10, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–28352 Filed 11–14–94; 8:45 am]

BILLING CODE 8010–01–M

federal register

Wednesday
November 16, 1994

Part II

Department of Agriculture

Agricultural Stabilization and Conservation Service
7 CFR Parts 718, 790, and 791

Commodity Credit Corporation
7 CFR Part 1413, et al.

1994 Wheat, Feed Grains, Cotton and Rice Programs; Interim Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Parts 718, 790, and 791

Commodity Credit Corporation

7 CFR Parts 1413, 1414, 1415, and 1416

RIN 0560–AD72, AD00

1994 Wheat, Feed Grains, Cotton and Rice Programs

AGENCIES: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The statutory requirements that relate to the feed grains, rice, upland and extra long staple cotton, and wheat programs were amended by the Agricultural Reconciliation Act of 1993 (the 1993 Act), which was enacted on August 11, 1993.

This interim rule sets forth amendments: to conform to the provisions of the 1993 Act; to make certain technical corrections; to delete references to obsolete provisions; to add references relating to current policy; to set forth the provisions for The Options Pilot Program (OPP) and Voluntary Production Limitation Program (VPLP); and to improve the operations of these programs for the 1994 through 1997 crop years.

DATES: Interim rule effective November 16, 1994. Comments must be received on or before December 16, 1994 in order to be assured of consideration.

ADDRESSES: Submit comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415. Comments may be inspected at USDA, ASCS, 14th and Independence Avenue, South Agriculture Building, room 3640, Washington, DC 20013–2415 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Bruce D. Hiatt, Agricultural Program Specialist, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–690–2798.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866. Based on information compiled by the USDA, it has been determined that this interim rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Final Regulatory Impact Analyses

Final Regulatory Impact Analyses have been prepared with respect to the programs for the 1994 crops of wheat, feed grains, cotton, and rice. Copies of the analyses are available to the public from the Deputy Administrator for Policy Analysis, ASCS, USDA, room 3741, South Agriculture Building, 14th and Independence Avenue, P.O. Box 2415, Washington, DC 20013–2415.

Federal Assistance Programs

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10.058; and Rice Production Stabilization—10.065.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither ASCS nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. The provisions of this rule are not retroactive. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments set forth in this interim rule contain new and revised information collections that require clearance by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. 35. These requirements have been submitted to OMB with a request for expedited review.

Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing 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 Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Nos. 0560–0004 and 0560–0092), Washington, DC 20503.

Background

The Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act) amended various Acts, including the Agricultural Adjustment Act of 1938 and the Agricultural Act of 1949 (the 1949 Act). The Food, Agriculture, Conservation, and Trade Act Amendments of 1991 made technical corrections to these Acts in order to correct errors and to improve the amendments made by the 1990 Act.

The 1993 Act, which was enacted on August 11, 1993, amended the 1949 Act to provide that the so-called "0/92" and "50/92" provisions of the annual acreage reduction programs (ARP's) be changed to "0/85" and "50/85" for producers of wheat, feed grains, upland cotton, and rice. Producers who plant

minor oilseeds or industrial and other crops (IOC's), or who were prevented from planting or had reduced yields, shall be eligible for benefits under the so-called "0/92" or "50/92" provisions of the ARP's.

This interim rule:

(1) Sets forth the amendments provided by the 1993 Act,

(2) Includes provisions from policy set forth for county ASCS offices,

(3) Provides the rules for incomplete performance based on information provided by a representative of the Secretary, failure to fully comply, the Options Pilot Program, and the VPLP,

(4) Makes minor editorial changes, and

(5) Revises many of the sections for clarity.

Discussion of Changes

A. 7 CFR Part 718, Determination of Acreage and Compliance

Section 718.10 State Committee (STC) Responsibilities

This section has been amended to allow STC's to set a per acre rate for acres in excess of 25 acres to reflect the cost involved nationally in performing measurement service from photographic slides, and to provide for the cost of furnishing reproductions of aerial photographs.

Section 718.12 Authority for Farm Entry and Securing Information

This section has been amended to provide that a farm operator has 15 days to reply to the county office after receiving notice of refusal to permit entry and inspection on the farm.

Section 718.21 Measurement Services

This section has been amended to include the requirements that must be met in order to keep the measurement service guarantee when a measurement service reveals acreage in excess of the permitted acreage.

Section 718.22 Acreage Reports

This section has been revised to include provisions for destroying small grain acreage beyond the crop disposition date by haying and grazing, and to provide the name and number of the form on which producers report their acreage and land uses.

Section 718.24 Revised Reports

This section had been amended to include the provisions for revising acreage reports for farms enrolled in the ARP, provisions for items that cannot be revised, when the revision adversely affects the program, provisions for releasing excess acreage conservation reserve (ACR) resulting from an acreage determination, and provisions for substituting acreage for previously reported ACR.

Section 718.25 Reporting out of Compliance

This section has been amended to add available flex acreage to the maximum permitted acreage when determining if producers are in compliance with acreage planting restrictions.

Section 718.26 Farm Inspections

This section has been amended to provide that producers that have an interest in a farm and are a warehouse operator, manager, or dealer are no longer required spot checks. This section also provides for required spot checks for farms on which there is unmarketed tobacco.

Section 718.40 Tolerance and Variance Rules Applicability

This section has been amended to provide tolerance provisions for corn and grain sorghum acreage enrolled in the production adjustment programs, and to increase the tolerance to the larger of 1.0 acre or 5 percent not to exceed 50 acres.

Section 718.42 Skip Rows and Strip Crops

This section has been amended to provide for determining a farm's history of planting 32-inch rows when producers have the option to consider the crop as either solid planted or skip row, and to include row widths that are wider than 32 inches when providing producers the option to consider the crop as either solid planted or skip row.

Section 718.43 Deductions

This section has been amended to clarify that, for areas not devoted to the crop or land use that are located within the planted area, the part of any perimeter area that is more than 33 links in width shall be an internal deduction if the standard deduction is used.

Section 718.45 Notice of Measured Acreage

This section had been revised to provide the number and name of the form on which written notice of measured acreage is provided to interested producers on the farm.

Section 718.47 Redeterminations

This section has been amended by removing verbiage that the redetermination is final and is not appealable under part 780 of this chapter. When the 1990 Act established the National Appeals Division, all decisions and redeterminations made by STC's and County Committees (COC's) became appealable.

B. 7 CFR Part 790—Incomplete Performance Based Upon Action Or Advice of An Authorized Representative of the Secretary

Section 790.2 Action

Section 790.2 has been revised to clarify existing provisions.

Section 790.3 Delegation of Authority

Section 790.3 has been revised to provide that the STC may exercise the authority provided in this part in cases where the total of payments and benefits extended under this part does not exceed $5,000.

Section 790.4 Filing of Request for Consideration

Section 790.4 has been revised to provide that COC's may submit a request for consideration under this part to the STC without a specific request from the producer when the COC believes that the producer is entitled to consideration under the provisions of this part.

C. 7 CFR Part 791—Authority To Make Payments When There Has Been a Failure To Comply Fully With the Program

Section 791.2 The Making of Loans, Purchases, and Payments When There Has Been a Failure to Fully Comply With the Program

This section has been revised to provide that the Deputy Administrator, State and County Operations, the Deputy Administrator, Commodity Operations, and the National Appeals Division, may authorize the making of loans, purchases, or payments in such amounts as is determined to be equitable in relation to the seriousness of the failure to fully comply.

D. 7 CFR Part 1413, Feed Grain, Rice, Upland and Extra Long Staple Cotton, Wheat, and Related Programs

Part 1413 has been revised into subparts to better organize the information contained therein for the use of the public.

Section 1413.1 Applicability

This section has been amended to set forth the terms and conditions under which producers of feed grains, rice, upland and extra long staple (ELS) cotton and wheat may enter into agreements with CCC and comply with the terms of such agreements and the provisions of this part in order to qualify for program benefits.

Section 1413.2 Compliance With Part 12 of This Title, Highly Erodible Land and Wetland Conservation Provisions

This section has been renumbered. This section requires compliance with the provisions of part 12 of this title to retain eligibility for program benefits.

Section 1413.3 Controlled Substance Violations

This section has been added to set forth the rules for making payments when the provisions of part 796 of this title have been violated.

Section 1413.4 Administration

This section has been renumbered. This section sets forth the provisions for administering the programs through the STC's and COC's.

Section 1413.5 Performance Based Upon Advice or Action of County or State Committee

This section has been renumbered. This section states that the provisions of part 791 of this title apply to this part.

Section 1413.6 Appeals

This section has been renumbered. This section sets forth the rules for producer appeals.

Section 1413.7 Paperwork Reduction Act Assigned Numbers

This section has been renumbered and amended to set forth the provisions for information collection requirements for the regulations.

Section 1413.9 Definitions

This section has been renumbered and amended to set forth the definitions applicable for all purposes of program administration. Definitions added to this section include acreage reduction program (ARP), actual ELS cotton yield per acre, custom farming, determined acreage, disaster, farming operations and practices, high residue crop (HRC), landlord, low residue crop (LRC), minor, nonrotation, offset, operator, other cotton, participating crop, participating farm, program benefits, repeat crop, sharecropper, and tenant. The definitions for current year, farm program payment yield, and producer have been revised for clarification.

Section 1413.10 Planted Crop Acreages

This section has been renumbered and the section heading has been revised. Paragraph (a) has been amended to remove incorrect references. Paragraph (c)(1) has been amended to reference the final planting date in accordance with part 400 of this title. Paragraph (c)(4) has been amended to correct the section reference. Subparagraphs (c)(6)(i) through (iv) have been added to provide policy for the use of experimental acreages. Paragraph (c)(7) has been amended to correct the section reference and paragraph (c)(9) has been added to include any crop acreages on a farm which are planted by a producer with no intent to harvest.

Section 1413.11 Considered Planted Acreages

This section has been added to include the provisions for determining considered planted acreage for a crop. References to considered planted acreages which were previously referenced in other sections have been consolidated into this section.

Section 1413.15 Farm Program Payment Yields

This section has been renumbered, and the text has been amended to provide the rules for establishing farm program payment yields for a crop.

Section 1413.16 Establishing Crop Yields for Soybeans and Minor Oilseeds

This section has been added to provide the rules for establishing yields for soybeans and minor oilseeds.

Section 1413.17 Historical Weighted Yields (HWY)

This section has been added to provide the rules for determining the HWY for crop on a farm.

Section 1413.18 Irrigated Acreage Maximum (IAM) for Yields

This section has been added to include the provisions for determining the IAM for a crop for a farm.

Section 1413.19 Submitting Production Evidence

This section has been added to include the rules for submitting reports of production evidence of crops of wheat, feed grains, upland cotton, and rice.

Section 1413.20 Reducing Yields

This section has been added to provide for reducing yields for current year program payment purposes when a program crop is planted or maintained in an unworkmanlike manner that, under normal conditions, would not yield production comparable to the established yield for the crop.

Section 1413.24 Crop Acreage Bases (CAB's)

This section has been renumbered and amended to include procedures used in establishing CAB's.

Section 1413.25 Participation in the Conservation Reserve Program

This section has been renumbered and amended to reflect the change of reference from a program contract to a program agreement.

Section 1413.26 Adjusting CAB's

This section has been renumbered and amended to include rules for permanent or temporary adjustments of crop acreage bases (CAB's).

Section 1413.27 Conservation Compliance CAB Exchanges

This section has been amended to correct the section reference.

Section 1413.30 Reconstitution of Farms

This section has been renumbered and amended for clarity.

Section 1413.31 Notice of CAB's and Yields

This section has been renumbered and amended to provide the rules for notifying producers of the CAB's and yields for a crop on a farm.

Section 1413.34 ELS Cotton Counties

This section has been added to include the rules for defining ELS cotton and determining ELS cotton counties. These rules previously appeared in other sections of this part.

Section 1413.35 ELS Cotton CAB's

This section has been added to include the rules for establishing ELS cotton CAB's. These rules previously appeared in other sections of this part.

Section 1413.36 ELS Cotton Crop Program Payment Yields

This section has been added to include rules for establishing ELS cotton yields. These rules previously appeared in other sections of this part.

Section 1413.37 Submitting ELS Cotton Production Evidence

This section has been added to include the rules for submitting ELS cotton production evidence to the county ASCS office.

Section 1413.41 0/85/92 Program Provisions for Wheat and Feed Grains

This section has been added to provide the general rules for participation in the 0/85 or 0/92 provisions of the feed grains and wheat programs when an ARP is in effect.

Section 1413.42 50/85 and 50/92 Program Provisions for Upland Cotton and Rice

This section has been added to provide the general rules for use of the

50/85 or 50/92 provisions of the upland cotton and rice programs when an ARP is in effect.

Section 1413.43 Planting Flexibility

This section has been renumbered and amended to include the provisions related to planting flexibility.

Section 1413.50 Requirements for Program Participation

The section heading has been revised and the text has been amended to set forth the provisions for participating in an ARP or land diversion program. Participation requirements for farms with both corn and grain sorghum CAB's, or farms with either a corn or grain sorghum CAB, are set forth in this section.

Section 1413.51 Successors in Interest

This section has been renumbered and amended to include the rules applicable to CCC–477 successor in interest determinations.

Section 1413.52 Misrepresentation and Scheme or Device

This section has been renumbered and amended to refer to CCC–477.

Section 1413.53 Required Acreage Reduction

This section has been renumbered and amended to correct the method for determining the acreage of eligible land devoted to conservation uses (CU) for ELS cotton.

Section 1413.54 Land Diversion

This section has been renumbered and amended to provide current provisions regarding a land diversion program. A land diversion program will not be offered in 1994.

Section 1413.55 Acreage Reduction Program Provisions

This section has been renumbered and amended to provide 1994 acreage reduction factors for wheat, feed grains, and upland and ELS cotton and rice. Rules are also set forth in this section for planting of minor oilseeds and IOC's on ACR or CU for payment.

Section 1413.60 Basic Rules for ACR and CU for Payment Acreage

This section has been amended to include provisions for CU for payment acreage because the rules for ACR and CU for payment acreage are the same.

Section 1413.61 Eligible Land for ACR and CU for Payment Designation

This section has been amended to include the rules for determining eligibility for CU for payment acreage. Other changes have been made to clarify the provisions within this section.

Section 1413.62 Ineligible Land for ACR or CU for Payment Designation

This section has been amended to include the rules for determining whether land is eligible to be designated for CU for payment. Other changes have been made to clarify the provisions within this section.

Section 1413.63 Required Cover Crops and Practices on ACR

The section heading and the text have been amended to provide references to ACR only for required cover and practices and to include rules applicable to required cover crops and ACR practices.

Section 1413.64 Nationally Approved Cover Crops and Practices for ACR and CU for Payment Acreages

This section has been added to set forth the rules for nationally approved cover crops and practices for ACR and CU for payment acreage.

Section 1413.65 Locally Approved Cover crops and Practices for ACR and CU for Payment

This section has been added to provide the rules for locally approved cover crops and practices for ACR and CU for payment.

Section 1413.66 Use of ACR and CU for Payment Acreage

This section has been renumbered and amended to include references to the use of CU for payment acreage.

Section 1413.67 Control of Erosion, Insects, Weeds, and Rodents on ACR and CU for Payment Acreage

This section has been renumbered and amended to include references to CU for payment acreage.

Section 1413.68 Orchards

This section has been renumbered and amended to include references to CU for payment acreage.

Section 1413.69 Land Going Out of Agricultural Production

This section has been renumbered and amended to include references to CU for payment acreage.

Section 1413.70 Wildlife Food Plots or Habitat

This section has been renumbered and amended to include references to CU for payment acreage and rules for determining crop seeding mixtures to be planted on such acreage.

Section 1413.71 Insufficient ACR Acreage

This section has been renumbered and amended for clarity.

Section 1413.72 Destroyed Crop Acreage

This section has been renumbered and amended to clarify the provisions for requesting to substitute acreages of small grains or row crops that were destroyed for designated ACR acreage.

Section 1413.74 Reduction in ACR

This section has been renumbered and amended for clarity.

Section 1413.75 Skip Rows

This section has been renumbered and amended to remove incorrect paragraph references.

Section 1413.100 Determination of Farm Program Acreage

This section has been amended for clarity.

Section 1413.101 General Payment Provisions

This section has been amended for clarity.

Section 1413.102 Advance Payments

This section has been amended for clarity.

Section 1413.103 Established (Target) Prices

This section has been renumbered and amended for clarity.

Section 1413.104 Deficiency Payments

This section has been renumbered and amended for clarity.

Section 1413.105 Timing and Calculation of Deficiency Payments

This section has been renumbered and amended to correct paragraph references.

Section 1413.106 Division of Payments

This section has been renumbered and amended to change references to contract to read agreement; to provide for determinations of scheme or device relative to cash leases; and to provide for determinations of types of leases and payment shares, division of payment shares, and clarification of determinations for hybrid seed corn growers with contracts with seed corn companies.

Section 1413.107 Provisions Relating to Tenants and Sharecroppers

This section has been renumbered and amended.

Section 1413.108 Offsets and Assignments

This section has been renumbered.

Section 1413.109 Payments by Commodities and Commodity Certificates and Refunds

This section has been renumbered.

Section 1413.110 Malting Barley

This section has been amended to remove incorrect references, add correct references, and clarify the malting barley provisions.

Section 1413.121 Disaster Credit

This section has been renumbered and amended to provide the rules for producer applications and COC determinations of prevented planting and failed acreage credit.

Section 1413.122 Eligibility for Regular Prevented Planted and Reduced Yield Payments

This section has been renumbered and amended to correct paragraph references and to include provisions used to determine eligibility for disaster payments.

Section 1413.123 Regular Disaster Payment Computations

This section has been renumbered and amended.

E. 7 CFR Part 1414—Integrated Farm Management Program Option

Part 1414 has been revised into subparts to better organize the information therein for the use of the public.

Section 1414.1 General Description of the Program

This section has been amended to clarify the objectives of the Integrated farm management (IFM) program.

Section 1414.8 Definitions

This section has been renumbered and the definitions of alternative crops, and resource conserving crop (RCC) have been amended for clarity.

Section 1414.9 Acreage Enrollment

This section has been renumbered and amended to clarify the program years and the acreage limitation.

Section 1414.10 Eligibility

This section has been renumbered and amended to clarify eligibility rules.

Section 1414.11 Agreements

This section has been renamed, renumbered and amended to provide that producers must agree to devote to a RCC not less than 20 percent of each crop acreage base on the farm enrolled in the IFM.

Section 1414.13 Displacement of Tenants or Lessees

This section has been renumbered and amended for clarity.

Section 1414.27 Resource-Conserving Crops on ACR

This section has been renumbered and amended to provide that ACR having RCC's planted must meet minimum size and width requirements for ACR. Haying and grazing requirements have also been clarified.

Section 1414.28 Resource-Conserving Crops on Payment Acres

This section has been renumbered and amended to clarify the haying, grazing and harvesting provisions for RCC's on payment acres.

Section 1414.29 Traditionally Underplanted Acreage and Reduction of Payment Acres

This section has been renumbered and amended for clarity.

F. 7 CFR Part 1415—Options Pilot Program

A pilot program for options contracts (the options program) for the 1993 crop year was announced by the Secretary of Agriculture. The options program was administered in conjunction with the Chicago Board of Trade (CBOT).

Under the options program, CCC entered into contracts with eligible producers who (1) agreed to purchase at least one CBOT put option for their chosen commodity, and (2) agreed to forgo other program benefits on any enrolled bushels. Producers were reimbursed by CCC for the cost of the premium for purchasing the put option and received an incentive payment of 15 cents or 5 cents per enrolled bushel for participating in the program, depending on whether producers enrolled at the target price equivalent level or the price support equivalent level, respectively. The enrollment period for this program was March 1 through April 30, 1993.

This program was available to corn producers in nine counties in three States: Champaign, Logan, and Shelby Counties in Illinois; Carroll, Clinton, and Tippecanoe Counties in Indiana; and Boone, Grundy, and Hardin Counties in Iowa. In the three Illinois counties, wheat and soybean producers could also participate. Producers were required to participate in the annual ARP for corn and wheat to be eligible for the options program on those commodities. Soybean producers must have accurately reported their soybean plantings in order to be eligible to participate.

Participation Choices

Producers could participate in the options program at levels that are alternatives to either (1) deficiency payments and loan program protection, or (2) loan program protection. Producers who chose the "deficiency payments" alternative enrolled production in the options program as "target price bushels" and agreed to forgo deficiency payments, price support benefits, and loan deficiency payments on any enrolled bushels. Producers who chose the "loan program protection" alternative enrolled production in the options program as "price support bushels" and agreed to forego price support benefits and loan deficiency payments on any enrolled bushels. Production could have been enrolled at either the target price or price support level, but not both. However, a producer could enroll some production at each level.

Premiums and Incentives

Producers participating in the options program received:

(1) A subsidy to cover the cost of the premium for the purchase of the put option(s), and

(2) An incentive payment of 15 cents per bushel on target price bushels, or 5 cents per bushel on price support bushels.

Target Price Participation

Corn participants were required to purchase at least one CBOT December 1993 corn put option contract (5,000 bushels) at a strike price equivalent to the $2.75 per bushel target price on or before June 15, 1993. Wheat participants were required to purchase at least one CBOT September 1993 wheat put option contract (5,000 bushels) at a strike price equivalent to the $4 per bushel target price on or before May 15, 1993.

Price Support Participation

Corn participants were required to purchase at least one CBOT March 1994 corn put option contract at a strike price equivalent to the county price support price for corn. Wheat participants were required to purchase at least one CBOT December 1993 wheat put option contract at a strike price equivalent to the county price support price for wheat. Soybean participants were required to purchase at least one CBOT March 1994 soybean put option contract at a strike price equivalent to the county soybean price support price, minus the 2 percent loan origination fee. Put options at the price support level could

be purchased until the options expired, beginning at harvest of the crop (at the time the crop was otherwise eligible to be placed under loan). The Secretary determined that the strike price equivalent to the county price support price for all nine counties was $2 per bushel for corn, $2.90 per bushel for wheat, and $5.50 per bushel for soybeans.

Other Production

Eligible production not enrolled in either the target price or price support levels of the options program was eligible to be pledged as collateral for CCC price support loans and for deficiency payments.

Other Requirements and Restrictions

All put options purchased as required by the options program must have been purchased through a separate account with a registered commodity broker. A subaccount is not considered "separate" for purposes of the options program.

Documentation

Documentation of all transactions involving the commodities covered by the program was required to be provided to CCC. This documentation includes, but is not limited to, copies of brokers' trade confirmations, account statements, and copies of cash contracts or bills of sale.

Corn and Wheat Options Program Participants

Options program participants for corn and wheat must have complied with the acreage limitations and other requirements of the acreage reduction programs. Additionally, participants agreed that (1) in the case of target price participation, the total of the premium subsidies received under the options program and the deficiency payments received under the annual acreage reduction programs will not exceed $50,000 per person; and (2) in the case of price support participation, the total of premium subsidies received under the option program and loan deficiency payments, marketing loan gains and "Findley" deficiency payments received under such price support programs will not exceed $75,000 per person. A "person" will be determined in the same manner as a "person" is determined for payment limitation purposes for such annual programs.

Incentive Payments

Incentive payments made under either participation level are not subject to any payment limit, except to the extent that the total number of bushels any one producer may enroll in the options program is limited to 50,000 bushels for corn and 15,000 bushels for wheat and soybeans. In the event that CCC made disaster assistance available with respect to the 1993 crops of wheat, corn, or soybeans to producers participating in the options program at the target price level, such producers must refund any premium subsidies and incentive payments received on any enrolled commodities in order to receive disaster assistance from CCC.

CCC will be operating a similar program in 1994, with the following changes.

Section 1413.13 Eligibility

The number of States and counties participating in the options program has been increased. Participating States and counties now include:

(1) For corn and soybeans, Champaign, Logan, and Shelby Counties in Illinois.

(2) For corn only, Carroll, Clinton, and Tippecanoe Counties in Indiana, and Boone, Grundy, and Hardin Counties in Iowa.

(3) For wheat, Ford and Thomas Counties in Kansas for hard red winter wheat, and Barnes and Grand Forks Counties in North Dakota for hard red spring wheat.

Wheat participation will not be available in the counties in Illinois, Indiana, and Iowa. The counties in Kansas shall use the Kansas City Board of Trade for hard red winter wheat put option contracts, and the counties in North Dakota shall use the Minneapolis Grain Exchange for hard red spring wheat put option contracts.

Section 1415.15 Agreements

In order to treat seed corn producers enrolled in the options program the same as if they had remained in the acreage reduction program, and to give them the same pricing flexibility as commercial corn producers, the quantity eligible for enrollment and the quantity eligible for pricing shall be based on the ratio of the program payment yield established for the crop for the farm to the actual yield produced.

Producers enrolled in the options program intending to price their grain must price the grain to a licensed bonded grain dealer, grain merchant, or warehouse, or for short hedges, through a registered commodity broker. Documentation must indicate that a hedge position was taken on the grain.

Section 1415.20 Premium and Incentive Payments

The amount of incentive payments has been revised for 1994. Producers participating in the options program will receive an incentive payment of $.05 cents per bushel for both target price or price support participation. All producers will receive the incentive payments on a specific date when the options program contract expires instead of each producer receiving the incentive payment after closing out the option and pricing the grain. This change will reduce the motivation to close out the options position early just to receive the incentive payment.

The total numbers of bushels that may be enrolled has been increased from 20 million bushels of corn to 60 million bushels of both corn and wheat. The expected cost of the program should remain essentially the same as the 1993 program because the reduced incentive payment will offset the increase in bushels accepted for participation. There continues to be no overall limit on bushels accepted for wheat and soybeans enrollment in the options program. Each county's share of this limit will be allocated based on the total corn and wheat CAB's in the county times the average of the percentage of such bases enrolled in the 1991 through 1993 CCC price support and production adjustment programs. If more bushels are enrolled than are allocated to a county, a drawing will be held to determine participants within a county.

G. 7 CFR Part 1416, Voluntary Production Limitation Program

The 1990 Act amended the 1949 Act to provide that, effective for the 1993 through 1995 crops of wheat and feed grains, if an ARP or a land diversion program is announced for such crops, the Secretary may conduct a pilot program in at least 15 counties in at least two States where producers have expressed an interest in participating in the pilot program. Under this program, producers on a farm shall be considered to have met the requirements of an ARP or land diversion program if such producers meet the requirements of the VPLP. After concurrence with the authors of the legislation, it was determined that the program would not be implemented until the 1994 crop year.

Producers who elect to participate in the VPLP for wheat and/or feed grains shall enter into a agreement which provides that the producer shall comply with the program by: (1) Not planting wheat or feed grain crops exceeding the sum of the CAB's enrolled in the VPLP; and

(2) Agreeing not to market, barter, donate, or use on the farm (including use as feed for livestock) in a marketing year a quantity of production in excess

of the production limitation quantity (PLQ) and eligible carryover from prior years for the crop on the farm for the marketing year.

The PLQ for a crop shall be determined by multiplying the acreage permitted to be planted to such crop under an ARP by the PLQ yield. The PLQ yield is the higher of the farm program payment yield, or the average of the yield per harvested acre for each of the 5 years preceding the crop year in which the producers first participate in the pilot program, excluding the highest and lowest crop year yields, and any year in which the crop was not planted on the farm. Carryover production is defined as eligible and ineligible carryover as follows:

(1) If the crop was enrolled in the VPLP the previous year and is enrolled in the current year, the carryover production from any previous crop year is considered ineligible carryover and if marketed, bartered, donated, or used shall be counted against the PLQ for the current year, except the producer may destroy the carryover, under supervision of employees of the county ASCS office, so that no benefit will be derived from the carryover; or

(2) If the crop was not enrolled in the VPLP the previous year but is enrolled in the current year, the carryover production from a previous crop year is considered eligible carryover and may be marketed, bartered, donated, or used without being counted against the PLQ for the current crop year; or

(3) If the crop was enrolled in the VPLP the previous year and is enrolled in the ARP in the current year, the producer may devote an amount of acreage to conservation use equal to the excess production divided by the PLQ yield for the crop.

Producers shall be considered to have complied with the terms and conditions of ARP or land diversion program for the crop, even though the acreage planted to such crop might exceed the permitted acreage and the available flex acreage under the terms and conditions of the ARP. Producers may store any quantity of the enrolled crop exceeding the PLQ for the crop for a period not to exceed 5 marketing years. Any excess commodity stored longer than 5 years is subject to forfeiture to CCC.

Corn and grain sorghum permitted acreages are combined for the 1994 through 1997 crop years. A farm with both corn and grain sorghum CAB's will have the PLQ determined by multiplying the combined permitted acreages of such crops times the corn PLQ yield for the farm. If a farm has a corn CAB, and a producer on such farm plants grain sorghum; or if a farm has a grain sorghum CAB, and the producer plants corn; or if a farm has both corn and grain sorghum CAB's, these farms will have the PLQ expressed as corn equivalent bushels. An example calculation follows:

(1) Corn-100 acre CAB, 100 bushel PLQ yield, permitted-100 acres.

(2) Grain Sorghum-100 acre CAB, 50 bushel PLQ yield, permitted-100 acres.

(3) Total permitted acres-200. 200 (permitted acres) X 100 (corn PLQ yield) = 20,000 bushels total corn equivalent PLQ.

The result is the total PLQ for both crops. Grain sorghum production is converted to corn equivalent production (CE) based on a ratio of the corn PLQ yield to the grain sorghum PLQ yield for such farm. In the preceding example, the yield ratio is 2 to 1. Therefore, if the producer markets 100 bushels of corn, then 100 bushels of CE is considered marketed. If 50 bushels of grain sorghum is marketed, then 100 bushels of CE is considered marketed.

The "0/85/92" provisions, in accordance with § 1413.41, and flex provisions, as set forth in § 1413.43, will not apply to farms enrolled in the VPLP.

Iowa, Nebraska, and South Dakota have been selected as the States in which to conduct this pilot program. From these States, a total of 15 counties have been selected to participate in the VPLP. The proposed counties are: Fremont, Harrison, Mills, Monona, and West Pottawatamie Counties in Iowa; Adams, Furnas, Harlan, Kearney, and Phelps Counties in Nebraska; and Bon Homme, Charles Mix, Douglas, Turner, and Yankton Counties in South Dakota.

It is further proposed that the following provisions will apply to the VPLP:

(1) Producers who have wheat and feed grain CAB's on a farm are not required to enroll all wheat and feed grain CAB's into the VPLP;

(2) The acreage for payment for which deficiency payments shall be earned shall be the smaller of the maximum payment acreage (MPA) or the acreage of the crop planted for harvest on the farm; *i.e.* for corn and grain sorghum, the sum of the corn and grain sorghum payment acres for a farm shall be prorated to corn and grain sorghum based on the ratio of the MPA for each crop to the total of the corn and grain sorghum MPA's;

(3) The P&CP acreage for an enrolled crop shall equal the CAB of the respective crop if the crop is in compliance with the VPLP provisions; and

(4) The crop acreage plantings of all enrolled crops shall be limited to the sum of the crop acreage bases for all crops enrolled in the VPLP.

To ensure compliance with the provisions of the VPLP, producers participating in this pilot program will be required to certify for each enrolled crop:

(1) The quantity of the previous year's commodity on hand at the beginning of the marketing year (June 1 for wheat, barley, and oats; September 1 for corn and grain sorghum);

(2) The quantity of the current year commodity harvested; and

(3) The quantity of the crop on hand at the end of the marketing year (May 31 for wheat, barley, and oats; August 31 for corn and grain sorghum).

If the sum of number (1) and number (2) less number (3) is equal to or less than the PLQ and eligible carryover, then the producer has complied with the production limitation. Producers not complying with the production limitations will be assessed penalties on all bushels disposed of by the producer in excess of the PLQ.

Graduated penalties will be assessed based on the percentage of bushels disposed of in excess of the sum of the PLQ and eligible carryover as follows:

(1) 5 percent or less, the penalty is the larger of the loan rate or the current market price times the excess bushels;

(2) 6 to 10 percent, the penalty is the larger of the loan rate or 1.2 times the current market price times the excess bushels; and

(3) Over 10 percent, the penalty is the larger of the target price or 1.5 times the current market price times the excess bushels at the time the violation occurred.

A penalty will be assessed against producers for certifying inaccurate quantities for the inventory of enrolled crop of wheat or feed grain on hand at the beginning of the marketing year, the quantity of current year crop harvested from acreage enrolled in the VPLP, and the quantity of commodities on hand at the end of the marketing year. The penalty per bushel for discrepancies will be the higher of the target price for the commodity or 1.5 times the market price for the commodity on the date of the inaccurate report.

Example: corn target price = $3.00; market price on date of report = $2.90 per bu.; excess bushels of corn = 300 bu.; therefore, $3.00 times 300 bu. = $900.00.

Producers on a farm who are participating in an ARP or a land diversion program may market, barter, or use excess wheat or feed grains in a year subsequent to the year they were produced, in an amount that reflects what would be expected to be produced

on acreage that the producers agree to devote to approved conservation uses (in excess of any acreage reduction or land diversion requirements) during a crop year.

The total current year production from enrolled wheat and feed grain crops shall be eligible for nonrecourse loans and entry into the farmer owned reserve (FOR) if the FOR becomes available. Any commodity that is forfeited to CCC is considered marketed.

This interim rule establishes 7 CFR part 1416 to set forth the terms and conditions of the VPLP with which a producer must comply in order to be eligible for benefits of the wheat and feed grains programs for the 1994 and 1995 crop years.

List of Subjects

7 CFR Part 718

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements.

7 CFR Parts 790 and 791

Price support programs.

7 CFR Parts 1413 and 1414

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

7 CFR Part 1415

Acreage allotments, Appeals, Feed grains, Loan programs—Agriculture, Price support programs, Reporting and recordkeeping requirements, Soil conservation.

7 CFR Part 1416

Acreage allotments, Feed grains, Loan programs—Agriculture, Penalties, Price support programs, Reporting and recordkeeping requirements, Soybeans, Warehouses, Wheat.

Accordingly, chapters VII and XIV of the Code of Federal Regulations are amended as follows:

PART 718—DETERMINATION OF ACREAGE AND COMPLIANCE

1. The authority citation for 7 CFR part 718 continues to read as follows:

Authority: 7 U.S.C. 1373 and 1374; 15 U.S.C. 714b and 714c.

2. Section 718.1 is revised to read as follows:

§ 718.1 Paperwork Reduction Act assigned number.

Information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. 35, and assigned OMB Nos. 0560–0004 and 0560–0092.

3. Section 718.2 is revised to read as follows:

§ 718.2 Applicability.

The provisions of this part apply to compliance determinations for the 1994 and subsequent crop years as authorized by the Agricultural Adjustment Act of 1938, as amended, the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act, as amended, with respect to the programs administered by the Agricultural Stabilization and Conservation Service, (ASCS), through State and county Agricultural Stabilization and Conservation (State and county committees) committees.

4. In § 718.3, paragraph (b) is amended by removing the definitions for "Director" and "Reporting date," and revising the definitions for "maintenance default", "nonprogram crop", "reported acreage", "reporting date", and "standard payment reduction" and adding definitions for "Crop reporting and disposition date" and "measurement service guarantee" to read as follows:

§ 718.3 Definitions.

* * * * *

(b) * * *

* * * * *

Crop reporting and disposition date. Dates established by the Deputy Administrator, State and County Operations (Deputy Administrator), ASCS, representing:

(1) The final date to report crop acreages; and

(2) The final disposition date to dispose of excess crop acreages. The final crop disposition date shall be the earlier of:

(i) The applicable final crop reporting date; or

(ii) 45 days prior to the normal harvesting date unless, for an acreage of small grain only, an extension is granted in accordance with § 718.22(c) of this title.

Maintenance default. A failure by the producer to properly maintain acreage designated as ACR, CU for payment, or CRP as provided in parts 1413 and 1410, respectively, of this title.

Measurement service guarantee. A producer who requests and pays for an authorized ASCS representative to measure acreage may use such measurement for ASCS and CCC program participation unless the producer takes action to adjust the measured acreage. If the producer has taken no such action, and the measured acreage is later discovered to be incorrect, the acreage determined pursuant to the measurement service will be used for program purposes for that program year.

* * * * *

Nonprogram crop. Any crop other than a program crop, ELS cotton, oilseed, industrial or other crop as provided in part 1413 of this title.

* * * * *

Reported acreage. The acreage reported by the farm operator, farm owner, or a properly authorized agent on form ASCS–578, Report of Acreage.

* * * * *

Standard payment reduction. A reduction in a producer's program benefits made pursuant to § 718.22 or as provided in parts 1410 and 1413 of this title.

* * * * *

5. Section 718.10 is amended by revising paragraph (a)(4) and adding paragraphs (a)(7) and (d) to read as follows:

§ 718.10 State committee responsibilities.

(a) * * *

(4) Establish:

(i) Disposition dates for crops that are no later than the applicable final reporting dates set forth in § 718.22;

(ii) Normal planting periods for crops;

* * * * *

(7) Adjust the per acre rate for acreage in excess of 25 acres to reflect the actual cost involved when performing measurement service from aerial slides.

* * * * *

(d) The cost of furnishing reproductions of aerial or other photographs, mosaics, and maps to farmers, governmental agencies, and others is as follows:

(1) Free upon request to the farm operator, landowner, Federal Crop Insurance Corporation (FCIC) and reinsured companies, including their agents or adjusters, if needed for loss adjustment, Soil Conservation Service (SCS) for highly erodible land and wetland determinations, Farmers Home Administration, and other Federal or State Agencies to perform their official duties in making ASCS program determinations;

(2) At the rate determined by ASCS to cover the costs of making such items available.

6. Section 718.12 is amended by revising paragraph (a)(2) and the introductory text of paragraph (b) to read as follows:

§ 718.12 Authority for farm entry and securing information.

(a) * * *

(2) Secure from producers data which are necessary to keep current the farm

records located in the county ASCS office or which are a requirement to obtain program benefits under any mandatory or voluntary program administered by ASCS.

(b) If a farm operator, owner, or other producer refuses to permit entry for the purpose of ascertaining acreage or production or determining adherence to any other program requirement under any mandatory or voluntary program for which such determinations are required, the county executive director shall notify the farm operator in writing as soon as possible that, unless the farm operator advises the county office within 15 days after the date of such notice that such operator will permit entry and inspection on the farm and pay the cost thereof, the following consequences, as applicable, will apply until such time as the operator permits such entry and inspection:

* * * * *

7. Section 718.13 is amended by revising paragraph (a)(3) to read as follows:

§ 718.13 Denial of program benefits.

(a) * * *

(3) Fails to maintain acreage designated as ACR, CU for payment, or CRP as provided in parts 1413 and 1410, respectively, of this title.

* * * * *

8. Section 718.21 is amended by revising paragraph (b) and adding paragraph (e) to read as follows:

§ 718.21 Measurement services.

* * * * *

(b) The acreage requested to be measured by staking and referencing shall not exceed the effective farm allotment for marketing quota crops or maximum permitted acreage for program crops plus the available flex acreage with respect to other program crops enrolled in that crop's production adjustment program for that year.

* * * * *

(e) When a measurement service reveals acreage in excess of the permitted acreage plus the available flex acreage with respect to other program crops enrolled in that crop's production adjustment program for that year, the producer must do either of the following in order to keep the measurement service guarantee:

(1) Destroy the excess acreage and pay for an authorized employee of ASCS to verify destruction,

(2) Pay for measurement service for an authorized employee of ASCS to verify destruction of an acreage of another crop on the farm that is enrolled in a production adjustment program equal to the excess acreage, if such other crop acreage is within permitted acreage established for the farm for that crop.

9. Section 718.22 is revised to read as follows:

§ 718.22 Acreage reports.

(a) To be eligible for program benefits, a report of acreage shall be required for all cropland on farms that produce an agricultural commodity that includes:

(1) Number of acres,

(2) Land use,

(3) Production, including zero production,

(4) Prevented or failed acreage,

(5) Crop disposition, if required according to 7 CFR 1413.21, and

(6) Other program requirements.

(b) The reports required under paragraph (a) of this section shall be timely filed by the farm operator, farm owner, or a duly authorized representative with the county committee by the final reporting date applicable to the crop as established by the county committee. Such final reporting dates are available at the applicable State and county ASCS offices.

(c) Small grain acreage may be destroyed beyond the crop disposition date by haying or grazing provided the farm operator, prior to using or delivering for sale hay derived from such small grain acreage:

(1) Requests an extension in writing by the crop disposition date; and

(2) Pays a fee to cover the cost of a farm visit by an authorized ASCS employee to verify that:

(i) The small grain acreage was cut for hay before reaching hard dough stage; and

(ii) None of the small grain acreage was harvested as grain.

(d) Acreage reports are not required to obtain burley tobacco benefits, including types:

(1) 32; Maryland tobacco produced in a quota area on a farm that had a Maryland quota in effect when quotas on Maryland tobacco were in effect.

(2) 41; Cigar-filler tobacco produced in Pennsylvania.

(3) 61; Cigar-wrapper tobacco produced in Connecticut or Massachusetts.

(4) 65; Cigar-wrapper tobacco produced in Georgia or Florida.

(e) Peanut producers shall provide the county office evidence of disposition of any peanuts that are kept on the farm, including:

(1) Type and quantity for use for seed on any farm in which the producer has an interest.

(2) Type, quantity, names, and addresses of purchases for peanuts sold or given to others.

(f) Peanut producers shall provide the county office information for acquisition of seed peanuts from other sources, including:

(1) Name and address of person who sold or gave producer the peanuts.

(2) Type, farmer's stock or shelled basis, and quantity.

(3) Acquisition date.

(g) Acreage and land use reports shall be:

(1) Used to determine program eligibility and benefits.

(2) On form ASCS–578, Report of Acreage.

10. Section 718.24 is amended by revising the introductory text and adding paragraphs (d), (e), (f), and (g) to read as follows:

§ 718.24 Revised reports.

The farm operator may revise a report of acreage to change the acreage reported if the county committee determines that the revision does not have an adverse impact on the program. Revised reports shall be filed and accepted:

* * * * *

(d) For a farm enrolled in the ARP, if the requirements of paragraph (a) of this section have been met as well as the following:

(1) The producer was in compliance with all other program requirements by the earlier of the final disposition date or the established reporting date for the crop,

(2) The producer met all ACR and CU for payment requirements for the crop as provided in part 1413 of this title.

(e) For requests to hay and graze small grains beyond the disposition date made according to § 718.22(c).

(f) For excess ACR resulting from an acreage determination, the farm operator may request in writing that the excess ACR be released at any time.

(g) Other acreage may be substituted for previously reported ACR if the:

(1) Designated ACR is later approved for CRP acreage, or

(2) The farm operator pays an inspection fee for an authorized ASCS employee to witness the destruction of hay production on an acreage that has been swathed before being designated as ACR, and all of the following conditions are met:

(i) The farm is, and was, as of the final reporting date, in compliance with all eligibility and minimum size and width requirements as provided in part 1413 of this title,

(ii) The acreage has not been found out of compliance through a spot check,

(iii) The farm operator pays an inspection fee for an authorized ASCS employee to inspect the original and

substituted acreage. A fee is not charged for substituted ACR to CRP acreage.

11. Section 718.25 (a) is revised to read as follows:

§ 718.25 Reporting out of compliance.

* * * * *

(a) A program crop exceeds the sum of the maximum acreage permitted and the available flex from other participating crops in ARP,

* * * * *

12. Section 718.26 is amended by revising paragraphs (a), (b)(3) through (b)(8), adding paragraphs (b)(9) and (b)(10), and revising paragraph (c) to read as follows:

§ 718.26 Farm inspections.

(a) A representative number of farms selected shall be inspected by an authorized representative of ASCS to ascertain the acreage or production, or to determine adherence to any requirement specified as a prerequisite for obtaining benefits under ARP, CRP, disaster programs, and highly erodible and wetland provisions under part 12 of this title.

(b) * * *

(3) A farm on which the county committee determines an estimate of production is needed to properly administer the program for any marketing quota crop.

(4) A farm for which an acreage report shows nonquota tobacco produced in a State where marketing quotas are in effect for any kind of tobacco.

(5) Farms that have an effective flue-cured tobacco allotment.

(6) Farms on which there is unmarketed tobacco.

(7) Farms on which no tobacco is grown that have zero effective allotment for dark air-cured and fire-cured tobacco.

(8) A farm for which a review of the production evidence submitted by the operator indicates that:

(i) Data is not valid,

(ii) Reported production is not reasonable when compared to other farms in the area.

(9) Farms for which production evidence is submitted to document farm and warehouse stored production, actual yields, and ginner and buyer records.

(10) Farms for which an ASCS–574, Application for Disaster Credit, is filed for prevented or failed acreage credit.

(c) County offices may conduct additional farm inspections when evidence indicates possible noncompliance with any requirement specified as a prerequisite for obtaining program benefits.

13. Section 718.40 is amended by revising paragraphs (d)(1), (d)(2), and (e)(1) to read as follows:

§ 718.40 Tolerance and variance rules applicability.

* * * * *

(d) * * *

(1) For individual crop acreages or program requirements, except for tobacco, the larger of 1.0 acre or 5 percent of the reported acreage, but not to exceed 50 acres.

(2) For farms with corn and grain sorghum crop acreage bases that are enrolled in a production adjustment program, the larger of 1.0 acre or 5 percent of the combined reported acreage, not to exceed 50 acres.

* * * * *

(e) With respect to:

(1) Individual crop acreages or program requirements, except for tobacco, the applicable requirements shall be considered to have been met if:

(i) The determined acreage for each crop does not differ from the reported acreage by more than the tolerance, and

(ii) A determination of good faith has been made by the county committee.

* * * * *

14. Section 718.42 is amended by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 718.42 Skip rows and strip crops.

* * * * *

(b) * * *

(2) If the distance between the rows is 32 inches or wider and the strips of idle land are at least 60 inches but less than 64 inches, the producer has the option to consider the crop as either solid planted or skip row if the producer has a history of planting 32-inch or wider rows.

(3) The COC shall determine history of 32-inch or wider rows by verifying that cotton acreage has been planted in 32-inch or wider rows in past years and reported:

(i) On the acreage report,

(ii) To FCIC,

(iii) To other State or Federal Agencies.

* * * * *

15. Section 718.43 is amended by revising paragraphs (a)(2) and (a)(3), redesignating paragraph (b) as (c), adding new paragraph (b) and revising the newly designated paragraph (c) to read as follows:

§ 718.43 Deductions.

(a) * * *

(2) For tobacco, three-hundredths acre, except that turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, noncropland, and subdivision boundaries each of which is at least 30 inches (approximately 3.8 links) in width may be combined to meet the 0.03-acre minimum requirement.

(3) For all other crops and land uses, one-tenth acre. Turn areas, terraces, permanent irrigation and drainage ditches, sod waterways, noncropland, and subdivision boundaries each of which is at least 30 inches (approximately 3.8 links) in width and each of which contain 0.1 acre or more may be combined to meet any larger minimum prescribed for a State in accordance with § 718.10(b).

(b) If the area not devoted to the crop or land use is located within the planted area, then consider the part of any perimeter area that is more than 33 links in width to be an internal deduction if the standard deduction is used.

(c) A standard deduction of three percent of the area devoted to a row crop and zero percent of the area devoted to a close-sown crop may be used in lieu of measuring the acreage of turn areas. The COC may use, upon approval by the STC, a different percentage when the three percent or zero percent deduction does not adequately reflect the normal cultural practice in the county.

16. Section 718.45 is revised to read as follows:

§ 718.45 Notice of measured acreage.

Written notice of measured acreage shall be on form ASCS–468, Notice of Determined Acreage and shall constitute notice to all interested producers on the farm. The county committee shall furnish such notice to each farm operator when a farm is measured, remeasured, or checked for adjustment credit.

17. Section 718.46 is revised to read as follows:

§ 718.46 Producer reliance on previous determinations.

If, in reporting an acreage, a producer relies in good faith on an acreage previously determined for that crop year by an employee of ASCS (except acreage determined from data furnished by the producer) and the acreage is subsequently determined by the county committee to be incorrect, the county committee shall consider the acreage on which the producer relied to be correct for that program year upon obtaining satisfactory proof from the producer that such producer relied in good faith upon the incorrect determination. However, the county committee may use the correct data if the producer would be adversely affected by an error in

producer service provided under § 718.21.

18. Section 718.47 is amended by revising paragraphs (a), (b)(1)(i), and (b)(1)(ii) to read as follows, and removing paragraph (d).

§ 718.47 Redeterminations.

(a) A redetermination of crop and land use, acreage, appraised yield, or farm-stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Such redeterminations may also be initiated by a producer who has an interest in the farm upon filing a request within 15 days after the date of the notice furnished the farm operator in accordance with § 718.44 or within five days after the initial appraisal of the yield of a crop or before any of the farm-stored production is removed from storage and upon payment of the cost of making such redetermination. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. Such redetermination shall be used in lieu of any prior determination.

(b) The county committee shall refund the payment of the cost for a redetermination when, because of an error in the initial determination:

(1)* * *

(i) Five percent or five pounds for cotton;

(ii) Five percent or one bushel for wheat, barley, oats, and rye;

* * * * *

19. Part 790 is revised to read as follows:

PART 790—INCOMPLETE PERFORMANCE BASED UPON ACTION OR ADVICE OF AN AUTHORIZED REPRESENTATIVE OF THE SECRETARY

Sec.

Authority: Sec. 326, 76 Stat. 631, 77 Stat. 47, 79 Stat. 1192; 7 U.S.C. 1339a.

§ 790.1 Applicability.

This part is applicable to all programs set forth in title 7 that are administered by the Agricultural Stabilization and Conservation Service, hereinafter referred to as "ASCS" under which benefits are extended or payments are made to farmers.

§ 790.2 Action.

(a) Notwithstanding any other provision of law, performance rendered in good faith based upon action of or information provided by any authorized representative of a County Committee or State Committee, as defined in part 719 of this chapter, may be accepted by the Administrator, ASCS (Executive Vice President, CCC), the Associate Administrator, ASCS (Vice President, CCC), or the Deputy Administrator, State and County Operations, ASCS (Vice President, CCC), as meeting the requirements of the applicable program, and benefits may be extended or payments may be made therefor in accordance with such action or advice to the extent it is deemed desirable in order to provide fair and equitable treatment.

(b) The provisions of this part shall be applicable only if a producer relied upon the action of a county or State committee or an authorized representative of such committee or took action based on information provided by such representative. The authority provided in this part does not extend to cases where the producer knew or had sufficient reason to know that the action or advice of the committee or its authorized representative upon which they relied was improper or erroneous, or where the producer acted in reliance on their own misunderstanding or misinterpretation of program provisions, notices, or advice.

§ 790.3 Delegation of authority.

The State committee may, in accordance with instructions issued by the Deputy Administrator, State and County Operations (DASCO), exercise the authority provided in this part in programs administered by the ASCS in cases where the total of any payments and benefits extended under this part does not exceed $5,000.

§ 790.4 Filing of request for consideration.

(a) Any person who feels that they are entitled to consideration under the provisions of this part may file a request with the county committee, or (b) the county committee may submit a request for consideration to the State committee without a specific request from the producer when the county committee believes that the producer is entitled to consideration under the provisions of this part.

20. Part 791 is revised to read as follows:

PART 791—AUTHORITY TO MAKE PAYMENTS WHEN THERE HAS BEEN A FAILURE TO COMPLY FULLY WITH THE PROGRAM

Sec.

Authority: Sec. 602, 79 Stat. 1206, 7 U.S.C. 1838; sec. 379b, 84 Stat. 1362, 7 U.S.C. 1379b; sec. 105, 84 Stat. 1368, 7 U.S.C. 1441 note; sec. 103, 84 Stat. 1374, 7 U.S.C 1444.

§ 791.1 Applicability.

This part is applicable to the wheat, feed grain, cotton, and rice programs, and to all other programs to which this part is made applicable by individual program regulations.

§ 791.2 The making of loans, purchases, and payments when there has been a failure to fully comply with the program.

In any case in which the failure of a producer to comply fully with the terms and conditions of any program to which this part is applicable precludes the making of loans, purchases, or payments, the Deputy Administrator, State and County Operations (DASCO), Deputy Administrator, Commodity Operations (DACO), and National Appeals Division (NAD), may, nevertheless, authorize the making of such loans, purchases, or payments in such amounts as determined to be equitable in relation to the seriousness of the failure. The provisions of this part shall be applicable only to producers who are determined to have made a good faith effort to comply fully with the terms and conditions of the program and rendered substantial performance. Any person who feels that he or she is entitled to consideration under the provisions of this part may file a request with the county committee.

§ 791.3 Delegation of authority.

The authority contained in § 791.2 of this title may be redelegated in whole or in part.

21. Part 1413 is revised to read as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

Subpart A—General Provisions

Sec.

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1413.1 Applicability.

The regulations in this part applicable to the Commodity Credit Corporation (CCC) 1994 and 1995 feed grain, rice, extra long staple (ELS), and wheat programs, and the 1994 through 1997 upland cotton programs. Producers of these commodities who enter into agreements with the CCC and fully comply with the terms of such agreements and the provisions of this part are eligible for program benefits. The programs are conducted throughout the United States, including Puerto Rico.

§ 1413.2 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.

Whenever a producer, or a person affiliated with such producer, is determined to be ineligible in accordance with part 12 of this title, such producer shall be ineligible for any payments under this part and shall refund any payments already received in accordance with § 1413.101(f).

§ 1413.3 Controlled substance violations.

In accordance with the regulations in part 796 of this title, payments shall not be made to program participants who are convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance as defined in part 796.

§ 1413.4 Administration.

(a) The programs are administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service (ASCS) and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (herein called "State and county committees").

(b) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part, or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulation of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the program.

(f) A representative of CCC may execute a CCC–477, Intention to Participate in the 1995 Price Support and Production Adjustment Programs only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any CCC–477 which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized

by the Executive Vice President, CCC, shall be null and void and shall not be considered to be an agreement between CCC and the operator and any other producer on the farm.

§ 1413.5 Performance based upon advice or action of County or State Committee.

The provisions of part 791 of this title with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 1413.6 Appeals.

(a) A producer enrolled in the programs conducted in accordance with this part may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at part 780 of this title.

(b) With respect to farm program payment yields, determinations made before December 23, 1985, are not appealable.

§ 1413.7 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. 35, and assigned OMB Nos. 0560–0004 and 0560–0092.

Subpart B—Definitions of Terms Used in This Part

§ 1413.8 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 719 of this title governing the reconstitution of farms shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Acreage conservation reserve (ACR) means the acreage which is required to be taken out of production and maintained according to § 1413.67.

Acreage for payment means the acreage used to compute deficiency payments for the crop for the farm as determined in accordance with § 1413.104 (d) and (e).

Acreage reduction program (ARP) means a land retirement system in which participating producers agree not to plant a specified number of acres for cotton, feed grains, rice, and wheat in a program year in return for the right to obtain deficiency payments, price support loans, and other program benefits.

Actual ELS cotton yield per acre means the acceptable net production divided by harvested acreage for the year.

Approved nonprogram crops (ANPC) means specified crops of dry peas (Austrian peas, wrinkled seed, green, yellow, and umatilla) and lentils, that producers are allowed to plant and harvest and receive planted and considered planted credit on up to 20 percent of wheat or feed grain crop acreage base, but not on acreage that is part of a rice or upland cotton acreage base.

Conserving uses (CU) means all uses during a year of cropland as defined in part 719 of this title except for:

(1) Acreage of crops planted for harvest or use during the current crop year, which shall include:

(i) A crop of rice, upland cotton, feed grains, wheat, or ELS cotton;

(ii) A crop of oilseeds;

(iii) Any nonprogram crop;

(iv) IOC's;

(v) Any crop for which price support is available through loans and purchases in accordance with chapter XIV of this title; and

(vi) Any acreage which is harvested for green chop, hay, forage, silage, or haylage in a State where the State committee, after consulting with interested parties, has determined that haying of conserving use acreage designated to a program crop for payment purposes under § 1413.104 shall not be permitted.

(2) Acreage which is not available to be cropped in the current year because:

(i) Of a contract under the Water Bank Program in accordance with part 752 of this title;

(ii) Of an agreement under the Great Plains Conservation Program in accordance with part 631 of this title;

(iii) Of a contract under the Conservation Reserve Program (CRP) in accordance with part 704 of this title;

(iv) The acreage is designated as ACR acreage for the current year; or

(v) The acreage is subject to a restrictive easement which prohibits its use for program crops.

(3) Any land which the producer was prevented from planting to a crop of rice, upland or ELS cotton, feed grains, or wheat and which is considered as planted to such crop for the purpose of computing crop acreage bases (CAB's);

(4) Any acreage which is determined to be ineligible in accordance with § 1413.62; and

(5) Any other acreage which is not available to be cropped in the current year and which is excluded in accordance with § 1413.43.

Corn means field corn or sterile high-sugar corn. Popcorn, corn nuts, blue corn, sweet corn, and corn varieties grown for decoration uses are excluded.

Cotton means upland cotton and ELS cotton meeting the definition set forth in the definitions of "upland cotton" and "extra long staple (ELS)" cotton in this section, respectively, and excludes cotton not meeting such definitions.

Current year means the program year in which the crop with respect to which payment may be made under this part would normally be harvested, or the program year for which a CAB or yield is being determined or other action being taken, which may not be the same as the calendar year in which action is taken.

Custom farming means performing services such as land preparation, seeding, cultivating, applying agricultural chemicals, and harvesting for hire with renumeration on a unit-of-work basis excluding:

(1) Harvesting by an entity engaged in such business;

(2) Applying agricultural chemicals by an entity regularly engaged in such business;

(3) Establishing enduring conservation measures, such as land leveling, terracing, ditching, and tree planting performed by an entity regularly engaged in such business.

Determined acreage means the acreage determined in accordance with 7 CFR part 718. If the acreage is not selected for spot-check and determined in accordance with 7 CFR part 718, the determined acreage shall be the reported acreage for program purposes.

Disaster means:

(1) A condition affecting a crop to cause prevented planting or failed acreage of such crop, such as drought, excessive moisture, hail, earthquake, freeze, tornado, hurricane, typhoon, volcano, excessive wind, excessive heat, or any combination thereof;

(2) Related conditions of insect infestation, plant disease, or other deterioration of such crop, including aflatoxin, that is accelerated or exerbated naturally because of damaging weather occurring before or during harvest; and

(3) Flooding within flood or flowage easement areas.

Farm program payment yield means the yield for the crop for the farm which is determined by the county committee in accordance with § 1413.15 adjusted to reflect any determinations made with respect to such yield in accordance with part 780 of this title. The 1985 farm program payment yield means:

(1) The yield for the crop for the farm which was determined by the county committee in accordance with the regulations in this part which were applicable for the 1985 crop year; or

(2) The yield for the crop for the farm which is determined in accordance with § 1413.15 if no yield was determined for the crop for the farm for the 1985 crop year.

Farming operations and practices means the integration of crops and crop-plant variety selection, rotation practices, tillage systems, soil conserving and soil building practices, nutrient management strategies, biological control and integrated pest management strategies, livestock production and management systems, animal waste management systems, water and energy conservation measures, and health and safety considerations.

Final disposition date means the date or time by which an acreage of barley, wheat, oilseeds, or oats must be disposed of in order that such acreage will not be considered as barley, wheat, oats, or oilseeds for harvest or by which an acreage of rye or similar grain must be disposed of in order for the acreage to qualify as ACR acreage in accordance with § 1413.63 or as a conserving or conservation use.

Grain sorghum means grain sorghum of a feed grain or dual purpose variety (including any cross which, at all stages of growth, has most of the characteristics of a feed grain or dual purpose variety). Sweet sorghum is excluded regardless of use.

High residue program crop (HRC) means a crop of barley, corn, grain sorghum, oats, and wheat that is not harvested for silage.

Industrial and other crops (IOC's) are: castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago ovato, and sesame, or other crops as designated by the Secretary. Individual State ASC Committees may remove individual crops of IOC's from the list permitted in such State.

Landlord means an individual, entity, or joint operation that rents or leases land to another individual, entity, or joint operation according to 7 CFR part 719.

Low residue crop (LRC) means a crop of barley, corn, grain sorghum, oats, or wheat that has been harvested for silage, and cotton. A crop of soybeans is considered a low residue crop.

Marketing year means the 12-month period beginning in the current year and ending the next year as follows:

(1) For barley, oats, and wheat, June 1 through May 31.

(2) For cotton and rice, August 1 through July 31.

(3) For corn and grain sorghum, September 1 through August 31.

Maximum payment acres for wheat, feed grains, upland cotton, and rice means 85 percent of the crop acreage base for the crop for the farm less the required ACR.

Minor means an individual who is not at least 18 years of age on or before the status date, as established by part 1497 of this title, of the current calendar year.

Minor oilseeds means acreages of sunflowers, safflowers, mustard seed, flaxseed, rapeseed, and canola that are planted for harvest as seed, or volunteer acreages of such crops from which the seed is harvested.

Nonprogram crop means any crop other than a program crop, ELS cotton, oilseed, or IOC as determined in accordance with this section.

Nonrotation means the planted and considered planted acreage of a crop that is generally consistent in every year on a farm.

Operator means an individual, entity, or joint operation that is in general control of the farming operations on the farm during the program year, as determined in accordance with 7 CFR part 719.

Other cotton means pure strain varieties of the barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate, if either of the following applies:

(1) The cotton is grown in a county that has not been designated as an ELS cotton county; or

(2) The cotton is ginned on other than roller-type gins.

Permitted acres for wheat, feed grains, upland and ELS cotton, and rice means the CAB minus the required ACR.

Person means an individual, joint stock company, corporation, estate or trust, association, or other legal entity, except that two or more entities shall be combined as one person in accordance with:

(1) The regulations found at part 1497 of this chapter for the purpose of administering maximum payment limitation provisions of the Food Security Act of 1985;

(2) The regulations found at part 796 of this title for the purpose of administering the provisions of the Food Security Act of 1985 with respect to the production of controlled substances; and

(3) The regulations found at part 12 of this title pertaining to the highly erodible land and wetland provisions (commonly known as "sodbuster and swampbuster" provisions) of the Food Security Act of 1985.

Producer means an individual, entity, or joint operation that shares in the risk of producing the crop, and is entitled to share in the crops available for marketing from the farm, or would have shared had the crops been produced.

Program benefits means loans, purchases, and payments authorized for a program crop.

Program crop means a crop of wheat, corn, grain sorghum, oats, barley, upland cotton, and rice.

Repeat crop means the same crop planted, harvested, and planted again on the same acreage. A second crop must be planted to be a repeat crop. Volunteer crops are not repeat crops.

Rice means rice excluding sweet, glutinous, or candy rice such as Mochi Gomi.

Sharecropper means a producer who:

(1) Performs work concerning the production of a crop under the supervision of the operator; and

(2) Receives a share of the crop for labor.

Small grains means barley, oats, wheat, and rye.

Soybeans means any variety of soybeans, except laredo and edamame, which is planted regardless of the intended use.

Tenant means an:

(1) Individual, entity, or joint operation, usually called a cash tenant, fixed-rent tenant, or standing-rent tenant, who rents land from another for a fixed amount of cash or a fixed amount of a commodity to be paid as rent;

(2) Individual, entity, or joint operation, usually called a share tenant, who rents land from another individual, entity, or joint operation and pays as rent a share of the crop or the proceeds thereof.

Upland cotton means planted and stub cotton which is produced from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate. For program purposes, brown lint cotton is considered upland cotton.

Subpart C—Planted and Considered Planted Acreages

§ 1413.10 Planted crop acreages.

(a) The county committee shall apply the guidelines in paragraphs (b) and (c) of this section in determining crop acreages planted for harvest.

(b) The county committee shall include as crop acreage planted for harvest any of the following:

(1) The acreage harvested;

(2) The acreage of small grains which was not disposed of before the disposal deadline in accordance with 7 CFR part 718.22(c), unless an extension has been

granted for the crop on the farm by the county committee; and

(3) The acreage of small grains which was disposed of before the disposal deadline if such acreage qualified for a reduced yield payment in accordance with the provisions of §§ 1413.122 and 1413.123 or failed acreage credit in accordance with the provisions of § 1413.121;

(4) Volunteer acreage of a crop that is harvested;

(5) Minor oilseed acreage that is planted for harvest as seed or a volunteer acreage of such oilseed crop from which the seed is harvested; and

(6) An acreage planted to oilseeds which is not disposed of before the disposal date established for such a crop.

(c) The county committee shall exclude as crop acreage planted for harvest any of the following:

(1) The acreage which failed and could have been replanted by the final planting date established for the crop by Federal Crop Insurance Corporation (FCIC), according to part 400 of this title, but which was not replanted;

(2) The acreage that is approved as ACR acreage in accordance with the provisions of §§ 1413.59 through 1413.75;

(3) The acreage which was disposed of without feed or other benefit (including lint benefit for cotton) and excluded by the operator on the report of acreage as provided in part 718 of this title;

(4) The acreage which was approved for wildlife food plots or planted for wildlife in accordance with § 1413.70;

(5) The acreage that was planted so late that it could not mature and produce grain or lint and, with respect to corn and grain sorghum, was not harvested for silage;

(6)(i) Any acreage which is planted for experimental purposes under the direct supervision of a State experimental station or a commercial company and which meets the following requirements:

(A) The production is:

(*1*) Destroyed before harvest;

(*2*) Used for testing or other experimental purposes; or

(*3*) Donated to a wildlife agency and certified by a representative from such agency as to the amount of production donated.

(B) A representative from the State experimental station or the commercial company certifies that any production harvested from the experimental acreage will not be marketed in any form.

(C) The producer certifies that no harvested production of the crop has or will be received by such producer.

(D) By the final reporting date for such crop, the producer:

(*1*) Reports the acreage of the crop to be excluded;

(*2*) Identifies the acreage of the crop on a land photocopy for reference; and

(*3*) Pays for a farm visit by a county committee representative, according to part 718 of this title, to verify how the crop was used.

(ii) Acreages planted to program crops for experimental purposes shall not be eligible for designation as ACR, CU for planted and considered planted credit and CU for payment, or any other planted and considered planted purpose.

(7) The acreage of barley, oats, wheat, or rice which is left standing as a cover crop past the disposal deadline according to § 1413.63 if the producer:

(i) Requests from the county committee, in writing, permission to allow such crop to be left standing before the crop reporting date;

(ii) Destroys the crop mechanically if the crop does not deteriorate before the end of the nongrazing period so that no benefit can be derived from the grain;

(iii) Does not obtain feed benefit from the crop; and

(iv) Pays the cost of a farm visit by a representative of the county committee to determine compliance with program requirements for disposal of the crop;

(8) Any acreage designated under the CRP in accordance with part 704 of this title; and

(9) Any crop acreage on a farm which is planted by a producer with no intent to harvest.

(d) The county committee shall consider mixtures of crops to be the crop that is predominant in the mixture, except when corn or grain sorghum is mixed with another crop in the same row, the mixture shall be considered to be corn or grain sorghum, as applicable.

§ 1413.11 Considered planted acreages.

Considered planted acreage for a crop means the following:

(a) With respect to the 1994 and subsequent crop years, the sum of the following except that for farms enrolled in an acreage reduction or land diversion program for the crop, the planted and considered planted shall be limited to the CAB for each crop for the crop year:

(1) Any acreage devoted to ACR for the crop under an acreage reduction, or land diversion program as set forth in this part or any other part;

(2) The acreage determined to be intended to be planted to the crop but which was prevented from being planted to the crop because of drought, flood, other natural disaster, or quarantine in accordance with § 1413.121;

(3) For farms on which producers are participating in an ARP for the crop, the acreage of crops designated for planted and considered planted purposes and CU credited to the crop in accordance with § 1413.100;

(4) For farms on which the ACR acreage has been reduced in accordance with § 1413.74, the smaller of the following:

(i) The amount of the reduction in ACR acreage; or

(ii) The acreage of cropland on the farm which is not considered as being planted to a program crop under any other provision of this part;

(5) For farms for which there is a CRP contract in effect, an acreage equal to the amount by which any CAB is reduced in accordance with § 1413.25 due to participation in the CRP in accordance with part 704 of this title.

(6) For program crops for which the acreage report filed in accordance with part 718 of this title reflects zero acreage of the program crop and which are not participating in an acreage reduction, or land diversion program for the crop, the planted and considered planted crop acreage shall equal the CAB of the crop. If the zero acreage report provision is requested by the operator, such provision cannot be used to increase the CAB for other crops on a farm.

(i) Producers growing fruits and vegetables, except for green manure, haying, and grazing, as specified in § 1413.43, must not have planted or have been prevented from being planted in excess of normal plantings of such crops for the farm. The cropping history for fruits and vegetables shall be based on the higher of the farm's history of planting such crops in the last year or 3 years preceding the current year. Zero report provisions will be permitted only if the current year acreage of fruits and vegetables for other than green manure, haying, or grazing, is equal to or less than the farm's history for the last year or the 3 years preceding the current year.

(ii) Planted and considered planted acreage of other nonparticipating crops planted in excess of such crop's CAB will be reduced, if the total planted and considered planted acreage exceeds the cropland for the farm.

(7) For program crops for which the acreage report filed in accordance with part 718 of this title reflects zero acreage of the program crop and which are not participating in an acreage reduction, or land diversion program for the crop, CU acreage may be used to receive planted and considered planted credit for the crop.

(8) Any acreage devoted to approved nonprogram crops (ANPC), not to exceed 20 percent of a wheat or feed grain CAB, but not rice, ELS cotton, or upland cotton, if the acreage is planted to dry peas (limited to Austrian peas, wrinkled seed, green, yellow, and umatilla) and lentils;

(9) Acreage that is an amount equal to the difference between program crop permitted acreage and planted acreage, if the considered planted acreage is devoted to conservation uses, or the production of commodities permitted under §§ 1413.41 and 1413.42;

(10) Acreage that is an amount equal to the difference between program crop permitted acreage and planted acreage, if the considered planted acreage is devoted to the production of commodities as permitted by § 1413.43. Both acreages of double-cropped program crops, oilseeds, and IOC's used on flex acreage will be used for planted and considered planted acreage.

(b) With respect to farms owned by the Farmers Home Administration (FmHA), in 1991 and subsequent crop years, an acreage equal to the CAB established for the farm in accordance with § 1413.24.

(c) The sum of the planted and considered planted acreage of corn and grain sorghum for each crop year shall be prorated to corn and grain sorghum based on the ratio of the CAB for the individual crop of corn or grain sorghum, as applicable, to the sum of the CAB's for corn and grain sorghum established for each crop year.

Subpart D—Farm Program Yields

§ 1413.15 Farm program payment yields.

(a) The bushel or pound per acre farm program payment yield for program crops for the 1994 through 1997 crop years shall be the 1990 farm program payment yield established for the crop for the farm.

(b) If the 1990 farm program payment yield established for a crop for a farm was less than 90 percent of the 1985 farm program payment yield for such crop, the deficiency payments for the crop shall be increased by the amount necessary to provide the same total return to producers as if the payment yield had not been reduced more than 10 percent below the 1985 program payment yield.

(c) If no farm program payment yield for a crop was established for the 1990 crop year, the county committee may assign a yield for any such year based upon the farm program payment yields for such crops for at least 3 similar farms in the county or other surrounding area with similar yield capability, including land and cultural practices, not including irrigation practices for feed grains and wheat.

§ 1413.16 Establishing yields for soybeans and minor oilseeds.

(a) State ASC Committees shall establish yields for soybeans and minor oilseeds. Such yields shall be used for:

(1) Calculating failure to fully comply reductions in accordance with part 791 of this title; and

(2) Price support purposes, in accordance with part 1421 of this chapter.

(b) State committees shall calculate soybean and minor oilseed yields as follows:

(1) Such yield shall be based on the county yield determined by the National Agricultural Statistics Service (NASS) for the preceding 5 crop years;

(2) The highest and lowest yield in such 5-year period shall be excluded; and

(3) The remaining 3 crop year yields shall be averaged.

(c) If a county yield is not available from NASS for the 5 preceding years for a crop of soybeans or minor oilseeds, State committees shall calculate the yields using the following data:

(1) State or area yields determined by NASS for the 5 preceding crop years, calculated as provided in paragraphs (a)(1) through (3) of this section.

(2) If neither State or area yields for the 5 preceding years are available from NASS, yields from FmHA for such years.

(3) If such yields are not available from FmHA, data for such yields from other government entities, such as Extension Service (ES).

(4) If no yield information is available from the sources listed in paragraphs (c)(1) through (3) of this section, obtain yields from other available sources.

§ 1413.17 Historical weighted yields (HWY).

If separate irrigated and nonirrigated farm crop program payment yields were established for the 1990 crop on a farm, the program payment yield for such crop for the 1994 through 1997 crop years shall be a HWY that is determined by:

(a) Multiplying the smaller of the effective irrigated acreage maximum (IAM) determined according to § 1413.18 or the CAB times the 1990 irrigated farm program payment yield for the crop;

(b) Subtracting the IAM from the current year CAB and multiplying the result, not less than zero, times the 1990 nonirrigated farm program payment yield for such crop; and

(c) Totaling the results of subparagraphs (a) and (b) of this section and dividing by the current year effective CAB. If the result is zero, the HWY yield is the 1990 nonirrigated program payment yield for the crop.

§ 1413.18 Irrigated acreage maximum (IAM) for determining HWY's.

(a) *General.* The farm IAM represents the maximum acreage for which deficiency payments using the irrigated payment yield will be computed. Except as otherwise provided in this section, the IAM for the farm shall not be changed for the 1994 through 1997 crop years.

(b) *Calculation.* The calculated farm IAM is the sum of the crop IAM's calculated as follows:

(1) *Base period.* The calculated crop IAM shall be computed, at the producer's option, on the basis of either the sum of the 1988, 1989, or 1990 irrigated planted and CU for payment acreages on the farm or the result of the 1991 CAB multiplied by the result of dividing the 1988, 1989, or 1990 irrigated planted and CU for payment acreages by the sum of the irrigated and nonirrigated planted and CU for payment acreages for the same year.

(2) *Base period for rotation farms.* If 1 or more crops are produced on a farm in a 2-year rotation, the producer has the option of using the 1991 CAB and the 1990, 1989, and 1987 years or the 1992 projected CAB and the years 1990, 1988, and 1986 for the computations explained above. If 1 or more crops are produced on a farm in a 3-year rotation, the producer has the option of using the 1991 CAB and the 1990, 1988, and 1985 years or 1992 projected CAB and the years 1990, 1989, and 1986 years or 1993 projected CAB and the years 1990, 1987, and 1984 years for the computations explained above.

(3) *Calculations for farms enrolled in the CRP.* Appropriate adjustments in the IAM calculation shall be made to reflect the amount of irrigated cropland enrolled in the CRP and the amount of reduction in CAB required by the CRP contract.

(4) *Calculations for FmHA inventory farms.* If a farm was in FmHA inventory prior to 1991 and had irrigated program crops prior to 1988, the county committee may approve adjustments to the farm IAM upon request from FmHA, operator, or owner. IAM calculations shall be based on substituting the most recent years the farm was not in FmHA inventory for the years the farm was in inventory.

(c) *Allocation of IAM's to crops.* If a farm has more than 1 irrigated crop, and the effective IAM for the crop exceeds

the effective CAB for the crop, the operator and owners have the option to reallocate the amount of the excess, provided that the receiving crop IAM does not exceed the effective CAB. Form CCC–507A, Agreement for Reallocation of Farm Irrigated Acreage Maximum, must be signed by both the operator and owners of the farm before the reallocation can be completed. The deadline for filing form CCC–507A is the same as for form CCC–477, Intention to Participate in the 1994 Price Support and Production Adjustment Programs. The reallocation is final for the year and becomes the following year crop IAM.

(d) *Appeals of IAM's.* The IAM for a farm may be appealed in accordance with § 1413.6 when it is first established for the farm, if the farm had an irrigated farm program payment yield for a crop established for 1990. The farm IAM established for 1994 and later years cannot be increased by appeal, except to correct errors in calculation or transferring data. The crop IAM established for 1994 and later years, which includes the allocation of farm IAM, can be appealed if the CCC–507A was not properly executed.

(e) *Effects of terminating CRP contracts.* When a CRP contract for a farm expires or is otherwise terminated, the original IAM shall be restored by multiplying the difference between the original IAM and effective IAM by the result of dividing the total cropland that is being released from CRP by the total cropland that was originally in CRP.

§ 1413.19 Submitting production evidence.

(a)(1) Producers shall submit reports of production evidence in accordance with this paragraph for crops of wheat, feed grains, upland cotton, and rice enrolled in a production adjustment program. Production evidence for program crops may be accepted by county committees at any time throughout the crop year. Producer certification shall not be accepted as proof of production.

(2) Certification of such production evidence shall be on form ASCS–658, Record of Production and Yield, for feed grains, rice, soybeans, and wheat. Production evidence for upland cotton shall be certified on either form ASCS–658–1, Certification of Deliveries to Handlers, or Form ASCS–503, Identification of Cotton Production, at the option of the county Committee. Producers who have an interest in program crops on more than one farm shall submit production evidence for all farms.

(3) County committees shall determine whether the production evidence submitted includes production from any other acreage for each year the evidence has been provided by the producer for the crop.

(4) Producers may have actual crop yields calculated for program crops and soybeans by paying a service fee of $15 for each crop on a farm and for each crop of the same commodity which is the subject of a different cropping practice.

(b)(1) When production has been disposed of through commercial channels, the county committee may require the operator or other producers to furnish documentary evidence in order to verify the information provided on the report. Acceptable evidence may include such items as the original or a copy of:

(i) Commercial receipts,

(ii) Gin records,

(iii) CCC loan documents,

(iv) Farm-stored loan documents, if the quantity of the grain has been determined by measurement,

(v) Evidence from harvested or appraised acreage, approved for FCIC or multiple-peril crop insurance loss adjustment settlement,

(vi) Settlement sheets,

(vii) Warehouse ledger sheets,

(viii) Elevator receipts or load summaries, supported by other evidence showing disposition, such as sales documents.

(2) Such production evidence must show:

(i) Producer's name,

(ii) Commodity,

(iii) Buyer's or storer's name, and

(iv) The date of the transaction.

(3) Production evidence shall be reviewed by the county committee for moisture content and applicable dockage, according to part 1421 of this title.

(c)(1) Farm-stored production shall be measured at the expense of the producer. Scale tickets or weight slips may be accepted for farm-stored production evidence instead of the measured quantity, if such scale tickets or weight slips show:

(i) The farm number,

(ii) The commodity being stored,

(iii) The date the commodity was weighed, and

(iv) The signature or initials of the weigh person, and company name, if available.

(2) The county committee shall determine that measurements indicating the weighed quantity of the commodity in the bin is reasonable compared to the measured quantity of such commodity.

(d) Subject to the county committee's approval, a producer may certify that a quantity of a commodity was used as seed for personal use if such certification includes:

(1) The production amount used for the commodity,

(2) The seeding rate for the commodity, and

(3) The number of acres that were planted using such commodity.

(e) Producers may request to have a crop appraised for production evidence purposes. Such appraisals shall be performed in accordance to 7 CFR § 401.8. The county committee has the option of:

(1) Accepting such appraisal's production estimates; or

(2) Reducing the appraised yield to reflect yields based on 3 similar farms and recording such appraised yield as an assigned yield, and notifying the producer of the reduction of the yield and the producer's right to appeal such yield.

(f)(1) Production that a producer intends to commingle with other production must be supported by acceptable production evidence, which shall be provided by the producer by:

(i) Having such production evidence measured,

(ii) Having the current year's production appraised, and

(iii) Establishing each producer's shares.

(2) The county committee may also verify the evidence submitted by the producer with the warehouse, gin, or other entity which received production. If the evidence is not furnished or the information provided on the report cannot be verified, the county committee has the option to:

(i) Disapprove the report of production; or

(ii) Require additional evidence to be provided.

(g) If production evidence is found to be unacceptable, false, or incorrect, the county committee shall make all determinations, including determinations as to whether the producer acted in good faith or took an action defeating the purpose of the program, as specified in accordance with part 791 of this title. If the county committee determines the producer did not act in good faith or took action defeating the purpose of the program, the actual yield shall be considered zero. If the county committee determines the producer acted in good faith, a yield shall be assigned for the crop year based on yields established for 3 similar farms in the county.

§ 1413.20 Reducing yields.

(a) For the purpose of determining the amount of any deficiency payment as provided in § 1413.104 or the amount of any disaster payment as provided in §§ 1413.122 and 1413.123, the farm

program payment yield for a crop for a farm shall be temporarily reduced for a farm for the applicable crop year when the county committee determines that the producer planted or maintained the acreage of the crop in an unworkmanlike manner such that, under normal conditions, it would not produce a yield comparable to the established yield for the crop for the farm.

(b) The following farming practices will not be considered as unworkmanlike unless the county committee determines that the actions are not an acceptable management practice for the crop and area:

(1) Continuous cropping when the yield for the crop was established based on the crop normally being planted on summer-fallow acreage on the farm;

(2) Cultural practices normal to the area or introduced by Extension Service or Soil Conservation Service (SCS) to improve conservation;

(3) Double cropping 2 crops that are normally double cropped in the area;

(4) Changes in irrigation practices, except for rice;

(5) Minimum till and no till practices according to practices customary for the area; and

(6) Introduction of new farm equipment into the area that was manufactured or built by an entity that normally builds farm equipment.

(c) The county ASC committee shall:

(1) Review the newly determined yield;

(2) Adjust the established yield, if the new yield is less than 90 percent of the current established yield for the crop; and

(3) Consider adjusting the current established yield for the crop if both of the following apply:

(i) The new determined yield is 90 percent or more of the current established yield for the crop; and

(ii) The conditions initiating the reduced yield justify such adjustment.

(d) Producers on a farm who have the yield for a crop temporarily reduced may file a request for reconsideration of such reduced yield. Production evidence that indicates that the actual yield exceeds the temporarily reduced yield must be provided by the producer.

(e) If such production evidence indicates that the actual yield justifies an increase in the temporarily reduced yield, such increased yield may not exceed the program payment yield established for the crop for a farm before the temporary reduction, irrespective of such actual yield.

(f) If a temporary yield is increased, such increase must be approved by a representative of the State committee.

(g) With respect to farms with repeat cropping, the total plantings of the crop shall be considered as the crop acreage. Temporary yield reductions may be made by the county committee with respect to the acreage of the second planting if the yield originally established for the farm was based on a history of a single planting.

(h) If a producer plants either corn or grain sorghum on the permitted acreage of either corn or grain sorghum, respectively, and the county committee determines that the crop planted was cared for in an unworkmanlike manner, and the other crop was earning payments;

(1) A percentage of the reduced production of the crop cared for in an unworkmanlike manner shall be determined, and the yield for the crop earning deficiency payments shall be reduced by the determined percentage.

(2) The producer may submit to the county committee actual production evidence for approval to increase such that was reduced yield for the crop.

Subpart E—Crop Acreage Bases

§ 1413.24 Crop acreage bases.

(a) A CAB shall be established for a farm for each year for barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, and wheat. With respect to the 1994 and 1995 crops of corn and grain sorghum, the permitted acreages of corn and grain sorghum for a farm shall be combined. Separate corn and grain sorghum crop acreage bases shall be calculated for the purpose of making deficiency payments in accordance with § 1413.104, and for planted and considered planted credit, in accordance with § 1413.11. Producers may plant any combination of corn and grain sorghum on the total of the combined permitted acreages for such crops.

(b) Except as provided in paragraphs (d) and (e) of this section, the CAB for each program crop of wheat, barley, corn, grain sorghum, and oats, for the 1991 and subsequent crop years shall be the number of acres that is equal to the average of the acreage planted and considered planted to the program crop for harvest on the farm in each of the 5 crop years preceding the crop year.

(c) For upland cotton and rice, except as provided in paragraphs (d) and (e) of this section, the CAB shall be equal to the average of the acreages planted and considered planted to such crop for harvest on the farm in each of the 3 crop years preceding such crop year.

(d) If the county committee determines that a crop is grown on a farm in a clearly established crop-rotation pattern for 2 or more years, the acreage base established for such crop will be determined by using the average of the planted and considered planted acreages for the 3 immediately preceding crop years in the rotation cycle that corresponds to the current year.

(e) The sum of the CAB's for a farm for a crop year shall not exceed the cropland for the farm, except to the extent that such excess is due to an established practice of doublecropping on the farm, according to paragraph (f) of this section.

(f) Acreages on a farm shall be considered to be double cropped if in the same crop year on the same acreage any of the following apply:

(1) Two different crops are harvested, or if not harvested, received failed or prevented planted acreage credit;

(2) The first crop was approved as prevented planted or failed acres and the second crop is not considered ghost acres, in accordance with § 1413.121; or

(3) Two different crops are planted such that:

(i) Small grains must reach the hard dough stage on or before the final disposition date in accordance with part 718 of this title; and

(ii) Other crops must reach maturity.

(g) The planting flexibility provisions in § 1413.43 allow nonprogram crops to be planted instead of program crops. Therefore, producers who have a history of double cropping program crops may plant nonprogram crop acreage as a double crop without losing double cropping history.

(h)(1) Nonprogram crop acreage following program crop acreage is eligible to receive double cropped planting credit if the farm has a history of a program crop following a program crop in 3 of the previous 5 years. Such acreage credited for double crop history purposes is limited to the smaller of the following:

(i) Nonprogram crop acreage considered double cropped; or (ii) Nonprogram crop acreage credited to planted and considered planted as flexible acreage, approved nonprogram crop, or other nonprogram crop.

(2) Program crop acreage, regardless of whether such acreage is the first or second crop planted, shall be credited as a program crop for planted and considered planted purposes, according to § 1413.9.

§ 1413.25 Participation in Conservation Reserve Program.

(a) Whenever the owner or operator of a farm signs a contract to participate in the CRP in accordance with part 1410 of this title:

(1) The total of the CAB's, acreage allotments, and marketing quotas established for the farm for the first crop year for which such contract is applicable shall be reduced in the same proportion as the ratio of the cropland taken out of production under the conservation reserve contract to the total cropland on the farm. If acreage bases, acreage allotments, and marketing quotas were established for more than one crop, the owner or operator shall determine which acreage bases, acreage allotments, or marketing quotas shall be reduced to achieve the total reduction required.

(2) The CAB's established for the farm for each succeeding crop year for which the conservation reserve contract is in effect shall be:

(i) Computed in accordance with § 1413.24; and

(ii) Reduced in accordance with part 1410 of this title.

(3) The amount of the reduction made in accordance with paragraphs (a) (1) and (2) of this section shall be considered as planted to the applicable crop for the purpose of establishing future CAB's.

(4) If there is an agreement in effect between CCC and the producers with respect to the annual program for one or more of the crops for which the acreage base is reduced in accordance with paragraph (a)(1) of this section, the operator and producers shall have the option of:

(i) Complying with the agreement using the acreage base for the crop after such reduction is determined; or

(ii) Canceling such agreement without liability.

(b) After the end of the period of a conservation reserve contract, the CAB's for the next crop year shall be computed in accordance with § 1413.24.

§ 1413.26 Adjusting CAB's.

(a)(1) A one-time forfeiture of all or a portion of a farm's CAB shall be allowed at the request of the owner and operator if the request for the permanent base reduction is filed not later than the end of the ARP signup period.

(2) With respect to farms on which a base forfeiture is requested and approved, the planted and considered planted history for each of the previous years which were used to establish the CAB shall be reduced by the same percentage that the base was reduced.

(b)(1) Producers may request such permanent reduction because:

(i) ACR is calculated on the CAB and the entire maximum permitted acreage will not be planted or credited with payment acres;

(ii) The historical weighted yield can be increased by decreasing such CAB if both irrigated and nonirrigated yields are present for such crop; or

(iii) The CAB exceeds the cropland and the producer prefers a permanent reduction instead of a temporary reduction.

(2) The crop involved in the reduction does not have to be participating in the ARP.

(c)(1) The operator of a farm may request that the acreage base for a crop of a commodity produced on a farm be established in accordance with either § 1413.24(b) or (d) for wheat and feed grains and § 1413.24(c) or (d) for upland cotton and rice. The sum of the CAB's in the rotation cycle after adjustment cannot exceed the sum of the CAB in the cycle before adjustment. The county or State committee may approve an increase in the acreage base established for such crop in future crop years.

(2) If the sum of CAB's, plus double cropping history, exceeds the cropland, the operator will be given the opportunity to reduce one or more CAB's. If the operator fails to make such a reduction, such a reduction shall be made by the county committee. Producers must designate, in writing, the CAB's to be reduced before any current year participation in the ARP, or CRP is requested, reconstitution to the farm is requested, or crop acreage report is filed according to part 718 of this title. Producers shall not reduce the CAB below the amount of the CAB that is designated for the CRP according to part 704 of this title, and the CAB's shall not be reduced below the cropland acreage.

(d)(1) For the 1994 through 1997 crops of upland cotton, and the 1994 and 1995 crops of rice, producers may increase individual CAB's on the farm above the levels that would otherwise be established under § 1413.24 in order to restore the total of the upland cotton CAB's on the farm for the 1994 through 1997 crop years, and the 1994 and 1995 total of the rice CAB's on the farm to the same level as the total of CAB's on the farm for the 1990 crop year, if the county committee determines:

(i) A producer of upland cotton or rice was required to reduce one or more individual CAB's on the farm during the 1991 crop year because of CAB's exceeding cropland in order to comply with § 1413.24(e) for establishing bases for upland cotton and rice; and

(i) The producers on the farm have participated in the production adjustment program during the 1991 crop year and each subsequent crop year through the current crop year.

(2) Producers affected by this method of calculation may request that the county committee adjust the rice and cotton CAB's on a farm to the higher of the preceding 3-year average or the preceding 5-year average.

(3) To determine the adjustment, county committees may:

(i) Calculate a 5-year average;

(ii) Compare the 5-year average to the current 3-year average;

(iii) Adjust the CAB to equal the 5-year calculation if the 5-year calculation is higher than the 3-year calculation.

(4) Such eligible producers may appeal:

(i) The 3-year calculation of upland cotton and rice CAB's each year,

(ii) No later than the final date as shown on Form ASCS–476, Notice of Bases and Yields.

§ 1413.27 Conservation compliance CAB exchanges.

CAB's established in accordance with § 1413.24 may be adjusted on a one-time basis by the county committee to increase the high residue CAB's on the farms, with an offsetting decrease in the low residue CAB's on the farm, so that producers can plant in compliance with the approved conservation plan for the farm.

§§ 1413.28–1413.29 [Reserved]

§ 1413.30 Reconstitution of farms.

(a) Farms shall be reconstituted in accordance with part 719 of this title.

(b) The yield established by the county committee for any crop on a farm resulting from a combination of farms or portions of farms shall not, except for rounding, exceed the weighted average of the applicable yields established for the component portions of such farm.

(c) The yield established by the county committee for any crop on a farm resulting from a division of a farm shall not, except for rounding, exceed the applicable yields established for the parent farm before the division of such farm.

(d) In determining the weighted average yields determined in accordance with paragraphs (b) and (c) of this section, the CAB for the farm for the current year shall be used.

(e) The actual yield established for ELS cotton for a farm resulting from a combination of farms or portions of farms shall not, except for rounding, exceed the weighted average of the applicable yields established for the component portions of such farm.

(f) The weighted average of the actual yield established for ELS cotton for a farm resulting from a division of a farm shall not, except for rounding, exceed the applicable yields established for the parent farm before the division of such farm.

(g) The IAM for a crop established in accordance with § 1413.18 for a farm shall be divided among the farms resulting from the division of such farm in proportion to the CAB for such crop established for each resulting farm. However, such division may be modified in order to more fairly reflect the cropping history of the land in such resulting farms in accordance with part 719 of this title. The sum of the IAM's established for any crop for a farm resulting from a division of a farm shall equal, except for rounding, the IAM established for the parent farm before the division of such farm.

§ 1413.31 Notice of CAB's and yields.

(a) The operator and all producers on a farm shall be notified in writing of the CAB's, yields and IAM's that are established for the farm, unless such operator or producer has on file in the county office a request in writing that such operator or producer not be furnished with the notice.

(b) Representatives of the county committee may correct errors that resulted in incorrect yields and CAB's on form ASCS–476, Notice of Acreage Bases, Yields, Allotments and/or Quotas, and use the correct entry for program crops enrolled in a production adjustment program for all the current crop year calculations unless the county committee determines, with State committee representative approval, that both of the following situations apply:

(1) The error was not so great that the producer should have noticed the error;

(2) The producer, relying on the erroneous ASCS–476 notice and acting in good faith:

(i) Materially changed plans because of the erroneous form ASCS–476, and

(ii) Was not notified by the county committee in time to comply with the corrected form ASCS–476 without suffering a loss.

(c) County committees shall use the correct entry for all purposes for nonparticipating program crops.

Subpart F—Extra Long Staple Cotton Crop Acreage Bases and Yields

§ 1413.34 ELS cotton counties.

(a) ELS cotton means any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified by CCC:

(1) American-Pima;

(2) Sea Island;

(3) Sealand;

(4) All other varieties of the Barbadense species of cotton, and any hybrid thereof; and

(5) Any other variety of cotton in which one or more of these varieties predominate.

(b) (1) An annual review of counties designated as suitable for the production of ELS cotton will be conducted. Counties in which ELS cotton is currently being grown and for which a roller-type gin is available will be designated or redesignated, as appropriate. For 1991–1995 such counties are:

(i) Alabama: Butler and Monroe;

(ii) Arizona: Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, and Yuma;

(iii) California: Fresno, Imperial, Kern, Kings, Madera, Riverside, and Tulare;

(iv) Florida: Alachua, Escambia, Hamilton, Jefferson, Madison, Marion, Santa Rosa, Suwannee, and Union;

(v) Georgia: Berrien, Brooks, Cook, Early, and Thomas;

(vi) Mississippi: Bolivar, Carroll, Coahoma, DeSoto, Hinds, Holmes, Humphreys, Issaquena, Lafayette, Leflore, Madison, Panola, Quitman, Sharkey, Sunflower, Tallahatchie, Tunica, Warren, Washington, and Yazoo;

(vii) New Mexico: Chaves, Dona Ana, Eddy, Hidalgo, Luna, Otero, and Sierra;

(viii) Texas: Andrews, Atascosa, Bee, Bexar, Borden, Brewster, Cochran, Culberson, Dawson, Dimmit, El Paso, Frio, Gaines, Hockley, Hudspeth, Jeff Davis, Kinney, La Salle, Loving, Lynn, Medina, Pecos, Presidio, Reeves, Refugio, Terry, Uvalde, Ward, Yoakum, and Zavala.

(2) Additional counties may be designated by CCC during the year as deemed appropriate, and a list of these counties will be available in State and county ASCS offices.

§ 1413.35 ELS cotton CAB's.

The CAB established for a crop of ELS cotton on a farm shall be the average of the planted and considered planted acreages, according to §§ 1413.10 and 1413.11, for ELS cotton for the 3 years immediately preceding the year prior to the current year. A county must have an ELS cotton designation before ELS cotton CAB's can be established.

§ 1413.36 ELS cotton crop program payment yields.

(a) For ELS cotton, the crop program payment yield in pounds per acre for the current year shall be the average of the actual yields per harvested acre for the farm for the 3 preceding years, adjusted as follows:

(b)(1) If no acreage of the crop was grown on the farm for a year, a yield for the crop shall be assigned by the county committee for the farm for such year based upon the actual yields for at least 3 similar farms in the county or surrounding area.

(2) The county committee may consider an assigned yield for ELS cotton as an actual yield, but may assign a yield for any year only if:

(i) Zero acreage was reported; or

(ii) Zero acreage was not reported, but evidence indicates that a cotton crop was not planted on the farm for the year involved.

(c) If any yield in the 3-year period preceding the current year is affected adversely as the result of a natural disaster or other condition beyond the producer's control, the county committee may temporarily adjust the yield for any such year upward to no more than the simple average of the highest 4 actual yields of the most recent 5 years.

(d) A report of ELS cotton production is required to determine the actual yield per harvested acre. The actual yield for ELS cotton shall be computed by dividing the total production by the total acreage harvested for lint, rounded to the nearest pound. Such acreage is the planted acreage, unless a smaller acreage is reported as harvested. If the total of such planted acreage is not harvested by the producer, the actual yield for such acreage shall be zero.

(e) If the planted acreage of ELS cotton on the farm is significantly less than the normal planting on the farm and the county committee determines that the reduction in planted acreage caused the ELS cotton yield on the farm to be unreasonably high, then the county committee may reduce the yield for the crop.

§ 1413.37 Submitting ELS cotton production evidence.

(a) Production evidence for ELS cotton shall be submitted according to § 1413.19 by a final date:

(1) Established by the State ASC Committee,

(2) Which shall be no later than April 1 of the crop year following the current crop year.

(b) Production evidence for ELS cotton shall be certified on either form ASCS–658–1, Certification of Deliveries to Handlers, or form ASCS–503, Identification of Cotton Production, at the option of the county committee.

Subpart G—Program Options for Program Crops

§ 1413.41 0/85/92 provisions for wheat and feed grains.

(a) *0/85.* If an ARP is in effect for the 1994 and 1995 crops of wheat and feed grains and producers file form CCC–477, Intention to Participate in the Price Support and Production Adjustment Programs, for such a crop with the county ASCS office and such

producers devote a portion of the maximum payment acres for wheat and feed grains equal to more than 15 percent of such acreage to conservation uses; such producers shall be eligible to receive deficiency payments on such portion of the maximum payment acres in excess of 15 percent of such acreage devoted to conservation uses at a per bushel rate that will be established by the Secretary, except that the rate may not be established at less than the projected deficiency payment rate.

(b) *Exceptions to 0/85.* (1) In the case of each of the 1994 and 1995 crops of wheat and feed grains, producers on a farm shall be eligible to receive deficiency payments for such crops not to exceed 92 percent of the maximum payment acreage, if an ARP is in effect for the crops, and

(i) Producers have been determined to be prevented from planting the crop, or have a reduced yield of a program crop on a farm because of a natural disaster, and such producers elect to designate such prevented planted or reduced yield acreage as CU for payment for such crop and devote more than 8 percent of the wheat or feed grains acreage to CU for payment; or

(ii) Producers elect to devote a portion of the maximum payment acres for wheat and feed grains in excess of 8 percent of such maximum payment acres to minor oilseeds and IOC's.

(2) If producers elect to devote a portion of the maximum payment acres for wheat and feed grains in excess of 8 percent of the maximum payment acres to a combination of minor oilseeds, IOC's, and CU for payment, a weighted average amount of between 8 percent and 15 percent of the maximum payment acres shall be determined by:

(i) Multiplying 92 percent times the minor oilseed and IOC acreage divided by the total of the minor oilseed, IOC, and CU for payment acreage; and

(ii) Multiplying 85 percent times the CU for payment acreage divided by the total of the minor oilseed, IOC, and CU for payment acreage.

(iii) The weighted average factor determined in paragraphs (b)(2)(i) and (ii) of this section shall be:

(A) Multiplied by the maximum payment acres; and

(B) Subtracted from the result of the maximum payment acres minus the total of the minor oilseed, IOC, and CU for payment acreage.

(3) Producers who have been determined to be prevented from planting the crop, or have reduced yields with respect to a program crop, and designate such acreage as CU for payment in accordance with paragraphs (b)(1)(i) and (ii) of this section, may plant such acreage to eligible minor oilseeds or IOC's.

(4) In order to receive deficiency payments with respect to such acreage, producers shall agree to forego eligibility to receive commodity price support loans and purchases under parts 1421 and 1427 of this chapter for the crop of a minor oilseed planted on the maximum payment acres according to paragraph (b)(1)(ii) and (2).

(5)(i) All or any portion of the acreage devoted to an IOC, minor oilseed, or other crop according to paragraph (b)(1)(ii) of this section may be subsequently planted during the same crop year to any oilseed, any IOC designated by CCC, or any other crop, except any fruit and vegetable crop (including potatoes and dry edible beans) not designated by CCC as an IOC; or a crop for which no substantial domestic production or market exists.

(ii) The planting of soybeans as a subsequently planted crop shall be limited to farms having an established history of double cropping soybeans following any other crop in at least 3 of the preceding 5 years.

(iii) Producers shall agree to forego eligibility to receive commodity price support loans and purchases under parts 1421 and 1427 of this chapter for the crop of the subsequently planted crop that is produced on a farm under this section.

§ 1413.42 50/85/92 program provisions for upland cotton and rice.

(a)(1) *50/85.* If an ARP is in effect for the 1994 through 1997 crops of upland cotton and the 1994 and 1995 crops of rice and producers file form CCC–477, Intention to Participate in the Price Support and Production Adjustment Programs, with the county ASCS office, and such producers devote a portion of the maximum payment acres for upland cotton and rice equal to more than 15 percent of such acreage to conservation uses:

(i) Such portion of the maximum payment acres in excess of 15 percent of such acreage devoted to conservation uses shall be considered to be planted to upland cotton or rice for the purpose of determining the acreage on the farm required to be devoted to conservation uses; and,

(ii) Producers shall be eligible for payments with respect to such acreage at a per pound rate that will be established by the Secretary, except that the rate may not be established at less than the projected deficiency payment rate.

(2) Producers shall be eligible for payments in accordance with paragraph (a)(1)(ii) of this section, except as provided in paragraph (c) of this section, if the acreage producers plant to upland cotton and rice for harvest, or the sum of the acreage planted for harvest plus the acreage credited as prevented planted under § 1413.121 equals at least 50 percent of the maximum payment acres for the farm.

(b) *Exceptions to 50/85.* (1) In the case of each of the 1994 through 1997 crops of rice and upland cotton, producers on a farm shall be eligible to receive deficiency payments for such crops in accordance with paragraph (a)(1)(ii) of this section if:

(i) An ARP is in effect for rice and upland cotton, and producers plant such crops of upland cotton or rice for harvest; and

(ii) The producers have been determined by the county committee to be prevented from planting such crops, or have reduced yields for such crops due to a natural disaster, and devote acreage to conservation uses; or

(iii) The producers elect to devote a portion of the maximum payment acres for rice and upland cotton equal to more than 8 percent of the rice or upland cotton acreage to IOC's.

(2) Acreages of upland cotton and rice that were subject to reduced yields or were prevented from being planted and are later devoted to CU for payment, in accordance with subparagraph (b)(1) (ii) and (iii) of this section, may be planted to IOC's.

(3) In order to receive payments under § 1413.101, producers shall agree to forego eligibility to receive a price support loan under part 1421 of this chapter if such loans are made available by CCC for a crop of sesame or crambe produced on the farm.

(c) *Quarantine.* If a quarantine has been imposed by a State or local agency on the planting of upland cotton or rice for harvest on farms in such State or County Office area, the following rules apply:

(1) The State committee may recommend to the Deputy Administrator, State and County Operations, that deficiency payments be made without regard to the 50 percent planting requirement under the provisions of this section to producers in the area who were required to not plant upland cotton and rice.

(2) In order for the quarantined acreage to be eligible for deficiency payments, the quarantined acreage must be devoted to eligible conserving use for payment acreage in accordance with § 1413.61.

§ 1413.43 Planting flexibility.

(a) With respect to the 1991 through 1997 crop years, producers may plant

for harvest on the established CAB, a commodity, which is other than the program crop for which the CAB was established and receive planted and considered planted credit for such program crop as the result of planting such other crop only if CCC has approved the planting of such other crop as provided in this part.

(b) Crops that may be planted for harvest on an established program CAB include the following:

(1) Any program crop;

(2) Any minor oilseed;

(3) Any industrial or other crop, including adzuki, fabin, lupin, and mung beans;

(4) Sugarcane, if the producer elects not to receive planted and considered planted credit for sugarcane;

(5) Nonparticipating ELS cotton; and

(6) Any other crop, except peanuts, tobacco, wild rice, trees, tree crops, nuts, and fruits and vegetables (including fruits and vegetables grown for seed or ornamentals), which include apples, apricots, arugala, artichokes, asparagus, avocados, babaco papayas, bananas, beans (except soybeans, adzuki, faba, and lupin), beets—other than sugar, blackberries, blueberries, bok choy, boysenberries, broccoli, brussel sprouts, cabbage, calabaza, cauliflower, celeriac, celery, chayote, cherimoyas, canary melon, cantaloupes, cardoon, carrots, casaba melon, cassava, cherries, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee, collards, cowpeas, crabapples, cranberries, crenshaw melon, cucumbers, currants, daikon, dasheen, dates, dry edible beans, eggplant, elderberries, endive, escarole, feijoas, figs, gooseberries, grapefruit, grapes, guavas, honeydew melon, huckleberries, jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leeks, lemons, lentils, lettuce, limequats, limes, loganberries, loquats, mandarins, mangos, marionberries, mulberries, murcotts, mustard greens, nectarines, olallieberries, onions, oranges, okra, olives, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pineapple, plantain, plumcots, plums, pomegranates, potatoes, prunes, pumpkins, quinces, radiochio, radishes, raisins, rapini, raspberries, rhubarb, rutabaga, santa claus melon, salsify, savory, shallots, spinach, squash, strawberries, Swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tomatillo, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yam, and yu choy, unless the crop has been approved by the county committee to be planted for green manure, haying (which includes silage, haylage, and green chop), or grazing.

(c) If producers plant fruits and vegetables on such acreage, according to paragraph (a) of this section, for green manure, haying, or grazing, such producers shall pay a fee to cover the cost of a farm visit, according to part 718 of this title, to verify that the crop has not been harvested. Each farm must be verified to ensure the crop has not been harvested.

(d) With regard to paragraphs (b)(1) through (b)(6) of this section, a list of the commodities that may not be planted on the program CAB's shall be available in the county ASCS offices.

(e) With regard to the CAB, except as provided in paragraphs (d) and (f) of this section, the quantity of CAB that may be planted to a commodity, other than the specific program crop, may not exceed 25 percent of the contributing crop's CAB.

(f) The total of the planted, prevented planted, and failed acreage of all participating crops shall not exceed the total of the permitted acreage for all participating crops on the farm.

(g) Nonprogram crops approved for prevented planting or failed acreage credit planted on flex acreage may be credited as flex for participating program crops.

(h)(1) Acreages that are flexed according to this section may be double cropped according to § 1413.24(e). State committees will establish beginning and ending flex dates for spring and fall program crops.

(i) The beginning date for the fall flex period shall be the normal planting date for fall planted program crops, and the ending date for the fall flex period shall be the normal harvest date for fall planted program crops;

(ii) The beginning date for the spring flex period shall be the normal planting date for spring planted crops, and the ending date for the spring flex period shall be the normal harvest date for spring planted program crops.

(2) Eligible flex acreage or ACR must be present on the farm from the time the program crop is normally planted until the program crop is normally harvested.

(i) The CAB for a crop shall not be increased using the flex provisions of this section.

(1) Planted and considered planted credit for all crops on a participating farm will be limited to the CAB for the crop.

(2) Crop acreage planted in excess of the permitted acreage for the crop shall be credited only for planted and considered planted credit to the contributing participating program crops from which the additional acreage was flexed.

(j) If, on January 1 of any calendar year, it is estimated by CCC that the national average price of soybeans during the subsequent soybean marketing year would be less than 105 percent of the nonrecourse soybean loan level, if soybeans were permitted to be planted on up to 25 percent of the program CAB, then the maximum program CAB that may be planted to soybeans may not exceed 15 percent of such acreage base.

(k) Producers of a program crop who are participating in the ARP for that program crop shall be allowed to plant such program crop in excess of the permitted acreage of the crop without losing loan, purchase, and payment eligibility for the crop if:

(1) The acreage planted to the program crop on the farm in excess of the permitted acreage does not exceed 25 percent of the CAB's on the farm for other participating program crops; and

(2) The producer agrees to a reduction in the permitted acreage for the other program crops produced on the farm by the quantity equal to the overplanting.

(l) Producers of an original program crop, who plant for harvest on the established acreage base of such original program crop, another program crop, and who are not participating in an ARP for such other program crop, shall be eligible for loans, purchases, or loan deficiency payments for such other program crop on the same terms and conditions as provided in a production adjustment program established for such other program crop.

(m) Producers shall be eligible to receive loans, purchases, or loan deficiency payments in the case of other crops for which CCC has announced the availability of such benefits, if the producers:

(1) Plant such other program crop in an amount that does not exceed 25 percent of the CAB established for the original program crop; and

(2) Agree to a reduction in the permitted acreage for the original program crop for the crop year.

Subpart H—Program Agreement and Enrollment Provisions

§ 1413.50 Requirements for program participation.

(a)(1) With respect to a crop for which an acreage reduction program is announced, eligible producers may enter into a CCC–477, Intention to Participate in the Price Support And Production Adjustment Programs, with CCC by executing and submitting such CCC–477 to the county ASCS office

where the records for the farm are maintained not later than a date specified in the announcement of the sign-up period for the acreage reduction and paid land diversion program. Producers may withdraw from a CCC–477 at any time up to the final reporting date for the enrolled crop.

(2) For a farm with both corn and grain sorghum CAB's, if the producer participates in the ARP for either corn or grain sorghum, such participation will constitute participation in both crops.

(3) For a farm with either a corn CAB or a grain sorghum CAB, if the producer participates in either corn or grain sorghum, such participation will constitute participation in both crops.

(b)(1) The producer must be an individual, entity, or joint operation that shares in the risk of producing the program crop produced in the current year, or shares in the proceeds thereof. The county committee shall determine who is an individual, entity, or joint operation in accordance with parts 1497 and 1498 of this chapter.

(2) A minor will be eligible to participate in the program only if one of the following conditions exists:

(i) The right of majority has been conferred upon the minor by court proceedings;

(ii) A guardian has been appointed to manage the minor's property and the applicable documents are signed by the guardian; or

(iii) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(c) The signup period determined and announced in accordance with paragraph (a) of this section may be extended for a producer or for all producers within a designated area under the terms and conditions announced by CCC in the event of the occurrence of a condition which is beyond the control of producers, if CCC determines that such an extension will not affect adversely the administration of the respective program.

§ 1413.51 Successors in interest.

(a) A succession in interest may be permitted to a CCC–477 if there has been a change in the operation of a farm, such as:

(1) A sale of the land;

(2) A change of operator or producer, including the change in a partnership that is a producer, that increases or decreases the number of partners;

(3) A foreclosure, bankruptcy, or involuntary loss of the farm after an advance payment; or

(4) A change in producer shares to reflect changes in the shares of the crop that were originally approved by the county committee on the CCC–477.

(b) If a change in producers occurs on a farm enrolled in a program in accordance with this part before the end of the ARP signup period, such new producers shall be considered to be successors in interest, if an advance payment has been made to the predecessor, unless such advance payment is refunded to CCC.

(c) A succession in interest on the CCC–477 is not permitted if CCC determines that the change results in a violation of the landlord-tenant provisions set forth at § 1413.107, or otherwise defeats the purpose of the program.

(d) All producers whose shares of the crop as listed on the CCC–477 have changed from the original CCC–477 are required to sign a revised CCC–477 by the earliest of:

(1) The date the crop is actually harvested;

(2) December 31 of the current crop year; or

(3) 15 days after the county committee was notified of the change in share amounts.

(e) When any producer of the crop on the farm (the predecessor) is succeeded by another producer (the successor), any payment which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the county committee agree is fair and equitable.

(f) Advance payments issued to the predecessor will be attributed to each successor based on:

(1) The successor's share of the crop; and

(2) The amount of advance payment issued to the predecessor for the crop.

(g) The successor shall assume responsibility for refunding any unearned payments issued to the predecessor, if such refunds are required under the CCC–477.

(h) If the predecessor and successor fail to agree on a revised CCC–477 and the predecessor:

(1) Has become unable to carry out the producer's responsibilities under the CCC–477, CCC may terminate the CCC–477 with respect to the predecessor and enter into a new CCC–477 with the successor;

(2) If the predecessor has not become unable to carry out the producer's responsibilities under the CCC–477, the contract may be terminated.

(i) In any case in which the amount of any payment due any successor producer has been paid previously to another producer, such payment shall not be paid to the successor unless it is recovered from the predecessor or payment to the successor has been authorized by the Deputy Administrator. If the predecessor refunds an advance program payment, such producer shall not be assessed interest in accordance with part 1403 of this chapter.

(j)(1) If payments are reduced on a farm for a predecessor in accordance with part 1497 of this chapter, such payments shall not increase because of a succession in interest.

(2) A succession in interest cannot increase the liability of CCC.

(k) The total amount of payments that a successor may be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949, as amended, for wheat, feed grains, upland and ELS cotton, rice and oilseeds may not exceed $50,000 for deficiency and land diversion payments, and $75,000 for marketing loan gains (except honey), loan deficiency payments (except honey), and emergency compensation (increased deficiency) payments, except as provided in paragraph (k) of this section.

§ 1413.52 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program determination made in accordance with this part shall:

(1) Not be entitled to payments under the crop program with respect to which the representation was made,

(2) Refund to CCC all payments received by such producer with respect to such farm and such crop program, and

(3) Be liable for liquidated damages in accordance with the terms of the CCC–477.

(b) With respect to programs conducted in accordance with this part, a producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the program,

(2) Made any fraudulent representation, or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to all farms and shall be liable for liquidated damages in accordance with the CCC–477. Such producer also shall be ineligible to receive program payments for the year

in which the scheme or device was adopted. If such action also is determined by CCC to be a scheme or device, a fraudulent representation or a misrepresentation of fact affecting a determination made in accordance with part 1497 of this title, the producer shall also be ineligible for program payments in the succeeding year.

§ 1413.53 Required acreage reduction.

(a)(1) The Secretary will announce:

(i) Whether an ARP is in effect for a crop year for a specific crop;

(ii) The percentage reduction to be applied to the CAB to determine the amount of required reduction; and

(iii) Other requirements of the program for the year.

(2) For wheat, feed grains, upland cotton and rice, the operator and each producer agree to devote to approved conservation uses an acreage of eligible land equal to the product of the acreage reduction factor announced by the Secretary, times the CAB.

(3) For ELS cotton, the acreage of eligible land devoted to conservation uses shall be determined by multiplying the product obtained by dividing the number of acres required to be withdrawn from the production of ELS cotton, by the number of acres authorized to be planted to ELS cotton under the limitation established by the Secretary, times the number of acres planted to such commodity.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the permitted acreage, which is the acreage base established for the crop minus the sum of the acreage required to be devoted to ACR in accordance with an ARP and any acreage which is required to be devoted to ACR in accordance with a land diversion program, plus any acreage planted in accordance with program provisions specified in § 1413.43;

(2) Devote to conservation uses, as prescribed in §§ 1413.60 through 1413.75, an acreage equal to the acreage determined in paragraphs (a)(2) and (3); and

(3) Otherwise comply with all program requirements.

§ 1413.54 Acreage reduction program provisions.

(a) The acreage reduction factor for the wheat, feed grains, upland and ELS cotton and rice programs are:

(1)(i) 1991 wheat, 15 percent;

(ii) 1992 wheat, 5 percent;

(iii) 1993 wheat, 0 percent; and

(iv) 1994 wheat, 0 percent.

(2)(i) For the 1991 crop:

(A) Corn, grain sorghum, and barley, 7.5 percent; and

(B) Oats, 0 percent;

(ii) For the 1992 crop:

(A) Corn, grain sorghum, and barley, 5.0 percent, and

(B) Oats, 0 percent; and

(iii) For the 1993 crop:

(A) Corn, 10 percent;

(B) Grain sorghum, 5 percent,

(C) Barley and oats, 0 percent; and

(iv) For the 1994 crop: corn, grain sorghum, barley, and oats, 0 percent.

(3)(i) 1991 upland cotton, 5 percent;

(ii) 1992 upland cotton, 10 percent;

(iii) 1993 upland cotton, 7.5 percent; and

(iv) 1994 upland cotton, 11.0 percent.

(4)(i) 1991 rice, 5 percent;

(ii) 1992 rice, 10 percent;

(iii) 1993 rice, 5 percent;

(iv) 1994 rice, 0 percent.

(5)(i) 1991 ELS cotton, 5 percent;

(ii) 1992 ELS cotton, 5 percent;

(iii) 1993 ELS cotton, 20 percent; and

(iv) 1994 ELS cotton, 15 percent.

(b) Targeted option payments shall not be available with respect to the 1991, 1992, and 1993 crops of wheat, feed grains, upland cotton, and rice.

(c)(1) Acreage designated as ACR under the 1991, 1992, and 1993 wheat, feed grain, upland cotton, and rice programs may not be devoted to oilseeds, industrial or experimental crops, to other program crops, to designated crops, or any other crop and must be devoted to approved uses as otherwise provided in this part.

(2) Acreage designated as CU for payment acreage under the "0/92" provisions of the 1992 through 1995 wheat and feed grains programs as provided in Section 1413.41 may be planted to sunflowers, rapeseed, canola safflower, flaxseed, and mustard seed ("minor oilseeds") and sesame and crambe. Such acreage may be doublecropped with other minor oilseeds, industrial or experimental crops, and other crops, except for any program crop or any fruit or vegetable crop. Soybeans may be doublecropped if the farm has an established history of doublecropping soybeans after any other crop in at least 3 of the preceding 5 years.

(3) Acreage designated as CU for payment acreage under the "50/92" provisions of the 1992 through 1995 upland cotton and rice programs may be planted to sesame and crambe.

(4) Acreage designated as CU for payment acreage under the "0/92" and "50/92" provisions of the 1992 through 1995 wheat, feed grains, upland cotton, and rice programs as provided in §§ 1413.41 and 1413.42 may not be planted to industrial, experimental, or other crops except as provided in paragraph (c)(2) of this section.

(d) Paid land diversion program payments:

(1) For the 1991 crop:

(i) Shall not be made available to producers of wheat,

(ii) Shall not be made available to producers of feed grains,

(iii) Shall not be made available to producers of upland cotton,

(iv) Shall not be made available to producers of ELS cotton, and

(v) Shall not be made available to producers of rice; and

(2) For the 1992 crop:

(i) Shall not be made available to producers of wheat,

(ii) Shall not be made available to producers of feed grains,

(iii) Shall not be made available to producers of upland cotton,

(iv) Shall not be made available to producers of ELS cotton, and

(v) Shall not be made available to producers of rice; and

(3) For the 1993 crop:

(i) Shall not be made available to producers of wheat,

(ii) Shall not be made available to producers of feed grains,

(iii) Shall not be made available to producers of ELS cotton,

(iv) Shall not be made available to producers of rice, and

(v) Shall not be made available to producers of upland cotton; and

(4) For the 1994 crop:

(i) Shall not be made available to producers of wheat,

(ii) Shall not be made available to producers of feed grains,

(iii) Shall not be made available to producers of upland cotton,

(iv) Shall not be made available to producers of ELS cotton, and

(v) Shall not be made available to producers of rice.

(e) With respect to the 1991, 1992, 1993, and 1994 crop years, in order to receive feed grain loans, purchases, and payments in accordance with this part and part 1421 of this title, producers of malting barley must comply with the acreage reduction program requirements of this part.

(f) With respect to the 1992 through 1995 crop years, production of black-eyed peas shall be allowed on upland cotton "50/92" acreage to the following restrictions:

(1) Production of such crop for harvest shall be approved only if State committees have authorized vegetables as a locally approved cover for green manure;

(2) Requests for planting black-eyed peas for harvest may be approved by county and State committees. In order for such request to be approved, producers must furnish a contract or similar agreement that specifies:

(i) The acreage to be harvested; and

(ii) The production shall be donated to a food bank or similar institution. Such agreement shall be signed by a representative of the food bank. In addition such representatives shall certify that the food bank received the commodity by notifying the county ASCS office in writing, and shall also certify that donations of black-eyed peas shall not be disposed of through cash sales.

(g) Producers may plant designated minor oilseeds and soybeans on 50 percent of the designated ACR acreage.

(1) If such designated crops are planted on ACR acreage, the amount of program deficiency payments that the producer is otherwise entitled to earn shall be reduced for each acre (or portion thereof), that is planted to the designated crop, by an amount equal to the program deficiency payment that would be made with respect to a determined number of acres of the crop.

(2) If producers are participating in an ARP for more than one crop, the amount of the payment reduction shall be determined by prorating such reduction based on the acreage of ACR reduced for such program crops.

§ 1413.55 Land diversion.

(a) The Secretary will announce:

(1) Whether a land diversion program is in effect for a crop year for a specific crop;

(2) The amounts payable to producers, which may be determined by the submission of bids by the producers for the contracts, in such manner as may be prescribed or deemed appropriate. In accepting contract offers, the extent of the diversion to be undertaken by the producers and the productivity of the diverted acreage shall be considered;

(3) Whether advance program payments will be available;

(4) Whether compliance with the land diversion requirement is required in order for the producer on the farm to be eligible for loans, purchases and payments for the crop; and

(5) Other requirements of the program.

(b) In order to be eligible for any land diversion payment, producers of the applicable crop or crops shall:

(1) Comply with all other program requirements for the crop;

(2) Devote to conservation uses, as prescribed in §§ 1413.60 through 1413.72, an acreage which is equal to the required diverted acreage.

(c) The total acreage to be diverted under such agreements in any county or local community shall be limited so as to not adversely affect the economy of the area.

Subpart I—Acreage Conservation Reserve and Conserving Use for Payment Provisions

§ 1413.60 Basic rules for ACR and CU for payment acreage.

Except as set forth in §§ 1413.67 through 1413.75, or as announced by the Secretary, ACR and CU for payment acreage which is designated in accordance with the provisions of §§ 1413.41, 1413.42, 1413.53 and 1413.54 must:

(a) Be eligible land in accordance with § 1413.61;

(b) Be devoted to approved cover or practices in accordance with the provisions of §§ 1413.63, 1413.64 and 1413.65;

(c) Not be grazed or harvested, except as provided in § 1413.66; and

(d) Be in compliance with the provisions of § 1413.67.

§ 1413.61 Eligible land for ACR and CU for payment designation.

(a) For 1992 and subsequent crop years, land designated as ACR and CU for payment acreage must:

(1) Meet the provisions of paragraph (b)(1) of this section, and

(2) Either of the provisions of paragraphs (b)(2) or (b)(3) of this section.

(b) ACR and CU for payment acreage must be cropland that:

(1) Meets the minimum size and width requirements of 5.0 acres and 1.0 chain (66 feet), respectively, except:

(i) One area per farm may be designated that is smaller than the requirements to complete the balance of required ACR or CU for payment;

(ii) Entire permanent fields may be designated for ACR or CU for payment that are less than 5.0 acres and 1.0 chain;

(iii) Contiguous and noncontiguous strips, including end rows, terraces, sod waterways, and filter strips, that are part of an approved conservation plan, which do not meet the minimum size (5.0 acres) and width (1.0 chain, 66 feet) may be designated as ACR or CU for payment if they average at least 33 feet in width; and

(iv) Contiguous and noncontiguous strips, including end rows, terraces, sod waterways, and filter strips, that are planted in a perennial cover and average at least 33 feet in width may be designated as ACR or CU for payment.

(2) Was planted or approved as prevented from being planted to a small grain, row crop, or other crop planted annually in either 1 of the last 5 years, or any year from 1985 to 1993; or

(3) Was cropland designated as ACR or CU for payment in any or all of the previous 5 years, or any year from 1985 to 1993.

(4) Cropland that was planted to trees may be designated as ACR, or CU for planted and considered planted credit for the crop year the trees were planted and the two following crop years if such land meets all other eligibility requirements.

§ 1413.62 Ineligible land for ACR or CU for payment designation.

Land designated as ACR or CU for payment acreage may not be land:

(a) That does not meet the eligibility requirements of § 1413.61; and

(b) That is designated:

(1) Under the Water Bank Program in accordance with part 752 of this title;

(2) Under the CRP set forth in accordance with parts 704 and 1410 of this title;

(3) As ACR acreage for another program crop;

(c) For which a deficiency payment is or could be made for the program crop;

(d) That is acreage credited to the crop in accordance with § 1413.100;

(e) That the producer does not have the authority to use, such as highway, railway, or other right-of-ways, airport buffer strips, or easements prohibiting production of crops;

(f) That is a converted wetland, as defined in part 12 of this title, land planted in violation of highly erodible land or wetland provisions, or highly erodible land, as defined in part 12 of this title, that does not have an approved conservation plan being actively applied;

(g) That the producer does not own, lease, or sharecrop;

(h) That is subject to a restrictive easement which prohibits its use for program crops.

(i) That is used as turn rows, end rows, or headlands, unless the land meets all the eligibility requirements in accordance with § 1413.61.

(j) That is going out of agricultural production in the current year, unless the county committee determines the land, without the program, would be planted to a program crop for harvest in the current year.

(k) That is credited for prevented planted or failed acreage unless the crop is eligible for harvest on ACR or CU for payment acreage.

(l) That was flooded or under water any time during the year, unless either of the following applies:

(1) before the flooding occurred, the land was planted to a cover crop, crop for harvest, or could have been planted in either the fall or spring to a crop for harvest in the current year;

(2) After being flooded, the land could be planted in the current year by the

final reporting date for spring-seeded crops.

§ 1413.63 Required cover crops and practices on ACR.

(a)(1) Producers participating in an ARP for a program crop shall plant or maintain an annual or perennial cover on at least 50 percent of the ACR acreage (or more at the producer's option) but not exceeding 5 percent of the CAB established for the crop.

(2) This requirement shall not apply to arid areas, including summer-fallow areas, as determined by CCC;

(3) If a producer elects to establish a perennial cover;

(i) And the cover is capable of improving water quality or wildlife habitat, CCC shall make available cost-share assistance of not more than 25 percent of the approved cost of establishing the cover, on acreage not to exceed 50 percent of the required ACR;

(ii) And the producer receives cost-share assistance with respect to the cover, the producer shall agree to maintain the perennial cover except as provided in paragraph (a)(3)(iii) of this section, and designate the acreage as ACR for a minimum of 3 consecutive years if ACR is required for the farm.

(iii) If cost share is received in a year, cost-share under the provisions of paragraph (a)(3)(i) of this section is not available on any other acreage on the farm during the maintenance lifespan of the practice, unless the cover failed, or the required perennial cover requirements increase in subsequent years.

(iv) And a producer receives cost-share benefits for establishing an approved cover, and the provisions of paragraph (a)(3)(ii) of this section are not met, such cost-share benefits received by the producer shall be refunded to CCC.

(4) A reasonable extension of time to establish the required cover may be granted if the county committee determines that the producer:

(i) made a good faith effort to meet the deadline for planting such cover; and

(ii) was prevented from meeting the deadline for reasons beyond the control of the producer.

(5) CCC may permit all or part of the acreage to be planted to any crop for ACR as may be authorized by CCC. Such list of authorized crops, if any, will be available in the county ASCS office.

(6) The perennial cover planted on ACR may be destroyed at the end of the third year if a fall-seeded crop is planted on the acreage.

(7) Residue from prior crops and clean till acreage is not considered as an eligible cover for meeting the requirements of paragraph (a)(2)(i) of this section.

(8) State committees shall establish a final seeding date for cover crops on ACR.

(9) The ACR acreage may be seeded in the fall to crops which are of a type that, when seeded in the fall in the county in which the farm is located, normally attain maturity in the next calendar year;

(10) Failure to establish a required cover crop shall be considered a maintenance default violation according to part 718 of this title.

(b) The ACR acreage may be tilled in the fall for spring planting and left bare only if approved in accordance with § 1413.65.

§ 1413.64 Nationally approved cover crops and practices for ACR and CU for payment acreages.

(a) The following are nationally approved cover crops and practices for ACR and CU for payment acreage:

(1) Annual, biennial, or perennial grasses and legumes, including sweet sorghums, sorghum grass crosses, and sudans, excluding soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, fruits, and vegetables.

(2) Barley, oats, rice, wheat, and other small grains, including volunteer stands in which one of the following apply:

(i) The seeds are planted or volunteered too late to reach the hard dough stage, so that clipping or any other disposal method is not required;

(ii) The crop is destroyed before reaching the disposition date according to part 718 of this title; or

(iii) The crop will remain standing in the field, according to paragraph (c) of this section.

(3) Crop residue from using "no till" or "minimum till" practices.

(b) If a producer elects to leave the crop standing in the field, the following requirements apply:

(1) A request to leave the crop standing shall be filed before the crop disposition date in accordance with part 718 of this title: and

(2) The producer shall pay a fee for such request, as specified in part 718 of this title.

(3) The crop may not be hayed or grazed, even if haying or grazing is approved for ACR and CU for payment.

(4) The crop must be destroyed mechanically or by natural deterioration, so no benefit can be derived from the grain.

(5) The crop must be destroyed by the date established by the State committee, and such date shall be no earlier than the beginning date for soil preparation for the succeeding year's crop.

(6) Destruction of the crop, either mechanically or by natural deterioration, must be sufficient to prevent the crop from being harvested or grazed and must leave sufficient residue and stubble to prevent wind and water erosion.

(c) Producers may plant designated minor oilseeds and soybeans on 50 percent of the designated ACR acreage;

(1) If such designated crops are planted on ACR acreage, the amount of program deficiency payments that are otherwise entitled to be earned shall be reduced for each acre (or portion thereof) that is planted to the designated crop, by an amount equal to the program deficiency payment that would be made with respect to a determined number of acres of the crop.

(2) If producers are participating in an ARP for more than one crop, the amount of the payment reduction shall be determined by prorating such reduction based on the acreage of ACR reduced for such program crops.

(d) Acreage designated as ACR under the 1994 wheat, feed grain, upland cotton and rice programs may be planted to IOC's.

§ 1413.65 Locally approved cover crops and practices for ACR and CU for payment acreage.

(a) Cover crops and practices that will protect the ACR and CU for payment acreage from wind and water erosion throughout the calendar year may be approved on a State or local basis as follows:

(1) The county committee, in consultation with the district conservationist of the SCS, may recommend the cover crop or practice.

(2) State committees shall approve such cover crops or practices after consulting with the State Soil Conservationist of the SCS, or, if applicable, the technical committee, to ensure that the practices shall sufficiently protect the land from wind and water erosion. State committee approval of such cover crops and practices shall include the conditions that the producer must meet in order for approval to be granted.

(b)(1) Practices installed in the current year or the two previous years that may be on ACR acreage include:

(i) Shrubs planted for any purpose;

(ii) Trees, if planted in the current year or two previous years;

(iii) Water storage developed for any purpose, including fish or wildlife habitat;

(iv) Permanent terraces, sod waterways, and filter strips used to reduce siltation in a stream or ditch, which may be installed at any time.

(2) For 1992 through 1995, the practices in subparagraph (b)(1) of this section are eligible for CU for payment acreage if installed in the current year or during the fall of the preceding year.

(3) The State committee shall establish and assess a fee as specified in part 718 of this title to cover the cost of a representative's farm visit to verify that the installed practice has been maintained.

(c) The cover crops or practices recommended shall not include:

(1) The growing of soybeans, and upland and ELS cotton.

(2) Fruits and vegetables for uses other than green manure, haying and grazing.

(3) The growing of wheat, feed grains, upland cotton, and rice, except such crops that meet the requirements of either paragraph (c) or (d) of this section.

(4) Control measures which are more costly to the producer than other similar alternatives normally accepted for the area.

(5) Control measures which are inconsistent with erosion control measures normally used on other cropland in the area.

(d) Crops of wheat, feed grains, upland cotton, and rice planted as cover on ACR or CU for payment are required to be close sown, unless a producer on a farm who elects to plant such crops:

(1) Files a request with the county committee to not close sow the cover;

(2) Pays a fee, as specified in part 718 of this title, to cover the cost of a farm visit to verify that such cover is not harvested, hayed, or grazed; and

(3) Ensures that the residue of a destroyed close sown program crop, as opposed to regrowth, will not be hayed or grazed after the end of the nonhaying and nongrazing period.

(e) Residue and stubble of destroyed program crops may be recommended as locally approved cover, provided that the crop residue, as opposed to regrowth, shall not be grazed after the end of the nongrazing period announced by the county committee in accordance with § 1413.66(a).

(f) The State committee shall establish the final seeding date for planting the cover and shall approve, after consulting the SCS State Conservationist regarding whether the crops or practices will sufficiently protect the land from weeds and wind and water erosion, appropriate crops planted or maintained as cover, including, as appropriate, native grasses and legumes or other vegetation.

(g) With respect to upland cotton CAB's enrolled in any of the 1994 through 1997 acreage reduction programs, production of black-eyed peas shall be allowed on CU for payment and up to 50 percent of the required ACR, subject to the following restrictions:

(1) Production of such a crop for harvest shall be approved only if the State committee has authorized vegetables as a locally approved cover for green manure;

(2) Producers furnish a contract or similar agreement that specifies:

(i) The acreage to be harvested; and

(ii) The production shall be donated to a food bank or similar institution; and

(3) Such agreement is signed by a representative of the food bank. In addition such representative shall certify to ASCS in writing:

(i) that the food bank received the commodity; and

(ii) the commodity has not been, or will not be, disposed of through a cash sale.

§ 1413.66 Use of ACR and CU for payment acreage.

(a) Haying and/or grazing of acreage devoted to conservation uses and designated as ACR and CU for payment shall be allowed, except for a consecutive 5-month period between April 1 and October 31 as established by the State committee. Locally approved covers shall not be hayed or grazed or used as green manure if such cover consists of program crops or mixtures containing program crops. Haying includes silage, forage, haylage, and green chop.

(b) Except as provided in paragraphs (a), (c) and (h) of this section, harvesting on ACR and CU for payment acreage is prohibited for all crops:

(1) In the current year; and

(2) After December 31 of the current year if the crop would normally mature and be harvested in the current year.

(c) Harvesting of a crop on ACR and CU for payment acreage may be permitted when:

(1) Both of the following rules apply:

(i) the crop matured in the preceding year; and

(ii) the county committee determines that the crop was not harvested because of adverse weather or other conditions beyond the producer's control, and the harvesting will be completed by the producer as soon as possible.

(2) IOC's or designated crops are planted on ACR and CU for payment acreage.

(d) ACR or CU for payment acreage that has been seeded with a nurse crop may be clipped, and the clippings removed, if both of the following rules apply:

(1) the clippings were destroyed and no value is derived from the clippings; and

(2) the producer pays the cost of a farm visit by representatives of the county committee to verify that the clippings were destroyed, and no value was derived from the clippings.

(e) Acreage that the producer has swathed before being designated as ACR or CU for payment may be designated as ACR or CU for payment if the producer pays an inspection fee in accordance with part 718 of this title, and representatives of the county committee witness the destruction of the hay production.

(f) Removing catfish, crayfish, and other fish for commercial purposes is prohibited during any period during which haying and/or grazing is prohibited in accordance with paragraph (a) of this section.

(g)(1) Land that has been converted to water storage uses shall be considered to be devoted to conservation uses and may be designated as ACR if the land had been planted to wheat, feed grains, cotton, rice, or oilseeds in at least 3 of the 5 years immediately preceding the conversion. The land shall be considered to be devoted to conservation uses for the period the land remains in water storage uses, but not to exceed 5 years subsequent to its conversion to water storage uses.

(2) The water stored on the land may not be ground water;

(3) The farm on which the land is located must have been irrigated with ground water in at least 1 of the last 5 crop years.

(4) Land converted to water storage uses may not be devoted to any commercial use, including commercial fish production.

(5) The ACR and CU for payment acreage may be used for noncommercial recreation, or temporary location of beehives. Fees may be charged for hunting and fishing.

(h) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Deputy Administrator may authorize, and prescribe conditions under which, on a county by county basis, ACR and CU for payment acreage may be used for haying or grazing, when abnormal weather conditions cause a critical shortage of hay and forage in the county, except that haying and grazing is not allowed with respect to:

(1) program crops;

(2) mixtures of crops containing program crops, and

(3) alfalfa that is or could be irrigated.

§ 1413.67 Control of erosion, insects, weeds, and rodents on ACR and CU for payment acreage.

(a) The farm operator shall use needed control measures in a timely manner to

control erosion, insects, weeds, and rodents on the ACR and CU for payment acreage.

(b) Control measures for weeds need only be sufficient to prevent the spread of weeds. These measures must be consistent with control practices normally carried out on similar cropland in the area. It is not intended that control practices be more costly to the producer than what is normal for the area.

(c) The county committee shall prescribe and require additional control measures upon a determination that those used by the producer are inadequate. When clipping or mowing to control weeds is prescribed, the county committee shall specify a time for clipping or mowing which is compatible with wildlife practices, but such time must be before the time such weeds form seeds.

§ 1413.68 Orchards.

Unless the State committee determines otherwise, the entire area of an orchard or nursery meeting the eligibility requirements specified in § 1413.61 is eligible to be designated as ACR if the trees were planted in the current year or fall of the previous year.

§ 1413.69 Land going out of agricultural production.

If the county committee determines that the designated ACR acreage may be devoted to a nonagricultural use during the current year, the operator must establish that the land, in the absence of the program, would have been planted to a program crop.

§ 1413.70 Wildlife food plots or habitat.

(a) Land devoted to wildlife food plots that meets requirements determined by the State committee, in consultation with wildlife agencies, is eligible to be designated as ACR acreage. Program crops may be grown on such acreage and small grains need not be disposed of by the disposal deadline. However, there must also be compliance with the requirements of § 1413.61.

(b) Land which is owned or operated by State or Federal agencies and which is planted to grain for wildlife for the agency is not eligible to be designated as ACR acreage.

(c) The State committee, after consultation with local wildlife agencies concerning areas to be planted for wildlife food plots or wildlife habitat on privately owned or operated farms, shall:

(1) Determine the recommended mixtures and practices on approved land devoted to soybeans in mixtures, ensuring that the mixture contains less than 30 percent soybeans on the total plant population;

(2) Establish standards for the maximum size and location of the wildlife food plots or wildlife habitat;

(3) Determine which crops on wildlife food plots may be cut and stacked on the wildlife food plots for use by wildlife in areas that are subject to winter snow conditions that make stacking such wildlife food desirable; and

(4) Establish fees to assess producers designating such wildlife food plots or habitat on ACR or CU for payment to cover the cost of a farm visit to verify that the cover is in compliance with program provisions, in accordance with part 718 of this title.

§ 1413.71 Insufficient ACR acreage.

(a) Before the final date for reporting crop acreage as provided in part 718 of this title, producers not having a sufficient amount of ACR to report may destroy crops on an acreage to designate all or part of the destroyed acreage as ACR acreage. The acreage must be eligible land as provided in § 1413.61. The acreage shall be devoted to an approved cover or practice in accordance with the provisions of §§ 1413.63, 1413.64, and 1413.65 as soon as practicable after destruction of the crop. Destruction of the crop does not nullify any failure to fully comply payment reduction that has already been determined in accordance with part 791 of this title.

(b) Producers on a farm who report insufficient ACR because they are unable to destroy program crop acreage according to paragraph (a) of this section, and have more than one participating crop on the farm shall select the crop or crops to be determined in violation of the program provisions.

§ 1413.72 Destroyed crop acreage.

Operators may substitute for the ACR acreage already designated and reported on form ASCS–578, acreages of small grains or row crops that were destroyed. However, with respect to such substitution of acreages, the following conditions are applicable.

(a) The operator must:

(1) Request the substitution in writing;

(2) Document such request on form ASCS–578;

(3) Agree that there will be no deficiency payment made with respect to the production from the substituted acreage;

(4) Agree that the substituted acreage shall not be used as planted and considered planted acreage for history purposes for such crop, and

(5) Agree that such acreage shall not be used for the establishment of future CAB's on the farm.

(b) The producer shall:

(1) Mechanically destroy the reclassified crop; or

(2) File a request at the time of reclassification to let the crop remain standing according to § 1413.64.

(c) The producer shall pay the cost of a farm visit by a representative of the county committee, according to part 718 of this title, to verify that the acreage has not been harvested.

(d) The land must be determined to be eligible as provided in § 1413.61; and

(e) The land must be devoted to an approved cover or practice in accordance with the provisions of §§ 1413.63, 1413.64, or 1413.65 as soon as practicable after the substitution.

(f) The substitution of acreages cannot be used to nullify a payment reduction as a result of the application of the failure to comply fully with provisions of part 791 of this title.

§ 1413.73 [Reserved]

§ 1413.74 Reduction in ACR.

(a) A producer whose payments under the feed grain, rice, upland and ELS cotton, or wheat programs may be reduced because of the application of the provisions with respect to the payment limitation as specified in accordance with part 1497 of this title may request a downward adjustment in the amount of acreage which is otherwise required to be devoted to conservation uses on the farm. The request shall be in writing and shall be filed with the county committee on form CCC–477A, Request for and Calculation of Reduced Acreage Conservation Reserve Requirement, and by the final reporting date for the crop. If such a producer is sharing in program payments with respect to farms in two or more counties, it shall be the producer's responsibility to furnish information concerning the producer's participation in the other counties to the county committee with which the application for the downward adjustment is filed.

(b) Any reduction in ACR acreage required under this section shall be computed by:

(1) Estimating the producer's total payments which would be received under the feed grain, rice, upland and ELS cotton, and wheat program on all farms, excluding crops which are enrolled in a program, but with respect to which deficiency payments are not paid,

(2) Determining the percentage by which the estimated total payments

must be reduced in order to comply with the payment limitation, and

(3) Multiplying such percentage by the number of acres in the producer's portion of the ACR acreage which is required for the farm or farms participating in the programs. When both land diversion and ARP's are in effect, the acreage required to be devoted to ACR in accordance with the ARP's shall be reduced to zero before the acreage to be devoted to ACR in accordance with the land diversion acreage is reduced.

(c) If the acreage reported on form ASCS–578 in accordance with part 718 of this title causes the projected deficiency payments to change by more than 5 percent, the CCC–477A must be revised. If the actual planted acreage of a crop is less than the acreage used to compute the reduced ACR for the crop because the producer was prevented from planting the crop, the required ACR reduction shall not be recalculated.

(d) If the producer is participating in the ARP on two or more farms, the producer may elect to have the reduction in ACR acreages under this program, but not under the land diversion programs, divided among the farms in such proportion as the producer may designate.

(e) If producers have interests in farms in more than one county, the county committee where the farm is administratively located shall be responsible for determining the required amount of reduced ACR, based on information provided by other county committees on such producers. The headquarters county committee shall notify other county committees of the amount by which the ACR requirement is reduced for each farm and each crop. If producers have interests in more than one State, the county committee shall contact the other county committees directly, or the applicable State committee if the county committee address is unknown.

§ 1413.75 Skip rows.

The acreage between rows of the crop planted in an established skip row pattern as defined in part 718 of this title is eligible for designation as either ACR or CU for payment if:

(a) The skip is at least the larger of 4 normal rows or 150 inches from plant to plant, and

(b) The land meets the requirements for eligible land as set forth in § 1413.61, except for the minimum size and width requirements.

Subpart J—Payment Provisions

§ 1413.100 Determination of farm program acreage.

(a) As a condition of eligibility for loans, purchases and payments in accordance with the provisions of this part, the operator must timely submit a report of acreage in accordance with part 718 of this title that lists all crops and land uses which are subject to the ARP agreement for all cropland on the farm for the crop year. Except as otherwise provided in this part, all acreage determinations shall be made in accordance with part 718 of this title.

(b) The operator shall designate, on the report of acreage filed in accordance with part 718 of this title, the priority order used to credit the acreage of crops designated for planted and considered planted credit and CU on the farm when there is one or more of the crops of wheat, feed grains, upland cotton, and rice. If the operator fails to so designate such acreages to such crops by the final reporting date established for the farm, the county committee shall allocate the acreage of crops designated for planted and considered planted credit and CU to such crops.

(c) On a farm, the sum of the acreage of crops designated for planted and considered planted credit and CU credited to the crop shall not exceed the difference between the CAB for the crop for the crop year and the sum of:

(1) The acreage of the crop planted for harvest;

(2) The acreage which the county committee determines, in accordance with § 1413.121, the producer was prevented from planting to the crop due to a natural disaster or similar condition beyond the producer's control; and

(3) The acreage which is designated as ACR for the crop.

(d) Separate corn and grain sorghum CAB's shall be calculated for the purpose of making deficiency payments in accordance with § 1413.105, and for planted and considered planted credit. Producers may plant any combination of corn and grain sorghum on the total of the combined permitted acreages for such crops.

(e) The sum of the corn and grain sorghum payment acres for each year, as determined in accordance with § 1413.104, shall be prorated to corn and grain sorghum based on the ratio of the maximum payment acreage for the individual crop of corn and grain sorghum, as applicable, to the sum of the maximum payment acreage for corn and grain sorghum established for each crop year.

§ 1413.101 General payment provisions.

(a) The payment of any amount which is due the operator or other producers on a farm shall be made only after the producers are determined to be in full compliance with the CCC–477 and applicable regulations.

(b) Except as otherwise provided in this part and in part 791 of this title, no payment shall be made for a farm or to a producer when there is failure to comply fully with the regulations set forth in this part.

(c) Subject to the provisions of the maximum payment limitation in accordance with paragraph (d) of this section and the payment limitation regulations found at parts 1497 and 1498 of this chapter, the total earned payment due each eligible producer shall be determined by multiplying the payment acreage times the program crop payment yield, times the payment rate, times the producer's share of the crop.

(d)(1) In accordance with section 1001 of the Food Security Act of 1985, as amended, the total amount of certain payments that a "person" may receive, in accordance with the programs set forth in this part, may not exceed the limitation of:

(i) $50,000 for deficiency and diversion payments; and

(ii) Except with respect to honey, $75,000 for marketing loan gains, loan deficiency payments, and emergency compensation payments (increased deficiency payments).

(2) The manner in which a "person" is determined for these purposes is set forth at parts 1497 and 1498 of this chapter.

(e) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the payment computed for the farm in accordance with the provisions of this section:

(1) Such payment or portions thereof shall not become available for any other producer; and

(2) The producer who declined payment, or the producer's successor in interest, may request payment no later than December 1 of the year payment is earned.

(f) A producer shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. A late payment charge may be assessed in accordance with the provisions of part 1403 of this title. Part 1403 of this chapter shall be applicable to all unearned payments.

(g) Whenever two or more individuals or entities are considered to be one person in accordance with the

maximum payment limitation regulations found at parts 1497 and 1498 of this chapter, the controlled substance regulations found at part 796 of this title, or affiliated persons in accordance with the highly erodible land and wetland conservation regulations found at part 12 of this title:

(1) Any payment issued to one such individual or entity in accordance with this part shall be considered a payment to all such individuals and entities; and

(2) Each individual or entity shall be jointly and severally liable for refunding the amounts of any unearned payments or overpayments in accordance with paragraph (f) of this section and for paying any liquidated damages applicable under the CCC–477.

(h) If a person, as determined under part 1497 of this title, is:

(1) A member of a partnership or joint venture that receives payments; and

(2) Has received total payments in excess of the payment limitation for the crop year, then the partnership or joint venture and the members thereof shall be jointly and severally liable for the amount of the overpayment.

(i) If a producer who signs a CCC–477 is subsequently determined by the county committee to have become deceased, missing, or incompetent, the CCC–477 shall be terminated and any person actions with respect to the producer's interest shall comply with the succession in interest provisions set forth in § 1413.51.

§ 1413.102 Advance payments.

(a) In order to receive an advance deficiency or diversion payment authorized for a crop:

(1) The operator and other producers on a farm must:

(i) Enter into an agreement with CCC to participate in the ARP and land diversion program, if applicable; and

(ii) Request the advance payment during the program enrollment period.

(2) The producers on the farm must not have been determined to be out of compliance with any of the requirements of the CCC–477 or the program at the time of payment.

(3) Each producer must be in compliance with the program payment limitation provisions set forth at parts 1497 and 1498 of this chapter; the controlled substance provisions at part 796 of this title; and the highly erodible land and wetland conservation provisions at part 12 of this title.

(b) Advance deficiency payments will be made for crops as announced by the Secretary and shall be computed using the intended acreages of the crop furnished by the operator during the enrollment period. The announcement will specify the rates, manner, and time of payment.

(c)(1) The provisions of § 1413.101 (a) and (b) are applicable to the amounts of any advance diversion or deficiency payments which are not earned by the producer. However, no late payment charge shall be assessed with respect to producers who have otherwise complied with the requirements of the program for the crop but have failed to refund to CCC the amount of the advance deficiency payments before the end of the marketing year for the crop when the final deficiency payment rate determined under § 1413.104(a) is zero or is less than the advance deficiency payment rate.

(2) In addition to the provisions of § 1413.101 (a) and (b), interest shall be charged on the amount of the advance payment if a producer obtains an advance deficiency or land diversion payment, or both, for a crop on a farm but does not comply with the requirements for any ARP or land diversion program required for the crop on the farm for the year. Interest shall be computed from the date of issuance of the payment to the earlier of the date such payment is refunded or the date of the first demand letter. The rate of interest shall be the rate of interest in effect for CCC commodity loans on the date of the issuance of the payment.

§ 1413.103 Established (target) prices.

(a) The established prices for the 1991 through 1995 crops and the 1996 and 1997 crops of upland cotton shall be as follows:

(1) Barley—$2.36/bu.
(2) Corn—$2.75/bu.
(3) Upland cotton—$0.729/lb.
(4) Grain sorghum—$2.61/bu.
(5) Oats—$1.45/bu.
(6) Wheat—$4.00/bu.
(7) Rice—$0.1071/lb.
(8)(i) 1991 ELS cotton—$0.996/lb.
(ii) 1992 ELS cotton—$1.058/lb.
(iii) 1993 ELS cotton—$1.057/lb.
(iv) 1994 ELS cotton—$1.02/lb.

(b) ELS cotton target price for the 1995 crop will be established as 120 percent of the loan rate for ELS cotton.

§ 1413.104 Deficiency payments.

(a) The deficiency payment rate for the 1991 through 1995 crops of ELS cotton and the 1991 through 1997 crops of upland cotton shall be the amount by which the established (target) price exceeds the higher of:

(1) The national average loan rate established for the crop; or

(2) The national weighted average market price received by producers for the crop during:

(i) The calendar year that includes the first 5 months of the marketing year for upland cotton; and

(ii) The first 8 months of the marketing year for ELS cotton.

(b) The deficiency payment for the 1994 and 1995 crops of wheat, feed grains (except as provided for malting barley producers in accordance with § 1413.110), and rice shall be the amount by which the established (target) price exceeds the higher of the:

(1) Lesser of:

(i) The national weighted average market price received by producers during the marketing year for the crop.

(ii) The national weighted average market price received by producers during the first 5 months of the marketing year for the crop (for barley, prices received by producers of barley sold primarily for feed) plus:

(A) 10 cents per bushel for wheat;

(B) 7 cents per bushel for corn, grain sorghum, barley, and oats; and

(C) 2.7 cents per pound for rice.

(2) Price support level determined for the crop. For wheat and feed grains, such level shall be that determined before any adjustments.

(c) For wheat and feed grains, whenever the Secretary announces a reduction in the price support level for a crop, the deficiency payment rate shall be increased by such amount as is determined necessary to provide the same total return to producers as if the price support level had not been reduced, taking into consideration payments made in accordance with paragraph (b) of this section. In such case, the amount of the deficiency payment rate, also known as emergency compensation payments, shall be the smaller of:

(1) The difference between the national average price support level for the crop before any adjustment by the Secretary and the national weighted average market price received by producers during the entire marketing year (for barley, prices received by producers of barley sold primarily for feed), or

(2) The difference between the national average price support level before any adjustment and the national average price support level after reduction by the Secretary.

(d) The individual farm program payment acreage for wheat, feed grains, upland cotton, and rice shall be the smaller of the maximum payment acres or the acreage planted to the crop on the farm for harvest within the permitted acreage of the crop for the farm. However, if the sum of the acreage of the crop planted for harvest and the optional flex acres planted to other

crops is less than the maximum payment acres for the crop, the farm program payment acreage may be increased, in accordance with §§ 1413.41 and 1413.42.

(e) The farm program payment acreage for ELS cotton shall be the acreage planted to the crop for harvest within the permitted acreage of ELS cotton established for the farm.

§ 1413.105 Timing and calculation of deficiency payments.

(a)(1) One hundred percent of the final projected deficiency payment for the crop, as determined in accordance with § 1413.104(b), reduced by the amount of any advance deficiency payment, will be made to producers of barley, oats, and wheat after December 1 of the year in which the crop is normally harvested. Any difference between the final projected deficiency payment and the actual final deficiency payment shall be made after July 1 of the year following the year in which the crop is normally harvested.

(2) Deficiency payments determined in accordance with § 1413.104 (a) and (b) will be made to producers of upland cotton and rice after February 1 following the year in which the crop is normally harvested.

(3) Seventy-five percent of the final projected deficiency payment for the crop, as determined in accordance with § 1413.104(b), reduced by the amount of any advance deficiency payment, will be made to producers of corn and grain sorghum after March 1 of the year following the year in which the crop is normally harvested. A final deficiency payment for the crop, as determined in accordance with § 1413.104(b) and reduced by the amounts of all previous advance and projected final deficiency payments will be made to producers of corn and grain sorghum after October 1 of the year following the year in which the crop is normally harvested.

(4) Deficiency payments determined in accordance with § 1413.104(a) will be made to producers of ELS cotton after May 15 following the year in which the crop is normally harvested.

(b) If applicable, the increased deficiency payments for feed grains and wheat calculated in accordance with § 1413.104(c) shall be made as soon as practicable after:

(1) July 1 following the year in which the crop is normally harvested for wheat, barley, and oats; and

(2) October 1 following the year in which the crop is normally harvested for corn and grain sorghum.

(c) If, with respect to each of the 1994 and 1995 crops of wheat, feed grains, and rice, and with respect to each of the 1994 through 1997 crops of upland cotton, 90 percent of the 1985 farm program payment yield exceeds the farm program payment yield for the farm established in accordance with § 1413.15, deficiency payments for such crops for each year shall be determined by multiplying the farm program acreage by 90 percent of the 1985 farm program payment yield by the deficiency payment rate. Such payments shall be made at the same time and in the same manner as deficiency payments are made to the producer.

(d)(1) For the 1994 crops of wheat, feed grains, upland cotton, and rice, if an acreage reduction limitation program is in effect, CCC shall make available 50 percent of the projected final deficiency payments made in accordance with § 1413.104 as an advance payment to producers in the manner determined and announced by CCC.

(2) For the 1995 crops of wheat, feed grains, and rice, and the 1995 through 1997 crops of upland cotton, if an acreage reduction limitation program is in effect, CCC shall make available 40 percent of the projected final deficiency payments, made in accordance with § 1413.104, as an advance payment to producers in the manner determined and announced by CCC.

§ 1413.106 Division of payments.

(a) Each producer on a farm shall be given the opportunity to participate in the program for a crop and receive program benefits in proportion to such producer's interest in the program crop on the farm or the interest such producer would have had if the crop had been produced. The name of all such producers shall be listed on the CCC–477. Federal agencies can earn no program payments, but any shares to which such agencies would otherwise be entitled, shall also be shown on the CCC–477 as though the agencies were earning them. The sum of the percentage shares of the program payment shall equal 100 percent.

(b)(1) For the 1994 and subsequent years, each producer's share of the farm program payment for a crop shall be based on the following:

(i) Producers are required to provide a copy of their written lease to the county committee, and, in the absence of a written lease, must provide to the county committee the terms and conditions of any oral agreement or lease.

(ii) A lease will be considered a cash lease if the lessor receives only a sum certain cash payment, or a fixed quantity of the crop (for example, cash, pounds, or bushels per acre), according to paragraph (b)(3) of this section.

(iii) If a lease contains provisions that require the payment of rent on the basis of the amount of crop produced or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, such agreement shall be considered to be share lease.

(iv) If a lease provides for both a cash payment and/or a share of the crop or production, the county committee will determine a normal cash lease amount by crop for the area. If the guaranteed production or cash lease payment is equal to or exceeds the normal cash lease established by the county committee for the area, then the lease shall be considered to be a cash lease.

(v) If the lease is determined to be a cash lease, the landlord is not eligible to receive disaster or deficiency payments in accordance with this part, or price support loans in accordance with part 1421 of this title, on such part of the crop.

(vi) If the cash guaranty is less than the normal cash guaranty for the area, the lease shall be determined to be a share lease.

(2) Deficiency payments shall be divided by one of the following rules:

(i) According to each producer's share of the expected production of the planted program crop or the way the production would have been shared if such crop had been planted;

(ii) According to each producer's share of planted crop or the way the crop would have been shared if the crop had been planted;

(iii) After considering the share of the program crop acreage planted for harvest and the acreage designated as ACR, or conserving use acreage, according to § 1413.61, designated as the planted program crop; or

(iv) According to the share of the program crop payment acreage instead of the shares of the planted program crop.

(3) The division of program payments according to paragraph (b)(2) of this section must be fair and equitable to all producers.

(4)(i) For hybrid seed corn growers with a contract with a seed corn company, only those operations not unique to the production of hybrid seed corn will be considered when making determinations as to contributions by a seed company that would reduce the grower's share. Items common to normal production that will be considered in determining contributions by the producer are:

(A) Land;

(B) Equipment;

(C) Capital;

(D) Active personal labor;

(E) Active personal management in cultural practices and production services not unique to hybrid seed corn production; and

(F) The risk in growing the crop, including crop insurance, compensation guarantees, and grower incentives for producing sellable corn seed.

(ii) Program payments shall be made to a seed corn company only if such company requests payment and is determined to be an eligible producer in accordance with the regulations set forth in this part.

(5) Operations or inputs designated as unique to the production of hybrid seed corn shall include, but not be limited to:

(i) Providing seed;

(ii) Specialized harvesting;

(iii) Detasseling;

(iv) Roguing;

(v) Paying crop insurance premiums;

(vi) Providing special pesticides;

(vii) Specialized drying;

(viii) Application of special pesticides;

(ix) Pollination enhancement; and

(x) Split planting reimbursement.

§ 1413.107 Provisions relating to tenants and sharecroppers.

(a) Program payments shall not be approved for the current year if it is determined that any of the conditions specified below exist:

(1) The landlord or operator has not given the tenants and sharecroppers on the farm an opportunity to participate in the program;

(2) The number of tenants and sharecroppers on the farm is reduced by the landlord or operator below the number on the farm in the year before the current year in anticipation of or because of participating in the program, except that this provision shall not apply to the following:

(i) A tenant or sharecropper who leaves the farm voluntarily or for some reason other than being forced off the farm by the landlord or operator in anticipation of or because of participating; or

(ii) A cash tenant, standing-rent tenant, or fixed-rent tenant unless:

(A) Such tenant was living on the farm in the year immediately preceding the current year, or

(B) At least 50 percent of such tenant's income was received from farming in the immediately preceding year;

(3) There exists between the operator or landlord and any tenant or sharecropper, any lease, contract, agreement, or understanding required or unfairly exacted by the operator or landlord which was entered into in anticipation of participating in the program the effect of which is:

(i) To cause the tenant or sharecropper to pay to the landlord or operator any payments earned by the person under the program,

(ii) To change the status of any tenant or sharecropper so as to deprive the person of any payments or other right which such person would otherwise have had under the program,

(iii) To reduce the size of the tenant's or sharecropper's producer unit, or

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper;

(4) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC.

(b) If a landlord or operator has reduced the number of tenants from the preceding year, the landlord or operator may still participate in the current year's ARP if:

(1) The reason for the reduction of tenants or sharecroppers was either:

(i) The landlord or operator purchased the farm for the current year; or

(ii) The tenant's lease expired, and the tenant has no further rights to the farm; and

(2) The county committee determines that the landlord or operator has the necessary means, such as knowledge, equipment, and financing to conduct the farming operation. The county committee shall not consider custom farming as a necessary means to conduct the farming operation.

(c) Notwithstanding any other provision of this section, landlords or operators who in the past had tenants or sharecroppers on their land for purposes of producing the program crop and such individuals are not classified as employees subject to the minimum wage provisions under the Fair Labor Standards Act, may pay these individuals on a wage basis and will not be considered as reducing the number of tenants or sharecroppers.

(d) County committees shall use information obtained from tenants and sharecroppers to determine that violations have not occurred.

§ 1413.108 Offsets and assignments.

(a) *Producer indebtedness and claims.* Except as provided in paragraph (b) of this section, any payment or portion thereof due any person shall be allowed without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to such payments.

(b) *Assignments.* Any producer entitled to any payment may assign any such payments which are made in cash in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1413.109 Payments by commodities and commodity certificates and refunds.

(a) Payments under the programs authorized by this part may be made in the form of commodities or commodity certificates in accordance with part 1470 of this chapter.

(b) Whenever it is determined in accordance with § 1413.101 that a producer was overpaid or received payments that were not earned, and such payments were in the form of commodities or commodity certificates, the producer shall refund the amount of the overpayment either by returning commodity certificates in an amount equal to the overpayment or by making cash payments to CCC.

§ 1413.110 Malting barley.

(a) Except in counties where the State committee determines, with the concurrence of the Deputy Administrator, that malting barley is produced, an assessment for each of the 1991 through 1995 crop years will be levied on producers of malting barley who are participating in the price support and production adjustment program established for a crop of barley. The final deficiency payment for barley will be reduced by the amount of the assessment.

(b) The assessment per bushel will be the smaller of:

(1) 5 percent of the:

(i) State weighted average market price of malting barley produced on the farm, in those States where average market prices are available from NASS, or

(ii) The national average market price in all other States, or

(2) The final deficiency payment rate.

(c) The assessment will be calculated on the total production with respect to which deficiency payments are to be made unless a producer furnishes acceptable proof in accordance with § 1413.19 that:

(1) All production failed or was used for feed purposes, for which the producer will receive the full deficiency payment with no assessment.

(2) Part of the production failed or was used for feed purposes, and part of the production was sold for malting purposes, such assessment will be calculated on the production sold for malting purposes.

(d) If the producer does not certify to the use of the barley before receiving the final deficiency payment made based on the 5-month average market price and the assessment is deducted, a certification of the use of barley made in accordance with paragraph (c) of this section may be accepted by CCC by the later of:

(1) September 1 of the year following the year of production; or

(2) 30 days after redemption or forfeiture of barley under CCC loan.

(e) If the producer certifies and furnishes acceptable proof in accordance with paragraph (d) of this section, the payment shall be recalculated and a supplemental payment issued when applicable.

Subpart K—Prevented Planted and Failed Acreage Credit

§ 1413.121 Disaster credit.

(a)(1) This section applies for prevented planted or failed acreage of a crop if the county committee determines the crop could not be planted or production was not normal because of:

(i) Damaging weather including drought, excessive moisture, hail, earthquake, freeze, tornado, hurricane, typhoon, volcano, excessive wind, excessive heat, or a combination thereof; or

(ii) Related conditions of insect infestation, plant disease, or other deterioration of a crop, including aflatoxin, that is accelerated or exacerbated naturally because of damaging weather occurring before or during harvest.

(2) FCIC established final planting dates, made in accordance with part 400 of this title, will be used to determine prevented planting of a crop and whether the producer was prevented from replanting failed acreage.

(b) In order to obtain failed acreage credit or prevented planting credit, the operator must file an application for disaster credit on form ASCS–574, Application for Disaster Credit. For prevented planted credit, the operator shall:

(1) File such application with the county committee for all crops affected by a natural disaster condition within 15 calendar days after such disaster occurs;

(2) File form ASCS–578, Report of Acreage, according to part 718 of this title;

(3) Have attempted to plant the crop for which the prevented planted credit is requested;

(4) Not have designated such acreage as ACR, conserving use for payment, or conserving use for planted and considered planted credit except as designated according to §§ 1413.41 and 1413.42; and

(5) Not have later planted an acreage of the same crop in the same program year for which the ASCS–574 is filed. If such acreage of the crop is later planted, the ASCS–574 will be canceled for this planted acreage.

(c) County committees shall limit or not limit approved prevented planted acreages of a crop:

(1) If the crop is enrolled in an ARP, the prevented planted acreage approved shall not exceed the permitted acreage of the crop, plus available flex acreage from other crops enrolled in an ARP in accordance with § 1413.43;

(2) If the acreage on a farm is enrolled in an ARP but the crop is not enrolled, the prevented planted acreage approved is unlimited;

(3) If the acreage on a farm is not enrolled in an ARP, the prevented planted acreage approved is unlimited;

(4) If a cover crop is planted on the acreage that was prevented from being planted, or a cover crop is a small grain that was left standing past the disposition date in accordance with §§ 1413.64 or 1413.65, the county committee shall not approve form ASCS–574. If such cover crop and the crop that was prevented from being planted can normally be planted in a double cropping pattern in the area, in accordance with § 1413.24(e), the county committee may approve form ASCS–574.

(d) Prevented planting requests will not be approved unless all of the following provisions apply:

(1) Other producers in the area were prevented from planting the same crop or similar crops;

(2) All cropland feasible to plant the crop was affected by the disaster;

(3) Preliminary efforts made by the producer to plant the crop are evident, such as discing the land, or seed and fertilizer were delivered or arranged for; and

(4) The acreage was prevented from being planted because of a disaster rather than a managerial decision.

(e) If the county committee cannot approve the ASCS–574 for prevented planting without a representative's farm visit, a late-filed ASCS–574 can be approved only if:

(1) The cost of the farm visit to verify the disaster and determine the acreage involved is paid by the operator in accordance with part 718 of this title;

(2) The ASCS–574 contains sufficient information to determine that the prevented planting was because of a recognized disaster; and

(3) Evidence of the disaster is still apparent on the affected acreage.

(f) Producers who have had irrigation water rationed under one of the following conditions are eligible to apply for prevented planting credit:

(1) The irrigation water is withheld by a Government entity or water district and the producer is not compensated for such withholding by the entity or district;

(2) The irrigation water is withheld by a Government entity or water district, and the producer is compensated for such withholding by the entity or district;

(3) The producers use a combination of ground water supplied by a Government entity or water district and their own irrigation wells; and

(4) The producers must have been personally notified by the Government entity or water district that such irrigation water supply will be reduced.

(g) Producers who do not have their irrigation water rationed, but choose to sell or lease such water to a Government entity or water district, or have their irrigation water reduced because the Army Corps of Engineers released less water from containment dams under its jurisdiction are not eligible to receive prevented planting credit.

(h) Producers who apply for prevented planting credit because of water rationing shall supply the county committee with documentation to indicate:

(1) The amount of water reduction; and

(2) The normal water allocation received by the producer in past years.

(i) Producers who meet the eligibility requirements contained in paragraph (f) of this section may be approved to receive prevented planting credit equal to the percentage of water reduction times the permitted acres of the crop or crops. The percent of water reduction shall be the effective percentage of water reduction before the ending planting date for the crop, as determined by the county committee. Producers who use a combination of Government entity, water district, and their own well water will have the percentage reduction determined by the county committee. Only the amount of irrigation water normally supplied by the Government entity or water district will apply when calculating such reduction.

(j) Producers who have their water allocation permanently reduced or cut

and who are approved for prevented planting credit, shall receive such prevented planting credit for the affected crops only in the year in which the reduction occurred. Prevented planting credit for reduced irrigation shall not apply for subsequent years.

(k) To be eligible for failed acreage credit for a crop, the acreage must have failed by either of the following dates:

(1) Before the ending planting date for the crop and the producer was prevented from replanting the crop before the ending planting date for the failed crop; or

(2) After the ending planting date established in accordance with part 400 of this title.

(l)(1) Producers must apply for failed acreage credit for a crop on form ASCS–574 if the crop has been or will be destroyed before:

(i) The disposition date for small grains established in accordance with part 718 of this title, without the grain being harvested for barley, oats, rye or wheat;

(ii) The final reporting date for corn and grain sorghum established in accordance with part 718 of this title, without being harvested for feed benefits;

(iii) The final reporting date for cotton established in accordance with part 718 of this title, without lint being harvested from cotton; and

(iv) The hard dough stage established in accordance with part 718 of this title for rice.

(2) Form ASCS–574 must be filed for all crops affected by such disaster condition within 15 calendar days after the disaster occurred.

(m) If the crop is destroyed after the dates prescribed in paragraph (o) of this section, such crop meets the definition of a planted crop as provided in § 1413.10, and form ASCS–574 is not required to be approved by the producer to receive planted acreage credit for the crop.

(n) Form ASCS–574 must be filed and approved by the county committee if the crop is destroyed after the dates prescribed in paragraph (l) of this section, but before the crop could have been harvested.

(o) Form ASCS–574 must be approved by the county committee to be eligible for the failed acreage and prevented planting provisions in accordance with §§ 1413.41 and 1413.42.

(p) If such failed condition occurred before form ASCS–578 was filed for the crop, the producer shall file form ASCS–578 and form ASCS–574 within 15 calendar days after the date the abnormal condition occurred or was obvious, but before physical evidence of the crop is destroyed.

(q) If such failed condition occurred after form ASCS–578 was filed for the crop, the producer shall:

(1) Revise form ASCS–578 in accordance with part 718 of this chapter before the physical evidence of the crop is destroyed and the affected crop acreage is used for any purpose; and

(2) File form ASCS–574 in accordance with paragraph (l) of this section within 15 days after the date the abnormal condition occurred or was obvious.

(r) A request for failed acreage credit will not be approved if the county committee determines that the crop was not planted or cared for with an intention and realistic possibility of an economically feasible harvest.

(s) If the county committee cannot approve the ASCS–574 without a representative's farm visit, a late-filed ASCS–574 can be approved only if:

(1) The cost of the farm visit to verify the disaster and determine the acreage involved is paid by the operator in accordance with part 718 of this title;

(2) The ASCS–574 contains sufficient information to determine that the prevented planting was because of a recognized disaster; and

(3) Evidence of the disaster is still apparent on the affected acreage.

(t) County committees shall limit approved failed acreages of a crop:

(1) If the crop is enrolled in an ARP, failed acreages may be approved not to exceed the permitted acreage of the crop, plus other available flex acreage from other participating crops, in accordance with § 1413.106;

(2) If the acreage is on a farm enrolled in the ARP and the crop is not enrolled in an ARP, failed acreage of the crop that can be approved is unlimited; and

(3) If the acreage is on a farm that is not enrolled in an ARP, the amount of failed acreage of the crop that can be approved is unlimited.

(u) If form ASCS–574 is approved for a program crop as the first crop and it was not harvested because of prevented planted or failed conditions in paragraph (a) of this section, and the second crop is not an allotment or poundage quota crop, then the second crop shall not be considered planted for planted and considered planted credit, deficiency payments, or eligible for price support in accordance with parts 1421 and 1427 of this title. The producer may elect to receive planted acreage credit for the second crop, if the second crop is normally planted in a double cropping situation in the area after the first crop is harvested. The later crop acreage shall be considered planted to the second crop and is eligible for planted and considered planted credit, deficiency payments, and price support in accordance with parts 1421 and 1427 of this title.

(v)(1) Except for established practices of doublecropping as provided in § 1413.24, any later crop planted on such acreage shall not be considered to be planted for any purpose under the programs authorized by this part and parts 1421 and 1427 of this chapter regardless of the permitted acreage for such crop.

(2) If the program crop that failed was planted to a second crop in a skip row pattern, the second crop may be planted in a solid pattern.

(3) If skips in skip row cotton have been designated as conserving use for payment acreage in accordance with § 1413.61, the second crop can be planted in a solid pattern. The conserving use for payment acreage must be redesignated as an equal acreage within the field or field subdivision that was reported as skip row cotton in accordance with part 718 of this title.

§ 1413.122 Eligibility for regular prevented planting and reduced yield payments.

(a) Prevented planting payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and if prevented planting crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(b) Reduced yield payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and reduced yield crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(c) Prevented planting payments and reduced yield payments are authorized to be made to producers of wheat, feed grains, upland cotton, and rice only if:

(1) Such a producer has entered into a contract with CCC for the applicable crop of the commodity on a farm;

(2) The operator and all producers have been determined to be in compliance with such contract; and

(3) The operator of the farm submits a form ASCS–574 in accordance with § 1413.121, and also submits a report of production and disposition in accordance with § 1413.19.

(d) In addition to the requirements of paragraph (c) of this section, the county committee must also determine that the

operator and other producers were prevented from planting an eligible commodity or that the production of an eligible commodity on an acreage resulted in a reduced yield of such commodity because of a drought, flood, other natural disaster, or other condition beyond the control of the operator or other producer.

(e) Prevented planting and failed acreage payments shall be computed in accordance with § 1413.123.

§ 1413.123 Regular disaster payment computations.

(a)(1) The prevented planting payment rate is one-third of the established (target) price as provided for in § 1413.103.

(2) The acreage eligible for payment equals the smallest of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster, or other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the crop that was planted or prevented from being planted in the previous year;

(iii) For crops for which an acreage reduction requirement is in effect or on farms participating in a land diversion, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year; or

(iv) The acreage for which crop insurance under the Federal Crop Insurance Act is not available.

(3) Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm payment yield as provided in § 1413.15 times the prevented planting payment rate.

(b)(1) The reduced yield payment rate is one-third of the established (target) price for upland cotton and rice and one-half of the established (target) price for barley, corn, grain sorghum, oats, and wheat as provided in § 1413.103.

(2) Reduced yield payments shall be determined for each crop by multiplying the reduced yield payment rate times the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 1413.15, and subtracting the determined production for the eligible acreage therefrom.

(3) The production from any acreage shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with § 1413.15 and shall be added to the actual production for the purpose of determining eligibility for and the amount of reduced yield prevented planted and failed acreage payments; and

(ii) The farm program payment yield shall be used with respect to any acreage for which the production cannot be determined. However, if the county committee determines that the acreage was affected by a natural disaster, the farm program payment yield with respect to such acreage shall be the larger of 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 1413.15 or the actual average yield from the harvested acreage of the crop.

22. Part 1414 is revised to read as follows:

PART 1414—INTEGRATED FARM MANAGEMENT PROGRAM OPTION

Subpart A—General Provisions

Sec.

Subpart B—Agreement and Enrollment Provisions

Subpart C—Bases and Yields

Subpart D—Resource-Conserving Crop Provisions

Subpart E—Program Payments

Authority: 7 U.S.C. 5822.

Subpart A—General Provisions

§ 1414.1 General description of the program.

The regulations in this part set forth the terms and conditions for the Integrated Farm Management Program Option (IFM). The objectives of the IFM are to:

(a) Assist producers of agricultural commodities in adopting integrated, multiyear, site-specific farm management plans by reducing farm program barriers to resource stewardship practices and systems;

(b) Help producers improve and conserve soil and water on farms by converting land to resource conserving crop (RCC) rotations according to an approved IFM plan; and

(c) Not reduce farm program payments for producers participating in IFM as a result of planting a RCC as part of an RCC rotation on program crop payment acres.

§ 1414.2 Applicability.

The regulations in this part are applicable to the integrated Farm Management Program (IFM), for the 1994 and 1995 crops of wheat, feed grains, upland cotton and rice, and set forth the terms and conditions under which producers of these commodities may enter into agreements with the Commodity Credit Corporation (CCC) to qualify for program benefits under the IFM.

§ 1414.3 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.

The regulations set forth in part 12 of this title are applicable to this part.

§ 1414.4 Administration.

(a) The provisions of § 1414.4 of this chapter shall be applicable to this part, except as otherwise provided in this section.

(b) The Soil Conservation Service (SCS) shall provide technical assistance to the producer for planning and implementing the resource-conserving crop rotation, erosion control, water management, and water quality components of the plan, and shall provide such other technical assistance in the implementation of the IFM as determined necessary.

(c) The Extension Service (ES) shall coordinate the related information and education program concerning implementation of the IFM.

§ 1414.5 Performance based upon advice or action of county or State Committee.

The provisions of part 790 of this title with respect to performance based upon action or advice of any authorized

representative of the Secretary shall be applicable to this part.

§ 1414.6 Appeals.

The appeal regulations set forth in part 780 of this title are applicable to this part.

§ 1414.7 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. 35 and an OMB control number has been assigned.

§ 1414.8 Definitions.

The terms defined in part 1413 of this chapter and part 719 of this title shall be applicable to this part except as otherwise provided in this section.

Alternative crops means experimental and industrial crops grown in arid and semiarid regions that conserve soil and water, as determined by ASCS. Certain alternative crops are approved for RCC use for 1994.

Conservation plan means the document containing the decisions of producers with respect to the location, land use, tillage systems and conservation treatment measures and schedule of implementation. The conservation plan also includes plans which have been established on highly erodible cropland in order to control erosion on such land.

ES means the Extension Service, an agency of the United States Department of Agriculture which is generally responsible for coordinating the information and educational programs of the Department.

Farming operations and practices includes the integration of crops and crop-plant variety selection, rotation practices, tillage systems, soil conserving and soil building practices, nutrient management strategies, biological control and integrated pest management strategies, livestock production and management systems, animal waste management systems, water and energy conservation measures, and health and safety considerations.

Grass means perennial grasses commonly used for haying or grazing.

Highly erodible land means land that has an erodibility index of 8 or more.

Integrated farm management plan (plan) means a comprehensive, multiyear, site-specific plan that meets the requirements of § 1414.12.

Legume means forage legumes (such as alfalfa or clover) or any legume grown for use as forage or green manure, but not including any bean crop from which the seeds are harvested.

Resource conserving crop (RCC) means legumes, legume-grass mixtures, legume-small grain mixtures, legume-grass-small grain mixtures, and alternative crops, including such failed crop if the crop was planted in a timely, workmanlike manner and failed because of a natural disaster or other condition beyond the control of the producer.

Resource-conserving crop rotation means a crop rotation that includes at least one resource-conserving crop that reduces erosion, maintains or improves soil fertility and tilth, interrupts pest cycles, or conserves water.

SCS means the Soil Conservation Service, an agency within the United States Department of Agriculture which is generally responsible for providing technical assistance in matters of soil and water conservation and for administering certain conservation programs of the Department.

Small grain shall not include malting barley or wheat, except for wheat interplanted with other small grain crops for nonhuman consumption.

§ 1414.9 Acreage enrollment.

(a) To the extent practicable, the total acreage enrolled in the program shall be limited to no less than 3,000,000 and no more than 5,000,000 acres of cropland during each of the calendar years 1991 through 1997.

(b) Because of the limitation in paragraph (a) of this section, acreage will be allocated to States and will be available to participants on a first-come-first-served basis.

Subpart B—Agreement and Enrollment Provisions

§ 1414.10 Eligibility.

To be eligible to participate in the IFM, a producer must:

(a) Prepare a plan for approval by SCS;

(b) Actively apply the terms and conditions of the plan;

(c) Devote to a resource-conserving crop, on the average through the life of the agreement, not less than 20 percent of each crop acreage base (CAB) on a farm enrolled under such program;

(d) Comply with the terms and conditions of any annual acreage limitation program in effect for each CAB on a farm enrolled in the integrated farm management program;

(e) Keep such records as ASCS may require; and

(f) Timely submit a report of acreage in accordance with part 718 of this title that lists all crops and land uses which are subject to the agreement for all cropland on the farm for the crop year.

§ 1414.11 Agreements.

(a) A producer shall enter into an agreement with CCC for a period of not less than 3 years nor more than 5 years, which may be renewed upon mutual agreement between CCC and the producer.

(b) Eligible producers may offer to enter into an agreement for any or all CAB's on the farm with CCC by executing such agreement and submitting it to the county ASCS office where the records for the farm are maintained not later than a date specified in the announcement of the annual acreage reduction program.

(c) The agreement shall provide that producers on the farm must agree to devote to a resource-conserving crop, on the average through the life of the agreement, not less than 20 percent of each CAB on a farm enrolled under such program.

(d) The agreement shall provide that producers on the farm shall comply with the terms and conditions of any annual acreage reduction program in effect for each CAB on a farm contracted in IFM.

(e) The agreement shall contain such other provisions as CCC determines appropriate to carry out the program established by this part.

(f) The agreement shall provide for payment of liquidated damages and termination in the event that the operator or any other producers on the farm fail to comply with their obligations under the agreement.

(g) Approved agreements expiring by the crop year 1995 may be renewed once, at the option of the producer, in the crop year that such agreement expires for a period of 3, 4, or 5 years. Such agreements expiring after the 1997-crop year are not renewable.

(h) IFM agreements may be canceled by the producer before the end of the acreage reduction program signup period in the year the CCC–406 is signed.

(i) If a producer enrolls into the conservation reserve program for the current program year, in accordance with part 1410 of this chapter:

(1) The IFM agreement and the acreage reduction program agreement shall be canceled;

(2) A new IFM agreement may be filed within 15 calendar days after the date of notification to the producer of the revised CAB's, and

(3) Minimum required resource conservation crop acreage shall be recomputed using the effective CAB after the reduction of such CAB for participation in the conservation reserve program.

§ 1414.12 Integrated farm management plan.

(a) In implementing the provisions of this part, ASCS shall:

(1) Provide the producer and SCS:

(i) CAB information; and

(ii) The minimum required resource-conserving crop acreage.

(2) Provide the producer:

(i) The annual acreage reduction program options relative to program planning decisions, and

(ii) Assistance in evaluating acreage reduction program options in conjunction with the plan;

(3) Provide SCS a copy of the producer's report of acreage; and

(4) Provide SCS a copy of the farm's acreage reduction program agreement and IFM agreement approved by the county committee.

(b) In implementing the provisions of this part, ES shall provide:

(1) Assistance to the producer, as requested, in developing integrated pest management guidelines if they are part of the plan;

(2) Assistance to the producer, as requested, in collecting and analyzing soil tests and in developing nutrient management guidelines if they are part of the plan;

(3) Assistance to the producer, as requested, with farm management recordkeeping; and

(4) Advice for maximizing the utilization of IFM to their farm operation.

(c) In implementing the provisions of this part, SCS shall:

(1) Develop the plan with the assistance of the producer;

(2) Assemble the various components of the plan; and

(3) Provide technical assistance to the producer for planning and implementing the conservation plan, erosion control, water management, and water quality components of the plan;

(4) Spot check the plans to assure that the elements contained in the plan have been implemented and meet technical standards; and

(5) Assist the producer in revising the plan to address changes in farm operations.

(d) The plan will contain elements that address:

(1) The specific acreage and CAB's enrolled;

(2) Acreage and location of the resource-conserving crop for each year of the agreement;

(3) Scheduling practices for the implementation, improvement, and maintenance of the resource-conserving crop rotation;

(4) A description of the farming operations and practices to be implemented and the impact of those practices on:

(i) Maintenance or enhancement of the overall productivity and profitability of the farm;

(ii) Erosion, soil fertility, and soil physical properties;

(iii) Water supplies; and

(iv) Federal, State, and local requirements designed to protect soil, wetlands, wildlife habitat, groundwater, and surface water; and

(5) The coordination of all soil and water resource plans applicable to the enrolled acreage; and

(6) Other provisions as provided by this part.

§ 1414.13 Displacement of tenants or lessees.

(a) In addition to the regulations relating to tenants and sharecroppers as set forth in § 1413.107 of this chapter, agreements and plans that will result in the involuntary displacement of farm tenants or lessees by landowners through the removal of substantial portions of the farm from production of a commodity shall not be approved.

(b) In the case of any tenant or lessee who has rented or leased the farm (with or without a written option for annual renewal or periodic renewals) for a period of 2 or more of the immediately preceding years, the refusal by a landlord, without reasonable cause other than simply for the purpose of enrollment in the program, to renew such rental or lease shall be considered as an involuntary displacement in the absence of a written consent to such nonrenewal by the tenant or lessee.

§ 1414.14 Successors in interest.

(a) The successor in interest provisions of § 1413.51 of this chapter are applicable to this part, except as otherwise provided in this section.

(b) Successors not wanting to continue participation in IFM may terminate the IFM agreement without the assessment of liquidated damages, after the year in which the succession occurs.

§ 1414.15 Misrepresentation and scheme or device.

The misrepresentation and scheme and device provisions set forth in § 1413.52 of this chapter are applicable to this part.

Subpart C—Bases and Yields

§ 1414.21 Bases and yields.

CAB's or farm program payment yields shall not be reduced as a result of the planting of a RCC as part of an RCC rotation implemented under the IFM.

§ 1414.22 Reconstitution of farms.

The reconstitution regulations set forth in part 719 of this title are applicable to this part.

Subpart D—Resource-Conserving Crop Provisions

§ 1414.27 Resource-conserving crops (RCC's) on acreage conservation reserve (ACR).

(a) Acreage devoted to RCC's as a part of an RCC rotation under this program may also be designated as ACR for the purpose of fulfilling any provisions under any acreage limitation program. The ACR must meet the minimum size and width requirements as set forth in § 1413.61 of this chapter.

(b) ACR acreage devoted to perennial cover, on which cost-share assistance for the establishment of the perennial cover has been provided, shall not be credited towards the producer's RCC requirement under an agreement.

(c) 50 percent of the RCC acreage designated as ACR may be hayed and grazed any time during the entire year. The remaining acreage designated as ACR may be hayed and grazed, except during the 5-month period during which haying and grazing of ACR is not allowed. The remaining acreage designated as ACR that include a small grain (other than barley, oats, and wheat), may be hayed and grazed after the small grain is harvested. Haying includes silage, forage, haylage, and green chop.

(d) Barley, oats, or wheat, as part of an RCC, on ACR may not be harvested in kernel form.

(e) Other small grains that are part of an RCC and other RCC's on ACR acreage may be harvested in kernel form.

§ 1414.28 Resource-conserving crops on payment acres.

(a) Program payments with respect to acreage enrolled in the program shall not be paid to a producer if such producer hays or grazes such acreage (excluding acreage designated as ACR) during the 5-month period in which haying and grazing of conserving use acres is not allowed under the provisions of § 1413.66 of this chapter, unless the crop planted on such acreage includes a small grain except barley, oats, and wheat, and the producer harvests the small grain crop in kernel form.

(b) Acreage planted to an RCC, which is used to determine the producer's deficiency payment, may be harvested in kernel form.

(c) CAB acreage devoted to RCC's as part of a RCC rotation shall be credited as planted and considered planted

acreage to the program crop in the priority order as designated by the producer.

(d) The COC shall not reduce crop program payment yields as a result of a producer planting an RCC on CAB acreage.

§ 1413.29 Resource-conserving crops on other acreage.

Acreage that is devoted to RCC's and not designated in accordance with §§ 1414.27 and 1414.28 may be designated as conserving use acres if all eligibility requirements are met in accordance with § 1413.10 of this title, and may be hayed and grazed throughout the crop year but shall not be harvested for grain or seed.

§ 1414.30 Traditionally underplanted acreage and reduction of payment acres.

(a) RCC's planted on program payment acreage shall be eligible for program payments if the planting of such RCC is part of an RCC rotation as specified in the plan.

(b)(1)(i) Traditionally underplanted acreage (TUA) means the difference in a particular year between the producer's CAB and:

(A) The total of the acreage planted to the program crop,

(B) Approved as prevented planted, and,

(C) For participating crops, the part of the CAB subject to the required ACR. If the producer is using the provisions set forth in §§ 1413.41 or 1413.42, traditionally underplanted acreage means 8 or 15 percent, as applicable, of the producer's permitted acreage for such year. The acreage shall never be less than zero, and is used only to the extent that such number exceeds the number of acres resulting from the reduction in payment acres because of the provisions in § 1413.43. RCC's for program payments and RCC's for ACR shall not be considered when calculating traditionally underplanted acreage for farms previously enrolled in the IFM program. RCC's for planted and considered planted credit are considered as traditionally underplanted acreage.

(ii) Traditionally underplanted acreage shall be determined by using the average of the calculation in paragraph (b) of this section for the 3 years prior to enrollment in IFM.

(2) If a rotation CAB has been established for a crop, and the rotation cycle includes zero acreage in the rotation, the previous three years with CAB's greater than zero shall be used.

(c) Producers enrolled in an RCC rotation shall not be eligible to receive payment for the amount that the average number of traditionally underplanted acreage of a crop exceeds the normal flex acreage for such crop, in accordance with § 1413.43 of this chapter.

Subpart E—Payment Provisions

§ 1414.36 Payments.

Farm program payments of participants in IFM shall not be reduced as a result of planting a RCC as part of a RCC rotation on payment acres. Payments shall be made in accordance with part 1413 of this title.

§ 1414.37 Offsets and assignments.

The offset and assignment regulations set forth in parts 1403 and 1404 of this chapter are applicable to this part.

23. Part 1415 is added to read as follows:

PART 1415—OPTIONS PILOT PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—Definitions Used in This Part

Subpart C—Agreement and Enrollment Provisions

Subpart D—Payments and Documentation

Authority: 7 U.S.C. 1421 Note; 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1415.1 General description of the program.

(a) The regulations in this part set forth the terms and conditions for the Options Program. The purpose of the Options Program was to conduct research necessary to:

(1) Ascertain whether futures options trading would provide reasonable protection to producers from fluctuations in the value of the commodities they produce;

(2) Ascertain whether producers will accept and fully utilize this method of price protection if information is provided to the producers concerning its proper use; and

(3) Determine the effect widespread adoption of such futures options trading program would have on commodity prices.

(b) The Options Program provides Federal support for commodities by helping producers purchase put options contracts for their crops. Producers participating in the Options Program receive a subsidy to cover the premium for the purchase of put options at strike prices equivalent to the target price or the loan rate for the commodity.

(c) Producers who choose to participate in the target price put option agree to forego deficiency payments and loan benefits on the bushels participating in the target price put option program. Producers who choose to participate at the loan rate equivalent strike price agree to forego loan benefits on the bushels enrolled in the loan rate put option.

§ 1415.2 Administration.

(a) The provisions of 1413.4 of this chapter shall be applicable to this part, except as otherwise noted in this section.

(b) The Extension Service (ES) shall provide an educational program for the Options Program that will explain:

(1) Program parameters;

(2) Fundamentals of options;

(3) Executing put option purchases;

(4) Cash pricing goals and marketing plan;

(5) Executing the cash marketing plan; and

(6) Offsetting options positions.

(c) ES shall, assisted by representatives of county Agricultural Stabilization and Conservation Service (ASCS) offices:

(1) Conduct educational meetings for all interested producers in a participating county;

(2) Prepare an informational video for producers to view; and

(3) Encourage producers to visit the local ES office to obtain information about the Options Program.

§ 1415.3 Appeals.

The appeal regulations set forth in part 780 of this title are applicable to this part.

§ 1415.4 Performance based upon advice or action of county or State committee.

The provisions of part 790 of this title, with respect to performance based upon action or advice of any authorized representative of the Secretary, shall be applicable to this part.

§ 1415.5 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.

The provisions of part 12 of this title, Highly Erodible Land and Wetland Conservation, are applicable to this agreement. Each person who violates such provisions shall refund any premium or incentive payment received for such crops on the farm participating in this program for which such person has an interest.

§ 1415.6 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. 35 and OMB number 0560–0092 has been assigned.

Subpart B—Definitions Used in This Part

§ 1415.9 Definitions.

The terms defined in parts 719 of this title and 1413 of this chapter shall be applicable to this part, except as otherwise provided in this section.

Agreement means form CCC–300, 1994 Options Program Agreement.

CBOT means the Chicago Board of Trade.

Exercise means the action taken by the holders of put options if they wish to sell the underlying futures contract.

Expiration Date means the last date on which the option may be exercised. Although options expire on a specified date during the month before the specified month, an option on a December futures contract is referred to as a December option, because the exercise on this contract would lead to the creation of a December futures position.

KCBOT means the Kansas City Board of Trade.

MGE means the Minneapolis Grain Exchange.

Premium means the price of an option contract determined by open outcry between buyers and sellers on the trading floor of a commodity exchange. The premium does not include related brokerage commission fees. The premium is the maximum amount of potential loss to which the option buyer may be subject.

Premium payment means the reimbursement from Commodity Credit Corporation (CCC) to the producer for the purchase price paid by the producer for a put option, not including brokerage commission fees.

Price support equivalent strike price means the strike price that would give producers an expected return on the options market equivalent to an amount they would have received by pledging the commodity for a CCC price support loan.

Pricing means providing documentary evidence of the establishment of a monetary value for a commodity through contract or bill of sale.

Producer means, as determined in accordance with part 1413 of this chapter, and as used in this agreement, both the "operator" and other producers of the crop on the farm.

Program means the 1994 Options Pilot Program.

Put Option means an option that gives the option buyer the right to sell the underlying futures contract at the strike price on or before the expiration date.

Sale means the transfer of title.

Strike Price means the price at which the holders of a put option may choose to exercise their right to sell the underlying futures contract.

Target price equivalent strike price means the strike price that would give producers an expected return on the options market equivalent to an amount they would receive in deficiency payments and loan benefits.

Subpart C—Agreement and Enrollment Provisions

§ 1415.13 Eligibility.

(a)(1) This program is available to producers of:

(i) 1994 corn and soybeans in Champaign, Logan, and Shelby Counties in Illinois;

(ii) 1994 corn in Carroll, Clinton, and Tippecanoe Counties in Indiana, and Boone, Grundy, and Hardin Counties in Iowa; and

(iii) 1994 hard red winter wheat producers in the counties of Ford and Thomas in Kansas, and hard red spring wheat producers in Barnes and Grand Forks counties in North Dakota.

(2) Participating farms must be administratively located in one of the selected counties.

(b) In order to participate at the target price equivalent strike price level and receive payments, a producer must enroll and comply in the annual ARP for the crop.

(c) Such producer shall be determined "actively engaged" in farming in accordance with 7 CFR part 1497.

(d) In order to participate at the price support equivalent strike price level:

(1) For corn and wheat, a producer must enroll and comply in the annual acreage reduction program for the crop;

(2) For soybeans, the producer must accurately report and certify the soybean acreage planted in accordance with part 718 of this title.

(e) The producer is not required to maintain beneficial interest, as determined in accordance with § 1421.5(c) of this chapter, in the crop after it is priced to maintain the put option.

§ 1415.14 Participation choices.

(a) Producers may participate in the Options Program at levels that are alternatives to either:

(1) Deficiency payments and loan program protection, or

(2) Loan program protection.

(b) Producers who choose the "deficiency payments" alternative will enroll production in the Options Program as "target price bushels" and agree to forego deficiency payments, price support benefits and loan deficiency payments on any enrolled bushels.

(c) Producers who choose the "loan program protection" alternative will enroll production in the Options Program as "price support bushels" and agree to forego price support benefits and loan deficiency payments on any enrolled bushels.

(d) Production can be enrolled at either the target price or price support level, but not both. However, a producer may enroll some production at each level.

§ 1415.15 Agreements.

(a) Eligible producers may enter into a agreement to participate with CCC by executing and submitting form CCC–300, Options Program Agreement, to the county ASCS office where the records for the farm are maintained, not later than a date specified in the announcement of the sign-up period for the Options Program, which will be held in conjunction with signup for the acreage reduction program (ARP).

(b) The agreement shall provide that producers on a farm must agree to:

(1) (i) Attend not less than one informational session developed by the Cooperative Extension Service of the United States Department of Agriculture (USDA);

(ii) For the target price equivalent strike price level for corn, purchase at least one December 1994 CBOT put option on or before June 15, 1994; for wheat in Kansas, purchase at least one September 1994 KCBOT put option on or before May 15, 1994; and for wheat in North Dakota, purchase at least one

September 1994 MGE put option on or before May 15, 1994;

(iii) Forego deficiency payments and CCC price support loan and loan deficiency benefits with respect to the bushels enrolled in the program; and

(iv) Forego participation at the price support equivalent strike price level with respect to such bushels.

(2) (i) For price support participation, purchase at least one March 1995 CBOT put option at a strike price equivalent to the county price support price for corn;

(ii) For soybeans, purchase at least one March 1995 CBOT put option contract at a strike price equivalent to the county soybean price support price, less a 2 percent loan origination fee;

(iii) For wheat producers in Kansas, purchase at least one December 1994 KCBOT put option at a strike price equivalent to the county price support price for wheat;

(iv) For wheat producers in North Dakota, purchase at least one December 1994 MGE put option at a strike price equivalent to the county price support for wheat;

(v) For corn, soybeans, and wheat, purchase such option(s) any time during the period when the grain is eligible to be pledged for CCC price support loan;

(vi) Forego CCC price support loan program and loan deficiency benefits, including the Farmer Owned Reserve, with respect to the bushels enrolled at the price support put option program; and

(vii) Forego participation at the target price equivalent strike price level with respect to such bushels.

(c) After all participant signatures have been obtained, county committees will approve all eligible CCC–300 agreements by the second Friday after the end of signup. A CCC–300 agreement may be approved, with the concurrence of a State committee representative, after the deadline subject to the following conditions:

(1) The CCC–300 was erroneously not approved or was not timely approved by the county committee;

(2) The producer signature requirements were met as provided in paragraph (d) of this section, and

(3) The individual case and the reasons for late approval are documented in the minutes of the county committee.

(d) (1) Participation is on a producer basis. When purchasing put options, producers enrolled in this program may use bushels derived from:

(i) Their share of production from a farm; or

(ii) Production from multiple farms.

(2) However, multiple producers on the same farm may not combine production in order to participate.

(e) A producer must have a corn or wheat, respectively, crop acreage base (CAB) in order to participate in the program at the target price strike price level for corn or wheat. However, a producer planting corn on a farm with a grain sorghum CAB, who reports that such acreage is corn for purposes of participating in the 1994 ARP for grain sorghum, may participate in the Options Program at the price support strike price level for corn.

(f) With respect to each producer, the maximum quantity eligible for target price put options is limited to the quantity determined by multiplying the participant's 1994 production adjustment payment acreage times the crop payment yield. The quantity eligible for price support put options is limited to the actual production eligible to be pledged as collateral for a CCC price support loan less any amount enrolled at the target price strike price level. Additionally, the total quantity of corn enrolled in the pilot program per participant shall not exceed 10 option contracts (50,000 bushels), and the total quantity of wheat and soybeans enrolled shall not exceed 3 option contracts (15,000 bushels).

(g) In order for producers of seed corn who enroll in the Options Program to receive the same benefits of the program as other enrolled producers, such producers shall have the actual quantity considered priced increased by the ratio of the farm payment yield established for the crop for the farm and the actual yield.

(h) If a producer enrolled in the program is not in compliance with the provisions of the 1994 production adjustment program for wheat or corn, as applicable, the producer will be required to repay any premiums and incentive payments made, in addition to any interest determined in accordance with the provisions of such program agreement.

Subpart D—Payments and Documentation

§ 1415.20 Premium and incentive payments.

(a) Producers participating in the Options Program will be reimbursed by CCC for the cost of the put option premium, subject to the total payment limitation specified in § 1415.24.

(b) Producers who comply with all terms and conditions of the CCC–300 agreement will receive an incentive payment equal to $.05 cents per bushel (or $250 per option contract of 5000 bushels) for purchasing a target price or loan rate put option.

(c) The incentive payments will be issued:

(1) At the expiration of the options program contract for all eligible bushels;

(2) After all participation requirements have been fulfilled, and:

(i) The options position has been closed through either:

(A) Selling the put option;

(B) Exercising the put option; or

(C) Allowing the put option to expire; and

(ii) The commodity has been priced.

(d)(1) Producers enrolled in the options program shall price their enrolled grain:

(i) To a licensed, bonded grain dealer, grain merchant, or warehouse; or

(ii) for short hedges, through a registered commodity broker.

(2) Documentation must be provided that such a transaction took place.

(e) Payments due eligible producers must be made within 30 calendar days after the payment due date specified in part 1413 of this chapter. If such payments are not issued within 30 calendar days after the due date, the producer will be also issued prompt payment interest.

(f) CCC will collect the excess premium issued at the time the actual payment acreage is reported by the producer, and no incentive payment will be issued with respect to the overstated acreage if, for target price participation, the acreage enrolled in the 1994 production adjustment program which is used in determining deficiency payments is less than the intended payment acreage specified in the agreement. However, the producer will be allowed to keep the put option with respect to the additional bushels.

(g) The producer will not be allowed to increase the quantity of the commodity enrolled in the program if, for target price participation, the acreage enrolled in the 1994 production adjustment program, which is used in determining deficiency payments, is more than the intended payment acreage specified in the agreement.

(h) Producers enrolled in the program at the target price level who have received an advance deficiency payment on production enrolled in the program will have such amount deducted from the premium earned for the put options.

§ 1415.21 Documentation.

(a) To receive reimbursement for the cost of the premium of the put option, the producer shall provide to CCC documentary evidence of the purchase.

(b) Such documentation shall include:

(1) Broker's or brokerage firm's name and address;

(2) Producer's account number;

(3) The commodity for which the put option was purchased;
(4) The date the put option was purchased;
(5) The number of 5,000 bushel put option contracts purchased; and
(6) The price that was paid for each put option contract.
(c) Copies of such documentation shall be attached to the CCC–300 agreement and retained in the county ASCS office.
(d) The final date for producers to submit evidence of purchasing a put option contract shall be the later of:
(1) 2 weeks after the put option has been purchased; or
(2) 2 weeks after the producer is notified of the deadline for submitting such documentation.
(e) Late-filed evidence of purchasing a put option may be accepted under meritorious circumstances if approved by the county committee.
(f) To receive the incentive payment, eligible producers must provide documentation, such as copies of contracts or bills of sale, to the county committee at least 2 weeks after pricing the grain that shows when the grain was priced. Such documentation must include:
(1) Buyer's name and address;
(2) Broker's or brokerage firm's name and address, if applicable;
(3) Producer's name and address;
(4) The commodity for which the put option was purchased;
(5) The date the commodity was sold;
(6) The number of bushels of the commodity that were priced; and
(7) The price that was paid.

§ 1415.22 Brokerage accounts, fees and charges.

(a) Producers who elect to enroll in the Options Program shall be responsible for establishing a separate brokerage account for purchasing put options for this program. Subaccounts shall not be used by such producer.
(b) Producers enrolled in the Options Program shall be responsible for all transaction costs related to purchasing a put option contract. Such costs shall include, but are not limited to:
(1) Brokerage fees;
(2) Transaction taxes; and
(3) Other related costs.
(c) Producers shall complete form CCC–302, Authorization for Release of Information Regarding Options Marketing Contracts, which authorizes individual brokers or brokerage entities to submit copies of statements concerning the producer's options contracts to the county office. Such information shall be reviewed by the county committee before issuance of any payments.

§ 1415.23 Other production.

Production not enrolled in either the target price or price support levels of the Options Program will be eligible for deficiency payments and to be pledged as collateral for CCC price support loans or tendered to CCC for purchase in accordance with parts 1413 and 1421 of this chapter, respectively.

§ 1415.24 Payment limitations.

(a) Participants shall agree that:
(1) In the case of target price participation, the total of the premium subsidies received under the options program and the deficiency payments received under the annual acreage reduction programs will not exceed $50,000 per person; and
(2) In the case of price support participation, the total of premium subsidies received under the option program and loan deficiency payments, marketing loan gains, and "Findley" deficiency payments received under such programs will not exceed $75,000 per person.
(b) A "person" will be determined in the same manner as a "person" is determined for payment limitation purposes for such annual programs, as provided in part 1497 of this chapter.

§ 1415.25 Disaster benefits on enrolled bushels.

(a) Disaster and deficiency payments cannot be earned on the same quantity of bushels, and the quantity of bushels enrolled in the Options Program cannot exceed the eligible deficiency quantity. If such deficiency quantity is reduced by the disaster quantity, the number of bushels eligible for enrollment in the Options Program may be reduced according to paragraph (b) of this section.
(b) If an enrolled producer elects to apply for disaster benefits and the enrolled options program quantity exceeds the eligible deficiency quantity after such quantity is adjusted for disaster, such producer shall refund, before receiving disaster benefits, any premium and incentive payments on the quantity of bushels that exceeds the remaining deficiency quantity.
(c) The total of disaster, deficiency, and Options Program bushels shall not exceed the result of multiplying the permitted acreage for the crop times the yield. Options Program bushels that remain eligible for premium and incentive payments shall be calculated as the smaller of:
(1) The result of multiplying the permitted acreage of the commodity, times the program payment yield established for such commodity, minus the disaster bushels; or
(2) The bushels of the commodity that are enrolled in the options program.

§ 1415.26 Successors in interest.

The successor in interest provisions of § 1413.51 of this chapter are applicable to this part.

§ 1415.27 Reconstitution of farms.

The reconstitution regulations set forth in part 719 of this title are applicable to this part.

§ 1415.28 Misrepresentation and scheme or device.

The misrepresentation and scheme and device regulations set forth in § 1413.52 of this title are applicable to this part.

§ 1415.29 Offsets and assignments.

The offset and assignment regulations set forth in parts 1403 and 1404 of this title are applicable to this part.

24. Part 1416 is added to read as follows:

PART 1416—VOLUNTARY PRODUCTION LIMITATION PROGRAM

Subpart A—General Provisions

Sec.
1416.1 Applicability.
1416.2 Administration.
1416.3 Performance based upon advice or action of county or State committee.
1416.4 Appeals.
1416.5 Paperwork Reduction Act assigned numbers.
1416.6 Controlled substance violations.
1416.7 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.
1416.8 Definitions.

Subpart B—Program Provisions

1416.100 Eligible VPLP counties.
1416.101 Basic program provisions.
1416.102 Production limitation quantity (PLQ) and carryover quantities.
1416.103 Production evidence for actual yields.
1416.104 Commingling grain.
1416.105 Required production reports.
1416.106 Determining compliance with the PLQ.
1416.107 Penalties for inaccurate inventory and crop production reporting errors.
1416.108 Incorrect, false or unacceptable evidence and penalties.
1416.109 Planted and considered planted acreages.
1416.110 Misrepresentation and scheme or device.

Subpart C—Agreement Procedures for VPLP

1416.300 Obtaining owner and producer signatures.
1416.301 Determining share leases or cash leases.
1416.302 Changes to form CCC–135.
1416.303 Revisions to form CCC–135 because of succession in interest.

Authority: 7 U.S.C. 1444f, 1445b-3a, 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1416.1 Applicability.

The regulations in this part are applicable to the Voluntary Production Limitation Program (VPLP), for the 1994 and 1995 crops of wheat and feed grains and set forth the terms and conditions under which producers of these commodities may enter into agreements with the Commodity Credit Corporation (CCC) to qualify for program benefits under the VPLP.

§ 1416.2 Administration.

(a) The provisions of § 1413.4 of this chapter shall be applicable to this part, except as otherwise noted in this section.

(b) The VPLP will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service (ASCS) and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (herein called "State and county committees").

(c) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(d) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part, or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulation of this part.

(e) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or designee, from determining any question arising under the VPLP or from reversing or modifying any determination made by a State or county committee.

(f) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(g) A representative of CCC may execute form CCC–135, Intention to Participate in the 1994 Voluntary Production Limitation Program, for wheat, barley, oats, corn, and grain sorghum only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any form CCC–135 which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, shall be null and void and shall not be considered to be an agreement between CCC and the operator and any other producer on the farm.

§ 1416.3 Performance based upon advice or action of county or State committee.

The provisions of part 791 of this title with respect to performance based upon action or advice of any authorized representative or the Secretary shall be applicable to this part.

§ 1416.4 Appeals.

(a) A producer, an assignee of a cash payment, or a holder of a commodity certificate issued in accordance with § 1413.109 of this chapter may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at part 780 of this title.

(b) With respect to farm program payment yields, determinations made before December 23, 1985, are not appealable.

§ 1416.5 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. 35, and assigned OMB Nos. 0560–0004 and 0560–0092.

§ 1416.6 Controlled substance violations.

In accordance with the regulations in part 796 of this title, payments shall not be made for a period of 5 crop years to program participants who are convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance such as marijuana.

§ 1416.7 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.

Whenever a producer, or a person affiliated with such producer, is determined to be ineligible in accordance with the provisions of part 12 of this title, such producer shall be ineligible for any payments under this part and shall refund any payments already received.

§ 1416.8 Definitions.

In determining the meanings of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine, and words used in the present tense include the past and future as well as the present. The following terms shall give the following meanings. All regulations governing the reconstitution of farms in part 719 of this title and the regulations applicable to the production adjustment programs for wheat and feed grains set forth in part 1413 of this chapter shall be applicable to the VPLP.

Agreement means form CCC–135, Intention to Participate in the 1994 Voluntary Production Limitation Program.

Current year means current year as defined in accordance with 7 CFR 1413.9.

Producer means producer as defined in accordance with 7 CFR 1413.9.

Maximum payment acres means maximum payment acres as defined in accordance with 7 CFR 1413.9.

Production limitation quantity (PLQ) means the amount of production from an enrolled program crop of wheat or feed grain that is eligible to be marketed in 1 year by a producer enrolled in the VPLP.

Production limitation quantity yield means for a wheat or feed grain program crop either:

(1) The farm payment historical weighted yield (HWY), or,

(2) The proven yield.

Subpart B—Program Provisions

§ 1416.100 Eligible VPLP Counties.

(a) The VPLP shall be effective for the 1994 crops of wheat and feed grains in:

(1) Fremont, Harrison, Mills, Monona, and West Pottawattamie Counties in Iowa;

(2) Adams, Furnas, Harlan, Kearney, and Phelps Counties in Nebraska; and

(3) Bon Homme, Charles Mix, Douglas, Turner, and Yankton Counties in South Dakota.

(b) Farms enrolled in the VPLP must be administratively located in one of the selected counties.

§ 1416.101 Basic program provisions.

(a) The enrollment period for this program will coincide with the period

established for the Acreage Reduction Program (ARP) signup which will be March 1 to April 29, 1994. All producers sharing in the crop produced on the farm must complete form CCC–135 to enroll in this program.

(b) A farm enrolled in the VPLP must have an established crop acreage base (CAB) for the enrolled crop in accordance with part 1413 of this chapter.

(c) Producers on a farm shall be considered to have met the requirements of the current year ARP for barley, corn, grain sorghum, oats, and wheat, respectively, if requirements for the VPLP for such crop, as set forth in this section, are met.

(d) Participating producers shall be determined eligible for program benefits in accordance with 7 CFR parts 1497 and 1498 of this chapter, respectively.

(e) In order to participate, producers on a farm must enroll 1 or more wheat or feed grain crops into the program on a farm having a CAB for such a crop.

(f) Eligible crops to be enrolled in the VPLP are as follows:

(1) Wheat;

(2) Corn;

(3) Grain sorghum;

(4) Barley; and

(5) Oats.

(g) Producers with farming interests on multiple farms are not required to enroll all farms into the VPLP.

(h) Farm owners must treat operators, tenants, and sharecroppers fairly, in accordance with § 1413.107 of this chapter.

(i) Producers must not be in violation of controlled substance provisions in accordance with part 796 of this title.

(j) Except for Bureau of Indian Affairs, Federal agencies are ineligible for VPLP payments.

(k) Acreage conservation reserve, in accordance with § 1413.61 of this chapter, is not required for crops enrolled in the VPLP.

(l) The provisions of § 1413.41 of this chapter do not apply to crops enrolled in VPLP.

(m) The provisions of § 1413.43 of this chapter do not apply to crops enrolled in VPLP.

(n) The sum of the planted acreage for all enrolled wheat and/or feed grain program crops shall not exceed the sum of the enrolled wheat or feed program CAB's on the farm.

(o) Producers who do not comply with the terms and conditions of the VPLP for a crop shall be required to refund all or a part, as determined appropriate by CCC, of the current year payments received by such producers for such crop.

§ 1416.102 Production limitation quantity (PLQ) and carryover quantities.

(a) Producers participating in the VPLP must agree not to market, barter, donate, or use on the farm, including use as livestock feed, a quantity greater than the sum of the PLQ for enrolled crops, calculated in paragraph (d) of this section and eligible carryover determined according to paragraph (b) of this section.

(b) Carryover production will be defined as eligible and ineligible carryover as follows: If the crop was:

(1) Enrolled in the VPLP the previous year and the current year, any carryover production from any previous crop is ineligible carryover, and if marketed, bartered, donated, or used during the current year shall be counted against the PLQ for the current year. However, so that no benefit will occur from the carryover, the producer may destroy the carryover under supervision of an employee of ASCS; or

(2) Not enrolled in the VPLP in the previous year but is enrolled in the current year, the carryover production from a previous crop year is eligible carryover and may be marketed, bartered, donated, or used during the current year without being counted against the PLQ for the current crop year; or

(3) Enrolled in VPLP in the previous year and is enrolled in ARP in the current year, the producer may devote an amount of acreage to conservation use acreage equal to the excess production divided by the PLQ yield for the crop and have the excess production considered eligible carryover.

(c) Production harvested in excess of the PLQ may be stored up to but not more than 5 years. Any excess commodity stored longer than 5 years is subject to forfeiture to CCC.

(d) The PLQ for a crop for a marketing year shall equal the product obtained by multiplying the acreage that would be permitted to be planted to such crop under the regular ARP conducted in accordance with part 1413 of this chapter by the PLQ yield.

(e)(1) The PLQ yield shall be calculated as the higher of:

(i) The farm program payment historic weighted yield for the crop determined in accordance with part 1413 of this chapter; or

(ii) The average of the actual yields, as determined in accordance with § 1416.104 of this part, for the crop for the farm for each of the 1989 through 1993 crop years, excluding the crop years with the highest and lowest yields.

(2) Any crop year in which the commodity was not planted shall be excluded.

(f) Farms which have either, corn or grain sorghum CAB's, or both, and participate in the VPLP, shall have the PLQ calculated as corn equivalents by multiplying the combined permitted acreage of corn and grain sorghum times the corn PLQ yield.

(g)(1) If grain sorghum is harvested on the farm, grain sorghum production credited against the PLQ shall be determined by:

(i) Dividing the corn yield by the grain sorghum yield; and

(ii) Multiplying the factor determined in (g)(1)(i) of this section times the grain sorghum production (bushels) marketed, bartered, donated, or used on the farm.

(2) The result is bushels of grain sorghum expressed in corn equivalents. Subtract this result from the PLQ for the combined permitted corn-grain sorghum PLQ to determine the quantity of corn eligible to be marketed.

§ 1416.103 Production evidence for actual yields.

The following provisions apply if producers elect to submit actual production for establishing actual yields for determining the PLQ in accordance with § 1416.102:

(a) Production evidence for the enrolled program crop(s) must be submitted to County ASCS Offices on form ASCS–658, Record of Production and Yield. Additional evidence will be required if a representative of the county ASCS office determines there is insufficient evidence to support the representation of production or acreage of the crop on the farm as certified to by the producer.

(b) Producers with an interest in enrolled crops on more than 1 farm shall submit production evidence for all farms. The county committee shall determine whether evidence includes production from any other acreage for each year the evidence is provided.

(c) Evidence for commercially stored production or production disposed of off the farm must show the:

(1) Producer's name;

(2) Commodity;

(3) Buyer's or storer's name; and

(4) Date of transaction.

(d) Acceptable documents substantiating amounts of commercially stored or disposed of production include:

(1) Commercial or warehouse receipts;

(2) Sales or elevator receipts;

(3) Warehouse ledger sheets or copies;

(4) Warehouse load summaries or copies;

(5) Settlement sheets;

(6) CCC-warehouse stored loan documents;

(7) Farm stored loan documents, if quantity has been determined by measurement;

(8) Weight slips or scale tickets from harvested or appraised acreage;

(9) Approved Federal Crop Insurance Corporation or multiperil crop insurance loss adjustment settlement; and

(10) Scale tickets or weight slips for wheat and feed grains that are supported by other evidence showing disposition, such as sales documents.

(e)(1) Documents showing the amount of production shall be reviewed to determine moisture content and dockage associated with the production.

(2) If the document does not show that the production has been reduced to standard moisture levels and shows:

(i) specific moisture that is greater than standard;

(ii) dockage; or

(iii) both excess moisture and dockage, the net amount will be adjusted on standard moisture levels and applicable dockage standards as determined by CCC.

(3) If the evidence shows that the net amount has been adjusted to include a drying charge in pounds or bushels and there is no moisture or dockage factor, then the pounds or bushels deducted for the drying charge will be included in the net amount; and

(4) If the evidence does not show a moisture or dockage factor, then the net amount, if the evidence provided is otherwise satisfactory, will be accepted.

(f) Standard test weights shall be used to convert net weight to bushels, in accordance with part 1421 of this title.

(g)(1) Farm-stored production will be measured at producer's request and expense. Scale tickets or weight slips may be accepted for production instead of the measured quantity, when the scale tickets or weight slips include all of the following:

(i) Farm identification number;

(ii) Commodity;

(iii) Date weighed; and

(iv) Weigher's signature or initials, and company name if available.

(2) The county committee shall determine that the measurements indicating the weighed quantity in the bin is reasonable compared to the measured quantity.

(h) Determined quantities may be changed for future years based on delivery amounts if a delivery amount indicates the quantity in the bin.

(i) If delivered amounts are normally smaller than measured quantities, other evidence, such as sales receipts, may be required to adjust quantities.

(j) Commingled production shall be apportioned between farms by measuring total harvested production and apportioning harvested production between farms based on the ratio of each farm's payment yield.

(k) When a farm has multiple producers and the producers' share of the production and total bushels received are known, the farm yield may be computed from this data.

(l) Production evidence for enrolled crops may be accepted no later than the 15 calendar days after the final signup date for VPLP.

§ 1416.104 Commingling grain.

(a) The producer will be allowed to store or commingle production for any and all crop years from acreage enrolled in the VPLP with any crop year production from acreage in compliance with the ARP.

(b) However, VPLP production must be measured by a representative of the county ASCS office before it is commingled with any other production.

§ 1416.105 Required production reports.

(a) Producers enrolled in the VPLP must file reports for each enrolled crop which include:

(1) The quantity of each enrolled crop on hand at the beginning of the current marketing year (June 1, for wheat, barley, and oats; September 1, for corn and grain sorghum);

(2) The quantity of the enrolled crop harvested in the current year; and

(3) The quantity of the enrolled crop's production on hand at the end of the current marketing year (May 31, for wheat, barley, and oats; August 31, for corn and grain sorghum).

(b) Producers shall certify the required quantities on form CCC–136, Production Certification for the VPLP.

(c) Certification of the quantity on hand at the beginning of the marketing year for the current crop production year shall occur no later than June 1 for wheat, barley, and oats and September 1 for corn and grain sorghum.

(d) A representative of the county ASCS office will conduct spot checks of all producer certifications.

(e) The operator shall certify current year production of wheat and small grains harvested for enrolled program crops no later than the following dates:

(1) Iowa—July 30;

(2) Nebraska—July 15; and

(3) South Dakota—August 1.

(f) The operator shall certify current year production of corn and grain sorghum harvested for enrolled corn and grain sorghum crops no later than December 1.

§ 1416.106 Determining compliance with PLQ.

(a) The quantity of an enrolled crop marketed, bartered, donated, or used on the farm during the marketing year will be calculated, based on the quantities reported in accordance with § 1416.105, by adding the amount of the enrolled crop reported on hand at the beginning of the marketing year and the production amount of the enrolled crop harvested and subtracting the quantity of the enrolled crop on hand at the end of the marketing year.

(b) The production amount disposed of:

(1) Is in compliance with program provisions if the result is less than or equal to the sum of the PLQ for the crop and eligible carryover as determined in § 1416.102;

(2) Is not in compliance if the result of paragraph (a) of this section is more than the sum of the PLQ and eligible carryover as determined in § 1416.102. In this case, excess marketings have occurred and the producer will be subject to a penalty.

(c) When the disposed bushels exceed the allowable quantities determined according to paragraph (a) of this section by:

(1) 5 percent or less, the penalty is the larger of the price support rate established for the county for the commodity or the current market price, as determined by CCC, times the excess bushels;

(2) 6 to 10 percent, the penalty is the larger of the price support rate established for the county for the commodity or 1.2 times the current market price, as determined by CCC, at the time the violation is discovered times the excess bushels;

(3) Over 10 percent, the penalty is the larger of the target price or 1.5 times the current market price, as determined by CCC, at the time the violation is discovered times the excess bushels.

§ 1416.107 Penalties for inaccurate inventory and crop production reporting errors.

(a) A penalty shall be assessed for each crop enrolled in this program for discrepancies in reporting the bushel quantity in accordance with § 1416.105.

(b) For any discrepancies in quantities listed above, the penalty per bushel shall be the higher of:

(1) The target price; or

(2) 1.5 times the market price, as of the date the quantities are required to be reported.

§ 1416.108 Incorrect, false, or unacceptable evidence and penalties.

When production evidence submitted for providing yields in accordance with

§ 1416.103 is found to be unacceptable, incorrect, or false, a proven yield will not be established.

§ 1416.109 Planted and considered planted acreages.

Regardless of planted acreages, planted and considered planted (P&CP) acreages for crops enrolled in the VPLP shall be equal the CAB.

§ 1416.110 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program determination made in accordance with this part shall:

(1) Not be entitled to payments under the crop program with respect to which the representation was made,

(2) Refund to CCC all payments received by such producer with respect to such farm and such crop program, and

(3) Be liable for liquidated damages in accordance with the terms of the CCC–477.

(b) With respect to programs conducted in accordance with this part, a producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the program,

(2) Made any fraudulent representation, or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to all farms and shall be liable for liquidated damages in accordance with the CCC–477. Such producer also shall be ineligible to receive program payments for the year in which the scheme or device was adopted. If such action also is determined by CCC to be a scheme or device, a fraudulent representation or a misrepresentation of fact affecting a determination made in accordance with part 1497 of this title, the producer shall also be ineligible for program payments.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the program,

(2) Made any fraudulent misrepresentation, or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to such farm. Such producer shall be ineligible to receive program payments for the year in which the scheme or device was adopted, and also in the succeeding year.

Subpart C—Agreement Procedure for VPLP

§ 1416.300 Obtaining owner and producer signatures.

(a) The agreement to participate in the 1994 VPLP, form CCC–135, shall be signed by:

(1) The operator; and

(2) All producers sharing in the enrolled crop or the proceeds of the enrolled crop.

(b) Owners not sharing in the enrolled crop shall not be required to sign the agreement. However, either of the following must be provided for the current year to the County Office:

(1) A written lease, rental arrangement, or other document signed by the owner, showing that the operator has operational control over the farm, or

(2) A written statement by the operator certifying that the operator understands that any incorrect or misleading statement shall require a forfeiture of all program benefits for the farm for the years included in the certification, and certifying either of the following:

(i) The land is rented for the current pilot VPLP year and the landowner receives no benefit from the crop; or

(ii) Landowner's cropland is enrolled in conservation reserve program and receives no benefit from the crop.

(c) County offices shall not approve form CCC–135 when any producer refuses to sign form CCC–135.

(d) The County committee may accept a late-filed CCC–135 after the end of the signup period if the county committee determines that either:

(1) Failure to timely file was beyond the control of the producer, or;

(2) All of the following apply:

(i) The farm operator demonstrated a good faith effort to timely file the required information;

(ii) Failure to timely apply did not result from gross negligence on the part of the farm operator or any party to CCC–135; and

(iii) Acceptance of CCC–135 would not create a situation that defeats the purpose of VPLP.

§ 1416.301 Determining share leases or cash leases.

Share leases and cash leases shall be determined in accordance with § 1413.107 of this chapter.

§ 1416.302 Changes to form CCC–135.

(a) The operator may cancel or revise form CCC–135 before the end of the VPLP signup period. Any advance payments that were issued and cannot be earned must be refunded with interest unless CCC–184, CCC check, is returned unnegotiated.

(b) The request by the farm operator to revise or cancel form CCC–135 shall be in writing or attached to form CCC–135.

(c) A new form CCC–135 shall be used as follows:

(1) When form CCC–135 has been approved during the signup period because advance payments were requested and then the operator revises form CCC–135;

(2) When an operator cancels a crop or reinstates a canceled crop; and

(3) With all required signatures for the crops to be enrolled or canceled.

(d) A canceled form CCC–135 may be reinstated before the end of the signup period.

(e) When form CCC–135 is canceled, all crops will be considered nonparticipating in the VPLP for all purposes, including planted and considered planted acreages.

§ 1416.303 Revisions to form CCC–135 because of succession in interest.

(a) The provisions at § 1413.51 relating to successors in interest are applicable to the VPLP. In addition:

(1) All producers whose shares have changed from the original CCC–135 must sign a revised CCC–135 by the earliest of the following:

(i) Date the crop is actually harvested;

(ii) December 31 of the current year; or

(iii) 15 calendar days after the county committee was notified of the succession.

(2) The successor shall be informed, before the successor's request to revise the CCC–135 is approved that:

(i) Successor is fully responsible for the predecessor's payments;

(ii) Successor shall refund any outstanding advance that is not earned on the farm; and

(iii) The successor's payments will be reduced by the amount of any outstanding advance.

(b)(1) When the predecessor does not agree to a revised CCC–135 the county committee shall determine if the predecessor has lost the authority to carry out the producer's responsibilities under CCC–135. In such cases the county committee shall:

(i) With the concurrence of the ASCS District Director, determine the producers, including the predecessor, who should receive payments based on a fair division of the payment; and

(ii) Offer the producers the opportunity to enter into a revised CCC–135.

(2) If the successor does not agree to enter into a revised CCC–135, the original CCC–135 will remain in effect and the original parties to CCC–135 remain liable if noncompliance occurs.

(c) If a person who signed a CCC–135 is later determined to be dead, missing, or declared incompetent, payments will be made in accordance with part 1413 of this title.

§ 1416.304 Effect of reconstitutions on approved form CCC–135.

(a) If a farm reconstitution is effective for the current year and is approved after form CCC–135 is filed and approved, producers may file a new form CCC–135 for a resulting farm by the later of the following:

(1) 15 calendar days after the date of form ASCS–476, Notice of Acreage Bases, Yields, Allotments, and/or Quotas, was determined for the resulting farm; or

(2) The end of the signup period.

(b) If the producer on the parent farm has not refunded the advance payment, then the producers on the resulting farm cannot receive an advance payment on the same acreage, and the final payments to the producers on the resulting farm shall be reduced by the advances paid for the parent farm.

Subpart D—Payments

§ 1416.400 Program payments and price support loans and loan deficiency payments.

(a) The deficiency payment provisions of part 1413 of this chapter are applicable to this part, except as otherwise provided in this section.

(b) Producers of enrolled crops shall be eligible to earn deficiency payments on the number of acres planted to such crop, not to exceed the maximum payment acreage for such crop.

(c) The deficiency payment yield shall be the historic weighted yield for the crop. The actual proven yield shall be used only to calculate the PLQ for the crop.

(d) Production from an enrolled crop is eligible for current program year price support benefits including the farmer owned reserve if the quantity is eligible for the farmer owned reserve.

§ 1416.401 Determining producer shares of crop.

(a) The producer's share of the crop shall be determined in accordance with the regulations in § 1413.106.

Signed at Washington, DC, on September 26, 1994.

Bruce R. Weber,

Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–27562 Filed 11–15–94; 8:45 am]

BILLING CODE 3410–05–P

federal register

Wednesday
November 16, 1994

Part III

Department of the Interior

Minerals Management Service

Request for Comments on the Preparation of a New 5-Year Outer Continental Shelf Oil and Gas Leasing Program for 1997–2002 and Notice of Intent To Prepare an Environmental Impact Statement; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Request for Comments on the Preparation of a New 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 1997-2002; and Notice of Intent to Prepare an Environmental Impact Statement for the Proposed 5-Year Program

SUMMARY: Section 18 of the OCS Lands Act (43 USC 1344) requires the Department of the Interior to solicit suggestions from Federal Agencies, coastal States, and others during the preparation of a new 5-year OCS oil and gas leasing program. The current 5-year program covers the period July 1992 to July 1997. The Minerals Management Service (MMS) intends to prepare a new 5-year program for the period 1997-2002 to succeed the current one.

The MMS is starting the program preparation process at this time because section 18 sets forth a lengthy, multi-step process of consultation and analysis that must be completed before the Secretary of the Interior may approve a new 5-year program. Section 18 includes the following required steps: this solicitation of comments; development of a draft proposed program, a proposed program, and a proposed final program; and Secretarial approval. The MMS also will prepare an Environmental Impact Statement (EIS) that analyzes the alternatives considered for the new 5-year program. This Notice announces the initiation of the EIS preparation process. The MMS will consider comments received in response to this Notice in developing the draft proposed program and in determining the scope of the programmatic EIS.

DATES: The MMS must receive all comments and information by January 9, 1995.

ADDRESSES: Respondents should mail comments and information to: 5-Year Program Project Director, Minerals Management Service (MS-4400), Room 1324, 381 Elden Street, Herndon, Virginia 22070. The MMS will accept hand deliveries at 1849 C Street, NW, Room 4230, Washington, DC. Respondents should label their comments and the packaging in which they are submitted as to subject matter: mark those pertaining to program preparation, "Comments for Preparation of the New 5-Year OCS Oil and Gas Leasing Program;" and mark those pertaining to EIS preparation, "Scoping Comments on the Proposed 5-Year OCS Oil and Gas Leasing Program EIS." However, the MMS will review all comments received.for purposes of determining the scope of the EIS.

When submitting any privileged or proprietary information to be treated as confidential, respondents should mark the envelope, "Contains Confidential Information."

FOR FURTHER INFORMATION CONTACT: Carol Hartgen, 5-Year Program Project Director, at (703) 787-1216; Tim Redding, Program Decision Document Project Manager, at (703) 787-1216; or Richard Wildermann, Environmental Impact Statement Project Manager, at (703) 787-1674. To order copies of base maps referred to below or documents and maps describing the 5-year program for 1992-1997 telephone (703) 787-1216.

SUPPLEMENTARY INFORMATION: The MMS requests comments from States, local governments, tribes, the oil and gas industry, Federal Agencies, environmental and other interest organizations, and other interested parties to assist in the preparation of a 5-year OCS oil and gas leasing program for 1997-2002 and applicable EIS. The MMS is committed to an open and objective process of consultation, analysis, and deliberation throughout this effort. The MMS hopes that the comments elicited by this Notice will help to bring quickly into focus the major issues that should be considered to build consensus and develop an environmentally sound and responsible program.

Program Preparation

The 5-year program enables the Federal Government, affected States, industry, and other interested parties to plan for steps proposed to lead to OCS oil and gas lease sales. The Department will make a decision on whether to proceed with a specific sale on the schedule only after meeting all of the applicable requirements of the OCS Lands Act, the National Environmental Policy Act, and other applicable statutes.

The program preparation process will follow all the procedural steps set out in section 18 of the OCS Lands Act. This Notice solicits comments early in the program preparation process pursuant to section 18(c)(1). The MMS will prepare a draft proposed program based on consideration of the comments received and analysis of the factors specified by section 18 (those factors are indicated below). The draft proposed program will present for review and comment a preliminary schedule of lease sales indicating the size, timing, and location of OCS leasing proposed for 1997-2002.

Background on OCS Planning Areas

The MMS supports environmentally sound and responsible management of the Nation's OCS resources. Since this Administration took office, the MMS has been carefully examining the OCS program, focusing on the possible resolution of issues associated with existing leases in certain areas that currently are under

legislative restrictions and have been for several years. Under this approach the MMS has supported the restrictions for Fiscal Year (FY) 1994 and FY 1995 as it tries to build consensus on those existing leases and, based on the results of those efforts, subsequently revisit its position on the restrictions.

The MMS is committed to the application of sound science, open and informative communication, and meaningful consultation in developing and implementing OCS policies. Just as the MMS has been applying these principles to conflicts associated with existing leases, the MMS plans to carry forward this approach to its preparation of the next 5-year program.

One of the main objectives of this Notice is to elicit views and comments concerning the appropriate planning areas to include for leasing consideration in the next 5-year program. The MMS would like to focus the areas under consideration early in the program preparation process in order to build consensus and develop an environmentally sound and responsible program. With this objective in mind, the MMS will review specific conditions relating to existing leasing restrictions, ongoing litigation, incomplete mandated scientific studies, and the absence of general regional consensus or conflict concerning the OCS program as they relate to the section 18 factors in designing the 5-year program.

For purposes of administering offshore oil and gas leasing and related activities pursuant to the OCS Lands Act, the OCS is divided into 26 planning areas. Maps presented as Figures 1 and 2 depict all 26 OCS planning areas. Note that precise marine boundaries between the United States and nearby or adjacent nations have not been determined in all cases. The maritime boundaries and limits depicted in the attached maps, as well as divisions between planning areas, where shown, are for planning purposes only. These limits shall not affect or prejudice in any manner the position of the United States with respect to the nature or extent of the internal waters or of sovereign rights or jurisdiction for any purpose whatsoever.

Section 18 requires the Secretary of the Interior to begin the 5-year program preparation process by soliciting information pertaining to all of the areas of the OCS. Such information will be considered in light of the factors specified by section 18 that are discussed later in this Notice, and if the Secretary decides not to propose leasing in certain areas, further analysis of those areas under section 18 will not be necessary.

Brief historical descriptions of Federal OCS program activities in the 26 planning areas are presented below.

North Atlantic. One lease sale was held in 1979, and ensuing exploration in 1981-1982 resulted in no commercial hydrocarbon discoveries. There are no existing leases. Due to controversy over past leasing proposals, the area has been under a series of annual congressional leasing restrictions since FY 1984 and was withdrawn from leasing through 2000 by an executive directive issued on June 26, 1990. That directive also prescribed scientific and technical studies that should be completed before considering further leasing. To date funds have not been available to do those studies, they are not currently planned, and they are not likely to occur in time for leasing between 1997-2002.

Mid-Atlantic and South Atlantic. Nine lease sales were held in these two areas between 1976 and 1983, and ensuing exploration between 1978 and 1984 resulted in no commercial hydrocarbon discoveries. There are 53 existing leases in the area, 32 of which are under suspension as a result of certain provisions of the Oil Pollution Act of 1990. The remaining 21 existing leases, which comprise the Manteo Unit, have been under suspension at the request of the unit operator pending decisions on coastal zone consistency appeals by the Department of Commerce and completion of studies recommended by the North Carolina Environmental Sciences Review Panel and committed to by Secretarial decision. On September 2, 1994, the Department of Commerce issued those decisions, which declined to override the State of North Carolina's consistency objections pertaining to the Unit operator's exploration plan and Environmental Protection Agency discharge permit, thereby prohibiting any exploration of the Manteo Unit as proposed in the exploration plan for Block 467. All 53 existing leases are involved in pending litigation filed by the leaseholders that alleges unconstitutional takings and breach of contract.

The area has been under a series of annual congressional leasing restrictions since FY 1990. The 5-year program for 1992-1997 scheduled one lease sale for an area combining portions of both the Mid-Atlantic and South Atlantic, but the restrictions have prevented initiation of the planning process for that proposed sale. The Department and the MMS have viewed the restrictions applying to the proposed Mid/South Atlantic lease sale as providing an opportunity to gather information and consult with interested and affected parties to resolve issues related to the existing leases.

Straits of Florida. One lease sale was held in 1959, and ensuing exploration in 1960 and 1961 resulted in no commercial hydrocarbon discoveries. The area was scheduled for leasing in the 5-year program for 1987-1992 but was removed in 1988, following strong opposition from the Governor of Florida and the State's Congressional Delegation. There are no existing leases in the area, no further conflict resolution efforts have taken place, and the area was not scheduled for leasing in the 5-year program for 1992-1997.

Eastern Gulf of Mexico. Eight lease sales have been held, between 1973 and 1988. The 1988 sale did not include the portion of the planning area located south of 26° N. latitude and east of 86° W. longitude. That portion was subjected to study by a multi-agency task force and subsequently was withdrawn from leasing through 2000 by an executive directive issued on June 26, 1990. That directive also prescribed scientific and technical studies that should be completed before considering further leasing. To date funds have not been available to do those studies, they are not planned, and they are not likely to occur in time for leasing between 1997-2002. That southeastern part of the planning area also has been under annual congressional leasing and exploration restrictions since FY 1989. There are 73 existing leases in the area. The 1990 executive directive requested the Secretary of the Interior to consider all of those leases for cancellation. The existing leases also are involved in litigation filed by the leaseholders that alleges unconstitutional takings and breach of contract.

There are 189 existing leases in the portion of the Eastern Gulf of Mexico that was not withdrawn by executive directive. A significant natural gas discovery has been made in the Destin Dome section. The Governor of Florida is strongly opposed to further drilling there and has articulated a general policy opposing OCS leasing and associated activities within 100 miles of the State's coastline (the portion of the planning area containing the 189 existing leases includes blocks located both within and beyond 100 miles of Florida). This area has been under annual congressional leasing restrictions since FY 1991. The 5-year program for 1992-1997 scheduled one sale in this area, but the restrictions have prevented initiation of the planning process for that proposed sale. The Department and the MMS have viewed the restrictions applying to the proposed Eastern Gulf of Mexico lease sale as providing an opportunity to gather information and consult with interested and affected parties to resolve issues related to the 189 existing leases in that portion of the planning area.

Central Gulf of Mexico and Western Gulf of Mexico. Seventy-two lease sales have been held in these areas since the inception of the Federal OCS oil and gas program in 1954, and exploration and production are ongoing. These two areas continue to contribute the great majority of all oil and gas produced from the Nation's OCS. The 5-year program for 1992-1997 provided for annual lease sales in both areas, and those proposed sales have proceeded on schedule.

Southern California. Ten lease sales were held between 1963 and 1984. This OCS planning area is the only one outside of the Central and Western Gulf of Mexico where oil and gas production has taken place. It has been under annual congressional leasing restrictions effectively since FY 1985 and was withdrawn from

leasing through 2000 by an executive directive issued on June 26, 1990. That directive also prescribed scientific and technical studies that should be completed before considering further leasing and provided that 87 blocks in the Santa Barbara Channel/Santa Maria Basin portion of the planning area could be considered for leasing before 2000 and as soon as 1996 if certain studies were done. While a number of studies have been initiated in the planning area, to date they have not been completed.

A number of California State and local government policies discourage additional offshore oil and gas leasing. Notably, in recent years many local governments have enacted ordinances restricting necessary onshore construction in support of offshore oil and gas activities, and the State has just enacted legislation permanently banning new oil and gas activities in California State waters.

In addition to 43 currently producing leases, there are another 49 existing leases in the area. The MMS is working with all interested and affected parties to resolve issues pertaining to the development of those 49 leases. The Tri-County Forum--which involves Santa Barbara, Ventura, and San Luis Obispo Counties--has been established to enhance communication among the Federal, State, and local regulatory bodies that deal with OCS oil and gas activities in the Tri-County area. Major accomplishments of the Forum to date include the development of a new process for reviewing previously approved OCS exploration plans and the formulation of a study of possible future exploration and production scenarios within existing onshore facility constraints. The latter initiative--the California Offshore Oil and Gas Resources Study (COOGER)--is being funded by the MMS and the oil and gas industry and will be managed by the MMS along with a Technical Management Team of representatives of the three counties, State agencies, and the lessees and operators of the undeveloped offshore oil and gas leases.

Central California and Northern California. One lease sale was held in these areas in 1963, and ensuing exploration between 1963 and 1967 resulted in no commercial hydrocarbon discoveries. Both areas have been under annual congressional leasing and exploration restrictions effectively since FY 1982 and were withdrawn from leasing through 2000 by an executive directive issued on June 26, 1990. That directive also prescribed scientific and technical studies that should be completed before considering further leasing. To date funds have not been available to do those studies, they are not currently planned, and they are not likely to occur in time for leasing between 1997-2002.

As described above, a number of California State and local government policies discourage additional offshore activities.

Washington-Oregon. One sale was held in 1964, and ensuing exploration between 1965 and 1967 resulted in no commercial hydrocarbon discoveries. The area has been under annual congressional leasing restrictions since FY 1991 and was withdrawn from leasing through 2000 by an executive directive issued on June 26, 1990. That directive also prescribed scientific and technical studies that should be completed before considering further leasing. To date funds have not been available to do those studies, they are not currently planned, and they are not likely to occur in time for leasing between 1997-2002.

Beaufort Sea. Five lease sales have been held, between 1979 and 1991. Ensuing exploration has resulted in six hydrocarbon discoveries, none of which are commercially viable under current economic conditions. In 1992 a significant oil discovery occurred at the Kuvlum prospect, but in 1993, after further drilling, it was deemed not commercial as a stand-alone development. There are 57 existing leases in the area. The 5-year program for 1992-1997 scheduled one lease sale for 1995. Planning for that proposed sale is proceeding, and it is now scheduled for 1997.

Chukchi Sea. Two lease sales have been held, between 1988 and 1991. Ensuing exploration has resulted in no commercial discoveries. There are 8 existing leases in the area. The 5-year program for 1992-1997 scheduled one lease sale in the area for 1996. The MMS now is working with the Russian Federation on a proposal to hold a simultaneous sale in U.S. and Russian waters. This will allow the United States and the Russian Federation to cooperate in developing respective lease sale proposals and to share environmental, cultural and economic analyses. It also provides an opportunity to focus training funded by the Agency for International Development on specific work products. On the U.S. side such planning will involve blocks located in both the Chukchi Sea and Hope Basin Planning Areas. A Request for Interest and Comments concerning this proposed simultaneous lease sale was published in the *Federal Register* on September 6, 1994. If the lease sale process proceeds, the MMS projects that it would be completed after 1997.

Hope Basin. No lease sales have been held. The 5-year program for 1992-1997 scheduled one lease sale in the area for 1997. As discussed above, this area is being considered for simultaneous lease sale planning with Russia.

Norton Basin. One lease sale has been held, in 1983. Ensuing exploration has resulted in no commercial discoveries. There are no existing leases, and the area was not scheduled for leasing in the 5-year program for 1992-1997.

Navarin Basin. One lease sale has been held, in 1984. Ensuing exploration has resulted in no commercial discoveries. There are two existing leases, and the area was not scheduled for leasing in the 5-year program for 1992-1997.

St. George Basin. One sale has been held, in 1983. Ensuing exploration has resulted in no commercial hydrocarbon discoveries. There are no existing leases in the area. The 5-year program for 1992-1997 scheduled one lease sale for 1996. However, no presale planning steps have been conducted.

North Aleutian Basin: One sale was held in 1986, but a lawsuit filed by the State of Alaska and others resulted in an injunction that delayed the opening of bids and awarding of leases until the court ruled in the Department of the Interior's favor in 1988. The area has been under annual congressional leasing and exploration restrictions since FY 1990, and no exploration has occurred on the 23 existing leases, which are involved in pending litigation filed by the leaseholders that alleges unconstitutional takings and breach of contract. This area was not scheduled for leasing in the 5-year program for 1992-1997.

Cook Inlet/Shelikof Strait. Three lease sales have been held, between 1977 and 1982. Ensuing exploration has resulted in no commercial hydrocarbon discoveries. Oil and gas production has been ongoing in State waters adjacent to the Federal OCS since the 1960's, and a discovery occurred at the Sunfish prospect in 1991. However, original estimates indicating that Sunfish was a significant commercial discovery recently were revised downward based on further exploration and delineation drilling in 1993 and 1994. There are no existing Federal offshore leases in the area. The 5-year program for 1992-1997 scheduled one lease sale for 1994. During the presale planning process for that proposed sale, the Department decided to exclude the Shelikof Strait blocks from further leasing consideration. The MMS is revising environmental and other analyses affected by that decision, and the proposed sale is now scheduled for 1996.

Gulf of Alaska. Three lease sales have been held, between 1976 and 1983. Ensuing exploration has resulted in no commercial hydrocarbon discoveries. There are no existing leases in the area. The 5-year program for 1992-1997 scheduled one lease sale in the Yakutat portion of the area for 1995. Planning for that proposed sale is proceeding, and it is now scheduled for 1996.

St. Matthew-Hall, Shumagin, Kodiak, Aleutian Basin, Bowers Basin, and Aleutian Arc. No lease sales have been held in any of these areas, and none were scheduled for leasing in the 5-year program for 1992-1997.

Additional Information and Comments Requested

--All Parties

The MMS would like to receive information and comments relevant to determining the appropriate overall size, timing, and location of OCS leasing for the 5-year period 1997-2002 (i.e., the planning areas to be considered for leasing, the number and timing of sales to be scheduled in each of those areas, and the process for ultimately determining the size and location of the individual lease sales for each area).

Section 18(a) requires consideration of a number of factors in formulating a 5-year leasing program. The MMS would like to have information and suggestions relevant to the requirements of section 18(a), including suggestions, insights, or considerations of nationwide application that would be useful in shaping the new 5-year program. The list presented below provides an indication of the kind of information that would be most useful in conducting the section 18(a) analysis (note that not all factors may be relevant to all parties wishing to comment).

(1) Information on national energy needs for the period relevant to the new program; on the economic, social, and environmental values of the renewable and nonrenewable resources contained in the OCS; and on the potential impact of oil and gas exploration on other resource values of the OCS and the marine, coastal, and human environments.

(2) Existing information concerning geographical, geological, and ecological characteristics of the regions (planning areas) of the OCS and nearshore environments.

(3) Suggested methods and information for analyzing the sharing of developmental benefits and environmental risks among the various regions (planning areas) and ways to determine what constitutes an equitable sharing.

(4) Information concerning other uses of the sea and seabed, including fisheries, navigation, existing or proposed sealanes, potential sites of deepwater ports, and other anticipated uses of OCS resources and locations.

(5) Methods and information for assessing relative environmental sensitivity and marine productivity of the different planning areas of the OCS.

(6) Relevant environmental and predictive information pertinent to offshore and coastal areas potentially affected by OCS development.

(7) The location of planning areas with respect to, and the relative needs of, regional and national energy markets.

The MMS welcomes socio-cultural and archeological information relating to the factors above.

It would also like to have information on the availability of transportation networks to bring oil and gas supplies to demand areas both on a current and projected basis.

Section 18(a)(4) requires that leasing activities under the 5-year program be conducted to assure the receipt of fair market value for the lands leased. The MMS welcomes information and comments on this issue.

The MMS requests that parties recommending the consideration of leasing in one or more portions of the OCS in the new oil and gas leasing program also indicate where leasing need not be pursued. It requests that parties recommending no leasing in one or more portions of the OCS in the new oil and gas leasing program also indicate where leasing should be considered. For example, should the MMS consider including in the OCS leasing program for 1997-2002:

(1) only those areas that have not been consistently placed under annual restrictions?

(2) only those areas that were not withdrawn from leasing consideration by the June 1990 executive directive?

(3) any areas that are under restrictions and have a great likelihood of containing substantial natural gas resources? If so, which areas?

(4) any areas that are not under restrictions but currently appear to be of low resource potential and low industry interest? If so, which areas?

The MMS would like comments on the existing configuration of OCS planning areas.

It requests comments and suggestions concerning the Area Evaluation and Decision Process (AEDP) used to determine the exact size and location and other specific conditions of an individual lease sale (a detailed description of this process is presented in Appendix 12 of the April 1992 Proposed Final Program for 1992-1997, which is available on request).

The MMS would like suggestions concerning possible initiatives for improved involvement and participation of constituents in the development and implementation of the 5-year program.

It requests respondents to submit information relating to section 18 factors that supports their comments in order to assist the MMS in its deliberations.

The MMS encourages local communities and American Indian and Native Alaskan tribal groups to comment.

--Governors of Coastal States

As specified in section 18(a)(2)(F), the MMS requests the Governors of affected States to identify State laws, goals, and policies relevant to OCS oil and gas. It has sent concurrently to each of those Governors a letter soliciting such information. Pursuant to section 18(f)(5) and implementing regulations at 30 CFR 256.20, the MMS requests information that pertains to States' development or administration of coastal zone management programs pursuant to the Coastal Zone Management Act and their application to the leasing, exploration, production, processing, or transportation of OCS oil and gas. It also requests the Governors to submit information concerning environmental risk and potential for damage to coastal and marine resources associated with development of the OCS adjacent to their States, information related to other uses of the sea, and any information in their possession that is relevant to equitable sharing of developmental benefits and environmental risks associated with OCS oil and gas activity.

--Oil and Gas Industry

As specified in section 18(a)(2)(E), the MMS requests oil and gas industry respondents to provide information indicating their interest in the opportunity to lease and develop additional OCS oil and gas resources. Information submitted in this instance should be based on expectations as of 1997. For each area in which your company is interested, please submit information concerning unleased hydrocarbon potential; future oil and gas price expectations; budgets for geological and geophysical data acquisition, lease acquisition and exploration; cost of operations; local, State and national laws, goals and policies applicable to each planning area; and other relevant information that your company uses in making OCS oil and gas leasing decisions. In addition the MMS requests industry commenters to provide information as specified below (on request such information will be treated as confidential as explained further below).

(1) Indicate the OCS planning area(s) in which your company would be interested in acquiring oil and gas leases during the period 1997-2002. If you indicate more than one planning area, rank the areas in order of preference.

(2) For each planning area in which an interest in leasing is indicated, delineate those portions that you believe are most likely to have high, moderate, low, and unknown potential for possible oil and natural gas accumulations. The delineations should be as specific as possible and would be most helpful if depicted on standard base maps that can be requested by calling (703) 787-1216.

(3) For each area in which an interest in leasing is expressed, also indicate whether your company considers that planning area to be oil-prone, gas-prone, both, or unknown.

(4) Indicate the number and timing of lease sales in the period 1997-2002 that would be appropriate for each area: if you suggest only one sale in a planning area, indicate whether that area should be considered for leasing early or late in the 5-year program schedule; and if you suggest more than one lease sale in a planning area, indicate the preferred interval between sales.

Section 18(g) authorizes confidential treatment of privileged or proprietary information. In order to protect the confidentiality of privileged or proprietary information, include such information as an attachment to other comments submitted. On request the MMS will treat as confidential from the time of its receipt until 5 years after approval of the next leasing program the privileged or proprietary information that is attached to a response, subject to the standards of the Freedom of Information Act. However, the MMS will not treat as confidential any aggregate summaries of such information, the names of respondents, and comments not containing such information. As noted above, the respondent should mark the envelope containing privileged or proprietary information to be treated as confidential, "Contains Confidential Information."

Preparation of the Draft Proposed Program

The MMS will consider all comments received in light of the factors set forth in section 18. It will consider both quantitative and qualitative information in performing the analyses required by section 18(a) in developing a new draft proposed program.

As recommended by the Policy Committee of the OCS Advisory Board in 1989 and implemented in the preparation of the 5-year program for 1992-1997, the MMS intends to update the analyses completed for the current approved program in developing a new draft proposed program (and full new analyses will be conducted for subsequent steps in the section 18 process). Under this approach the MMS will conduct a relatively simple updating analysis that will entail examining new information and highlighting the significant changes in information or conditions that have

developed since the current program was approved in 1992. The analyses and resulting decisions presented in the new draft proposed program will reflect those changes. Copies of the 1992 programmatic decision documents and EIS, which establish the basis from which the analysis for the new draft proposed program will proceed, are available on request.

Regional Stakeholder Task Force Initiative

On November 2, 1994, the OCS Policy Committee passed a resolution establishing a Regional Stakeholders Task Force for Alaska that is to develop recommendations concerning the new 5-year program. Establishment of this task force is intended to encourage enhanced participation by local and regional interests in the 5-year program preparation process, thereby aiding the MMS in tailoring leasing proposals to stakeholder needs and interests in affected areas. The Policy Committee resolution also provides that the regional stakeholder task force initiative could be extended to other regions of the OCS if circumstances are conducive. The MMS looks forward to receiving the input of the Regional Stakeholders Task Force for Alaska and also welcomes from all commenters their views concerning the task force initiative.

MMS Approach to Program Preparation

The MMS intends to develop the 5-year program for 1997-2002 in an open and candid manner with the aim of building consensus support for the program to increase its stability and reliability. It is committed to the process and the analytical requirements of section 18 and actively solicits comments and views on the appropriate composition of the 5-year program. The MMS will make no decision on the draft proposed program or subsequent versions until meeting the section 18 requirements and fully reviewing and evaluating all comments received at each stage of program preparation.

EIS Preparation

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the MMS intends to prepare an Environmental Impact Statement (EIS) for the new 5-year OCS oil and gas leasing program for 1997-2002.

This Notice initiates the scoping process for the EIS under 40 CFR 1501.7. The MMS hereby solicits information from States, local governments, tribes, the oil and gas industry, Federal Agencies, environmental and other interest organizations, and the public regarding issues and alternatives that should be evaluated in the EIS. It requests respondents to focus their comments on the significant environmental issues attendant to OCS oil and gas leasing and development and on alternative options for the size, timing and location of sales that should be evaluated in the EIS. A final EIS will incorporate comments received following public review of the draft EIS.

Cynthia Quarterman
Acting Director, Minerals Management Service

NOV 9 1994
Date

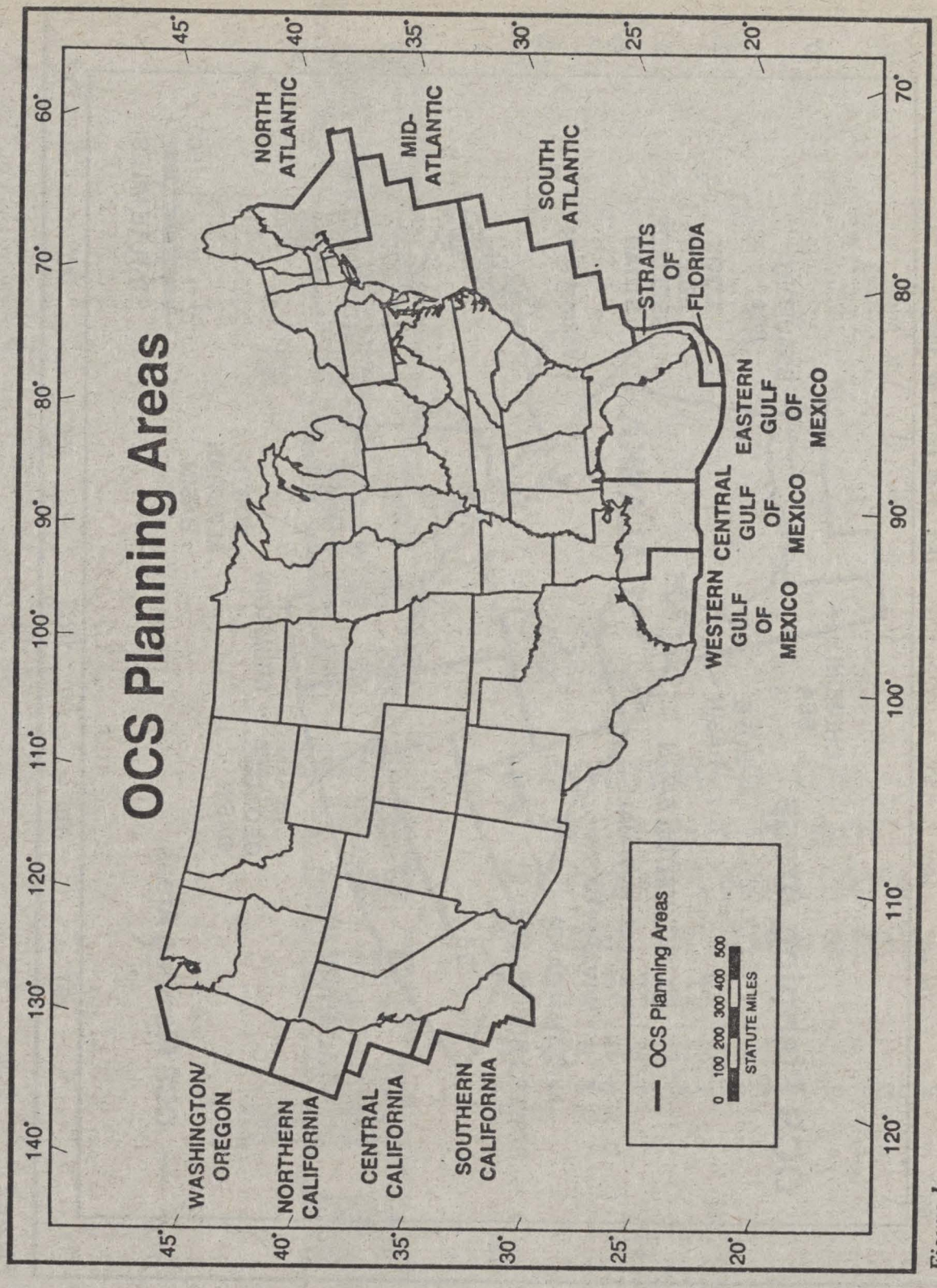

OCS Planning Areas
WASHINGTON/ OREGON
NORTHERN CALIFORNIA
CENTRAL CALIFORNIA
SOUTHERN CALIFORNIA
NORTH ATLANTIC
MID-ATLANTIC
SOUTH ATLANTIC
STRAITS OF FLORIDA
WESTERN GULF OF MEXICO
CENTRAL GULF OF MEXICO
EASTERN GULF OF MEXICO
OCS Planning Areas
0 100 200 300 400 500
STATUTE MILES
140° 130° 120° 110° 100° 90° 80° 70° 60°
45° 40° 35° 30° 25° 20°

Figure 1

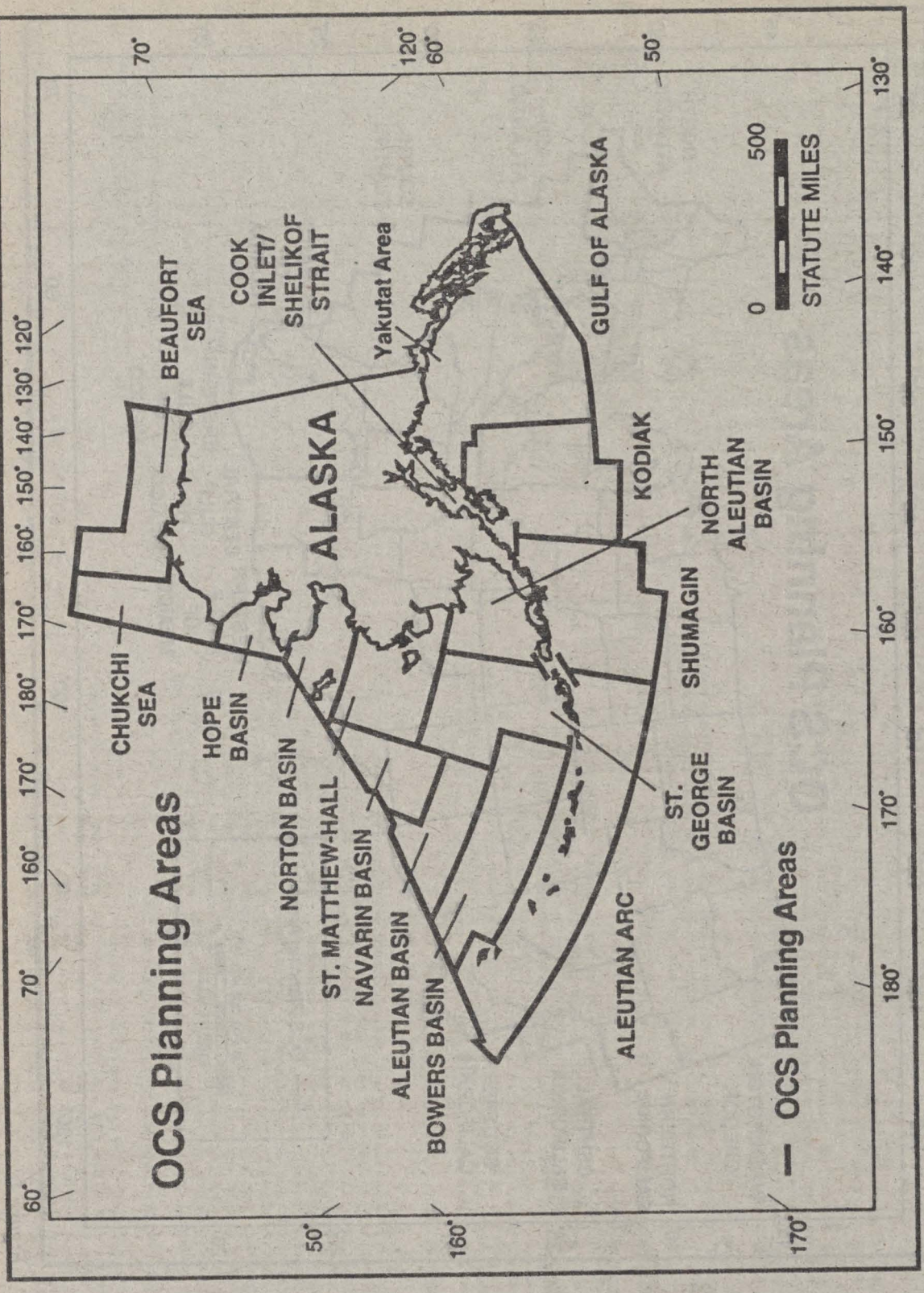


Figure 2

[FR Doc. 94–28200 Filed 11–15–94; 8:45 am]

BILLING CODE 4310–MR–C

federal register

Wednesday
November 16, 1994

Part IV

Committee for Purchase From People Who Are Blind or Severely Disabled

41 CFR Part 51–2, et al.
Revisions to Committee Regulations; Final Rule

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–3, 51–4, 51–5, 51–6, 51–8, and 51–9

Revisions to Committee Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: This final rule updates the regulations of the Committee for Purchase From People Who Are Blind or Severely Disabled to reflect developments and changes in Committee procedures which have occurred since the regulations were last substantively revised in 1991, and to include wording changes that were overlooked in that revision. The new revisions were made necessary by changes in the Government procurement process, of which the Committee's program is a part, and by the Committee's experiences since 1991, including litigation, which have demonstrated that the regulations do not always clearly reflect the authorities given the Committee by the Javits-Wagner-O'Day (JWOD) Act and other laws as implemented in its procedures. The rule will enable the JWOD Program to operate more efficiently to fulfill the Committee's mission of increasing employment opportunities for people with severe disabilities through the Government procurement process.

EFFECTIVE DATE: December 16, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–7740. Copies of this notice will be made available on request in Wordperfect 5.1 format on diskette.

SUPPLEMENTARY INFORMATION: The Committee's regulations were last substantively amended in 1991 (56 FR 48974, effective October 28, 1991). Those amendments were the result of the first comprehensive review of the regulations since their promulgation in 1973. The purpose of the current revision to the regulations is to update them to reflect developments and changes in procedures since 1991, and to include changes that were overlooked in the last revision.

Among the changes to part 51–2 on Committee responsibilities, § 51–2.2(b) has been amended to make clear that the Committee authorizes and deauthorizes both central nonprofit agencies and nonprofit agencies employing people who are blind or have other severe disabilities to accept orders from Government agencies under the Committee's program. Section 51–2.3 is amended to indicate that the Committee publishes notices of proposed deletions and additions to the Procurement List and to require interested persons who submit bound comments on these proposals to also submit an unbound copy to be duplicated for staff use.

Sections 51–2.4, 51–2.7, and 51–3.2 have been amended to make them consistent with the JWOD Act, which considers a determination that a commodity or service is suitable for addition to the Procurement List and the establishment of an initial fair market price for the commodity or service to be two legally separate actions. The confusing term "current or most recent contractor" in § 51–2.4 has been changed to "current contractor." An explanation of those rare instances when "current contractor" means "most recent contractor" will be addressed in the Committee's procedural memoranda. The Committee's position that the "current contractor" includes affiliated companies and parent corporations is explicitly stated in the amended § 51–2.4. A provision has been added to § 51–2.4 to express the Committee's position that its discretion to determine what commodities and services are suitable for addition to the Procurement List is not totally constrained by the enumerated criteria in the section. Section 51–2.7 has also been rewritten to reflect current Committee pricing practices.

Section 51–2.5 has been amended to make clear that when the Committee decides that a proposed addition is likely to have a severe adverse impact on a current contractor, it will decide either to reduce the portion of the Government requirement for the commodity or service to be added to the Procurement List or will decline to add it. The Committee's standard for reconsidering a decision to add a commodity or service to the Procurement List, which appears in an internal memorandum, has been added to § 51–2.6.

Section 51–3.3, which deals with assignment of a commodity or service to a central nonprofit agency for possible addition to the Procurement List, and §§ 51–6.4 and 51–6.12, which deal with military resale commodities and specification changes respectively, have been rewritten to clarify their language. Small editorial changes for clarity have been made in §§ 51–4.2 and 51–5.2. Recordkeeping provisions in § 51–4.3 have been changed to permit acceptance of State certifications of disability to document individuals' disability status in accordance with recent changes in Federal disability regulations. The section title "Violations" used for both §§ 51–4.5 and 51–5.8 has been changed to indicate that the former applies to violations of Committee regulations by nonprofit agencies and the latter to violations by entities of the Government.

Section 51–5.3, which sets forth the scope of the mandatory procurement source requirement of the JWOD Program, has been amended to indicate that the requirement applies to items that are essentially the same as commodities identified on the Procurement List by a National Stock Number or other item designation. This change was made necessary by the increasing number of commercial items in the system which are essentially the same as Procurement List commodities. A similar change was made in § 51–6.13 on replacement and similar commodities. A new paragraph was added to § 51–5.3 to set forth the Committee's longstanding policy that Procurement List additions do not affect contracts in being before the effective date of the addition, or options exercised under those contracts.

The minimum figure for prior Committee approval of purchase exceptions granted by central nonprofit agencies in § 51–5.4 has been raised from $25,000 to the simplified acquisition threshold established by the Federal Acquisition Streamlining Act of 1994, currently $100,000. Sections 51–5.5 and 51–5.6 on prices and shipping of commodities have been amended to allow for pricing and delivery on an FOB destination basis, consistent with recent developments in Government ordering procedures, as well as the Committee's traditional FOB origin practice.

Section 51–6.2 has been amended in paragraph (f) to correct an undetected typographical error in the 1991 amendments. Section 51–6.8 on deletions from the Procurement List has been amended by adding a paragraph making it clear that the Committee can delete a commodity or service from the Procurement List without a request from a central nonprofit agency. A new paragraph has been added to § 51–6.12 on specification changes to indicate that nonprofit agencies are to recommend changes that will improve the commodity or service being provided, reduce costs, or improve overall value to the Government. The paragraph also requires contracting activities to

respond promptly to the recommendations. Section 51–6.13 has been amended to clarify its language and to indicate that other colors, sizes, or variations of commodities on the Procurement List which have not been recently procured are considered to be on the Procurement List as well.

Section 51–8.3, consisting of definitions applicable only to part 51–8 on Committee actions under the Freedom of Information Act (FOIA), has been amended by removing the definition of the Committee, which also appears in the general definitions for the Committee's regulations at § 51–1.3, and by changing the title "Chairman" to "Chairperson" as the title of the Committee's presiding officer. The same change to "Chairperson" has also been made in §§ 51–8.7, 51–8.10, 51–8.11 and 51–9.405.

Changes have been made to §§ 51–8.1 and 51–8.4 and to paragraph (a) of § 51–8.5 to make clear the distinction between material which the Committee is required to make available for public inspection and material which the Committee provides in response to a FOIA request. The provision in § 51–8.14 for a minimum amount for FOIA processing costs below which no fee will be charged has been qualified to indicate that the minimum will apply to each Committee response to a FOIA request where it is necessary to make more than one response to a request. The Committee bills FOIA requesters separately for each response, which requires a decision each time as to whether the cost of collection would exceed the amount billed.

Public Comments on the Proposed Rule

The Committee published the proposed rule in the **Federal Register** of July 27, 1994 (59 FR 38318). Eighteen commenters submitted comments on the proposed rule. Thirteen of these commenters supported the rule as proposed, and were particularly supportive of the proposed changes to §§ 51–2.4, 51–2.7, and 51–3.2 to make them consistent with the JWOD Act distinctions between suitability and fair market price determinations.

One commenter suggested that § 51–2.3 on notice of proposed Procurement List additions and deletions be amended to require actual notice to current contractors for the commodities or services being considered, and to require the Committee to publish notice of the proposal in the Commerce Business Daily as well as the **Federal Register**, in order to provide wider notice of the Committee's proposals. The Committee has considered this suggestion in the past. However, the Committee has concluded that the benefits which adopting this suggestion might provide are outweighed by the considerable administrative burden which would be imposed on the Committee's small staff. The Committee already writes to current contractors when it is unable to obtain sales data on them from a financial reporting service, and experience has shown that some contractors do not respond and those who do rarely provide persuasive comments with their responses. In many cases, Government contracting activities, trade associations, or other persons are already notifying current contractors and other affected parties of the Committee's intentions. Under these circumstances, the Committee does not consider it appropriate to extend its notice of proposed actions beyond that which is mandated by law.

The same commenter also suggested that the employment potential requirement for a Committee determination that a commodity or service is suitable for addition to the Procurement List, at newly redesignated § 51–2.4(a)(1), be changed to require the addition to generate employment for a larger number of persons who are blind or have severe disabilities than is performed by such employees of the current contractor in connection with the commodity or service. The Committee does not believe this change is necessary because it is already required by law to consider and respond to all significant comments it receives when it makes a Procurement List addition decision. It should also be noted that the Committee's regulatory definition of persons with severe disabilities (41 CFR 51–1.3) requires them to be incapable of normal competitive employment over an extended period of time, a test which employees of a competitive contractor could not meet.

This commenter also suggested that an additional factor be added to those listed in newly redesignated §§ 51–2.4(a)(4)(i)(A) through (C) concerning elements of impact on a current contractor to which the Committee gives particular attention in making a suitability determination, to require the consideration of whether the contractor has made an unrecovered capital or training investment in connection with the commodity or service, and whether losing the contract will cause idle productive capacity or unemployment in a labor surplus area. The Committee believes this change is not needed because it already considers any comments of this nature it receives as required by the rulemaking statute. The Committee is also required by § 51–2.4(a)(4)(i)(C) to give particular attention to comments received on contractor impact as a result of its notice proposing addition of the commodity or service to the Procurement List.

Another commenter objected to the proposed addition to § 51–2.4(a)(4)(i)(A) of language indicating that the Committee looks at the impact on a current contractor's total sales, including sales of affiliated companies and parent corporations, in determining the suitability of an addition to the Procurement List. The commenter felt this position is unfair, as it can result in a heavy impact on a corporate division. As indicated in the proposed rule, the Committee believes that the new language is nothing more than a clarification of its existing policy in this area, which it recently reaffirmed. Given the ability of large corporations to shift assets between divisions, the Committee does not believe it would be fair to the nonprofit agencies participating in the Committee's program to assess impact on a part of a large corporation in the same manner as a small independent business.

This same commenter objected to new language in § 51–2.5 concerning the addition to the Procurement List of a commodity or service "in whole or in part." The commenter felt that this language would permit the Committee to extend the reach of a Procurement List addition beyond a particular commodity into a larger line of commodities. The Committee believes that the commenter misunderstood the intent of the change, which was discussed in the proposed rule. The Committee's intent was to clarify an existing provision which permits the Committee, when it decides that a proposed addition to the Procurement List of the total Government requirement for a commodity or service is likely to have a severe adverse impact on a current contractor, to add only a part of the requirement to lessen the impact on the contractor. There is no intent in this language to permit the expansion of the addition beyond what is specifically stated in the final rule making a Procurement List addition.

Another commenter suggested that the phrase "harm to the contracting activity" in § 51–2.6(b) listing the factors the Committee addresses when reconsidering a Procurement List addition decision be changed to "harm to the Government" to allow consideration of harm to ultimate Government users of items purchased for them under the Committee's program by contracting activities. The Committee agrees with the commenter

and has amended § 51–2.6(b) accordingly.

The same commenter suggested that language in § 51–2.7 requiring the Committee to consider recommendations from contracting activities in setting initial fair market prices not based on competitive bids be broadened to permit contracting activity comments on all Committee pricing determinations. The Committee does not agree with the commenter. When initial fair market prices are established based on bids, the process is an automatic one based on the bid history of the commodity or service in question. There is no place for comments, unlike the alternate process of setting prices based on nonprofit agency costs, where a wider variety of information is allowable to determine what these costs actually are. As the commenter noted, the Committee has allowed contracting activities to make comments on pricing determinations whenever appropriate, so a requirement to accept these comments is not necessary. The Committee has modified the sentence, however, to make it clear that the no-comment rule applies only to initial fair market price determinations based on competitive bids and not to price changes.

One commenter noted that § 51–2.7 provides some detail on the Committee's method of making initial fair market price determinations, but very little on how price changes are determined, which is set forth on Committee procedures. The Committee has modified § 51–2.7 to identify the price change methods used and to make reference to the Committee procedures where the details are set forth.

The same commenter also suggested that § 51–2.7 be amended to prohibit the establishment of an initial fair market price that is more than twenty percent above the existing Government price for the commodity or service. Current Committee policy already prohibits such a high price, so a change in the regulations is not necessary.

One commenter asked for clarification of the term "other persons" in a new sentence in § 51–5.2(e) concerning ordering of Procurement List commodities available only from nonprofit agencies. This term is part of a phrase extending the mandatory source requirement applicable to Government agencies to others providing the commodities to the agencies by contract which already appears in § 51–5.2(c) and (d), and is only added to make it clear that the same requirement applies to orders covered by § 51–5.2(e) as well. While the Committee agrees with the commenter that the term was originally intended to apply in all three cases to commercial suppliers under contract to Government agencies, the Committee believes that the broader language is justified by the JWOD Act and is appropriate to address similar situations which might not be covered by a more restrictive term.

Two commenters suggested that language added to § 51–5.3(a) by the proposed rule to extend the mandatory source requirement to commodities "essentially the same" as those on the Procurement List be deleted, along with new § 51–6.13(c) which indicates that contracting activities are not permitted to purchase commercial items that are essentially the same as commodities on the Procurement List. One of these commenters indicated that this language would allow the Committee to add commodities to the Procurement List without performing individual suitability evaluations. The other commenter objected to the lack of a definition for "essentially the same," and indicated that the concept would make it difficult for contracting activities to comply with the Administration policy and new statutory mandate to acquire commercial products whenever possible.

As the proposed rule implied, this change was made necessary by the recent threat of proliferation in the Government supply system of commercial items which are essentially identical to commodities produced under the JWOD Program. The purpose of the JWOD Act, to create employment for persons who are blind or have other severe disabilities, would be nullified if contracting activities could evade the JWOD Act's mandate simply by purchasing items which differed from JWOD Program commodities only in brand name or other insignificant features. The Committee, which includes a number of leading Government procurement officials, has carefully considered this change and has decided that it is important for the JWOD Program and within the intent of the JWOD Act.

The Committee does not intend to use this concept as a substitute for individual evaluation of new commodities to determine their suitability for addition to the Procurement List. The concept will be used to identify commercial items which duplicate or differ only marginally from Procurement List commodities, to insure that contracting activities do not purchase the former instead of the latter. The Committee is already working actively with one of the JWOD Program's major Government customers to identify such commercial items. Because these determinations must be made on a case by case basis, the Committee does not believe that a specific definition of the concept is possible. The Committee does believe that the JWOD Program and the commercial items acquisition policy can coexist successfully, and that this new concept will be a useful tool for assuring that this will happen.

One commenter suggested that the phrase "simplified acquisition threshold" be used instead of the figure "$100,000" as the limit for central nonprofit agency issuance of purchase exceptions without Committee approval stated in § 51–5.4. The commenter noted that this change would make the provision consistent with the new procurement reform statute and would avoid the need for further changes in the Committee's regulation if the threshold changed in the future. The Committee has adopted this suggestion. As the proposed rule indicated, the Committee's intent in changing the figure from $25,000 to $100,000 was to be consistent with this legislation.

One commenter noted that the policy of stocking military resale commodities, which is set forth in § 51–6.4, has been changed to require exclusive stocking of commodities in the 800- as well as 900-series. The Committee has revised the section accordingly.

One commenter requested clarification of the pricing of replacement commodities as described in § 51–6.13(a). The Committee has revised the provision to make it clear that the fair market price is the one set for the replacement commodity, not the price for the commodity being replaced.

Another commenter objected to the substitution of the word "recently" for "previously" in the description of a replacement commodity in § 51–6.13(a) as one "which has not been recently procured." The commenter recommended the use of a specific period of time in this context, such as "one year." The Committee believes this recommendation would make the provision unnecessarily restrictive, particularly if a one-year limit were adopted, and would deny the Committee the flexibility it needs to respond to individual circumstances.

One commenter objected to the term "other variations" in new § 51–6.13(b), which extends Procurement List status to additional sizes, colors, or other variations of a commodity on the Procurement List if these similar commodities have not been recently procured. Another commenter, on the other hand, applauded this additional

size, color, and variation terminology as clarifying the scope of what a Procurement List commodity is.

Like the "essentially the same" concept discussed earlier in this notice, the Committee considers the language in § 51–6.13(b) which the commenters have noted to be an important part of defining the scope of a Procurement List commodity in the new Government procurement environment. The term "other variations" is necessary to reach items which are essentially the same as Procurement List commodities where the difference cannot be defined in terms of size or color. Consequently, deletion of the term from § 51–6.13(b) would deny the Committee the flexibility it needs to carry out its mission.

A commenter suggested that the Committee regulations should contain a provision allowing contracting officers to terminate for default nonprofit agencies which fail to perform as required, and/or to apply liquidated damages in such instances. Because of the differences in the JWOD Program from competitive contracting, particularly the statutory mandatory source requirement, the Committee has long used an alternative method of resolving contractor performance problems. This method is set forth in Part 51–6 of the Committee's regulations, and includes a dispute resolution procedure which involves the central nonprofit agency concerned in situations which cannot be resolved between the nonprofit agency and the contracting officer, with a right of appeal to the Committee, as well as a purchase exception procedure which affords the contracting activity relief from the mandatory source requirement in cases where the nonprofit agency truly cannot meet the Government's requirements. The Committee has also allowed price reductions and other consideration in return for late deliveries, in appropriate circumstances. In light of the existence of these procedures, which have worked well over the years to minimize disputes and speed their resolution, the Committee does not believe that the approach suggested by the commenter would be an improvement, and it would deny the Committee the flexibility it needs to make its program run effectively.

Regulatory Flexibility Act

I certify that this revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revisions basically update and clarify program policies and procedures and do not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this regulatory revision because it contains no information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, this revision to the Committee's regulations is not a significant regulatory action as defined in the Executive Order.

List of Subjects

41 CFR Parts 51–2 Through 51–6

Government procurement, Handicapped, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

41 CFR Part 51–8

Freedom of information.

41 CFR Part 51–9

Privacy.

For the reasons set out in the preamble, parts 51–2 through 51–6, 51–8 and 51–9 of title 41, chapter 51 of the Code of Federal Regulations are amended as follows:

1. The authority citation for parts 51–2 through 51–6 continues to read as follows:

Authority: 41 U.S.C. 46–48C.

PART 51–2—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

2. Section 51–2.2 is amended by adding the following sentence at the end of paragraph (b):

§ 51–2.2 Powers and responsibilities.

* * * * *

(b) * * * Authorize and deauthorize central nonprofit agencies and nonprofit agencies to accept orders from contracting activities for the furnishing of specific commodities and services on the Procurement List.

* * * * *

3. Section 51–2.3 is revised to read as follows:

§ 51–2.3 Notice of proposed addition or deletion.

At least 30 days prior to the Committee's consideration of the addition or deletion of a commodity or service to or from the Procurement List, the Committee publishes a notice in the **Federal Register** announcing the proposed addition or deletion and providing interested persons an opportunity to submit written data or comments on the proposal. Interested persons submitting comments in bound form should also submit an unbound copy that is capable of being legibly photocopied.

4. Section 51–2.4 is amended by removing paragraph (d), redesignating the introductory text and paragraphs (a) through (c) as paragraphs (a) through (a)(3), redesignating paragraphs (e) through (e)(3) as paragraphs (a)(4) through (a)(4)(ii), revising the newly redesignated paragraphs (a), introductory text, (a)(4) through (a)(4)(ii), and adding paragraph (b) to read as follows:

§ 51–2.4 Determination of suitability.

(a) For a commodity or service to be suitable for addition to the Procurement List, each of the following criteria must be satisfied:

* * * * *

(4) *Level of impact on the current contractor for the commodity or service.* (i) In deciding whether or not a proposed addition to the Procurement List is likely to have a severe adverse impact on the current contractor for the specific commodity or service, the Committee gives particular attention to:

(A) The possible impact on the contractor's total sales, including the sales of affiliated companies and parent corporations. In addition, the Committee considers the effects of previous Committee actions.

(B) Whether that contractor has been a continuous supplier to the Government of the specific commodity or service proposed for addition and is, therefore, more dependent on the income from such sales to the Government.

(C) Any substantive comments received as the result of the notice of the proposed addition in the **Federal Register**.

(ii) If there is not a current contract for the commodity or service being proposed for addition to the Procurement List, the Committee may consider the most recent contractor to furnish the item to the Government as the current contractor for the purpose of determining the level of impact.

(b) In determining the suitability of a commodity or service for addition to the Procurement List, the Committee also considers other information it deems pertinent, including comments on a proposal published in the **Federal**

Register to add the commodity or service to the Procurement List and information submitted by Government personnel and interested persons.

5. Section 51–2.5 is revised to read as follows:

§ 51–2.5 Committee decision.

The Committee considers the particular facts and circumstances in each case in determining if a commodity or service is suitable for addition to the Procurement List. When the Committee determines that a proposed addition is likely to have a severe adverse impact on a current contractor, it takes this fact into consideration in deciding not to add the commodity or service to the Procurement List, or to add only a portion of the Government requirement for the item. If the Committee decides to add a commodity or service in whole or in part to the Procurement List, that decision is announced in the **Federal Register** with a notice that includes information on the effective date of the addition.

6. Section 51–2.6 is amended by redesignating the current text of the section as paragraph (a) and adding paragraph (b) to read as follows:

§ 51–2.6 Reconsideration of Committee decision.

(a) * * *

(b) In reconsidering its decision, the Committee will balance the harm to the party requesting reconsideration if the item remains on the Procurement List against the harm which the nonprofit agency or its employees who are blind or have other severe disabilities would suffer if the item were deleted from the Procurement List. The Committee may also consider information bringing into question its conclusions on the suitability criteria on which it based its original decision as factors weighing toward a decision to delete the item, and information concerning possible harm to the Government and the JWOD Program as factors weighing toward confirmation of the original decision.

7. Section 51–2.7 is revised to read as follows:

§ 51–2.7 Fair market price.

The Committee is responsible for determining the fair market prices, and changes thereto, for commodities and services on the Procurement List. The Committee establishes the initial fair market price at the time a commodity or service is added to the Procurement List. In cases where initial prices are not based on competitive bids, the Committee considers recommendations from contracting activities and the central nonprofit agency concerned. Prices are revised in accordance with changing market conditions as reflected primarily by economic indices and changes in nonprofit agency costs, as provided in Committee pricing procedures. Recommendations for fair market prices or changes thereto shall be submitted by the nonprofit agencies to the appropriate central nonprofit agency. The central nonprofit agency shall analyze the data and submit a recommended fair market price to the Committee accompanied by the information required by the Committee's pricing procedures to support the recommended price.

PART 51–3—CENTRAL NONPROFIT AGENCIES

8. Section 51–3.2 is amended by revising paragraph (d), redesignating paragraphs (e) through (m) as paragraphs (f) through (n), and adding a new paragraph (e) to read as follows:

§ 51–3.2 Responsibilities under the JWOD Program.

* * * * *

(d) Recommend to the Committee, with the supporting information required by Committee procedures, suitable commodities or services for procurement from its nonprofit agencies.

(e) Recommend to the Committee, with the supporting information required by Committee procedures, initial fair market prices for commodities or services proposed for addition to the Procurement List.

* * * * *

9. Section 51–3.3 is revised to read as follows:

§ 51–3.3 Assignment of commodity or service.

(a) The central nonprofit agencies shall determine by mutual agreement the assignment to one of them of a commodity or service for the purpose of evaluating its potential for possible future addition to the Procurement List, except that the Committee shall initially assign a commodity to National Industries for the Blind when NISH has expressed an interest in the commodity and National Industries for the Blind has exercised the blind priority.

(b) NISH shall provide National Industries for the Blind with procurement information necessary for a decision to exercise or waive the blind priority when it requests a decision. National Industries for the Blind shall normally notify NISH of its decision within 30 days, but not later than 60 days after receipt of the procurement information, unless the two central nonprofit agencies agree to an extension of time for the decision. Disagreements on extensions shall be referred to the Committee for resolution.

(c) If National Industries for the Blind exercises the blind priority for a commodity, it shall immediately notify the Committee and NISH and shall submit to the Committee a proposal to add the commodity to the Procurement List within nine months of the notification, unless the Committee extends the assignment period because of delays beyond the control of National Industries for the Blind. Upon expiration of the assignment period, the Committee shall reassign the commodity to NISH.

(d) The central nonprofit agency assigned a commodity shall obtain a decision from Federal Prison Industries on the exercise or waiver of its priority and shall submit the procurement information required by Federal Prison Industries when it requests the decision. Federal Prison Industries shall normally notify the central nonprofit agency of its decision within 30 days, but not later than 60 days after receipt of the procurement information, unless it agrees with the central nonprofit agency on an extension of time for the decision. The central nonprofit agency shall refer a disagreement over an extension to the Committee for resolution with Federal Prison Industries.

(e) The central nonprofit agency shall provide the Committee the decision of Federal Prison Industries on the waiver or exercise of its priority when it requests the addition of the commodity to the Procurement List. NISH shall also provide the decision of National Industries for the Blind waiving its priority.

PART 51–4—NONPROFIT AGENCIES

10. Section 51–4.2 is amended by revising paragraph (a)(1) introductory text, and (a)(2) introductory text, to read as follows:

§ 51–4.2 Initial qualification.

(a) * * *

(1) A privately incorporated nonprofit agency shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the corporation or chief executive:

* * * * *

(2) A State-owned or State-operated nonprofit agency, or a nonprofit agency established or authorized by a State statute other than the State corporation laws and not privately incorporated, shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a

letter signed by an officer of the wholly-owned State corporation or an official of the agency that directs the operations of the nonprofit agency, as applicable:

* * * * *

11. Section 51–4.3 is amended by revising paragraphs (b)(6) and (c)(1) to read as follows:

§ 51–4.3 Maintaining qualification.

* * * * *

(b) * * *

(6) Maintain a file on each blind individual performing direct labor which contains a written report reflecting visual acuity and field of vision of each eye, with best correction, signed by a person licensed to make such an evaluation, or a State certification of blindness.

* * * * *

(c) * * *

(1) A written report signed by a licensed physician, psychiatrist, or qualified psychologist, reflecting the nature and extent of the disability or disabilities that cause such person to qualify as a person with a severe disability, or a State certification listing the disability or disabilities.

* * * * *

12. Section 51–4.5 is amended by revising the section heading to read as follows:

§ 51–4.5 Violations by nonprofit agencies.

* * * * *

PART 51–5—CONTRACTING REQUIREMENTS

13. Section 51–5.2 is amended by revising the section heading and paragraph (a) and adding a second sentence to paragraph (e) to read as follows:

§ 51–5.2 Mandatory source requirement.

(a) Nonprofit agencies designated by the Committee are mandatory sources of supply for all entities of the Government for commodities and services included on the Procurement List, as provided in § 51–1.2 of this chapter.

* * * * *

(e) * * * This requirement applies both to contracting activities and to other persons providing such commodities to them by contract.

* * * * *

14. Section 51–5.3 is amended by revising the first sentence of paragraph (a) and adding paragraph (c) to read as follows:

§ 51–5.3 Scope of requirement.

(a) When a commodity is included on the Procurement List, the mandatory source requirement covers the National Stock Number or item designation listed and commodities that are essentially the same as the listed item. * * *

* * * * *

(c) When a commodity or service is added to the Procurement List, the addition does not affect contracts for the commodity or service awarded prior to the effective date of the Procurement List addition or options exercised under those contracts.

15. Section 51–5.4 is amended by revising paragraph (d) and the second sentence of paragraph (f)(1) to read as follows:

§ 51–5.4 Purchase exceptions.

* * * * *

(d) The central nonprofit agency shall obtain the approval of the Committee before granting a purchase exception when the value of the procurement exceeds the simplified acquisition threshold set forth in the Federal Acquisition Streamlining Act of 1994 or any subsequent amendments thereto.

* * * * *

(f) * * *

(1) * * * The deadline may be extended by the central nonprofit agency with, in cases of procurements exceeding the simplified acquisition threshold, the concurrence of the Committee.

* * * * *

16. Section 51–5.5 is amended by revising paragraph (b) to read as follows:

§ 51–5.5 Prices.

* * * * *

(b) Prices for commodities include applicable packaging, packing, and marking. Prices include transportation to point of delivery as specified in § 51–5.6.

* * * * *

17. Section 51–5.6 is revised to read as follows:

§ 51–5.6 Shipping.

(a) Except as provided in paragraph (c) of this section for commodities other than military resale commodities, delivery is accomplished when a shipment is placed aboard the vehicle of the initial carrier. Time of delivery is when the shipment is released to and accepted by the initial carrier.

(b) Method of transportation to destination shall normally be by Government bills of lading although the contracting activity may designate another method of transportation on its order, in accordance with Committee procedures. Government bills of lading may accompany orders or be otherwise furnished, but shall be supplied promptly. If the contracting activity fails to designate a method of transportation or furnish a Government bill of lading promptly, it shall constitute an excusable cause for delay in delivery.

(c) The Committee may determine that for certain commodity orders, delivery is accomplished when the shipment is delivered to the purchaser's facility (plant, warehouse, store, lot, or other location to which shipment can be made). Time of delivery for these orders is when the shipment is released by the carrier and accepted by the purchaser. Under this method of transportation, the nonprofit agency will normally ship by commercial bills of lading and will be responsible for any loss or damage to the goods occurring before receipt of the shipment at the delivery point specified. The nonprofit agency will prepare and distribute commercial bills of lading, furnish a delivery schedule and designate the mode of delivering carrier, and pay all charges to the specified point of delivery.

§ 51–5.8 Violations by entities of the Government.

* * * * *

18. Section 51–5.8 is amended by revising the section heading to read as set forth above.

PART 51–6—PROCUREMENT PROCEDURES

19. Section 51–6.2 is amended by revising the second sentence in paragraph (f) to read as follows:

§ 51–6.2 Allocation process.

* * * * *

(f) * * * When a request for allocation provides a delivery schedule (based on established lead times and time required for processing the allocation request) which cannot be met, the central nonprofit agency shall request a revision, which the contracting activity shall grant, if feasible, or the central nonprofit agency shall issue a purchase exception authorizing procurement from commercial sources as provided in § 51–5.4 of this chapter.

* * * * *

20. Section 51–6.4 is amended by revising paragraphs (a), (b), (c)(3), (c)(4), and (d), and the second sentence of paragraph (e) to read as follows:

§ 51–6.4 Military resale commodities.

(a) Purchase procedures for ordering military resale commodities are available from the central nonprofit agencies. Authorized resale outlets (military commissary stores, Armed Forces exchanges and like activities of other Government departments and agencies) shall request the central

nonprofit agency responsible for the military resale commodity being ordered to designate the nonprofit agency or its agent to which the outlets shall forward orders.

(b) Authorized resale outlets shall stock military resale commodities in as broad a range as practicable. Authorized resale outlets may stock commercial items comparable to the military resale commodities they stock, except that military commissary stores shall stock military resale commodities in the 800- and 900-series exclusively, unless an exception has been granted on an individual store basis for the stocking of comparable commercial items for which there is a significant customer demand.

(c) * * *

(3) Issue guidance requiring commissary store personnel to maximize sales potential of military resale commodities.

(4) Establish policies and procedures which reserve to its agency headquarters the authority to grant exceptions to the exclusive stocking of 800- and 900-series military resale commodities.

(d) The Defense Commissary Agency shall provide the Committee a copy of each directive which relates to the stocking of military resale commodities in commissary stores, including exceptions authorizing the stocking of commercial items in competition with 800- and 900-series military resale commodities.

(e) * * * Zone pricing is used for delivery to Alaska and Hawaii.

21. Section 51–6.8 is amended by adding paragraph (e) to read as follows:

§ 51–6.8 Deletion of items from the Procurement List.

* * * * *

(e) The Committee may delete an item from the Procurement List without a request from a central nonprofit agency if the Committee determines that none of the nonprofit agencies participating in the JWOD Program are capable and desirous of furnishing the commodity or service to the Government, or if the Committee decides that the commodity or service is no longer suitable for procurement from nonprofit agencies employing people who are blind or have other severe disabilities. In considering such an action, the Committee will consult with the appropriate central nonprofit agency, the nonprofit agency or agencies involved, and the contracting activity.

22. Section 51–6.12 is amended by revising paragraphs (a), (c), and (d) and adding paragraph (e) to read as follows:

§ 51–6.12 Specification changes and similar actions.

(a) Contracting activities shall notify the nonprofit agency or agencies authorized to furnish a commodity on the Procurement List and the central nonprofit agency concerned of any changes to the specification or other description of the commodity.

* * * * *

(c) For services on the Procurement List, the contracting activity shall notify the nonprofit agency furnishing the service and the central nonprofit agency concerned at least 90 days prior to the date that any changes in the statement of work or other conditions of performance will be required.

(d) If an emergency makes it impossible for a contracting activity to give the 90-day notice required by paragraphs (b) and (c) of this section, the contracting activity shall inform the nonprofit agency and the central nonprofit agency concerned of the reasons it cannot meet the 90-day notice requirement when it places the order or change notice.

(e) Nonprofit agencies shall recommend changes in specifications, item descriptions, and statements of work that will improve the commodity or service being provided, reduce costs, or improve overall value to the Government. Contracting activities shall respond promptly to these recommendations and work with the nonprofit agencies to implement them when appropriate.

23. Section 51–6.13 is revised to read as follows:

§ 51–6.13 Replacement and similar commodities.

(a) When a commodity on the Procurement List is replaced by another commodity which has not been recently procured, and a nonprofit agency can furnish the replacement commodity in accordance with the Government's quality standards and delivery schedules, the replacement commodity is automatically considered to be on the Procurement List and shall be procured from the nonprofit agency designated by the Committee at the fair market price the Committee has set for the replacement commodity. The commodity being replaced shall continue to be included on the Procurement List until there is no longer a Government requirement for that commodity.

(b) If contracting activities desire to procure additional sizes, colors, or other variations of a commodity after the commodity is added to the Procurement List, and these similar commodities have not recently been procured, these commodities are also automatically considered to be on the Procurement List.

(c) In accordance with § 51–5.3 of this chapter, contracting activities are not permitted to purchase commercial items that are essentially the same as commodities on the Procurement List.

PART 51–8—PUBLIC AVAILABILITY OF AGENCY MATERIALS

24. The authority citation for Part 51–8 continues to read as follows:

Authority: 5 U.S.C. 552.

25. Section 51–8.1 is revised to read as follows:

§ 51–8.1 Purpose.

These regulations implement the provisions of the "Freedom of Information Act," 5 U.S.C. 552. They establish procedures under which the public may inspect and obtain copies of material maintained by the Committee, provide for administrative appeal of initial determinations to deny requests for material, and prescribe fees to be charged by the Committee to recover search, review, and duplication costs.

26. Section 51–8.3 is amended by revising the introductory text of the section, removing paragraph (b), redesignating paragraphs (c) through (i) as paragraphs (b) through (h), and revising newly redesignated paragraph (b), to read as follows:

§ 51–8.3 Definitions.

As used in this part:

(a) * * *

(b) The term *Chairperson* means the Chairperson of the Committee for Purchase From People Who Are Blind or Severely Disabled.

* * * * *

27. Section 51–8.4 is revised to read as follows:

§ 51–8.4 Availability of materials.

Material described in 5 U.S.C. 552(a)(2) shall be available for inspection during normal business hours at the Committee's offices, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461. An individual who intends to visit the Committee offices to inspect this material shall make an appointment with the Executive Director at least one week in advance, except when the Committee has provided notification to the individual that the material is available for inspection in the Committee offices, in which case an appointment must be made at least 24 hours in advance.

28. Section 51–8.5 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 51–8.5 Requests for records.

(a) Requests to obtain copies of any material maintained by the Committee must be submitted in writing to the Executive Director at the Committee's offices, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461. * * * * * * * * * *

§ 51–8.7 [Amended]

29. Section 51–8.7 is amended by removing "Chairman" where it appears in paragraph (e) and replacing it with "Chairperson."

§ 51–8.10 [Amended]

30. Section 51–8.10 is amended by removing "Chairman" where it appears in paragraphs (a), (b), (c), and (d) and replacing it with "Chairperson" in each place it occurs.

§ 51–8.11 [Amended]

31. Section 51–8.11 is amended by removing "Chairman" where it appears in paragraph (a) and replacing it with "Chairperson." 32. Section 51–8.14 is amended by revising paragraph (c) to read as follows:

§ 51–8.14 Fee waivers and reductions.

* * * * *

(c) Fees shall be waived in all circumstances where the amount of the fee is $10 or less as the cost of collection would be greater than the fee. This minimum shall be applied separately to each Committee response when it is necessary for the Committee to make more than one response to a request for records.

PART 51–9—PRIVACY ACT RULES

33. The authority citation for Part 51–9 is revised to read as follows:

Authority: 5 U.S.C. 552a.

§ 51–9.405 [Amended]

34. Section 51–9.405 is amended by removing "Chairman" wherever it appears in each paragraph of the section and replacing it with "Chairperson" in each place it occurs.

Dated: November 9, 1994.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–28191 Filed 11–15–94; 8:45 am]

BILLING CODE 6820–33–P

federal register

Wednesday
November 16, 1994

Part V

Department of Agriculture

Agricultural Research Service

Cooperative State Research, Education, and Extension Service

Biotechnology Risk Assessment Research Grants Program; Fiscal Year 1995; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

Biotechnology Risk Assessment Research Grants Program; Fiscal Year 1995; Solicitation of Applications

Purpose

Proposals are invited for competitive grant awards under the Biotechnology Risk Assessment Research Grants Program (the "Program") for fiscal year 1995. The authority for the Program is contained in section 1668 of Public Law 101–624 (the Food, Agriculture, Conservation, and Trade Act of 1990, 7 U.S.C. 5921). The Program is administered by the Cooperative State Research, Education, and Extension Service (CSREES) and the Agricultural Research Service (ARS) of the U.S. Department of Agriculture. (The CSREES was established by Pub. L. 103–354, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, and the functions of the Cooperative State Research Service were transferred to the CSREES by the Secretary of Agriculture's Memorandum 1010–1.)

The purpose of the Program is to assist Federal regulatory agencies in making science-based decisions about the safety of introducing genetically modified plants, animals, and microorganisms into the environment. The Program accomplishes this purpose by providing scientific information derived from the risk assessment research conducted under it. Research proposals submitted to the Program must be applicable to the purpose of the Program to be considered. Proposals based upon field research and whole organism-population level studies are strongly encouraged. Awards will not be made for clinical trials, commercial product development, product marketing strategies, or other research not appropriate to risk assessment. Proposals should be applicable to current regulatory issues surrounding the ecological impacts of genetically modified organisms, with special emphasis on natural ecosystem consequences.

Applicant Eligibility

Proposals may be submitted by any United States public or private research or educational institution or organization.

Available Funding

The amount available for support of the Program in fiscal year 1995 is approximately $1.7 million.

Pursuant to Section 712 of Public Law 103–330 (the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1995), funds available in fiscal year 1995 to pay indirect costs on research grants awarded competitively by CSREES may not exceed 14 per centum of the total Federal funds provided under each award.

In addition, pursuant to Sec. 719(b) of Public Law 103–330, in the case of any equipment or product that may be authorized to be purchased with the funds provided under this Program, entities are encouraged to use such funds to purchase only American-made equipment or products.

Program Description

Under the Program, USDA will competitively award research grants to support science-based biotechnology regulation and thus help address concerns about the effects of introducing genetically modified organisms into the environment and to help regulators develop policies concerning such introduction. Proposals are invited in the area of biotechnology risk assessment research as appropriate to agricultural plants, animals and microbes. Emphasis will be given to risk assessment research involving genetically modified organisms, but model systems using nongenetically modified organisms also will be considered if they can provide information that could lead to improved assessment of potential risks associated with the introduction of genetically modified organisms into the environment.

Proposals will be evaluated by the Administrator assisted by a peer panel of scientists for science quality, relevance for current regulatory issues, and intent to advance the safe application of biotechnology to agriculture by providing new knowledge for science-based regulatory decisions. The development of better risk assessment methods for field testing genetically modified organisms will also be considered.

Areas of Research to Be Supported in Fiscal Year 1995

Proposals addressing the following research topics are requested:

1. Development of new risk assessment methods (e.g., monitoring organism escape, measuring biological impacts), and risk assessment procedures (e.g., comparative analysis of ecosystems, models to predict risks) that could be used in risk assessment of genetically modified fungi, bacteria, viruses (including animal vaccines), plants, arthropods, fish, birds, and mammals. Applicants should address the need for, and development of, such new risk assessment methods in the course of addressing a specific and defined risk assessment issue, especially as pertains to genetically modified organisms.

2. Creation of information systems and computer models to support regulatory agency decision-making in regards to potential impacts to the environment over time (e.g., computer models to describe the interaction of environmental and organismal factors especially for establishment and dispersal of the organism).

3. Risk assessment of the environmental fate (e.g., survival, reproduction fitness, genetic stability, horizontal gene transfer) as correlated with effects (e.g., loss of genetic diversity, enhanced competition) of genetically modified fungi, bacteria, viruses, plants, arthropods, fish, birds and mammals introduced into the environment (i.e., not in a contained laboratory, greenhouse or building); and studies or identification of traits which may influence fate and effects.

In response to requests to Program Directors and Federal regulatory agencies, as stipulated in the authorizing legislation for the Program, section 1668 of Public Law 101–624, the following specific areas of risk assessment research have been identified as eligible for competition as research topics for this year.

4. The bidirectional rates, effects of selection pressures, mechanisms and impact of gene transfer between currently genetically transformable crop species and existing North American wild relatives of those crops including studies of methods of mitigation of potential gene exchange. Species specifically identified by the Animal and Plant Health Inspection Service include rye, oats, barley, sorghum and turfgrasses. Research could rely on reanalysis of published information and/or laboratory/field studies.

5. The potential for recombination between plant viruses and plant-encoded noncapsid viral genes (e.g., replicase), especially for those viruses in supergroup B (carmovirus, tombusvirus, luteovirus, sobemovirus). Such studies should identify recombination potentials and, if demonstrated, define frequencies and effect on symptom expression.

6. The potential for plants to express nonviral genes using noncoding regulatory sequences (promoters, translational enhancers, termination sequences) derived from plant viruses that naturally infect the plants (e.g., cauliflower mosaic virus and *Brassica* spp.). The potential for changes in expression of introduced genes or other aspects of host physiology when the transgenic plant becomes infected with plant viruses, especially those from which the noncoding sequence was derived or from related viruses.

7. Changes in viral host ranges or the types of viral vectors as a result of the use of transgenic plants expressing viral genes.

8. The potential for nontarget effects of introduced plant-defense compounds expressed in genetically modified plant-associated microorganisms (e.g., compounds in phyllosphere or rhizosphere-inhabiting bacteria) or in plants (e.g., *Bacillus thuringiensis* delta-endotoxin), especially in regard to persistence of the organisms and material in the environment.

9. Identification of genes which can confer additional pathogenicity to animal pathogens. Pathogenic organisms specifically identified by the Animal and Plant Health Inspection Service as being of interest are Marek's disease virus, laryngo tracheitis virus, bovine leukemia virus, eastern equine encephalomyelitis virus, bovine diarrhea virus, *Erysipelothrix rhusiopathiae* and *Haemophilus somnus*.

10. Environmental risk analysis of large scale deployment of genetically engineered organisms, especially commercial uses of such organisms, with special reference to considerations that may not be revealed through small scale evaluations and tests.

All research proposals submitted should include a statement describing the relevance of the proposed project to one or more of the research topics requested. When appropriate, detailed descriptions of statistical analyses to be done should be included in the proposal. The inclusion of statisticians as co-principal investigators or contractors is encouraged.

Note: Individual investigators whose research projects are funded under the Program will be required to attend and present data on the results of their research at an Annual Conference. Attendance costs at such a conference do not need to be included in the budgets of proposed research projects; such costs will be paid from funds provided under a cooperative agreement between CSREES and the University of Maryland for an annual risk assessment symposium. Additionally, a final project report on research results will be required in a fixed protocol, electronic format, suitable for distribution by USDA on CD–ROM.

Applicable Regulations

This Program is subject to the administrative provisions found in 7 CFR part 3415 (58 FR 65646, December 15, 1993), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals, the awarding of grants, and post-award administration of such grants. Several other Federal statutes and regulations apply to grant proposals considered for review or to grants awarded under this Program. These include, but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act;

7 CFR Part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR Part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR Part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR Part 520—ARS implementation of the National Environmental Policy Act;

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR Part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

7 CFR Part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR Part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

7 CFR Part 3407—CSREES implementation of the National Environmental Policy Act;

29 U.S.C. 794, section 504—Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs;

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

Programmatic Contact

For additional information on the Program, please contact:

Dr. Ann Lichens-Park, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2220, Washington, DC 20250–2220, Telephone: (202) 401–4892

or

Dr. Robert M. Faust, Agricultural Research Service, U.S. Department of Agriculture, Room 338, Building 005, BARC–West, Beltsville, MD 20705, Telephone: (301) 504–6918

How to Obtain Application Materials

Copies of this solicitation, the administrative provisions for the Program (7 CFR Part 3415), and the Application Kit will be made available upon request. The Application Kit contains required forms, certifications, and instructions for preparing and submitting grant applications. The administrative provisions include guidelines for proposal format.

Copies of this solicitation, the administrative provisions, and the Application Kit may be obtained by contacting:

Proposal Services Branch, Awards Management Division, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, Telephone Number: (202) 401–5048

Application materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@csrees.esusda.gov which states that you wish to receive a copy of the application materials for the Fiscal Year 1995 Biotechnology Risk Assessment Research Grants Program. The materials will then be mailed to you (not e-mailed) as quickly as possible.

Proposal Format

The format guidelines for full research proposals, found in the administrative provisions for the Program at § 3415.4(d), should be followed for the preparation of proposals under the Program in fiscal year 1995. (Note that the Department elects not to solicit preproposals nor conference grant proposals in fiscal year 1995).

Compliance with the National Environmental Policy Act (NEPA)

As outlined in 7 CFR Part 3407 and 7 CFR Part 520 (the CSREES and ARS regulations implementing the National Environmental Policy Act of 1969), environmental data for any proposed

project is to be provided to CSREES and ARS so that CSREES and ARS may determine whether any further action is needed. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories.

(1) Department of Agriculture Categorical Exclusions

(7 CFR 1b.3)

(i) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSREES and ARS Categorical Exclusions (7 CFR 3407.6 and 7 CFR 520.5

Based on previous experience, the following categories of CSREES and ARS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, where such activity is limited in scope and intensity.

In order for CSREES and ARS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusions must be identified. The information submitted shall be identified as "NEPA Considerations" and the narrative statement shall be placed after the coversheet of the proposal.

Even though a project may fall within the categorical exclusions, CSREES and ARS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Proposal Submission

What to Submit

An original and 14 copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper lefthand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

Where and When to Submit

Proposals submitted through the regular mail must be received by January 13, 1995, and must be sent to the following address:

Proposal Services Branch, Awards Management Division, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245, Telephone: (202) 401–5048

Hand-delivered proposals must be brought to the following address by c.o.b. (4:30 p.m.) on January 13, 1995 (note that the zip code differs from that shown above):

Proposal Services Branch, Awards Management Division, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Room 303, Aerospace Center, 901 D Street, S.W., Washington, DC 20024, Telephone: (202) 401–5048

Supplementary Information

The Biotechnology Risk Assessment Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.219. For reasons set forth in the final rule-related Notice to 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., on this 7th day of November, 1994.

Sarah J. Rockey,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

Richard L. Dunkle,

Acting Associate Administrator, Agricultural Research Service.

[FR Doc. 94–28344 Filed 11–15–94; 8:45 am]

BILLING CODE 3410–22–M

federal register

Wednesday
November 16, 1994

Part VI

Department of Labor

Employment and Training Administration

Job Training Partnership Act: Job Corps Program; Selection of Sites for Centers; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Job Corps Program; Selection of Sites for Centers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; selection of center sites.

SUMMARY: The Department of Labor requests assistance in identifying sites for locating four new Job Corps centers. This notice specifies the requirements and criteria for selection.

DATES: Proposals are requested by March 13, 1995.

ADDRESSES: Proposals shall be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue NW., room N4508, Washington, DC 20210. Attention: Peter E. Rell, Director, Office of Job Corps.

FOR FURTHER INFORMATION CONTACT: Peter E. Rell, Director, Office of Job Corps. Telephone: (202) 219–8550 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor (Department) is soliciting proposals for sites to establish four new Job Corps centers. The Job Corps program is designed to serve disadvantaged young women and men, 16 through 24, who are in need of additional educational, vocational and social skills training, and other support services in order to gain meaningful employment, return to school or enter the Armed Forces. The program is primarily a residential program operating 24 hours per day, 7 days per week with non-resident enrollees limited by legislation to 20 percent of national enrollment. However, while the 20-percent level should be used as a guideline, the percentage of non-residents can vary from center to center, depending upon local needs.

To assist potential applicants, the Department of Labor will conduct an orientation session from 9 a.m. to 12 noon on December 14, 1994 in the Bureau of Labor Statistics Training Center, room G440, Postal Square Building at 2nd and Massachusetts Avenue, Washington, DC (photo I.D. required for entrance). The orientation will enable prospective proposers to obtain clarification of the information provided in this Notice. If you plan to attend, please notify Mr. Peter E. Rell at the phone number listed above by December 9, 1994.

From this solicitation, the Department intends to select four localities for locating new centers. One of the four localities is intended to be a replacement site for the Chesapeake Job Corps Center, which was located in Maryland and was closed in 1989 for reasons unrelated to performance.

This solicitation is for site selection only and *not* for the operation of these Job Corps centers. A competitive contract procurement for selection of a center operator at each site will be initiated and completed well after the site selection process has been completed.

Congress continued the Job Corps expansion authorized in previous years by appropriating $10 million in the Fiscal Year 1995 Department of Labor Appropriations Act to initiate four additional new Job Corps centers. The accompanying congressional report language described the use of a competitive process in selecting these sites and said that the Department should give priority to those localities having a high level of organized community support for a center and which are:

- In States with less than 2 percent of eligible youth currently served by the Job Corps program;
- In States which can demonstrate a high incidence of minority or other youth unemployment;
- In States that currently have two or fewer Job Corps centers and have not recently been selected for a new center in the Department's selection process; and
- In States with high percentages of non-urban youth.

Also, the report language instructed the Department to give consideration to proposed sites that will serve individuals with limited English proficiency.

The determination of need will be made by analyzing State-level rural poverty and overall poverty rates for youth, ages 16 through 24, youth unemployment, and limited English proficiency levels, using standardized uniform data available through federal agencies, such as 1990 census data, Bureau of Labor Statistics publications, and existing Job Corps centers, slots and locations.

In addition to the requirements in the appropriations language, the Department will assess the facilities at proposed sites. The assessment will be in terms of property acquisition costs, the cost and suitability of existing structures and the need for, and cost of, new construction and renovation.

Further, the Department will assess each jurisdiction's plan to use State and local resources, both public and private, through contributions/linkages that will reduce the Federal cost of operating a Job Corps center. Such contributions/linkages may include, but are not limited to, the provision of child care services by local jurisdictions, provision of health services, alcohol and drug counseling, referral of eligible youth to Job Corps, and job placement assistance after leaving Job Corps, as well as arrangements with public school systems, community college networks, social service agencies, business and industry, and other training programs to provide such services as classroom training, vocational training, advanced learning opportunities, and co-enrollment arrangements with appropriate JTPA programs. Contributions of this nature will make maximum use of available statewide and community resources in meeting the needs of these youth.

Finally, additional points will be awarded for proposed sites located in empowerment zones and enterprise communities in accordance with guidelines in "Building Communities: Together," published by the U.S. Departments of Housing and Urban Development and Agriculture in the spring of 1994. Under this program, the Federal Government will designate up to 104 areas that meet certain poverty and distress criteria and prepare creative strategic plans for revitalization. The Secretary of Housing and Urban Development will designate up to six urban Empowerment Zones and 65 Enterprise Communities and the Secretary of Agriculture will designate up to three rural Empowerment Zones and 30 Enterprise Communities. Announcement of these is expected to be made in December 1994.

Eligible applicants for proposing sites are units of State and/or local governments. A Federal agency also may propose sites to the extent that such sites are located on public land which is under the jurisdiction of the agency. In addition, proposals submitted by Federal agencies must have the support of appropriate State and local governments.

Since Job Corps is primarily a residential program and provides academic education, vocational training, and extensive support services, space and facilities suitable for the following types of utilization are required for a Job Corps center.

- *Residential*—Adequate housing, including bath and lounge facilities, as well as appropriate administrative space.
- *Academic Education*—Space for classrooms, computer labs, and library resources.

• *Vocational Training*—Classroom and shop space to satisfy the needs of specific vocational training areas (*e.g.*, carpentry, clerical, painting, culinary arts, health education). The configuration of the vocational area, with regard to classroom and shop areas, is determined by the ultimate vocational mix offered at the center. In this regard, heavy trades, such as construction and automotive, require shop areas, while lighter trades, such as clerical and retail sales, require only classroom space.

• *Food Services*—Cafeteria, including food preparation and food storage areas.

• *Medical/Dental*—Medical examining rooms, nurses' station, infirmary space for male and female students, and dental facilities.

• *Recreation*—Gymnasium/multi-purpose recreational facility and large, level outdoor area.

• *Administration*—General office and conference space.

• *Storage/Support*—Warehousing and related storage including operations and maintenance support.

• *Parking*—Sufficient for a minimum of 70 vehicles. Other factors that influence the suitability and cost of facilities necessary to operate a Job Corps center include the following:

Configuration of Facility

The preferred configuration of a facility is a campus-type environment permitting a self-contained center with all space requirements located on-site. Low-rise buildings such as those commonly found in public school and college settings are preferred.

The Office of Job Corps has developed prototype designs for selected facilities where new construction is necessary. Parties interested in obtaining copies of these designs may do so by contacting the Office of Job Corps at the address shown above.

Location of Facilities

Facilities should be located in areas where neighbors are supportive and no major pervasive community opposition exists. Past experience indicates that commercial, light industrial, and rural locations are most desirable in this regard, while high-value residential locations are the least conducive to community acceptance. In addition, access to emergency medical services and fire and law enforcement assistance should be within reasonable distances. If non-residential enrollment is planned, direct and easy access to the center by public transportation is an important consideration. Moreover, proposed sites should be within reasonable commuting distance of planned linkages with other programs and services and easy access to transportation to these linkages should be available. Locations with major environmental issues, zoning restrictions, flood plain and storm drainage requirements, or uncertainty regarding utility connections that cannot be resolved efficiently and in a timely manner are less than desirable. Likewise, a facility with buildings which are eligible under the National Historical Preservation Act may receive less than favorable consideration, due to restrictions on and costs for renovation. Communities are encouraged to hold public hearings in close proximity to the facilities being proposed to ascertain the level of community support for a Job Corps center. The Office of Job Corps has developed a 12-minute video (available in English and Spanish) which provides an overview of the Job Corps program and can be useful in informing the local community about Job Corps. Any proposer interested in obtaining a copy of either version of this video may contact the Office of Job Corps at the address shown above.

Own/Lease

Ownership is preferred over leased facilities, since most facilities will require a substantial investment of construction funds to make the site suitable for Job Corps utilization. Exceptions are long-term leases (*e.g.*, 25 years or longer) at a nominal cost (*e.g.*, $1/year).

Size

The size (capacity) of Job Corps centers can vary substantially. However, centers with a capacity of less than approximately 275 students are relatively cost-inefficient in terms of operating cost. Centers above approximately 500 students are less desirable from a programmatic and management standpoint.

The following table shows the approximate gross square feet (GSF) required for the various types of buildings. The examples shown are for centers with 100-percent residential capacity of 275 and 500 students, respectively. The substitution of non-resident for resident students will decrease the dormitory space requirements, but will not affect other buildings.

Building type	GSF per student	GSF per 275 students	GSF per 500 students
Housing	175	48,125	87,500
Education/ Vocation	85	23,375	42,500
Food Services	44	12,100	22,000
Recreation	82	22,550	41,000
Medical/Dental	12	3,300	6,000
Administration	26	7,150	13,000
Storage/Support	57	15,675	28,500
Subtotal		132,275	240,500
Child Care Center (40 children)		5,760	5,760
Subtotal		138,035	246,260
Single Parent Dorm (minimum 28)		9,894	9,894
Total		147,929	256,154

Note: Space requirements for child care and single parent dormitories are included in the event these activities are proposed.

Land Requirements

Listed below is the acreage needed for centers with 275 and 500 students, respectively.

	GSF per 275 students	GSF per 500 students
Acreage	15–19 acres	23–27 acres.

Availability of Utilities

Since the majority of students are residential, it is critical that all basic utilities (*i.e.*, sewer, water, electric and gas) are available and in proximity to the site and in accordance with EPA standards.

Safety, Health and Accessibility

Job Corps is required to comply with the requirements of the Occupational Safety and Health Act (OSHA), the Environmental Protection Act (EPA), and the Uniform Federal Accessibility Standards (UFAS). The cost involved in complying with these requirements is an important factor in determining the economic feasibility of utilizing a site. For example, a site which contains an excessive amount of asbestos probably would not be cost-effective due to associated removal costs. Further, sites with any environmental hazard that cannot be corrected economically will be at a disadvantage.

Cost

The availability of low-cost facilities is a major consideration in light of resource limitations. In evaluating facility costs, the major items that must be considered are:

• Site acquisition or lease costs,

- Site/utility work,
- Architectural and engineering services,
- New construction requirements,
- Rehabilitation and modifications of existing buildings, and
- Equipment requirements.

An assessment of these initial capital costs as well as consideration of future repair, maintenance and replacement costs will be used in evaluating the economic feasibility of a particular facility. Consideration will be given to the use of raw land which is suitable for a Job Corps center and on which facilities can be constructed economically.

Proposal Submission

In preparing proposals, eligible applicants should identify sites which meet the evaluation criteria and guidelines specified above. Proposals should address each area with as much detail as practicable to enable the Department to determine the suitability of locating a Job Corps center at the proposed site. In this regard, proposals must contain, at a minimum, the specific information and supporting documentation as described below

Facilities

Submissions must provide a full description of existing buildings, including a building site layout, square footage, age, and general condition of each structure. Included in the description must be a discussion of its current or previous use; the number of years unoccupied, if appropriate; and the condition of sub-systems such as heating, ventilation and air conditioning systems, plumbing, and electrical. Any building documents, such as blueprints, should be available for review when a site inspection is conducted by the Department. Documentation in the nature of photographs of the property and/or facilities must be submitted as well. In addition, a videotaped presentation of the site may be provided. The proposal must identify the extent to which hazardous materials such as asbestos, PCB, and underground storage tanks are present at the site or, if appropriate, confirm that contaminants do not exist. The results of any environmental assessment for the proposed site, if one has been done, must be provided. The proposal must address the availability and proximity of utilities to the proposed site, including electrical, water, gas, and sanitary sewer and runoff connections. It must also describe whether the water and sewer utilities for existing buildings are connected to the municipal system or operated separately. A statement on current zoning classification and any zoning restrictions for the proposed site must also be included. Use of the site as a Job Corps center should be compatible with surrounding local land use and also with local zoning ordinances. Confirmation must be provided as to whether or not any buildings at the site are on a Federal or State Historical Preservation Register. The proposal must also describe the available acreage at the site, and the nature of the surrounding environment including whether it is commercial, industrial, light industrial, rural, or residential. In some instances, proposed sites may be part of a substantially larger acreage which has or contemplates having other uses. This type of joint-use situation may or may not be compatible with providing a quality training environment for young women and men. Finally , the proposal must address the cost of acquiring the site, which may involve transferring the site to the government at no cost, entering into a low-cost long-term lease agreement or arranging for a negotiated purchase price based on a fair market appraisal. Estimated acquisition costs along with the basis for the estimate must be included in the proposal.

Contributions/Linkages

An important aspect of any proposal will be its description of how State and local resources will be used to reduce Federal operating costs. It is, therefore, essential that precise and comprehensive information about the linkages be available to ensure that the proposed site receives every opportunity for an equitable evaluation. The proposal should contain for each linkage the following information:

- A comprehensive description of the service to be provided, including projected listing of resources that will be involved such as number of instructors/staff, types of equipment and materials.
- Whether it will be provided at no cost to Job Corps or will be available on a contractual (paid) basis to Job Corps.
- Whether the linkage will be provided on-site or off-site.
- The number of students to be served and over what period of time, as well as the specific benefits to Job Corps students while in Job Corps and/or after leaving the program.
- Distance to linkage, if off-site, and any arrangements for transportation to off-site services, including any cost to Job Corps.
- The estimated annual value of the contribution and the basis on which the estimate was determined (*e.g.*, two full-time staff devoted to Job Corps at an annual salary of $30,000 each for a total annual value of $60,000, or one hour of a professional staff-person's time per week for 52 weeks at an hourly rate of $15.00 for an annual value of $780, or 15 computers at a cost of $1,800 each for an annual value of $27,000).
- Any limitations associated with the linkage, such as eligibility restrictions (*e.g.*, in-state versus out-of-state residents), limited hours of service, and availability over time (*e.g.*, all-year versus selected months).
- Long-term prospects for continuation of the commitment (e.g., one time only, 1 year, on-going, dependent on outside funding sources). If dependent on outside funding levels, which may vary significantly, what is the likelihood that the linkage will not be funded?
- Documentation that addresses timeframes and steps involved in firming up the linkage, if appropriate, including obtaining State or local legislation, fitting into other planning cycles, or securing other agreements or arrangements which may be necessary to assure provision of the service.
- A letter of commitment confirming each aspect of the linkage, including the level of resources and annual value of these resources, from the head of the agency responsible for delivering the contribution.
- Name of the agency/organization(s), address, telephone number and contact person.

In providing information on linkages, proposers should keep in mind that Job Corps is an open-entry, open-exit, individualized, self-paced instructional program that operates on a year-round basis. This type of learning environment may have implications for the types of linkages being offered.

In preparing the linkage/contribution part of their proposals, eligible applicants should provide full information on each proposed linkage/contribution. Each item listed above should be addressed for each linkage/contribution, providing as much information as is needed to ensure that each proposed linkage receives a fair assessment.

Other Information

Proposals should include any other information the applicant believes pertinent to the proposed site for consideration by the Department. This information may include: letters of community support from elected officials, government agencies, community leaders and neighborhood associations; access to cultural/recreation activities in the community; and unique features in the surrounding

area which would enhance the location of a Job Corps center at that site.

Also, proposals should indicate whether or not the proposed site is located in either a designated Empowerment Zone or Enterprise Community. The Department will verify any designation referenced in the proposal.

The Job Corps legislation provides the Governor with the opportunity to veto the establishment of a center within a State. It is important that, before proposing the use of any particular location, appropriate clearances are obtained from local and State political leadership.

With regard to timeframes for choosing sites for the establishment of Job Corps centers, the site selection process normally take 8 months to complete. This allows sufficient time for eligible applicants to prepare and submit proposals and for the Department to conduct a preliminary site assessment of all proposed facilities, as well as a comprehensive site utilization study for those sites having high potential for the establishment of a Job Corps center, based on the preliminary assessment results. Governors of States in which high-potential sites are identified will be provided written notification by the Department, in accordance with section 435(c) of the Job Training Partnership Act, that these sites are in a final phase of consideration. Each Governor will be provided a 30-day time period to approve or reject further consideration of establishment of a Job Corps center at the identified site(s).

The Department hereby requests eligible proposers to submit proposals to be received no later than March 13, 1995, using the guidance provided above.

Signed in Washington, DC, this 9th day of November, 1994.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 94–28281 Filed 11–15–94; 8:45 am]

BILLING CODE 4510–30–M

Reader Aids

Federal Register

Vol. 59, No. 220

Wednesday, November 16, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

54513–54786 1
54787–55018 2
55019–55198 3
55199–55328 4
55329–55570 7
55571–55806 8
55807–55984 9
55985–56372 10
56373–58758 14
58759–59098 15
59099–59356 16

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6752 54513
6753 55329
6754 55805
6755 55981
6756 55983
March 21, 1917
(Revoked in part by PLO 7098) 55371

Executive Orders:
12710 (See Treasury Department final rule of October 11) 55209
12735 59099
12930 59099
12933 54949
12936 59075
12937 59097
12938 59099

Administrative Orders:

Memorandums:
October 27, 1994 54515

Notices:
October 12, 1994 54785

Presidential Determinations:
No. 95–2 of November 1, 1994 55979
No. 95–3 of November 1, 1994 56373

4 CFR

28 59103
29 59103

5 CFR

532 54787
576 55807
1600 55331
1605 55331
1630 55331
1631 55331
1632 55331
1650 55331

Proposed Rules
211 55212
230 55212
300 55212
301 55212
307 55212
310 55212
316 55212
330 55212
333 55212
339 55212
340 55212
351 55212
353 55212
831 55211
842 55211
930 55212

7 CFR

301 56375
718 59280
790 59280
791 59280
905 ..... 55332, 55571, 56376
906 56381
927 55333
928 55334
929 55336
931 55337
932 ..... 55338, 55985
934 55338
944 ..... 55571, 55985, 56376
948 58759
955 55019
966 55020
979 58760
997 55808
1205 59109
1413 59280
1414 59280
1415 59280
1416 59280
1902 54787
1941 54787
1942 54787
1943 54787
1944 54787
1945 54787
1951 54789

Proposed Rules:
68 55067
70 56573
300 56412
319 ..... 56412, 59070
929 56007
956 56254
1011 55377
1030 54952
1065 54952
1068 54952
1076 54952
1079 54952
1131 56414
1413 55378

8 CFR

214 55910

9 CFR

94 55021

10 CFR

Proposed Rules:
Ch. II 56421
Ch. III 56421
Ch. X 56421
20 55224
35 55068
50 54843
55 54843

73.....54843
430.....56423

12 CFR

5.....54789
16.....54789
208.....55987
211.....55026
225.....54801, 54805
262.....54805
701.....54517

Proposed Rules:
900.....55379

14 CFR

25.....59115, 59116
39.....54517, 55199, 55203, 55341, 55988, 55990, 55992, 55993, 55995, 56114, 56383, 58761, 58765, 58766, 58768, 59122, 59124
61.....56385
71.....55029, 55810
73.....55030, 55995, 55996, 59134
93.....58770
97.....55205, 55206
121.....55208
125.....55208
135.....55208

Proposed Rules:
23.....55225
35.....55070
39.....54535, 54847, 54849, 55380, 55382, 55383, 55595, 56008, 56011, 56433, 56435, 56436, 56438, 59178, 59179
71.....59181

15 CFR

770.....59135
772.....59135
773.....59135
774.....59135
776.....59135

Proposed Rules:
291.....56439

16 CFR

410.....54809
1500.....56387

Proposed Rules:
1700.....56445

17 CFR

200.....59137
240.....54812, 55006, 55342, 59137
249.....55342
250.....55573
405.....55910

Proposed Rules:
228.....55385
229.....55385
230.....55385
239.....55385
240.....55014, 55385
274.....55385
404.....58792
405.....58792

18 CFR

Ch. I.....56421
2.....55031
11.....54815
342.....59137
346.....59137
347.....59137
348.....59148

Proposed Rules:
Ch. I.....54851

19 CFR

12.....54817
133.....55996
171.....55997
175.....58771

Proposed Rules:
10.....54537
123.....56014
148.....56014

20 CFR

Proposed Rules:
638.....54539

21 CFR

175.....58775
520.....55999, 56388, 58775
522.....54517, 55999
558.....54518

Proposed Rules:
54.....55071
101.....56573
170.....56573
182.....55072
310.....56573
312.....55071
314.....55071
320.....55071
330.....55071
333.....58799
369.....58799
600.....56448
601.....55071, 56448
606.....56448
607.....56448
610.....56448
640.....56448
660.....56448
807.....55071
812.....55071
814.....55071
860.....55071
1309.....54949
1313.....54949

22 CFR

40.....55045

23 CFR

Proposed Rules:
627.....59182

24 CFR

905.....56354
906.....56354

Proposed Rules:
38.....54984
100.....56449

26 CFR

1.....58800

Proposed Rules:
1.....55225

27 CFR

Proposed Rules:
9.....55226

28 CFR

Proposed Rules:
524.....54782

29 CFR

1601.....54818
1910.....55208
2619.....58775
2676.....58775

Proposed Rules:
1910.....58884
1915.....58884
1926.....54540, 58884

30 CFR

920.....56389, 56390
935.....58778

Proposed Rules:
Ch. II.....55597
42.....54855
48.....54855
70.....54855
71.....54855
75.....54855
77.....54855
90.....54855
913.....55597
917.....56449
920.....56451
931.....58801
938.....58802
946.....59187

31 CFR

306.....59036
357.....59036
565.....55209

32 CFR

701.....55348
706.....59161, 59162, 59163

33 CFR

100.....55583, 56393
117.....54518
165.....55583, 56393, 56395, 56396
168.....54519

Proposed Rules:
110.....55598
117.....55599, 55601
165.....55602, 55603
181.....55823

34 CFR

690.....54718
691.....54718

36 CFR

7.....58781
701.....55811

Proposed Rules:
13.....58804

37 CFR

201.....58787

Proposed Rules:
1.....56015

40 CFR

52.....54521, 54523, 55045, 55053, 55059, 55368, 55584, 55585, 55586
70.....55813
82.....55912
180.....55589, 59164, 59165
186.....59165
258.....58789
271.....55368, 56000, 56397, 56407, 56573
272.....56114
300.....56409

Proposed Rules:
Ch. I.....59188
50.....58958
52.....54540, 54544, 54866, 55072, 55400, 55824, 56019, 59189
53.....58958
63.....54869
70.....54869
80.....54678
81.....55053, 55059
82.....56276
89.....55930
91.....55930
170.....59192
180.....54818, 54821, 54822, 54824, 54825, 54827, 54869, 54871, 54872, 55605, 56027, 56452, 56454
185.....56454
186.....54829, 56454
264.....55778
265.....55778
270.....55778
271.....55322, 55778
300.....54830, 55606
721.....54874
745.....54984
763.....54746

41 CFR

51–2.....59338
51–3.....59338
51–4.....59338
51–5.....59338
51–6.....59338
51–8.....59338
51–9.....59338
101–6.....54524

42 CFR

59a.....59167
401.....56116
431.....56116
435.....56116
440.....56116
441.....56116
442.....56116
447.....56116
483.....56116
488.....56116
489.....56116
498.....56116

Proposes Rules:
60.....59193

43 CFR

4.....56573

Public Land Orders:
7098.....55371
7099.....55371
7100.....55820
7101.....55821
7102.....56409
7103.....56410

Proposed Rules:
11.....54877
43.....58808

44 CFR

65.....56003
67.....55060, 55590

Proposed Rules:
61.....58808

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List November 15, 1994

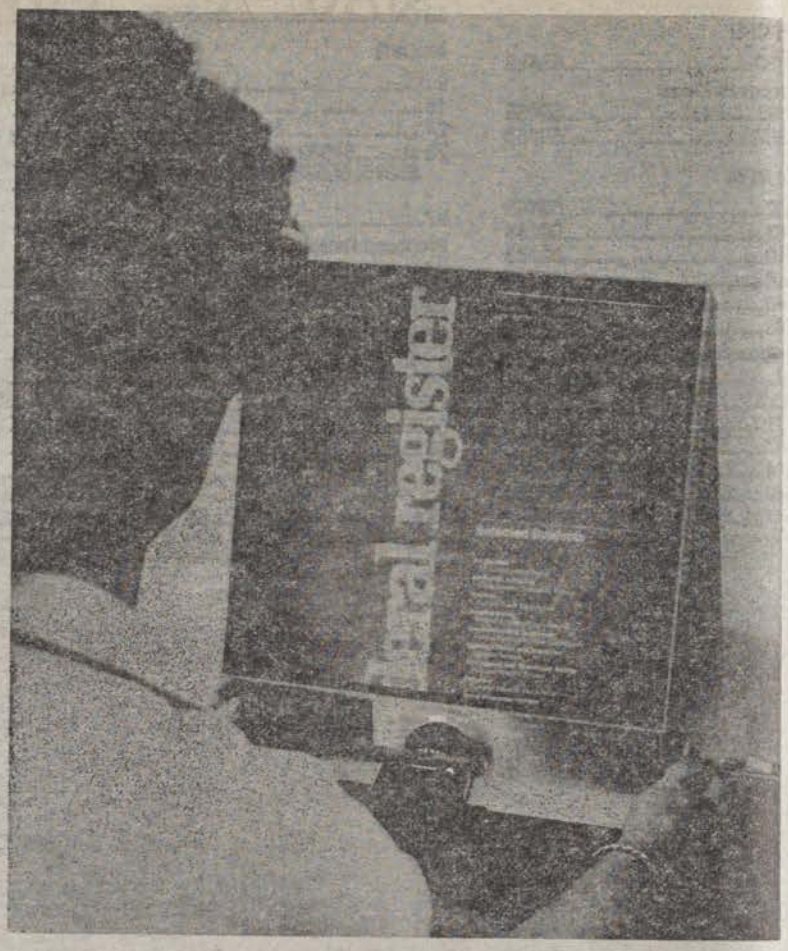
Microfiche Editions Available...

Federal Register

The Federal Register is published daily in 24x microfiche format and mailed to subscribers the following day via first class mail. As part of a microfiche Federal Register subscription, the LSA (List of CFR Sections Affected) and the Cumulative Federal Register Index are mailed monthly.

Code of Federal Regulations

The Code of Federal Regulations, comprising approximately 200 volumes and revised at least once a year on a quarterly basis, is published in 24x microfiche format and the current year's volumes are mailed to subscribers as issued.



Microfiche Subscription Prices:

Federal Register:

One year: $433.00
Six months: $216.50

Code of Federal Regulations:

Current year (as issued): $264.00

Superintendent of Documents Subscription Order Form

Order Processing Code:
* 5419

Charge your order. It's easy!

To fax your orders (202) 512–2233

☐ **YES,** enter the following indicated subscriptions in 24x microfiche format:

____ **Federal Register** (MFFR) ❑ One year at $433 each ❑ Six months at $216.50

____ **Code of Federal Regulations** (CFRM5) ❑ One year at $264 each

The total cost of my order is $_____. Price includes regular domestic postage and handling and is subject to change. International customers please add 25%.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, Zip code)

(Daytime phone including area code)

(Purchase order no.)

For privacy, check box below:
❑ Do not make my name available to other mailers

Check method of payment:
❑ Check payable to Superintendent of Documents
❑ GPO Deposit Account ☐☐☐☐☐☐☐–☐
❑ VISA ❑ MasterCard ☐☐☐☐ (expiration)
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

(Authorizing signature) 10/94

Thank you for your order!

Mail to: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954

Public Laws

103d Congress, 2d Session, 1994

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 2d Session, 1994.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws.)

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
* 6216

S3

Charge your order. It's Easy!

To fax your orders (202) 512-2233

☐ **YES**, enter my subscription(s) as follows:

_____ subscriptions to **PUBLIC LAWS** for the 103d Congress, 2d Session, 1994 for $156 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (1994)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Printed on recycled paper