AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

10-18-91
Vol. 56 No. 202
Pages 52187-52442

federal register

Friday
October 18, 1991

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** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

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: 56 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–783–3238**
Magnetic tapes	**512–2235**
Problems with public subscriptions	**512–2303**

Single copies/back copies:

Paper or fiche	**783–3238**
Magnetic tapes	**512–2235**
Problems with public single copies	**512–2457**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**523–5240**
Magnetic tapes	**512–2235**
Problems with Federal agency subscriptions	**523–5243**

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

Contents

Federal Register
Vol. 56, No. 202
Friday, October 18, 1991

Administrative Conference of the United States
NOTICES
Meetings:
Rulemaking Committee, 52251

Agency for International Development
RULES
Acquisition regulations:
Disadvantaged enterprises; contracting and subcontracting requirements, 52212

Agriculture Department
See Food Safety and Inspection Service; Forest Service

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol; viticultural area designations:
Benmore Valley, CA, 52190

Army Department
See Engineers Corps

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Meetings:
Smoking and Health Interagency Committee, 52272

Commerce Department
See also International Trade Administration; National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 52254

Committee for Purchase From the Blind and Other Severely Handicapped
NOTICES
Procurement list; additions and deletions, 52256 (2 documents)

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Give-up charges and floor brokerage payment, 52256

Defense Department
See also Engineers Corps
RULES
Acquisition regulations:
Protests, disputes, and appeals; contracting officer's decisions, 52440
Civilian health and medical program of uniformed services (CHAMPUS):
Mental health services—
Acute inpatient psychiatric care, etc., 52193
Inpatient psychiatric care, 52198

Delaware River Basin Commission
NOTICES
Hearings, 52259

Education Department
NOTICES
Agency information collection activities under OMB review, 52260
Grants and cooperative agreements; availability, etc.:
Library Services and Construction Act library literacy program, 52260

Employment and Training Administration
NOTICES
Nonimmigrant aliens temporarily employed as registered nurses; attestations by facilities; list, 52295

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 52293

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Atomic energy agreements; subsequent arrangements, 52442

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Fox River and Chain-O-Lakes, McHenry and Lake Counties, IL, 52257
Spotsylvania County, VA, 52257
Meetings:
Environmental Advisory Board, 52258

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Connecticut, 52205
PROPOSED RULES
Air programs; fuel and fuel additives:
Gasoline and alcohol blends volatility, 52316
Drinking water:
National primary drinking water regulations—
Radionuclides; maximum contaminant levels; correction, 52241
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 52269
Weekly receipts, 52269
Meetings:
Ozone Transport Commission, 52270

Executive Office of the President
See Science and Technology Policy Office

Federal Aviation Administration
RULES
Airworthiness directives:
Partenavia, 52188
NOTICES
Meetings:
Research, Engineering, and Development Advisory Committee, 52308

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 52312
(2 documents)

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Interstate pipelines—
Facilities construction and replacement, 52330
NOTICES
Electric rate, small power production, and interlocking directorate filings, etc.:
United Illuminating Co. et al., 52261
Environmental statements; availability, etc.:
Central Vermont Public Service Corp., 52263
Natural gas certificate filings:
Tennessee Gas Pipeline Co. et al., 52263
Applications, hearings, determinations, etc.:
Boundary Gas, Inc., 52266
Carnegie Natural Gas Co., 52265
Commonwealth Atlantic Limited Partnership, 52265
Consolidated Edison Co. of New York, Inc., 52265
Equitrans, Inc., 52266
Granite State Gas Transmission Inc., 52266
Great Lakes Gas Transmission Limited Partnership, 52266
Nekoosa Papers Inc., 52267
Northern Natural Gas Co., 52267
Pacific Gas & Electric Co., 52267
Raton Gas Transmission Co., 52268
South Georgia Natural Gas Co., 52268
Trunkline Gas Co., 52268
Williams Natural Gas Co., 52269

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Montmorency and Otsego Counties, MI, 52308

Federal Maritime Commission
NOTICES
Agreements filed, etc., 52271

Federal Railroad Administration
PROPOSED RULES
Railroad accident reporting; meeting, 52241

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 52312
(2 documents)

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Universal Underwriters Insurance Co., 52311

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Bear River Migratory Bird Refuge, UT, 52291

Food and Drug Administration
NOTICES
Human drugs:
New drug applications—
Upjohn Co.; approval withdrawn, 52272

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Canadian products, imported; review and inspection requirements exemption; withdrawn, 52218
Sodium nitrate as anticoagulant in fresh blood of livestock; increased level, 52218

Forest Service
NOTICES
Appealable decisions; legal notice:
Alaska region, 52251
Rocky Mountain region, 52251
Environmental statements; availability, etc.:
Dixie National Forest, UT, 52253

General Services Administration
NOTICES
Property transfers:
Cannelton Locks and Dam, Perry County, IN, 52271

Health and Human Services Department
See also Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; Public Health Service; Social Security Administration
NOTICES
Agency information collection activities under OMB review, 52271

Health Care Financing Administration
NOTICES
Meetings:
Medicare-Physician Relationships Advisory Committee, 52272

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Property improvement and manufactured home loans; lending institutions approval, 52414
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 52274
Mortgage and loan insurance programs:
Property improvement and manufactured home loans; lending institutions approval; maximum expense-to-income ratios for creditworthiness determinations, 52438

Inter-American Foundation
NOTICES
Meetings; Sunshine Act, 52313

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service; Reclamation Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes:
Consolidated return regulations—
Consolidated groups; hearing, 52240
Small business corporations; one class of stock requirement
Correction, 52240

International Development Cooperation Agency
See Agency for International Development; Overseas Private Investment Corporation

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 52254

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
CSX Transportation, Inc., 52292, 52293
(2 documents)
Providence & Worcester Railroad Co., 52293

Labor Department
See Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration

Land Management Bureau
RULES
Public land orders:
Alaska, 52210
(2 documents)
California, 52212
Colorado, 52211
NOTICES
Classification of public lands:
Arizona, 52274
Closure of public lands:
Oregon, 52274
Coal leases, exploration licenses, etc.:
Wyoming, 52275
Conservation and recreation areas:
California Desert Conservation Area Plan, 52275
Environmental statements; availability, etc.:
Cockrell Oil Corp. Coalbed Methane Project, UT, 52276
Oil and gas leases:
Utah, 52277
Wyoming, 52277
Realty actions; sales, leases, etc.:
California, 52277
Minnesota, 52278
Montana, 52278
Nevada, 52279
(2 documents)
Survey plat filings:
Wyoming, 52279
Withdrawal and reservation of lands:
Alaska, 52280
Idaho, 52280
Montana, 52281
Nevada, 52283
New Mexico, 52284, 52285
(2 documents)

Merit Systems Protection Board
RULES
Practice and procedure:
Regional Offices; addresses, commercial FTS facsimile numbers, and geographic jurisdictions, 52187

Mine Safety and Health Administration
RULES
Metal and nonmetal safety and health:
Explosives
Partial stay; correction, 52193

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Miscellaneous amendments, 52213
NOTICES
Meetings:
Space Science and Applications Advisory Committee, 52301

National Commission on Severely Distressed Public Housing
NOTICES
Meetings; correction, 52301

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts National Council, 52301
Humanities National Council, 52302

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety systems:
Lamps, reflective devices, and associated equipment—
Replaceable light source dimensional information; lower beam headlighting requirements, 52242

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 52214
Gulf of Alaska groundfish, 52213
(2 documents)
Western Pacific Region pelagic, 52214
PROPOSED RULES
Coastal Zone Act; implementation:
Reauthorization amendments; phase one, 52220
NOTICES
Meetings:
Killer whales; capture, care, and maintenance for public display, 52255
North Pacific Fishery Management Council, 52255

National Park Service
NOTICES
Environmental statements; availability, etc.:
Cheeseboro Canyon/Palo Comado Canyon and Santa Monica Mountains National Recreation Area, CA, 52291
Timpanogos Cave National Monument, UT, 52291
Meetings:
Farmington River Study Committee, 52292

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Wolf Creek Nuclear Operating Corp., 52302
Applications, hearings, determinations, etc.:
Illinois Power Co. et al., 52303

Occupational Safety and Health Administration
NOTICES
State plans; standards approval, etc.:
Iowa, 52296–52299
(2 documents)
Maryland, 52300

Overseas Private Investment Corporation
NOTICES
Meetings, 52304

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Premium payments, 52192

Public Health Service
See also Centers for Disease Control; Food and Drug Administration
NOTICES
Meetings:
Scientific Integrity Advisory Committee, 52273

Reclamation Bureau
NOTICES
Contract negotiations:
Quarterly status tabulation of water services and repayment, 52285
Meetings:
Colorado River Basin Salinity Control Advisory Council, 52290

Resolution Trust Corporation
NOTICES
Meetings; Sunshine Act, 52313

Science and Technology Policy Office
NOTICES
Meetings:
Semiconductors National Advisory Committee, 52303

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 52305

Severely Distressed Public Housing, National Commission
See National Commission on Severely Distressed Public Housing

Small Business Administration
RULES
Business loans:
Rural loan program; lenders making guaranteed loans of less than $75,000 to small businesses in rural areas, 52187
NOTICES
Commercial and fixed rate loans; interest rates, 52306
Disaster loan areas:
New York, 52306
New York et al., 52306, 52307
(2 documents)
Utah, 52307
Meetings; regional advisory councils:
Arizona, 52307
Connecticut, 52307
North Carolina, 52307
Tennessee, 52307
Texas, 52308

Social Security Administration
PROPOSED RULES
Social security benefits:
Disability and blindness determinations—
Respiratory system listing, 52231
NOTICES
Agency information collection activities under OMB review, 52273

Transportation Department
See Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; National Highway Traffic Safety Administration

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Fiscal Service; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 52309, 52310
(3 documents)
Notes, Treasury:
H-1998 series, 52311

Separate Parts In This Issue

Part II
Environmental Protection, 52316

Part III
Department of Energy, Federal Energy Regulatory Commission, 52330

Part IV
Department of Housing and Urban Development, 52414

Part V
Department of Defense, 52440

Part VI
Department of Energy, 52442

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
1201 52187

9 CFR
Proposed Rules:
312 52218
318 52218
322 52218
327 52218
381 52218

13 CFR
122 52187

14 CFR
39 52188

15 CFR
Proposed Rules:
928 52220
932 52220

18 CFR
2 52330
154 52330
157 52330
284 52330
375 52330
380 52330

20 CFR
Proposed Rules:
404 52231

24 CFR
200 52414
201 52414
202 52414

26 CFR
Proposed Rules:
1 (2 documents) 52240

27 CFR
9 52190

29 CFR
2610 52192

30 CFR
56 52193
57 52193

32 CFR
199 (2 documents) 52193–52198

40 CFR
52 52205
Proposed Rules:
80 52316
141 52241
142 52241

43 CFR
Public Land Orders:
6892 52210
6893 52210
6894 52211
6895 52212

48 CFR
233 52440
705 52212
706 52212
719 52212
726 52212
752 52212
1825 52213

49 CFR
Proposed Rules:
225 52241
564 52242
571 52242

50 CFR
672 (2 documents) 52213
675 52214
685 52214

Rules and Regulations

Federal Register
Vol. 56, No. 202
Friday, October 18, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending part 1201 by revising appendix II to reflect the current addresses, commercial and FTS facsimile numbers, and geographic jurisdictions of its regional offices. This action is being taken to correct the commercial facsimile numbers for the Boston, Dallas, St. Louis, San Francisco, and Seattle regional offices, to add the commercial facsimile number for the Atlanta regional office, and to add FTS facsimile numbers for all of the regional offices.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Duward Sumner (202) 653-8892.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701 unless otherwise noted.

2. Appendix II to part 1201 is revised to read:

Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

All submissions shall be addressed to the Regional Director, Merit Systems Protection Board, at the addresses listed below, according to geographic region of the employing agency or as required by § 1201.4(d) of this part. Address of Appropriate Regional Office and Area Served:

1. Atlanta Regional Office, 401 W. Peachtree Street, NW., 10th Floor, Atlanta, Georgia 30303
Commercial Facsimile No.: (404) 730-2767
FTS Facsimile No.: FTS 880-2767
(Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina.)
2. Boston Regional Office, 10 Causeway Street, Room 1078, Boston, Massachusetts 02222-1042
Commercial Facsimile No.: (617) 565-5903
FTS Facsimile No.: FTS 835-5903
(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.)
3. Chicago Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604-1669
Commercial Facsimile No.: (312) 886-4231
FTS Facsimile No.: FTS 886-4231 (Illinois [all locations north of Springfield], Indiana, Michigan, Minnesota, Ohio, and Wisconsin.)
4. Dallas Regional Office, 1100 Commerce Street, room 6F20, Dallas, Texas 75242-9979
Commercial Facsimile No.: (214) 767-0102
FTS Facsimile No.: FTS 729-0102
(Arkansas, Louisiana, Oklahoma, and Texas)
5. Denver Regional Office, 730 Simms Street, suite 301, P.O. Box 25025, Denver, Colorado 80225-0025
Commercial Facsimile No.: (303) 231-5205
FTS Facsimile No.: FTS 554-5205 (Arizona, Colorado, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming.)
6. New York Regional Office, 26 Federal Plaza, room 3137-A, New York, New York 10278-0022
Commercial Facsimile No.: (212) 264-1417
FTS Facsimile No.: FTS 264-1417 (New York, Puerto Rico, Virgin Islands, and the following counties in New Jersey: Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, Union, and Warren.)
7. Philadelphia Regional Office, U.S. Customhouse, room 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106-2904
Commercial Facsimile No.: (215) 597-3456
FTS Facsimile No.: FTS 597-3456
(Delaware, Pennsylvania, Virginia—except cities and counties served by Washington Regional Office, West Virginia, and the following counties in New Jersey: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Middlesex, Monmouth, Ocean, and Salem.)
8. St. Louis Regional Office, 911 Washington Avenue, room 615, St. Louis, Missouri 63101-1203
Commercial Facsimile No.: (314) 425-4294
FTS Facsimile No.: FTS 279-4294 (Illinois [Springfield and all locations south], Iowa, Kentucky, Missouri, and Tennessee.)
9. San Francisco Regional Office, 525 Market Street, room 2800, San Francisco, California 94105-2789
Commercial Facsimile No.: (415) 744-3194
FTS Facsimile No.: FTS 484-3194
(California.)
10. Seattle Regional Office, 915 Second Avenue, suite 1840, Seattle, Washington 98174-1001
Commercial Facsimile No.: (206) 553-6484
FTS Facsimile No. FTS 399-6484 (Alaska, Hawaii, Idaho, Oregon, Washington, and Pacific overseas areas.)
11. Washington Regional Office, 5203 Leesburg Pike, suite 1109, Falls Church, Virginia 22041-3473
Commercial Facsimile No.: (703) 756-7112
FTS Facsimile No.: FTS 756-7112
(Washington, DC., Maryland, all overseas areas not otherwise covered, and the following cities and counties in Virginia: Alexandria, Falls Church, Arlington, Fairfax City, Fairfax County, Loudoun, and Prince William.)

Dated: October 15, 1991.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 91-25177 Filed 10-17-91; 8:45 am]

BILLING CODE 7400-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans, Rural Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: Section 307 of Public Law 101-574, the Small Business Administration and Amendments Act of 1990, enacted on November 15, 1990 (104 Stat. 2814) (1990 legislation), amended the Small Business Act by adding a new section 7(a)(19)(C) which authorizes a lender to retain one half of the guaranty fee when it makes a guaranteed loan of less than $75,000 to a small business located in a rural area. If the guaranteed loan to a business in a rural area is $75,000 or more, the participating lender is allowed to keep one half of the guaranty fee attributable to $75,000 on a *pro rata* basis. This final regulation implements these provisions.

EFFECTIVE DATE: October 18, 1991.

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

SUPPLEMENTARY INFORMATION: Pursuant to section 7(a)(19)(C) of the Small Business Act (15 U.S.C. 636(a)(19)(C)) (Act), if a guaranteed loan of under $75,000 is made to a small business in a rural area under section 7(a) of the Act, the lender is allowed to keep one half of the guaranty fee. Also, if a lender makes a guaranteed loan of $75,000 or more to a business in a rural area, such lender is authorized to retain one half of the guaranty fee attributable to $75,000. On June 4, 1991, SBA published a notice of proposed rulemaking in the **Federal Register** (56 FR 25378) in which it proposed to implement the 1990 legislation. One comment was received from a trade association which voiced support for the regulation. It stated that the regulation, if finalized, should have a positive impact on the delivery of small business loans guaranteed by the SBA to the rural business community. SBA is amending the regulation as proposed.

At the present time, the guaranty fee (payable to SBA) is two percent of the guaranteed portion of a loan made pursuant to section 7(a) of the Act, except for loans with a maturity of one year or less or for loans made by development companies under section 7(a)(13) of the Act. Accordingly, a lender, under this final regulation, is authorized to retain up to $750 of the guaranty fee (one half of the two percent attributable to $75,000). Under the provisions of the 1990 legislation this so-called rural loan program terminates with respect to guaranteed loans approved by SBA after September 30, 1995.

The rural loan program is separate and distinct from SBA's small loan program (*i.e.*, loans of $50,000 or less) authorized by section 7(a)(19)(B) of the Act which contains its own provisions with respect to the lender retaining one half of the guaranty fee. Consequently, a lender which makes a rural loan of $50,000 or less is authorized to retain only one half of the guaranty fee under section 7(a)(19)(C); the retention provisions of section 7(a)(19)(B) would not apply.

The final regulation sets forth the general rule regarding retention of guaranty fees for the rural loan program. Since the 1990 legislation does not define "rural area", SBA defines the term in a manner similar to that used by SBA in another of its programs relating to development companies (see § 108.2 of this Title). Under the definition as stated in the final regulation, a "rural area" means: (1) Any political subdivision or unincorporated area in a nonmetropolitan county (as defined by the Economic Development Division, Economic Research Service, U.S. Department of Agriculture) or the equivalent thereof, or (2) any political subdivision or unincorporated area in a metropolitan county or the equivalent thereof, with a resident population of less than 20,000 if SBA has determined such political subdivision or area to be rural. The SBA plans to supply its field offices with the necessary information from the U.S. Department of Agriculture.

The final regulation provides that the proceeds of a guaranteed loan made under this rural loan program could be used for any of the purposes set forth in section 7(a) of the Act.

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

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

SBA certifies that this final rule is not a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

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

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

List of Subjects in 13 CFR Part 122

Loan programs/business, Small businesses.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends Part 122, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 122—BUSINESS LOANS

1. The authority citation for Part 122 continues to read as follows:

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

2. Subpart B of part 122 is amended by adding new §§ 122.60, 122.60-1, 122.60-2 and 122.60-3 to read as follows:

§ 122.60 Rural Loan Program.

§ 122.60-1 General Rule.

The Act authorizes a Lender to retain one half of the guaranty fee with respect to a guaranteed loan of less than $75,000 to a small business concern in a rural area. With respect to a guaranteed loan of $75,000 or more to a small business concern in a rural area, a Lender may retain one half of the guaranty fee attributable to $75,000. The proceeds of a guaranteed loan made pursuant to this section of the regulations may be used for any of the purposes prescribed under section 7(a) of the Act. This rule terminates for guaranteed loans approved by SBA after September 30, 1995.

§ 122.60-2 Rural area.

For the purposes of this section, "rural area" means:

(a) Any political subdivision or unincorporated area in a nonmetropolitan county (as defined by the Economic Development Division, Economic Research Service, U.S. Department of Agriculture) or the equivalent thereof, or

(b) Any political subdivision or unincorporated area in a metropolitan county or the equivalent thereof, with a resident population of less than 20,000 if SBA has determined such political subdivision or area to be rural.

§ 122.60-3 Calculation of guaranty fee.

The guaranty fee (as described in § 120.104-1(a) of this Title) is calculable with respect to the guaranteed portion of any loan made under section 7(a) of the Act other than a loan repayable in one year or less or a loan under section 7(a)(13).

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

Dated: September 12, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-25076 Filed 10-17-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-CE-75-AD; Amendment 39-8066; AD 91-22-06]

Airworthiness Directives; Partenavia P-68 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Partenavia P–68 series airplanes. This action requires the installation of a reinforcement strip on the lower side of the horizontal tailplane and the incorporation of airspeed limitations until the reinforcement strip is installed. Tests have shown that the affected airplanes do not meet horizontal tail load requirements. The actions specified by this AD are intended to prevent horizontal stabilator failure, which could result in loss of control of the airplane.

DATES: Effective November 12, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1991.

Comments for inclusion in the Rules Docket must be received on or before January 3, 1992.

ADDRESSES: Partenavia Service Bulletin No. 85, dated July 16, 1991, that is discussed in this AD may be obtained from Partenavia, Costruzioni Aeronautiche S.p.A., Via G. Pascoli n. 7, 80026 Casoria (NA), Italy. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–75–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30; Facsimile (322) 230.68.99; or Mr. Mike Dahl, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on Partenavia P–68 series airplanes. The RAI advises that the affected airplanes do not meet horizontal tail load requirements. The RAI conducted wind tunnel tests on a full-scale tail section to gain an understanding of the aerodynamic characteristics of the horizontal stabilator. Results showed an increase of the aerodynamic coefficients in terms of tailplane lift slope in comparison with the theoretical values used for the original certification of the P–68 series airplanes. The RAI developed a rational analysis for horizontal tail loads and distribution and performed a new horizontal tailplane static test. During the static test, the applied load exceeded limit load, but the demonstrated safety margin was determined to be lower than the required 1.5.

The manufacturer, Partenavia, has issued Service Bulletin (SB) No. 85, dated July 16, 1991, which specifies the installation of a reinforcement strip on the lower side of the horizontal tailplane, and the installation of an operating limitation placard on the instrument panel until the reinforcement strip is installed on Partenavia P–68 series airplanes. The RAI classified this service bulletin as mandatory and issued RAI AD 91–271/P–68–44, dated July 31, 1991, in order to assure the airworthiness of these airplanes in Italy. The airplanes are manufactured in Italy and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, the RAI has kept the FAA totally informed of the above situation.

The FAA examined the findings of the RAI, 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 this condition could exist or develop in other Partenavia P–68 series airplanes of the same type design, an airworthiness directive (AD) is being issued that specifies actions that will prevent horizontal stabilator failure, which could result in loss of control of the airplane. The actions require the installation of a reinforcement strip on the lower side of the horizontal tailplane and the incorporation of interim airspeed limitations until the reinforcement strip is installed in accordance with the instructions in Partenavia SB No. 85, dated July 16, 1991.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, 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 regulatory docket number and be submitted in triplicate to the address specified above. 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 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 at the address given above. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

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 and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 3913 [Amended]

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

91-22-06 **Partenavia:** Amendment 39-8066; Docket No. 91-CE-75-AD. Applicability: P-68 Series (not applicable to AP-68TP Series) airplanes (serial numbers 1 through 327), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent horizontal stabilator failure, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after the effective date of this AD, accomplish the following:

(1) Change the airspeed limitations in Section 2 Operating Limitations of the Partenavia P-68 Flight Manual to correspond with Part A of Partenavia Service Bulletin (SB) No. 85, dated July 16, 1991, and operate the airplane accordingly.

(2) Install the Operating Limitation Placard that is included with Partenavia SB No. 85, dated July 16, 1991, on the airplane instrument panel within the pilot's clear view and operate the airplane accordingly.

(b) Within the next 500 hours TIS after the effective date of this AD, install a reinforcement strip on the lower side of the horizontal tailplane in accordance with the instructions in paragraphs 1 through 5 of Part B of Partenavia SB No. 85, dated July 16, 1991.

(c) After compliance with paragraph (b) of this AD, paragraphs (a)(1) and (a)(2) of this AD no longer apply and the Operating Limitation Placard may be removed and the flight manual limitations may be restored to their original measurements.

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

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety, may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(f) The modifications and installations required by this AD shall be done in accordance with Partenavia Service Bulletin No. 85, dated July 16, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Partenavia, Costruzioni Aeronautiche S.p.A., Via G. Pascoli n. 7, 80026 Casoria (NA), Italy. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the **Federal Register**, 1100 L Street, NW; room 8401, Washington, DC.

This amendment becomes effective on November 12, 1991.

Issued in Kansas City, Missouri, on October 4, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-25102 Filed 10-17-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-315; Reference Notice No. 717]

RIN 1512-AA07

Benmore Valley Viticultural Area (91F-002P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is establishing an American viticultural area in the southwest corner of Lake County, California to be known as "Benmore Valley." This final rule is the result of a petition submitted by Compliance Specialists, Santa Rosa, CA, on behalf of Vimark Inc., a Benmore Valley vineyard owner. The Bureau of Alcohol, Tobacco and Firearms believes the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will allow wineries to designate the specific grape-growing areas where their wines originate, and will help consumers identify the wine they purchase.

EFFECTIVE DATE: This final rule is effective November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226; telephone (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which are delineated in subpart C of part 9. Under 27 CFR 4.25a(e)(2), any interested person may petition ATF to establish a grape-growing region as an American viticultural area. Approved American viticultural areas are listed in 27 CFR part 9.

Petition

Compliance Specialists, Santa Rosa, California, on behalf of Vimark, Inc., a vineyard owner, petitioned ATF to establish a viticultural area in southwest Lake County, California to be known as "Benmore valley." The Benmore Valley viticultural area contains about 1440 acres, of which 125 acres are currently planted to Chardonnay grapes. There are no bonded wineries in the viticultural area.

Name

Benmore Valley, at 2,400 feet in elevation, is prominently identified on U.S.G.S. maps. The earliest use of this name can be traced to the late nineteenth century. The petition stated that use of the name Benmore for this area originated with the nineteenth century cattle rustler, Benjamin Logan Moore, or Ben Moore. Ben Moore would steal cattle in adjacent Mendocino County, and then drive them to Lake County into the hidden valley which now bears his name. He would later drive the cattle into Sacramento valley where he would sell them. Ben Moore continued this practice for many years until emigrating to South America to escape the Law. The 1988 Lake County Historical Society publication, Pomo Bulletin, further details the historical aspects of Ben Moore, and his life in Benmore Valley. The Benmore name also appears on a number of other local geographical features, including Benmore Creek, Upper Benmore Road, and Benmore Ridge Camp. The Benmore name may be found on the Hopland, Purdys Gardens and Lakeport U.S.G.S. maps.

Boundaries

The petitioner submitted two 1:24,000 scale U.S.G.S. maps which are the largest scale maps that describe the

area. The boundaries of the Benmore Valley viticultural area coincide in a general manner with the Benmore Valley area which is so labeled on the Purdys Gardens and Hopland U.S.G.S. maps. The boundary of the viticultural area closely follows the peaks that surround the valley, and the viticultural area encompasses the valley floor of Benmore Valley and a portion of the watershed surrounding it. The exact boundaries are described in § 9.138.

Distinguishing Features

The petitioner provided the following evidence relating to geographic features which distinguish the viticultural area from the surrounding areas.

Climate

Benmore Valley is characterized by a cooler climate than surrounding areas. University of California Hopland Field Station data shows Benmore Valley to be a Region I classification with fewer than 2,000 annual heat units. Adjacent areas in Mendocino County are warmer. McDowell Valley two miles distant is classified as a Region II area with 2,500 to 3,000 annual heat units, while the City of Hopland three miles distant is classified as having a Region III climate with 3,000 to 3,500 annual heat units.

Kelseyville and Middletown in Lake County are classified as Region III or Region IV climates and are much warmer. Ten-year statistical data from the Hopland Field Station shows that the growing season begins later in the year in Benmore valley than in adjacent areas. The date of the last frost in Benmore Valley occurs as much as one month later than in surrounding areas, including both higher mountain elevations and lower valley areas. Although Benmore Valley does not experience high temperatures, the valley tends to warm up earlier and cool later than other coastal areas, and thus stay warm for a longer part of the day. This fact, together with the relative lack of fog in the valley, provides a suitable climate for grape growing.

Soils

Soil types found within Benmore Valley differ from soils in the mountains surrounding the valley. The three soil types on the valley floor are Manzanita loam which predominates, Still loam, and Wolfcreek loam. These are deep, well-drained soils of slow to moderately slow permeability found on alluvial plains. These soils contrast sharply with those in the surrounding mountains. Soil types of the surrounding mountains are complexes made of mixtures of Maymen, Etsel, Mayacama and Snook soils, all shallow, excessively drained soils derived from weather shale and sandstone.

Elevation

Benmore Valley can be described as a slight depression in the surrounding mountains. The valley itself is a high elevation upland valley, higher than most nearby areas, but isolated from other areas by even higher mountains immediately surrounding the valley. The valley floor elevation is 2,400 feet with the surrounding mountains averaging 2,800 feet, and rising to the north to just over 3,000 feet in elevation.

Water

The petition states that three man-made lakes and a natural creek provide adequate natural water supply for vineyard production. There is a high water table, which contrasts with the surrounding mountain area with little water capacity. Due to its high elevation, there are no watercourses which flow into the valley. This natural watershed boundary provides definition between the valley and its surrounding areas.

Notice of Proposed Rulemaking

In response to the petition submitted by Compliance Specialists, ATF proposed the Benmore Valley viticultural area in Notice No. 717, (56 FR 21971), on May 13, 1991. ATF solicited comments in that notice regarding the proposed viticultural area.

Comments

No comments were received in response to the notice during the 45-day comment period which ended on June 27, 1991. As a result, ATF is adopting the viticultural area as proposed in Notice No. 717, on the basis of the evidence presented in the petition.

Miscellaneous

ATF does not wish to give the impression by approving the Benmore Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, but not better than other areas. By approving the area, ATF will allow wine producers to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Benmore Valley wines.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because this final rule is not expected (1) to have significant secondary, or incidental effects on a substantial number of small entities, or (2) to impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291, and a regulatory Impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Charles N. Bacon, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

Accordingly, 27 CFR part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.138 to read as follows:

§ 9.138 Benmore Valley.

(a) *Name.* The name of the viticultural area described in this section is "Benmore Valley."

(b) *Approved Maps.* The appropriate maps for determining the boundaries of the Benmore Valley viticultural area are two U.S.G.S. maps. They are entitled:

(1) "Hopland, CA," 7.5 Minute Series, edition of 1960, (photoinspected 1975); and

(2) "Purdys Gardens, CA," 7.5 Minute Series, edition of 1958, (photoinspected 1975).

(c) *Boundaries.* The Benmore Valley viticultural area is located in the southwest corner of Lake County, California. It lies entirely within the North Coast viticultural area. The beginning point is an unnamed peak of 2788 feet elevation found in the southeast portion of section 35, T. 14 N., R. 11 W., on the "Purdys Gardens, CA" U.S.G.S. map:

(1) Then southwest in a straight line to the point where an unnamed unimproved road crosses the south section line of section 35, T. 14 N., R. 11 W., west of Benmore Creek;

(2) Then following the unnamed unimproved road south to the intersection with the boundary between Lake and Mendocino Counties;

(3) Then following the county boundary between Lake and Mendocino Counties east and south to the intersection with the 2800 foot contour line;

(4) Then following the 2800 foot contour line in a northerly and then southernly direction to its intersection with the boundary between Lake and Mendocino Counties on the southern edge of section 2, T. 13 N., R. 11 W;

(5) Then following the boundary between Lake and Mendocino Counties east to the point of intersection of sections 1, 2, 11, and 12, T. 13 N., R. 11 W;

(6) Then southeasterly in a straight line to an unnamed peak of 2769 feet elevation in the center of section 12, T. 13 N., R. 11 W;

(7) Then south in a straight line to the point where the boundary between Lake and Mendocino Counties changes from an east-west direction to a north-south direction;

(8) Then in a straight line in an easterly direction to an unnamed peak of 2883 feet elevation in the southwestern portion of section 5, T. 13 N., R. 10 W;

(9) Then northeast in a straight line to the easternmost peak of an unnamed ridge with four peaks in the center of section 5, T. 13 N., R. 10 W;

(10) Then northerly in a straight line to an unnamed peak of 2647 feet elevation near the north section line of section 5, T. 13 N., R. 10 W;

(11) Then westerly in a straight line to the point of intersection between section 5, T. 13 N., R 10 W., section 31, T. 14 N., R. 10 W., and section 1, T. 13 N., R. 11 W;

(12) Then northwest in a straight line to an unnamed peak of 2904 feet elevation in the north portion of section 1, T. 13 N., R. 11 W;

(13) Then northwest in a straight line to an unnamed peak of 2788 feet elevation, the point of beginning.

Signed: September 12, 1991.

Stephen E. Higgins,

Director.

Approved: October 4, 1991.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 91-25092 Filed 10-17-91; 8:45 am]

BILLING CODE 4810-31-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's (the "PBGC's") regulation on Payment of Premiums, 29 CFR part 2610, to reflect a statutorily mandated increase in the PBGC premium rates applicable to single-employer plans. There was no change for multiemployer plans.) This increase is effective with respect to plan years beginning on or after January 1, 1991.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW. Washington, DC 20006; telephone 202-778-8824 (202-778-8059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 12021 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, ("OBRA '90") amended section 4006 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") to increase the premium rates applicable to single-employer plans. (There was no change for multiemployer plans.) This increase, which is effective for premium payment years beginning on or after January 1, 1991, has three components.

First, the flat rate portion of the premium (which, for well funded plans, constitutes the entire premium) is increased from $16 to $19 per participant. Second, the variable rate charge (applicable to underfunded plans) is increased from $6 to $9 per $1,000 of a plan's "unfunded vested benefits." Third, the maximum variable rate charge for each participant is increased from $34 to $53. (This new $53 statutory cap, like the old $34 statutory cap, is subject to the cap reduction rules of § 2610.23(a)(3); the PBGC reminds plan administrators, however, that the cap reduction ceases to exist after the 1992 premium payment year.) Thus, for severely underfunded single-employer plans, the maximum per-participant total charge is increased from $50 ($16 flat rate and $34 variable rate) to $72 ($19 flat rate and $53 variable rate).

This rule amends the PBGC's Payment of Premiums regulation, 29 CFR part 2610, to incorporate these new premium rates. Because this premium increase is mandated by statute, the PBGC finds that notice of and public comment on this amendment would be unnecessary. See 5 U.S.C. 553(b). For this same reason, the PBGC finds that good cause exists for making this amendment effective immediately. See 5 U.S.C. 553(d)(3).

E.O. 12291 and Regulatory Flexibility Act

The PBGC has determined that this amendment does not constitute a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions; nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule merely incorporates the premium increase established by Congress in OBRA '90.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2610

Employee benefit plans, Pension insurance, Pensions, and Reporting and recordkeeping requirements.

In consideration of the foregoing, part

2610 of chapter XXVI of title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307 (1988 & Supp. I 1989), as amended by sec. 12021, Pub. L. 101–508, 104 Stat. 1388, 1388–573.

§ 2610.11 [Amended]

2. Section 2610.11 is amended by removing the term "$34" from paragraph (b)(2) thereof.

3. Section 2610.21 is amended by revising the last sentence thereof to read as follows:

§ 2610.21 Purpose and scope.

* * * Certain provisions, as specifically noted, apply to plan years beginning on or after January 1, 1989, January 1, 1990, or January 1, 1991.

4. Section 2610.22 is amended by removing the term "$34" from the second sentence of the introductory text of paragraph (a)(3), and by revising paragraph (a)(1), the first sentence of paragraph (a)(2) and the first sentence of the introductory text of paragraph (a)(3) to read as follows:

§ 2610.22 Premium rate.

(a) * * *

(1) *Flat rate amount.* The amount under this paragraph is $16 (for premium payment years beginning in 1988, 1989 or 1990) or $19 (for premium payment years beginning on or after January 1, 1991).

(2) *Variable rate amount.* Except for plans covered by an exemption or special rule pursuant to § 2610.24, the amount under this paragraph is $6 (for premium payment years beginning in 1988, 1989 or 1990) or $9 (for premium payment years beginning on or after January 1, 1991) for each $1,000 of a plan's unfunded vested benefits, as determined under § 2610.23, with that product divided by the number of participants in the plan on the last day of the plan year preceding the premium payment year. * * *

(3) *Cap on variable rate amount.* Except as modified by the next sentence, in no event shall the variable rate amount determined under paragraph (a)(2) of this section exceed $34 per participant (for premium payment years beginning in 1988, 1989 or 1990) or $53 per participant (for premium payment years beginning on or after January 1, 1991). * * *

* * * * *

Issued in Washington, DC this 11th day of October, 1991.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 91–25141 Filed 10–17–91; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219-AA17

Safety Standards for Explosives at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; corrections.

SUMMARY: This document corrects several typographical errors in the final rule for safety standards for explosives at metal and nonmetal mines which appeared in the **Federal Register** on September 12, 1991 (56 FR 46500).

EFFECTIVE DATE: The final rule as published on September 12, 1991 (56 FR 46500) will become effective November 1, 1991, except for the provisions stayed by that notice.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: On September 12, 1991, the Mine Safety and Health Administration (MSHA) published in the **Federal Register** a final rule for safety standards for explosives at metal and nonmetal mines (56 FR 46500). This document corrects several typographical errors in that rule.

1. On page 46500, in the first column, under "Summary", second paragraph, 21st line, "on location of explosive material storage facilities," is correctly revised to read as "on requirements for storage of packaged blasting agents,".

2. On page 46500, in the first column, under "Summary" second paragraph, 23rd line, "on requirements for storage of packaged blasting agents," is correctly revised to read as "on location of explosive material storage facilities,".

§ 56.6407 [Corrected]

3. Page 46505, in the second column, § 56.6407, paragraph (a), third line, "or" should read "and".

§ 56.6501 [Corrected]

4. Page 46505, in the third column, § 56.6501, paragraph (c)(5), third line, "blast area" should read "blast site".

§ 57.6131 [Corrected]

5. Page 46510, in the second column, § 57.6131, in the introductory text, add "(a)" before "Storage".

§ 57.6304 [Corrected]

6. Page 46512, in the second column, § 57.6304, in the Note, "§ 56.6304(b)" should read "§ 57.6304(b)".

§ 57.6306 [Corrected]

7. Page 46512, in the third column, § 57.6306, in the Note, "§ 56.6306" should read "§ 57.6306".

§ 57.6330 [Corrected]

8. Page 46513, in the first column, § 57.6330, in the Note, "§ 56.6330" should read "§ 57.6330".

§ 57.6501 [Corrected]

9. Page 46514, in the first column, § 57.6501, paragraph (c)(5), third line, "blast area" should read "blast site".

§ 57.7055 [Corrected]

10. Page 46517, in the second column, section heading, "§ 56.7055 Intersecting holes." should read "§ 57.7055 Intersecting holes."

Dated: October 11, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91–25072 Filed 10–17–91; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

RIN 0720-AA02

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements changes required by the National Defense Authorization Act for Fiscal Year 1992 and the Department of Defense Appropriations Act for Fiscal Year 1991, as amended by the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, concerning mental health services under CHAMPUS. The Acts change the existing day limits and waiver criteria for acute inpatient psychiatric care, introduce new day limits for residential treatment center care, and protect against economic

interests in referrals to inpatient facilities by health care professionals.

EFFECTIVE DATE: This final rule is effective November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen R. Knight, Office of the Assistant Secretary of Defense for Health Affairs, Health Services Financing, room 1B657, Pentagon, Washington, DC, 20301-1200, telephone (703) 697-8975.

SUPPLEMENTARY INFORMATION:

A. Background

In the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510, and the Defense Appropriations Act for Fiscal Year 1991, Public Law 101-511, Congress firmly addressed the problem of spiraling costs for mental health services under CHAMPUS. As stated by the House Armed Services Committee:

> The cost of mental illness and substance abuse is of particular concern to the committee. While CHAMPUS expenditures have generally increased by 50 percent between 1986 and 1989, CHAMPUS mental health expenditures have more than doubled. Last year mental health costs accounted for about one-quarter of CHAMPUS's total spending, far above, the typical proportion in private employers' health care plans.
>
> Closer inspection of CHAMPUS costs shows that children and adolescents (dependents of active-duty and retired military personnel) are particularly heavy users of inpatient mental health care. Care in hospitals and residential treatment centers (RTCs) accounts for about 80 percent of their total mental health costs * * *
>
> Thus, control of inpatient costs, particularly for children and adolescents, is essential to slowing the rise in CHAMPUS mental health expenditures.

H. Rept. No. 101-665, p. 289. The Senate Appropriations Committee sounded the same call:

> In recent years, CHAMPUS mental health costs have increased faster than other elements of the benefit package. Mental health costs more than doubled between 1986 and 1989 from $303,000,000 to $633,000,000. In 1989, mental health care presented about 25 percent of the total CHAMPUS program, costs. In contrast, private sector firms average mental health cost was about 11 percent of total costs. Mental health costs in the Blue Cross/Blue Shield Federal employee plan, which originally served as a model for CHAMPUS, represented about 4 percent of total costs.
>
> CHAMPUS mental health benefits are more generous than plans available to Federal or private sector employees * * *.
>
> The Committee feels that the time has come to address the ever-increasing cost of mental health care provided under CHAMPUS and has included a general provision which establishes certain limitations with respect to mental health care.

S. Rept. No. 101-521, p. 43.

Motivated by the desire to bring CHAMPUS mental health care costs under control, Congress—in both the Authorization and Appropriations Acts—established certain benefit changes and management procedures and required that they take effect February 15, 1991. These statutes made two principal changes. First, they established new day limits for inpatient mental health services—30 days for acute care for patients 19 years of age and older, 45 days for acute care for patients under 19 years of age, and 150 days of residential treatment—each of these limits subject to waiver in special cases after review by an outside expert that takes into account the level, intensity and availability of the care needs of the patient. Second, the statutes mandated prior authorization for all nonemergency inpatient mental health admissions, with required certification of emergency admissions within 72 hours.

However, in March of 1991, Congress decided to "delay the effective date of the reduction in CHAMPUS mental health benefits required by" the two statutes based on a judgment that "these benefits should not be reduced during a period when the requirement for dependent mental health care is increasing because of the stresses of Operation Desert Storm." S. Rept. No. 102-18, p. 6-7. Accordingly, in section 316 of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102-25, Congress delayed from February 15, 1991, until October 1, 1991 the effective date of the new statutory mandates.

In the meantime, DoD had issued, February 15, 1991, an interim final rule to implement the new requirements, 56 F.R. 6268. Thus, after the 1991 Congressional action, DoD withdrew the interim final rule, 56 F.R. 13,758 (April 4, 1991), and went back to the drawing board. The decision was made to split the subject matter of the interim rule into two proposed rules, the first dealing with the preadmission authorization program, which was published July 2, 1991, and the second dealing with the benefit changes Congress postponed until October 1. The second proposed rule was published July 8, 1991. In developing both of these proposed rules, we considered major comments received in response to the interim final rule.

The final rule relates to the second of these two proposed rules. However, one matter addressed in the proposed rule is not included in this final rule. That matter is the establishment of a partial hospitalization program for mental health services under CHAMPUS. A final rule concerning partial hospitalization is being deferred pending the completion of Congressional action on legislative proposals. Final Congressional action, expected by October 1, will likely affect the specific attributes of the program. Thus, we must await that action. We expect to consider issuance of a final rule soon after the legislative action.

We received six public comments regarding the proposed rule, not including comments which discussed only the partial hospitalization issue. All comments were from representatives of providers in the mental health care industry. The comments are discussed below.

B. Provisions of this Final Rule Implementing New Statutory Requirements

1. Day Limits and Waiver Authority

This final rule amends the regulation to reflect the new Congressionally mandated day limits and waiver criteria. The present 60-day acute care limit and waiver criteria based upon danger to self or others is replaced with the new day limits and waiver criteria for mental health services provided on and after October 1, 1991. The interim rule addressed the new day limits in relation to a "benefit year," defined as a 365-day period beginning on the first date of covered care. The current method applies day limits on a calendar year basis, a method that produces inequalities in benefits based solely on the calendar.

A number of commenters on the interim rule objected to these provisions, primarily on the grounds that it would be administratively difficult to keep track of individual "benefit years." In addition, at least one commenter suggested a fiscal year basis for applying the day limits, the same basis as CHAMPUS uses for the annual deductible and catastrophic payment limits. We believe there is some merit to these suggestions.

On the other hand, we continue to believe that automatically restarting the day count based solely on the calendar produces results that cannot be squared with clear Congressional intent. For example, in the case of an RTC admission 150 days before the end of the year, the arrival of the first day of the year would start a new 150 day count. This would result in that patient having a 300 day stay before even being reviewed under the waiver criteria to determine whether any care after 150 days was actually necessary. This result

is clearly inconsistent with what Congress intends to happen.

Therefore, in the proposed rule, we suggested a middle ground position, which we now adopt. The day limits would generally be based on fiscal years, except that if the applicable number of days is reached during a single admission, the day limit waiver will also be required. It should be noted again that the day limits do not result in a rigid limit on benefits, but only in triggering the waiver review process.

This final rule establishes waiver criteria consistent with the new statutory provisions. To give meaning to the statutory day limits, the rule establishes a presumption against the appropriateness of inpatient services beyond those limits. This presumption can be overcome, however, by demonstrating that a true need exists. The criteria that would be applied to this are the same criteria used to consider medical or psychological necessity at the admission and concurrent review stages.

To implement the new statutory mandates for intensive review of medical/psychological necessity to exceed day limits, the final rule focuses on the patient's progress under the patient's individualized diagnosis/treatment plan.

In unusual cases in which services beyond the maximum day limits are needed, the emphasis is on adopting necessary adjustments to the treatment plan and completing necessary services to permit discharge or transfer to less intensive levels of care. The primary thrust is on appropriate, high quality, medically necessary care as demonstrated by adequate documentation and review.

More than one commenter protested the proposed rule's reference to a "statutory presumption" against mental health services in excess of the statutory day limits. We have made no change in this regard. Congress established the specific day limits and a waiver authority. We know of no other way to give the day limits some meaningful effect than to consider them presumptive limits, subject to waiver.

Several commenters suggested that the wording of §§ 199.4(b)(8)(ii)(A) and 199.4(b)(9)(iii)(A) that refers to the peer reviewer as "a health professional who is not a federal employee" be revised to specify that the health professional must be a physician or doctoral-level professional. For several reasons, we have made no change to the regulatory wording. First, this is the statutory wording, which we have repeated without change. Secondly, our current practice reflects a careful balance between providers' desires for prompt answers to preadmission or waiver requests and the need to assure appropriate professional judgment. The balance is that approval authority generally rests with trained non-physician (such as nurses) reviewers in cases in which established screening criteria are clearly met, but denial authority rests only with physicians or doctoral-level professionals. Under this approach, providers are protected against both uninformed denials and unreasonable delays.

More than one comment referred to the requirement in § 199.4(b)(8)(ii)(C) that, in discharge planning, RTCs seek to arrange for any necessary supportive and adjunctive resources that might be necessary to address family or social issues. The commenters noted that because RTCs do not control such resources, case-specific flexibility is necessary is applying the rule. We agree that case-specific flexibility is called for and believe it will be accomplished under the case-by-case waiver process.

Several commenters raised concerns regarding the provision in §§ 199.4(b)(8)(ii)(D) and 199.4(b)(9)(iii)(D) of the proposed rule calling for RTC day limit waiver requests to be received by the 135th day of RTC care and acute care requests one week before the limit. These commenters pointed out that there was no time limit for the reviewers to respond to the request. This point is well taken. We have deleted the proposed requirements for requesting waivers by the 135th day for RTC care and one week prior for acute care. As a general matter, we expect anticipated waiver issues concerning both acute care and RTC care to be identified during concurrent reviews adequately in advance of the day limit. When the day limit is near, the request can be made, either during a concurrent review or at a point in time agreed to during the most recent concurrent review. At the time any required documentation is received by the peer review contractor, a response will generally be provided in one working day.

One commenter requested clarification regarding the applicability of reconsideration and/or appeal procedures to waiver decisions. This was addressed in our other rule, which stated that various procedures, including reconsideration and appeals procedures, now followed in the CHAMPUS PRO program will be the model for the procedures available concerning waiver decisions.

2. Economic Interest Exclusion

As required by the Defense Appropriations Act, this final rule excludes CHAMPUS payment for care received when a patient is referred to a provider of inpatient mental health care or residential treatment care by a health care professional having an economic interest in the facility to which the patient is referred, unless coverage is granted by a waiver. The Congressional purpose of this requirement is to protect against improper economic motivations by individual providers in referring patients to inpatient facilities.

This final rule does not establish a definition of "economic interest" more specific than that found in the statute. If a situation arises, however, wherein a decision is reached to exclude CHAMPUS payment solely on the basis of a provider's economic interest in the referral facility, the normal CHAMPUS appeals process will be available to the provider.

In addition, this rule establishes the procedure for granting a waiver from the economic interest exclusion. The final rule states that a waiver request will be considered in connection with the request for preadmission authorization. The only additional requirement would be that the economic interest be disclosed so that the criteria for medical/psychological necessity can be applied with knowledge of the economic interest. This will assure that the admission is not improperly affected by the economic interest.

A number of commenters protested our position in the proposed rule not to attempt a further definition of "economic interest," although they provided little in the way of specific suggestions. Two specific suggestions were that medical directorships and minority ownership interest should not be considered as economic interests. There could be other examples in which certain economic relationships and interests could be argued for exclusion from the definition on the basis of a judgment that there is not a significant risk that the interest would be a provider's motivation for a referral for an inpatient admission. We have several difficulties with this approach. First, the statute does not give us authority to define the term in such a way as to distinguish between economic interests we find more likely to cause improper patient referrals and those we find less likely to do so. Second, as evidenced by the recent rules of the HHS Inspector General establishing "safe harbors" from antikickback laws, any serious effort to sort out various forms of

economic relationships and interest inevitably would become extremely complicated. Further, based on some of the reactions to the safe harbor regulation, even very elaborate definitions and distinctions leave substantial gray areas. Third, and perhaps most importantly, the identification of an economic interest has no direct impact on any decision. It is merely a matter to be identified at the time of the preadmission authorization review so that it will be a matter of record when the medical necessity of the admission is considered. For these reasons, we believe our position is most appropriate.

We have revised the economic interest provision in the final rule to clarify applicable reconsideration and appeal rights. Waiver decisions will be treated the same as day limit waiver decisions, which, in turn, follow the existing CHAMPUS PRO program procedures. Under these procedures, the general rule is that regarding medical determinations, the peer reviewer shall provide for reconsideration, and the reconsidered determination will be final. Exceptions to this include beneficiary appeals and decisions on issues that are not primarily medical determinations. In the latter category are decisions regarding whether a provider knew or could reasonably have been expected to know that certain services were excludable on the grounds of medical necessity. All of these CHAMPUS procedures are modeled closely after Medicare's procedures.

Decisions on economic interest waiver requests will be subject to the reconsideration procedures. Because they involve medical determinations concerning the medical criteria for waiver, reconsidered determination are final for providers. However, because decisions on whether a particular economic relationship constitutes an economic interest within the meaning of the statutory exclusion are not medical judgments, these will be appealable in the same way as determinations of whether a provider knew or could reasonably have been expected to know that certain services were excludable.

C. Other Mental Health Program Revision

Provider certification categories for mental health specialized treatment facilities (STFs) are clarified by the final rule. Unless a facility type is specifically listed, authorized provider status will not be granted. The statement, "The list is for example only and is not construed as being all-inclusive" is deleted from the regulation. The listing of mental health STF facility categories will then be all-inclusive. Provisions have been added for provider certification of substance use disorder treatment facilities.

One commenter objected to the reference in § 199.4(c)(3)(ix) to "licensed, qualified mental health professional" as the provider who could diagnose a mental disorder. The commenter suggested that the rule should limit this function to psychiatrists and other specifically trained physicians. We have made no change. It is our view that if a non-physician qualified mental health professional is acting within his or her state-granted, licensed authority in providing health care services, we should not disallow payment for these services.

Another commenter addressed the provision that services provided by alcoholism rehabilitation counselors and certified addiction counselors are covered only when rendered in a CHAMPUS-authorized substance abuse rehabilitation facility. The commenter suggested that this should be changed to be inclusive of all approved inpatient treatment settings. We agree with this suggestion and have revised the provision accordingly.

D. Rulemaking Procedures

Regarding regulatory procedures, Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more or have other substantial impacts.

Section 605(b) of the Regulatory Flexibility Act requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This final rule is not a major rule under Executive Order 12291. Also, we certify that this rule will not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act. For the most part, this rule would implement new statutory requirements.

One commenter questioned our statement in the proposed rule that this rule will not have an impact of $100 million or more. This commenter suggested that this rule would reduce CHAMPUS mental health benefits by several hundred million dollars. We are aware of no basis for such predictions and stand by our estimates of a much more modest impact of this rule.

In addition, this rule does not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

This final rule has been approved by the Departments of Health and Human Services and Transportation.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by adding new paragraphs (b)(8), and (b)(9); by adding 5 new sentences to the end of the introductory text of paragraph (c)(3)(ix); and by revising paragraphs (c)(3)(ix)(A)(*4*) and (*5*), (c)(3)(ix)(B)(*2*), and (c)(3)(ix)(C); by revising paragraphs (g)(39), and (g)(72); by redesignating paragraph (g)(73) as paragraph (g)(74) and by adding a new paragraph (g)(73), as follows:

§ 199.4 Basic program benefits.

* * * * *

(b) * * *

(8) *RTC day limit.* (i) With respect to mental health services provided on or after October 1, 1991, benefits for residential treatment are generally limited to 150 days in a fiscal year or 150 days in an admission (not including days of care prior to October 1, 1991). The RTC benefit limit is separate from the benefit limit for acute inpatient mental health care.

(ii) *Waiver of the RTC day limit.* (A) There is a statutory presumption against the appropriateness of residential treatment services in excess of the 150 day limit. However, the Director, OCHAMPUS, (or designee) may in special cases, after considering the opinion of the peer review designated by the Director (involving a health professional who is not a federal employee) confirming that applicable criteria have been met, waive the RTC benefit limit in paragraph (b)(8)(i) of this section and authorize payment for care beyond that limit.

(B) The criteria for waiver shall be those set forth in paragraph (b)(4)(vii) of this section. In applying those criteria to the context of waiver request reviews, special emphasis is placed on assuring that the record documents that:

(1) Active treatment has taken place for the past 150 days and substantial progress has been made according to the plan of treatment.

(2) The progress made is insufficient, due to the complexity of the illness, for the patient to be discharged to a less intensive level of care.

(3) Specific evidence is presented to explain the factors which interfered with treatment progress during the 150 days of RTC care.

(4) The waiver request includes specific timeframes and a specific plan of treatment which will lead to discharge.

(C) Where family or social issues complicate transfer to a lower level of intensity, the RTC is responsible for determining and arranging the supportive and adjunctive resources required to permit appropriate transfer. If the RTC fails adequately to meet this responsibility, the existence of such family or social issues shall be an inadequate basis for a waiver of the benefit limit.

(D) It is the responsibility of the patient's primary care provider to establish, through actual documentation from the medical record and other sources, that the conditions for waiver exist.

(iii) RTC day limits do not apply to services provided under the program for the handicapped (§ 199.5 of this part) or services provided as partial hospitalization care.

(9) *Acute care day limits.* (i) With respect to mental health care services provided on or after October 1, 1991, payment for inpatient acute hospital care is, in general, statutorily limited as follows:

(A) Adults, aged 19 and over—30 days in a fiscal year or 30 days in an admission (excluding days provided prior to October 1, 1991).

(B) Children and adolescents, aged 18 and under—45 days in a fiscal year or 45 days in an admission (excluding days provided prior to October 1, 1991).

(ii) It is the patient's age at the time of admission that determines the number of days available.

(iii) *Waiver of the acute care day limits.* (A) There is a statutory presumption against the appropriateness of inpatient acute services in excess of the day limits set forth in paragraph (b)(9)(i) of this section. However, the Director, OCHAMPUS (or designee) may in special cases, after considering the opinion of the peer review designated by the Director (involving a health professional who is not a federal employee) confirming that applicable criteria have been met, waive the acute inpatient limits described in paragraph (b)(9)(i) of this section and authorize payment for care beyond those limits.

(B) The criteria for waiver of the acute inpatient limit shall be those set forth in paragraph (b)(6)(i) of this section. In applying those criteria in the context of waiver request review, special emphasis is placed on determining whether additional days of acute inpatient mental health care are medically/psychologically necessary to complete necessary elements of the treatment plan prior to implementing appropriate discharge planning. A waiver may also be granted in cases in which a patient exhibits well-documented new symptoms, maladaptive behavior, or medical complications which have appeared in the inpatient setting requiring a significant revision to the treatment plan.

(C) The clinician responsible for the patient's care is responsible for documenting that a waiver criterion has been met and must establish an estimated length of stay beyond the date of the inpatient limit. There must be evidence of a coherent and specific plan for assessment, intervention and reassessment that reasonably can be accomplished within the time frame of the additional days of coverage requested under the waiver provision.

(D) For patients in care at the time the inpatient limit is reached, a waiver must be requested prior to the limit. For patients being readmitted after having received 30 or 45 days in the fiscal year, the waiver review will be conducted at the time of the preadmission authorization.

(iv) Acute care day limits do not apply to services provided under the program for the handicapped (section 199.5 of this part) or services provided as partial hospitalization care.

(c) * * *

(3) * * *

(ix) *Treatment of mental disorders.* * * * In order to qualify for CHAMPUS mental health benefits, the patient must be diagnosed by a CHAMPUS-authorized licensed, qualified mental health professional to be suffering from a mental disorder, according to the criteria listed in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders which may be purchased from the American Psychiatric Press, Inc., 1400 K Street, NW., suite 1101, Washington, DC 20005. Benefits are limited for certain mental disorders, such as specific developmental disorders. No benefits are payable for "Conditions Not Attributable to a Mental Disorder," or V codes. In order for treatment of a mental disorder to be medically or psychologically necessary, the patient must, as a result of a diagnosed mental disorder, be experiencing both physical or psychological distress and an impairment in his or her ability to function in appropriate occupational, educational or social roles. It is generally the degree to which the patient's ability to function is impaired that determines the level of care (if any) required to treat the patient's condition.

(A) * * *

(4) *Psychoanalysis.* Psychoanalysis is covered when provided by a graduate or candidate of a psychoanalytic training institution recognized by the American Psychoanalytic Association and when preauthorized by the Director, OCHAMPUS, or a designee.

(5) *Psychological testing and assessment.* Psychological testing and assessment is generally limited to six hours of testing in a fiscal year when medically or psychologically necessary and in conjunction with otherwise covered psychotherapy. Testing or assessment in excess of these limits requires review for medical necessity. Benefits will not be provided for the Reitan-Indiana battery when administered to a patient under age five, for self-administered tests administered to patients under age 13, or for psychological testing and assessment as part of an assessment for academic placement.

* * * * *

(B) * * *

(2) *Inpatient psychotherapy.* Coverage of inpatient psychotherapy is based on medical or psychological necessity for the services identified in the patient's treatment plan. As a general rule, up to five psychotherapy sessions per week are considered appropriate when specified in the treatment as necessary to meet certain measurable/observable goals and objectives. Additional sessions per week or more than one type of psychotherapy sessions performed on the same day (for example, an individual psychotherapy session and a family psychotherapy session on the same day) could be considered for coverage, depending on the medical or psychological necessity for the services. Benefits for inpatient psychotherapy will end automatically when authorization has been granted for the maximum number of inpatient mental health days in accordance with the limits as described in this section, unless additional coverage is granted by the Director, OCHAMPUS or a designee.

(C) *Covered ancillary therapies.* Includes art, music, dance, occupational, and other ancillary therapies, when included by the attending provider in an approved inpatient, residential

treatment plan and under the clinical supervision of a licensed doctoral level mental health professional. These ancillary therapies are not separately reimbursed professional services but are included within the institutional reimbursement.

* * * * *

(g) * * *

(39) *Counseling.* Counseling services that are not medically necessary in the treatment of a diagnosed medical condition; for example, educational counseling, vocational counseling, and counseling for socio-economic purposes, diabetic self-education programs, stress management, life style modification, etc. Services provided by a marriage and family, pastoral or mental health counselor in the treatment of a mental disorder are covered only as specifically provided in § 199.6. Services provided by alcoholism rehabilitation counselors and certified addiction counselors are covered only when rendered in a CHAMPUS-authorized treatment setting and only when the cost of those services is included in the facility's CHAMPUS-determined allowable cost-rate.

* * * * *

(72) *Inpatient mental health services.* Effective for care received on or after October 1, 1991, services in excess of 30 days in any fiscal year (or in an admission), in the case of a patient nineteen years of age or older, 45 days in any fiscal year (or in an admission) in the case of a patient under 19 years of age, or 150 days in any fiscal year (or in an admission) in the case of inpatient mental health services provided as residential treatment care, unless coverage for such services is granted by a waiver by the Director, OCHAMPUS, or a designee. In cases involving the day limitations, waivers shall be handled in accordance with paragraphs (b)(8) or (b)(9) of this section. For services prior to October 1, 1991, services in excess of 60 days in any calendar year unless additional coverage is granted by the Director, OCHAMPUS, or a designee.

* * * * *

(73) *Economic interest in connection with mental health admissions.* Inpatient mental health services (including both acute care and RTC services) are excluded for care received when a patient is referred to a provider of such services by a physician (or other health care professional with authority to admit) who has an economic interest in the facility to which the patient is referred, unless a waiver is granted. Requests for waiver shall be considered under the same procedure and based on the same criteria as used for obtaining preadmission authorization (or continued stay authorization for emergency admissions), with the only additional requirement being that the economic interest be disclosed as part of the request. The same reconsideration and appeals procedures that apply to day limit waivers shall also apply to decisions regarding requested waivers of the economic interest exclusion. However, a provider may appeal a reconsidered determination that an economic relationship constitutes an economic interest within the scope of the exclusion to the same extent that a provider may appeal determinations under § 199.15(i)(3). This exclusion does not apply to services under the program for the handicapped (§ 199.5 of this part) or provided as partial hospital care. If a situation arises where a decision is made to exclude CHAMPUS payment solely on the basis of the provider's economic interest, the normal CHAMPUS appeals process will be available.

3. Section 199.6 is amended by revising the introductory texts of paragraphs (b)(4)(x)(B) and (b)(4)(x)(B)(*3*); by revising paragraphs (b)(4)(x)(B)(*3*)(*iv*) and (b)(4)(x)(B)(*3*)(*vi*); by removing the NOTE immediately following paragraph (b)(4)(x)(B)(*3*)(*vi*); and by adding new paragraph (b)(4)(x)(B)(*3*)(*vii*).

§ 199.6 Authorized providers.

* * * * *

(b) * * *

(4) * * *

(x) * * *

(B) *Types of providers.* The following is a list of facilities that have been designated specifically as STFs.

* * * * *

(*3*) *Substance use disorder rehabilitation facilities.* In order to be authorized under CHAMPUS as a provider of substance use detoxification, rehabilitative services, outpatient treatment, and family therapy, substance use rehabilitation facilities, both freestanding facilities and hospital-based facilities, shall operate primarily for the purpose of providing treatment of substance use disorders (on either an inpatient (including partial care) or an outpatient basis) and shall meet the following criteria:

* * * * *

(*iv*) The facility shall be accredited by and shall remain in substantial compliance with standards issued by either the Joint Commission on Accreditation of Healthcare Organizations under the Consolidated Standards Manual, or the Commission Accreditation of Rehabilitation Facilities (CARF), or shall meet such other requirements as the Director, OCHAMPUS, finds necessary in the interest of the health and safety of the individuals who are furnished services in the facility.

* * * * *

(*vi*) The substance use rehabilitation facility shall not be considered to be a CHAMPUS-authorized provider and CHAMPUS benefits shall not be paid for services provided by the substance use rehabilitation facility until the date the participation agreement is signed by the Director, OCHAMPUS, or a designee.

(*vii*) The substance use rehabilitation facility is not designated by the Health Care Financing Administration as an alcohol and drug abuse hospital for purposes of applicability of the Medicare prospective payment system.

* * * * *

Dated: October 10, 1991.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-24865 Filed 10-17-91; 8:45 am]

BILLING CODE 3810-01-M

---

32 CFR Part 199

[DoD 6010.8-R]

RIN-0720-AA03

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Mental Health Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes a mandatory preadmission authorization program for mental health services under CHAMPUS. Such a program is needed to promote quality assurance and contain rapidly increasingly costs in inpatient psychiatric care under CHAMPUS. By maintaining most of the procedures of the current voluntary preadmission authorization program, the final rule minimizes inconveniences for providers.

EFFECTIVE DATE: This final rule is effective November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen R. Knight, Office of the Assistant Secretary of Defense for Health Affairs, Health Services Financing, room 1B657, Pentagon, Washington, DC, 20301-1200, telephone (703) 697-8975.

SUPPLEMENTARY INFORMATION:

A. Regulatory and Statutory Background

In 1989, the Office of the Assistant Secretary of Defense (Health Affairs)

announced plans to establish a national utilization review and quality assurance program for inpatient mental health admissions under CHAMPUS. Initial implementation of these plans focused on establishment of a voluntary, comprehensive program for authorization and concurrent review of mental health care delivered in psychiatric hospitals and residential treatment facilities. Extension of this program to psychiatric admissions in general hospitals was deferred until the basis system was firmly established. This system became operational in January of 1990, primarily through a contract with Health Management Strategies International, Inc. (HMS) of Alexandria, Virginia.

Several months later, an outside consultant's report on the alarming increases in mental health costs under CHAMPUS recommended that DoD proceed expeditiously with mandatory preauthorization for all mental health inpatient care, as well as make a number of other program changes. Aware of these alarming cost increases, Congress took action in the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510, and the Defense Appropriations Act for 1991, Public Law 101–511. In these statutes, Congress directed that the mandatory preauthorization program be implemented by February 15, 1991. Further, Congress enacted certain benefit changes concerning authorized days of inpatient mental health services (also to take effect February 15) and required to report to Congress on DoD's plan to bring mental health cost under control.

To implement these new statutory requirements, DoD issued an interim final rule (56 FR 6268, February 15, 1991), which solicited public comments and put into place rules and procedures that would apply during the interim period. However, subsequent to that, Congress enacted the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991, Public Law 102–25 (April 6, 1991), which, in section 316, delayed the effective date of the new statutory requirements until October 1, 1991. This provision restored, for the time being, all prior statutory authority to its status prior to February 15. The reason for this Congressional action was a desire to avoid changes in mental health benefits—i.e., the new day limits—while family stresses associated with the Persian Gulf conflict were still proximate.

Based on this Congressional action, in early April, DoD restored the CHAMPUS regulation to its state prior to February 15, (56 FR 13758). We then began the rulemaking process anew with a notice of proposed rulemaking (56 FR 30360, July 2, 1991). This proposed rule reflected an initial policy preference for returning to the original plan of proceeding expeditiously with expansion of our current voluntary preauthorization program into a mandatory preadmission program. This was premised on our prior statutory authority and independent of any of the statutory requirements postponed until October 1. Preadmission authorization is a procedure to effect longstanding medical and psychological necessity requirements of law, including 10 U.S.C. 1079(a)(13).

This proposed rule was followed by a second proposed rule, 56 FR 30887, July 8, 1991, on benefit issues, including the new statutory day limits that take effect October 1. That proposed rule also addressed the new statutory protection against economic interests by professional providers (which takes effect October 1) and a new partial hospitalization benefit. A final rule concerning these matters will be issued soon. This final rule relates to the proposed rule published at 56 FR 30360, July 2, 1991. We received seven public comments in response to the proposed rule, all from representatives of the mental health provider industry. These are addressed below.

B. The Need for Mandatory Preadmission Review

Since 1966, when CHAMPUS benefits were legislatively expanded to include mental health services, the cost and utilization of these benefits have grown steadily—and at rates exceeding those for all other types of care. Between fiscal years 1986 and 1989, the cost of CHAMPUS inpatient mental health care almost doubled. During this same period, inpatient medical, surgical and obstetrical costs rose by only 6.1 percent, and actually decreased from FY87 to FY89. In FY89, mental health expenditures totaled more than $600 million, approximately one quarter of the cost of the entire program. An important characteristic of the increased cost for mental health services has been the dramatic increase in inpatient utilization rates for children and adolescents.

Between FY86 and FY89, the entire cost increase for CHAMPUS inpatient care can be explained by increased admissions and bed-days for beneficiaries between the ages of 1 and 19 for inpatient care. This means that if the cost for this age group were excluded, the cost for all CHAMPUS inpatient care would have remained constant over this period (FY86 to FY89).

An analysis of utilization characteristics for adolescents (ages 10–19) reveals a number of important changes during the FY86 to FY89 period:

1. Admissions increased by over 7,500 to 19,228—an increase of 64 percent,
2. Hospital days increased by over 440,000 days to 952,085—an increase of 86 percent,
3. Benefit costs increased by over $207 million to $342 million—an increase of 154 percent.

Preliminary data from the National Mental Health Utilization Management Program, administered by Health Management Strategies International, Inc. (HMS) of Alexandria, Virginia, indicate that the voluntary preauthorization, concurrent review and waiver procedures instituted in 1990 have begun to result in a reduction in both numbers of residential treatment center ((RTC) admissions and lengths of stay among adolescents. This has been accomplished with a focus on providing necessary and appropriate care, and the contractor has no financial incentive to deny needed care. The effect in FY90, based on part-year results, shows a slowing of cost increases.

The experience under this program, especially during the second half of FY90, has reinforced our conviction that strengthened utilization management tools can assure access for necessary and appropriate high quality care for our beneficiaries and still have the potential to contain costs. Even though preauthorization has been voluntary, a substantial proportion of RTC admissions have been submitted for preadmission review, with only about 3 percent of those submitted being denied for clinical reasons and another 3 percent for administrative deficiencies. Similarly, the acute care denial rate was only about 5 percent. This is a strong indicator that the process is within the capability of providers, and that it has not resulted in wholesale denial of admissions.

This final rule seeks to ensure routine early clinical review of the necessity and appropriateness of care without imposing an onerous burden on responsible providers.

C. Provisions of the Final Rule

This final rule is similar to the provisions of the February 15 interim rule concerning preadmission authorization. However, after considering comments we received on the interim rule, we incorporated several revisions in the July 2, 1991, proposed rule. In addition, there were some new

provisions in the proposed rule, including a proposal on payment reduction in cases in which providers fail to comply with preadmission certification requirements. A summary of the key provisions of the final rule follows.

1. Incorporation of Peer Review Organization Procedures

Like the interim rule, this final rule (§ 199.4(a)(12)(i)) generally incorporates for purposes of the mental health utilization review program procedures similar to those in place for the CHAMPUS utilization review program for other medical services—the Peer Review Organization program. This does not mean that the peer review organization contractors used by CHAMPUS (the same PROs that perform similar services for Medicare) will be used for mental health services reviews. In fact, different contractors, are being used (the current major contractor is HMSI, referenced above).

This provision simply means that basic review processes for mental health, concerning matters such as hospital cooperation, confidentiality of records, appeals and hearings, limitations on beneficiary liability, and the like, will be comparable to those in place for the rest of the CHAMPUS program. Adoption of such procedures is already provided for in the CHAMPUS regulation at § 199.15(f) and our underlying statutory authority, including section 8074 of Public Law 101–511, which authorizes the Secretary of Defense to adopt for CHAMPUS requirements similar to the utilization and quality review rules and procedures of the Medicare program.

One commenter questioned whether CHAMPUS indeed intended that uniform requirements concerning utilization and quality review procedures would apply throughout the country. The answer is that this is indeed the intent. This is, of course, subject to ongoing demonstration project authority, including 10 U.S.C. 1092, under which deviations from normally applicable rules may be authorized.

Several commenters criticized the proposal to make the appeals procedure now applicable to most CHAMPUS admissions also apply to mental health services. Some confusion was expressed regarding these procedures. The new § 199.4(a)(12)(i) refers to applicable provisions of § 199.15, which fully set forth procedures and requirements for reconsiderations, appeals and hearings. These provisions, very closely modeled after Medicare procedures, have been demonstrated to be fair and reasonable for beneficiaries and providers.

Under this final rule, the Director of OCHAMPUS will establish reconsideration and appeal procedures substantially comparable to those in place for medical and surgical care utilization and quality review activities. Under those procedures, if a provider or beneficiary is not satisfied with an initial determination by the peer review contractor, the provider or beneficiary may obtain a reconsideration, which is provided by the same contractor organization, but by completely different reviewers. Thus, it is an independent, second determination.

At that point, if still dissatisfied, a beneficiary may appeal to OCHAMPUS. But, as under Medicare's rules, a reconsidered determination regarding medical necessity is final for providers.

Procedures substantially comparable to these will be provided for mental health services. However, one additional step will be added in cases in which the peer review entity also has overall responsibility for managing the delivery of health care services. This is the case in connection with the CHAMPUS Reform Initiative in California and Hawaii and the Contract Provider Agreement program in the Tidewater area of Virginia. Because these contractors are financially responsible for these services, there are potential incentives for them to be strict in utilization decisions, even though only qualified professional personnel make the decisions.

To assure confidence in the process, a second reconsideration will be provided in connection with services in places covered by contracts involving those potential incentives. The second reconsideration will be by a completely independent contractor, such as HMS, which will apply its own standards. Thus, our reconsideration and appeal procedures will assure a fair process for all parties.

2. Payment Reduction for Noncompliance With Preadmission Authorization Requirements

The final rule (§ 199.4(a)(12)(ii)) establishes a reduction in payment in cases wherein institutional providers fail to comply with the mandatory preadmission authorization requirements. The reduction would be to exclude payment for each day of care provided before the effective date of the authorization, up to a maximum of five days of care. In cases for which payment is on a per-discharge (rather than a per-diem) basis, a $500 per day amount will be used. Patients may not be billed for any payment reductions.

This reduction would apply only in connection with days of care provided before the effective date of an authorization. As explained below, authorizations will typically be considered effective on the date of receipt of the request for authorization, or, in the case of acute hospital emergency admissions occurring prior to the date of the request, the date of the admission. Requests may be received seven days a week, 24 hours a day. Thus, providers who follow the simple rule of requesting authorization prior to admission (except for bona fide emergencies) will not have to worry about payment reductions for noncompliance.

Several commenters objected to this provision. One argument advanced was that DoD has no authority to reduce payment for failure to comply with mandatory preadmission authorization requirements. It is our view that because Congress made preadmission authorization mandatory, there must be authority to give some meaning to the mandatory nature of the requirement. If there is absolutely no consequence attached to ignoring the "requirement," then it is not mandatory in any actual sense. The statute states "the Secretary of Defense shall require preadmission authorization." To give this meaning, a relatively modest reduction in payment is necessary and appropriate.

A related comment was that there should be no payment reduction in cases in which a provider states that it was an emergency, but the peer review entity determines that it was not a bona fide emergency. The reason advanced was that such important decisions should not be second guessed. We think no change is necessary. If mandatory preadmission authorization requirements can be avoided by claiming an emergency which does not, in fact, meet the standards for an emergency, then the statutory mandate would be a mirage. With respect to the concern about second guessing, it should be noted that the definition of "psychiatric emergency" places substantial emphasis on the professional judgment of the provider performing the evaluation. All appropriate deference will be accorded.

3. Criteria for Determining Medical or Psychological Necessity for RTC Admissions

The final rule (§ 199.4(b)(4)(vii)) is essentially unchanged from the provision in both the February interim rule and July proposed rule on this point. This provision restates the basic clinical circumstances that represent a need for inpatient RTC services.

Several commenters objected to reference in our criteria to "skilled

interventions by qualified mental health professionals" based on fear that this could be construed as denying payment for normal RTC services. This is not the purpose or effect of this provision. CHAMPUS payments for normal RTC services that support the provision of skilled interventions remain unchanged. It must be underscored, however, that every admission must be medically or psychologically necessary. Residential treatment care is not for the purpose of ameliorating the growing pains of adolescence. Rather, there must be a diagnosable psychiatric disorder, persistent psychological and/or emotional disturbances, and active clinical treatment under an individualized treatment plan that provides for minimally necessary attributes of real clinical treatment. This is one of the fundamental points of the recent Congressional action and of this final rule.

Another comment in connection with this section criticized the reference to OCHAMPUS authority to adopt additional evaluation standards consistent with the criteria set forth in the rule. The complaint was that this would circumvent the rulemaking process. Our response is that there will be no circumvention of any applicable requirement. Whatever detailed standards and procedures emerge as implementation proceeds, they will be consistent with the basic rights and obligations of all affected parties, as established in the regulation.

4. Preauthorization Requirement for RTC Admissions

The final rule (§ 199.4(b)(4)(viii)) establishes mandatory preadmission authorization for all RTC admissions. The rule emphasizes the development of a diagnosis/treatment plan for the patient that addresses the need for the admission, the possibility of services at a less intensive level of care, a comprehensive patient assessment, specific treatment plans, family involvement, and discharge planning. The reason for this emphasis is to prevent the possibility of inpatient admissions and prolonged stays without significant therapeutic attention.

We hold to this position, but we have made a significant change from the interim rule with respect to clarification of our expectations regarding the timetable for the treatment plan, a matter addressed by several commenters on the interim rule. Under the final rule, the timetable for development of the plan is as follows: Development of the plan must have begun at the time of admission; a preliminary plan must be developed in writing within 24 hours of the admission; and a master plan must be established within ten days of the admission. The timetable for a master plan contained in the proposed rule was seven days. We have changed it to ten days in response to a comment which argued that the need for multidisciplinary assessments and interaction in the development of an appropriate individualized treatment plan required the additional time.

One commenter suggested the inclusion of a psychiatric emergency exception to preadmission authorization for RTC admissions. It is our experience in connection with RTC care that no such exception is necessary.

5. Concurrent Review of RTC Care

The final rule (§ 199.4(b)(4)(ix)) restates in the regulation current practice for concurrent reviews of RTC care.

Several commenters noted that the rule states that concurrent review will occur no less frequently than every 30 days and proposed that it also stipulate that reviews may be no more frequent than every 30 days. We do not concur with this suggestion. Our statutory obligation is to ensure that all care provided is medically necessary. We do not believe we can meet this obligation in all cases by limiting reviews to every 30 days or every $12,000 (the approximate cost of 30 days of care at the RTC payment cap). Thus, when appropriate, we believe authority must be preserved to conduct concurrent reviews more frequently than every 30 days.

6. Criteria for Determining Medical or Psychological Necessity for Acute Care

The final rule (§ 199.4(b)(6)(i)) restates currently applicable criteria for determining medical or psychological necessity for acute inpatient mental health services. The criteria focus on the severity of the patient's condition and the intensity of the treatment needed.

Several commenters suggested that the rule not refer to acute inpatient services as following a "brief" intensive treatment model on the grounds that individual needs might require something longer than brief treatment. It is our response that in view of the day limits enacted by Congress and of the proper care model for acute services, "brief" is an accurate and appropriate component of the general treatment model. Of course, in any given case, there is sufficient flexibility to address the needs of the patient.

A related comment argued that it is inappropriate for DoD to describe acute care as relating to stabilization of a life threatening or severely disabling condition. It is our view that it is part of DoD's responsibility to promulgate reasonable standards of medical necessity and that the standards established in the final rule are necessary, appropriate and consistent with sound medical practice.

Another comment suggested that our reference to a patient's need for "high dosage, unusual medication" as a criteria for an acute care admission be changed to "high dosage, intensive medication" on the grounds that the focus should be on the potential for serious side effects, regardless of how unusual the medication involved might be. We agree with this suggestion and have revised the provision accordingly.

7. Preauthorization Requirements for Acute Mental Health Care

The final rule (§ 199.4(b)(6)(iii)) establishes the general requirement for preadmission authorization for all non-emergency acute hospital admissions for mental health services. As in the interim rule, emphasis is placed on the development of an individual diagnosis/treatment plan. The plan must address the necessity for the admission, the needed level of intensity of care, a comprehensive patient assessment, a specific treatment plan, family involvement, and discharge planning. The importance of this is to assure that actions and plans of the providers responsible are based on appropriate therapeutic considerations.

Responding to a number of comments with respect to the interim rule, the final rule clarifies the timetable for development of the diagnosis/treatment plan. Under the final rule, the plan must be under development at the time of admission, a preliminary plan must be established within 24 hours of the admission, and a master treatment plan must be developed within five days (rather than 72 hours, as stated in the proposed rule) of the admission. We have also significantly changed the interim rule's provision concerning the timing of the request for preadmission authorization by eliminating the requirement for a request 48 hours in advance of the proposed non-emergency admission. Under the final rule, the request may be at any time prior to the admission. In general, the decision regarding preauthorization will be made within one business day following receipt of the request. If authorization is granted in response to the request, even if that granting takes place after the admission, the effective date of the preadmission authorization will be the date the request was received. Thus, the authorization will apply from the first

day of the admission. If, however, that request is denied and the provider has already admitted the patient, neither CHAMPUS nor the patient may be billed for the services rendered.

In emergency cases, preauthorization is not mandatory. However, notification of the admission should be made within 24 hours or, in the case of a holiday, the next business day. If the admission was a bona fide emergency, the effective date of the preauthorization will be the date of the admission. However, if it was not an emergency (but the admission can be authorized as medically or psychologically necessary), the effective date will be the date the request was received. Under the payment reduction provision, discussed above, days of care prior to the effective date of the authorization will not be reimbursed (up to a maximum payment reduction of five days of services).

One commenter criticized the definition of "psychiatric emergency" included in the proposed rule (proposed § 199.2(b)) on the grounds that it requires that a psychiatric evaluation prior to admission, contrary to prevailing standards which require an evaluation within 24 hours after admission. This comment confuses two separate requirements. An evaluation within 24 hours is a requirement for all admissions, for purposes of initiating active treatment of the patient. The evaluation necessary for authorizing an emergency admission is much different. It is simply to ascertain whether an emergency circumstance exists. Thus, no change is made in the final rule.

Another comment concerning the definition of psychiatric emergency argued that harm to self or others is too narrow a standard. We disagree. If this circumstance is not presented, based on the reasonable medical judgment of the responsible provider, then we believe there is no emergency that requires an acute care admission prior to following the simple procedure of requesting preadmission authorization.

Another comment relating to the definition of "psychiatric emergency" was that only physicians, not psychologists, should be recognized as competent to make this and certain other clinical judgments. We believe the provision in the rule that accepts the requirements of the applicable state law on this matter is the appropriate DoD position regarding clinical competence.

Several commenters expressed concern that the utilization review contractor is not available around the clock to consider preadmission authorization requests and that, as a result, full payment might be denied. It is true that our utilization review contractors' offices are not staffed seven days a week, 24 hours a day. It is for this reason that the rule makes preadmission authorization approvals effective the date the request was received, not the date it was approved. Through telephone facsimile device or telephone recording machine, the review contractor will provide a mechanism for requests to be received around the clock, with a record created as to the date and time of the request. Thus, as long as the provider makes the request at the proper time, the approval will cover the initial days of the admission. This is similar to the process now in effect under the CHAMPUS peer review organization program.

Several commenters raised concerns regarding the applicability of preadmission authorization requirements in cases in which CHAMPUS is the second payer, the concern relating to the burden of potentially requiring authorizations from more than one payer. We have made no change for two reasons. First, the statutory requirement is applicable to every case in which CHAMPUS payment is sought, regardless of whether it is on a first payer or second payer basis. Second, we believe the requirement is not a significant burden.

Another comment suggested that the rule require written confirmation by the utilization review contractor of the preadmission authorization decision. We agree and have revised §§ 199.4(b)(4)(viii)(D) and 199.4(b)(6)(iii)(D) accordingly.

Another comment proposed that the timetable for developing a master treatment plan be extended from 72 hours to five days. We believe this is a good suggestion. There is an important need for the providers to proceed expeditiously with development of a treatment plan. Five days appears consistent with this need. We, therefore, have made this change.

Several commenters suggested that the general standard for deciding on preauthorization requests should be changed from one business day after receipt of the request of the same day of the request. Our response is that although same day responses are often possible, some requests require additional analysis and consideration. Because of this, we do not think it practicable to commit ourselves to same-day decisions.

8. Concurrent Review of Acute Care

The final rule (§ 199.4(b)(6)(iv)) restates in the regulation current practice for concurrent review of acute care.

Several commenters suggest that we establish a standard timeframe for issuing decisions on concurrent review. We agree. We added to the rule the general standard that decisions will be issued within one business day after the review. This, of course, assumes that all necessary documentation has been received by the reviewer.

9. Limitations on Liability

The final rule (§§ 199.4(h)(5)(vi) and 199.6(a)(6)) reinforces current regulatory requirements (applicable to both institutional and individual providers) regarding limitations on liability for services excluded because they were not medically or psychologically necessary. The current regulation provides that potentially excludable services may be reimbursed if the provider could not reasonably have known of the exclusion. The final rule makes it explicit that this possibility will not be available to any provider who fails to follow available preadmission authorization procedures that would have provided the definitive answer. Also, the final rule would make it an explicit requirement for providers to adhere to CHAMPUS rules which disallow billing the patient for excluded services unless the patient (1) specifically understood that the services would likely not be covered and (2) agreed to pay.

Some commenters expressed concern about the effect of these provisions. Clarification of several points might be useful. First, the relevance of these two new provisions can only be understood in the conjunction with current section 199.4(b) of the CHAMPUS regulation, which establishes the limitation on liability rules. Among these existing rules is that neither providers nor beneficiaries will be financially liable for services excludable as not medically necessary if the provider or beneficiary did not know and could not reasonably have been expected to know that the services were excludable. In the case of beneficiaries, one application of this rule is that beneficiaries are not liable unless they knowingly agree to accept financial responsibility for services that are excluded from CHAMPUS payment. As part of the CHAMPUS peer review organization program, these rules have been in place for most CHAMPUS services, but, until now, not for most mental health services.

The second point of clarification is that § 199.4(a)(12)(i) of this final rule, discussed above, make the limitation on liability rules and other procedures of the CHAMPUS peer review organization

program applicable to mental health services.

The third point of clarification is that the new §§ 199.4(h)(5)(vi) and 199.6(a)(6) apply to all CHAMPUS services. Their purpose and effect is to reinforce the current limitation on liability rules. The first of these provisions simply provides that a provider will not be able to claim that it did not know and could not reasonably have been expected to know that a particular admission would have been determined to be not medically necessary if the provider failed to follow preadmission authorization (or concurrent review) procedures that would have given the answer. The second of these new provisions simply restates in the section of the CHAMPUS regulation relating to general requirements applicable to authorized providers that providers must comply with applicable limitation on liability requirements.

10. Other Matters

Without reference to any specific provision of the proposed rule, several commenters suggested that DoD should establish rules to prevent conflicts of interest or inappropriate decisions by the peer reviewers conducting the utilization reviews. We believe we have addressed this above in the discussion of appeal procedures. In addition, all reviews are conducted pursuant to contractual arrangements between DoD and the peer review entity. Mechanisms exist for DoD to correct any possible problems regarding objectivity of the peer review contractor. Any person who has information supporting any allegation of impropriety in the review process should notify the Director, OCHAMPUS.

D. Rulemaking Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would result in an annual effect on the national economy of $100 million or more or have other substantial impacts. Section 605(b) of the Regulatory Flexibility Act requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This final rule is not a major rule under Executive Order 12291. Also, we certify that this final rule will not significantly affect a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

In addition, this final rule would not impose information collection requirements. Therefore, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

In accordance with usual CHAMPUS procedures, this final rule has been approved by the Departments of Health and Human Services and Transportation.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.2 (b) is amended by adding a definition for "psychiatric emergency" in alphabetical order as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Psychiatric emergency. A psychiatric inpatient admission is an emergency when, based on a psychiatric evaluation performed by a physician (or other qualified mental health care professional with hospital admission authority), the patient is at immediate risk of serious harm to self or others as a result of a mental disorder and requires immediate continuous skilled observation at the acute level of care.

* * * * *

3. Section 199.4 is amended by redesignating the current paragraph (a)(12) as (a)(13); by adding a new paragraph (a)(12); by adding new paragraphs (b)(4)(vii), (b)(4)(viii), and (b)(4)(ix); by redesignating paragraphs (b)(6) as paragraph (b)(7); by redesignating paragraph (b)(5)(ix) introductory text as paragraph (b)(6) introductory text; by removing paragraphs (b)(5)(ix) (A) and (B); by adding new paragraphs (b)(6)(i) through (iv); and by adding a new paragraph (h)(5)(vi), as follows:

§ 199.4 Basic program benefits.

(a) * * *

(12) *Utilization review, quality assurance and preauthorization for inpatient mental health services*—(i) *In general.* The Director, OCHAMPUS shall provide, either directly or through contract, a program of utilization and quality review for all mental health care services. Among other things, this program shall include mandatory preadmission authorization before nonemergency inpatient mental health services may be provided and mandatory approval of continuation of inpatient services within 72 hours of emergency admissions. This program shall also include requirements for other pretreatment authorization procedures, concurrent review of continuing inpatient and outpatient care, retrospective review, and other such procedures as determined appropriate by the Director, OCHAMPUS. The provisions of paragraph (h) of this section and § 199.15(f) shall apply to this program. The Director, OCHAMPUS, shall establish, pursuant to that § 199.15(f), procedures substantially comparable to requirements of paragraph (h) of this section and § 199.15. If the utilization and quality review program for mental health care services is provided by contract, the contractor(s) need not be the same contractor(s) as are engaged under § 199.15 in connection with the review of other services.

(ii) *Preadmission authorization.* (A) This section generally requires preadmission authorization for all nonemergency inpatient mental health services and prompt continued stay authorization after emergency admissions. Institutional services for which payment would otherwise be authorized, but which were provided without compliance with preadmission authorization requirements, do not qualify for the same payment that would be provided if the preadmission requirements had been met.

(B) In cases of noncompliance with preadmission authorization requirements, institutional payment will be reduced by the amount attributable to the days of services without the appropriate certification up to a maximum of five days of services. In cases in which payment is determined on a prospectively set per-discharge basis (such as the DRG-based payment system), the reduction shall be $500 for each day of services provided without the appropriate preauthorization, up to a maximum of five days of services.

(C) For purposes of paragraph (a)(12)(ii)(B) of this section, a day of services without the appropriate preauthorization is any day of services provided prior to:

(*1*) the receipt of an authorization; or

(*2*) the effective date of an authorization subsequently received.

(D) Services for which payment is disallowed under paragraph (a)(12)(ii)(B) of this section may not be billed to the patient (or the patient's family).

* * * * *

(b) * * *

(4) * * *

(vii) *Criteria for determining medical or psychological necessity.* In determining the medical or psychological necessity of services and supplies provided by RTCs, the evaluation conducted by the Director, OCHAMPUS (or designee) shall consider the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care. In addition to the criteria set forth in this paragraph (b)(4) of this section, additional evaluation standards, consistent with such criteria, may be adopted by the Director, OCHAMPUS (or designee). RTC services and supplies shall not be considered medically or psychologically necessary unless, at a minimum, *all* the following criteria are clinically determined in the evaluation to be fully met:

(A) Patient has a diagnosable psychiatric disorder.

(B) Patient exhibits patterns of disruptive behavior with evidence of disturbances in family functioning or social relationships and persistent psychological and/or emotional disturbances.

(C) RTC services involve active clinical treatment under an individualized treatment plan that provides for:

(*1*) Specific level of care, and measurable goals/objectives relevant to each of the problems identified;

(*2*) Skilled interventions by qualified mental health professionals to assist the patient and/or family;

(*3*) Time frames for achieving proposed outcomes; and

(*4*) Evaluation of treatment progress to include timely reviews and updates as appropriate of the patient's treatment plan that reflects alterations in the treatment regimen, the measurable goals/objectives, and the level of care required for each of the patient's problems, and explanations of any failure to achieve the treatment goals/objectives.

(D) Unless therapeutically contraindicated, the family and/or guardian must actively participate in the continuing care of the patient either through direct involvement at the facility or geographically distant family therapy. (In the latter case, the treatment center must document that there has been collaboration with the family and/or guardian in all reviews.)

(viii) *Preauthorization requirement.* (A) All admissions to RTC care are elective and must be certified as medically/psychologically necessary prior to admission. The criteria for preauthorization shall be those set forth in paragraph (b)(4)(vii) of this section. In applying those criteria in the context of preadmission authorization review, special emphasis is placed on the development of a specific diagnosis/treatment plan, consistent with those criteria and reasonably expected to be effective, for that individual patient.

(B) The timetable for development of the individualized treatment plan shall be as follows:

(*1*) The plan must be under development at the time of the admission.

(*2*) A preliminary treatment plan must be established within 24 hours of the admission.

(*3*) A master treatment plan must be established within ten calendar days of the admission.

(C) The elements of the individualized treatment plan must include:

(*1*) The diagnostic evaluation that establishes the necessity for the admission;

(*2*) An assessment regarding the inappropriateness of services at a less intensive level of care;

(*3*) A comprehensive, biopsychosocial assessment and diagnostic formulation;

(*4*) A specific individualized treatment plan that integrates measurable goals/objectives and their required level of care for each of the patient's problems that are a focus of treatment;

(*5*) A specific plan for involvement of family members, unless therapeutically contraindicated; and

(*6*) A discharge plan, including an objective of referring the patient to further services, if needed, at less intensive levels of care within the benefit limited period.

(D) Preauthorization requests should be made not less than two business days prior to the planned admission. In general, the decision regarding preauthorization shall be made within one business day of receipt of a request for preauthorization, and shall be followed with written confirmation. Preauthorizations are valid for 90 days.

(ix) *Concurrent review.* Concurrent review of the necessity for continued stay will be conducted no less frequently than every 30 days. The criteria for concurrent review shall be those set forth in paragraph (b)(4)(vii) of this section. In applying those criteria in the context of concurrent review, special emphasis is placed on evaluating the progress being made in the active individualized clinical treatment being provided and on developing appropriate discharge plans.

* * * * *

(6) * * *

(i) *Criteria for determining medical or psychological necessity.* In determining the medical or psychological necessity of acute inpatient mental health services, the evaluation conducted by the Director, OCHAMPUS (or designee) shall consider the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care. The purpose of such acute inpatient care is to stabilize a life-threatening or severely disabling condition within the context of a brief, intensive model of inpatient care in order to permit management of the patient's condition at a less intensive level of care. Such care is appropriate only if the patient requires services of an intensity and nature that are generally recognized as being effectively and safely provided only in an acute inpatient hospital setting. In addition to the criteria set forth in this paragraph (b)(6) of this section, additional evaluation standards, consistent with such criteria, may be adopted by the Director, OCHAMPUS (or designee). Acute inpatient care shall not be considered necessary unless the patient needs to be observed and assessed on a 24-hour basis by skilled nursing staff, and/or requires continued intervention by a multidisciplinary treatment team; and in addition, at least one of the following criteria is determined to be met:

(A) Patient poses a serious risk of harm to self and/or others.

(B) Patient is in need of high dosage, intensive medication or somatic and/or psychological treatment, with potentially serious side effects.

(C) Patient has acute disturbances of mood, behavior, or thinking.

(ii) *Emergency admissions.* Admission to an acute inpatient hospital setting may be on an emergency or on a non-emergency basis. In order for an admission to qualify as an emergency, the following criteria, in addition to those in paragraph (b)(6)(i) of this section, must be met:

(A) The patient must be at immediate risk of serious harm to self and or others based on a psychiatric evaluation performed by a physician (or other qualified mental health professional with hospital admission authority); and

(B) The patient requires immediate continuous skilled observation and treatment at the acute psychiatric level of care.

(iii) *Preauthorization requirements.* (A) All non-emergency admissions to an acute inpatient hospital level of care must be authorized prior to the admission. The criteria for preauthorization shall be those set forth

in paragraph (b)(6)(i) of this section. In applying those criteria in the context of preauthorization review, special emphasis is placed on the development of a specific individualized treatment plan, consistent with those criteria and reasonably expected to be effective, for that individual patient.

(B) The timetable for development of the individualized treatment plan shall be as follows:

(*1*) The development of the plan must begin immediately upon admission.

(*2*) A preliminary treatment plan must be established within 24 hours of the admission.

(*3*) A master treatment plan must be established within five calendar days of the admission.

(C) The elements of the individualized treatment plan must include:

(*1*) The diagnostic evaluation that establishes the necessity for the admission;

(*2*) An assessment regarding the inappropriateness of services at a less intensive level of care;

(*3*) A comprehensive biopsychosocial assessment and diagnostic formulation;

(*4*) A specific individualized treatment plan that integrates measurable goals/objectives and their required level of care for each of the patient's problems that are a focus of treatment;

(*5*) A specific plan for involvement of family members, unless therapeutically contraindicated; and

(*6*) A discharge plan, including an objective of referring the patient to further services, if needed, at less intensive levels of care within the benefit limit period.

(D) The request for preauthorization must be received by the reviewer designated by the Director, OCHAMPUS prior to the planned admission. In general, the decision regarding preauthorization shall be made within one business day of receipt of a request for preauthorization, and shall be followed with written confirmation. In the case of an authorization issued after an admission resulting from approval of a request made prior to the admission, the effective date of the certification shall be the date of the receipt of the request. However, if the request on which the approved authorization is based was made after the admission (and the case was not an emergency admission), the effective date of the authorization shall be the date of approval.

(E) Authorization prior to admission is not required in the case of a psychiatric emergency requiring an inpatient acute level of care, but authorization for a continuation of services must be obtained promptly. Admissions resulting from a bona fide psychiatric emergency should be reported within 24 hours of the admission or the next business day after the admission, but must be reported to the Director, OCHAMPUS or a designee, within 72 hours of the admission. In the case of an emergency admission authorization resulting from approval of a request made within 72 hours of the admission, the effective date of the authorization shall be the date of the admission. However, if it is determined that the case was not a bona fide psychiatric emergency admission (but the admission can be authorized as medically or psychologically necessary), the effective date of the authorization shall be the date of the receipt of the request.

(iv) *Concurrent review.* Concurrent review of the necessity for continued stay will be conducted. The criteria for concurrent review shall be those set forth in paragraph (b)(6)(i) of this section. In applying those criteria in the context of concurrent review, special emphasis is placed on evaluating the progress being made in the active clinical treatment being provided and on developing/refining appropriate discharge plans. In general, the decision regarding concurrent review shall be made within one business day of the review, and shall be followed with written confirmation.

* * * * *

(h) * * *

(5) * * *

(vi) Preadmission authorization was available but not requested, or concurrent review requirements were not followed.

* * * * *

§ 199.6 [Amended]

4. Section 199.6 is amended by redesignating paragraphs (a)(6) through (a)(9) as paragraphs (a)(7) through (a)(10) respectively, and by adding a new paragraph (a)(6), as follows:

§ 199.6 Authorized providers.

* * * * *

(a) * * *

(6) *Exclusion of beneficiary liability.* In connection with certain utilization review, quality assurance and preauthorization requirements of section 199.4 of this part, providers may not hold patients liable for payment for certain services for which CHAMPUS payment is disallowed. With respect to such services, providers may not seek payment from the patient or the patient's family. Any such effort to seek payment is a basis for termination of the provider's authorized status.

* * * * *

Dated: October 10, 1991.

L.M. Bynum,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-24866 Filed 10-17-91; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT3-1-5236; A-1-FRL-4018-1]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Revised Regulations Controlling Volatile Organic Compound Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut. These revisions consist of revised volatile organic compound (VOC) emission regulations applicable in the entire State of Connecticut. The intended effect of this action is to approve Connecticut's revised VOC regulations to correct deficiencies of Connecticut's Ozone Attainment Plan. This action is being taken under section 110 and part D of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on November 18, 1991.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection, by appointment, during normal business hours at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th Floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, (617) 565-3248; FTS 835-3248.

SUPPLEMENTARY INFORMATION: On May 18, 1990 (55 FR 20614), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval of revised volatile organic compound (VOC) emission regulations in section 22a-174-20 of Connecticut's Regulations for the Abatement of Air Pollution. The formal SIP revision was submitted by the

Connecticut Department of Environmental Protection (DEP) on November 9, 1989 and a revision to that request was submitted on September 12, 1991.

Background

On May 25, 1988, EPA sent a letter to William A. O'Neill, then Governor of Connecticut, pursuant to section 110(a)(2)(H) of the preamended Clean Air Act notifying him that the Connecticut SIP was substantially inadequate to achieve the National Ambient Air Quality Standard (NAAQS) for ozone in the entire State. EPA requested the State to respond to the SIP call in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs. The first phase of the response to the SIP call was meant to consist of (1) correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the area's base year emissions inventory.

On June 16, 1988, EPA sent a letter to the Director of Connecticut's Air Compliance Unit outlining the corrections that needed to be made to Connecticut's existing VOC regulations to eliminate the identified deficiencies and inconsistencies in the regulations as compared to EPA national guidance. Therefore, the corrections were necessary to make Connecticut's SIP consistent with EPA guidance. The revised VOC regulations submitted by Connecticut on November 9, 1989 and September 12, 1991, are in response to EPA's May 25 and June 16, 1988, letters.

On May 18, 1990, EPA proposed approval of this revision. EPA based this approval on a determination that the submittal addressed the deficiencies identified in the SIP call. On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). In section 182(a)(2)(A) of the amended Act, Congress codified the requirement that States revise their SIPs for ozone nonattainment areas so that they conform with EPA's preamendment guidance. However, EPA is not addressing today whether this action meets the requirements of section 182(a)(2)(A).[1] EPA is taking final action because this action is consistent with the guidance that existed at the time of the proposal, and because it will strengthen the existing SIP.

Content of Revised Regulations

The Connecticut DEP made the following changes to the VOC regulations in section 22a–174–20:

The applicability levels of Connecticut's "bulk gasoline terminal" regulation and "bulk gasoline plant" regulation, which are subdivisions 22a–174–20 (b)(1) and (b)(4), respectively, were changed such that they are now based on a 30–day rolling average. The "bulk terminal" regulation now states that once a loading rack exceeds the applicability cutoff of 10,000 gallons per day, it will always be subject to the 80 milligrams per liter of liquid loaded emission limitation. Correspondingly, the "bulk plant" regulation now states that once a loading rack exceeds 4000 gallons per day, it will always be subject to at least the requirements covering bulk plants.

2. The applicability level of Connecticut's "service stations—Stage I" regulation (subdivisions 22a–174–20 (b)(5) and (b)(6)) was changed such that it is based on a 30–day rolling average and now states that once a service station's throughput exceeds 10,000 gallons/month, the requirements of the regulations will always apply.

3. The applicability of the surface coating regulations for can, coil, fabric and vinyl, metal furniture, paper and wire coating (subsections 22a–174–20(m) through 22a–174–20(r) inclusive) was changed such that facilities are now subject to the emission limitations if facility-wide emissions from surface coating operations exceed 15 pounds VOC per day actual emissions. Further, these regulations state that once the applicable cutoff is exceeded by a facility, it will always be subject to the applicable emission limitations of the regulation.

4. The applicability of the miscellaneous metal parts and products coating regulation (subsection 22a–174–20(s)) was changed such that facilities are now subject to the emission limitations if facility-wide emissions from surface coating operations exceed 15 pounds VOC per day actual emissions. However, the regulation allows facilities to be exempt provided they agree to a restriction limiting their VOC emissions to 1,666 pounds per month and have never exceeded this amount since January 1, 1987. These restrictions on emissions will limit potential VOC emissions from a source to less than 10 tons per year (TPY) which is consistent with the allowable applicability level in EPA's May 25, 1988 guidance document entitled "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations." Further, these regulations state that once the applicable cutoff is exceeded by a facility, it will always be subject to the applicable emission limitations of the regulation.

5. The applicability of Connecticut's pharmaceutical regulation (subsection 22a–174–20(t)) was changed such that the regulation is applicable to any piece of equipment that has potential emissions exceeding 15 pounds VOC per day.

6. The applicability of Connecticut's graphic arts regulation (subsection 22a–174–20(v)) was changed such that the regulation is applicable to any printing line that has actual VOC emissions exceeding 40 pounds per day or any facility which has potential facility-wide emissions of 100 tons per year (TPY) or greater. Further, the regulation now states that once a source is subject to the applicable emission limitations, it will always be subject.

7. Connecticut's 100 TPY non-CTG source regulation (subsection 22a–174–20(ee)) was changed such that it more clearly defines which facilities are subject to the regulation.

8. The emission limitations in all the surface coating regulations (subsections 22a–174–20(m) throuqh 20(s) inclusive) were changed such that they are all now in terms of "pounds of VOC per gallon of coating minus water and exempt solvents."

9. The surface coating regulations and the graphic arts regulation (subsections 22a–174–20 (m) through (s) inclusive and 20(v), respectively) were revised such that the applicable emission limitation of the regulations must be met for every coating being utilized by the facility.

10. A calculation procedure was added to subsection 22a–174–20(bb) which allows the calculation of the allowable emissions for surface coating sources using the applicable emission limit in terms of "pounds of VOC per gallon of solids" for use in equivalence calculations when add-on control equipment is utilized to meet the emission limit.

11. The following terms were either defined or the definition of the term was revised to reflect current EPA guidance: (a) Vapor balance system; (b) cutback asphalt; (c) freeboard height; (d) freeboard ratio; (e) refrigerated chiller; (f) interior base coating; (g) vinyl coating; (h) paper coating; (i) roll coating; (j) clear coat; (k) extreme performance coatings; (1)

[1] EPA will take action on whether this submittal meets the requirements of the RACT fix-up provision within the timeframe specified in 110(k)(1) and (2).

pharmaceutical products and intermediates; and (m) canned pumps.

12. Connecticut's previously approved generic bubble regulation (subdivisions 22a–174–20(cc) (1) and (2)) was changed such that all cross line averaging now must be consistent with EPA's final Emissions Trading Policy Statement published on December 4, 1986 (51 FR 43814), and must be submitted as single source SIP revisions before becoming effective.

13. Connecticut's regulations were changed such that the appropriate compliance averaging periods for the following emissions limitations and/or requirements are now stated: (a) The "80 milligrams per liter of liquid loaded" limit for bulk gasoline terminals (i.e., six hours); (b) the reduction requirement for add-on control devices on air dryers and process equipment in pharmaceutical plants (i.e., one hour); (c) the "80 milligrams per liter of liquid loaded" limit for solvent deliveries at pharmaceutical plants (i.e., per delivery); (d) the reduction and capture efficiency requirements for add-on control equipment on pneumatic rubber tire manufacturing facilities (i.e., one hour except for carbon adsorption systems); (e) the reduction and capture efficiency requirements for add-on control equipment on printing equipment at graphic arts facilities (i.e., one hour); (f) the "0.12 kg of VOC/1000 kg of product" limitation for polystyrene resin manufacturers (i.e., one hour); and (g) the reduction and capture efficiency requirements for surface coating sources using add-on control equipment (i.e., one hour).

14. Recordkeeping requirements were adopted for surface coating sources, owners of fixed and external floating roof tanks, bulk gasoline terminals and plants, and gasoline service stations.

15. Continuous monitoring requirements were adopted for major stationary sources using thermal incinerators, catalytic incinerators, condensers or refrigeration systems, or carbon adsorbers.

16. The most current EPA-approved VOC test methods were incorporated into the regulations for determining the VOC content of surface coatings (i.e., Reference Method (RM) 24 and 24A); the reduction efficiency of add-on control devices (i.e., RM 18, 25, 25A and 25B); the total seal gap area for floating roofs (i.e., measurement method from model regulation (EPA–450/2–79–004)); the efficiency of control devices at bulk gasoline terminals (i.e., procedures in 40 CFR 60.503 (c) and (e)) [2]; leaks from gasoline tank trucks (i.e., RM 27); the VOC content of cutback asphalt (i.e., ASTM D–244); and compliance with the requirements imposed on perchloroethylene dry cleaners (i.e., certain visual methods, the test method from EPA–450/2–78–041, and a modified version of ASTM D–322–67). On September 12, 1991, the Connecticut Bureau of Air Management submitted a letter as an amendment to the SIP revision. The letter requested that the last sentence of subdivision 22a–174–20(aa)(7) be withdrawn from consideration as part of the SIP revision. This portion of the regulations deals with capture efficiency. In response to the Notice of Proposed Rulemaking for this SIP revision, a company submitted an adverse comment on that portion of the submittal. The comment will be discussed in more detail below. In order to accommodate the concern, the Bureau withdrew this portion of the regulations from consideration. Since the rest of the regulations remain approvable, EPA is approving the remainder of the regulations and withdrawing its proposal of approval for the last sentence of subdivision 22a–174–20(aa)(7). Additionally, Connecticut decided that it will not mention the use of transfer efficiency (TE) credit as a compliance option in its regulations. If a facility ever wanted to utilize TE credits this would be in conflict with the SIP and could only be done if EPA approved it as a single source SIP revision.

17. The following existing exemptions and/or variances have been changed as noted: (a) The exemption for bulk gasoline plants and service stations that cannot meet the requirements of the regulation for various reasons has been changed to say that EPA approval is needed for all waivers granted before becoming effective; (b) the exemption for cold cleaners at automobile repair facilities has been eliminated; (c) the exemption for conveyorized and vapor degreasers installed prior to July 1, 1980 has been eliminated; (d) the exemption for small metal components in the miscellaneous metal parts and products coating regulation has been eliminated; (e) the exemption for the interiors of airplanes in the miscellaneous metal parts and products coating regulation has been eliminated; (f) the exemption for certain types of pneumatic rubber tire manufacturing operations based on size has been eliminated; and (g) the variance provision for perchloroethylene dry cleaners that cannot meet the requirements of the regulation for various reasons has been changed to say that EPA approval is needed for all waivers granted before becoming effective.

18. Various provisions of EPA's model regulations (i.e., EPA–905/2–78–001 and EPA–450/2–79–004) for the Group I and II control techniques guideline (CTG) documents were added to the following regulations: (a) The regulation for the storage of volatile organic compounds; (b) the regulation for the storage of volatile organic compounds under external floating roofs; (c) the metal cleaning regulation; and (d) the regulation covering perchloroethylene dry cleaning facilities.

EPA's review of the SIP submittal indicates that Connecticut has addressed all of the deficiencies and inconsistencies in the existing VOC regulations identified by EPA except those related to capture efficiency testing. The State of Connecticut will address the remaining deficiency in a separate submittal in the future. EPA is approving the Connecticut SIP revisions containing the revised VOC regulations in section 22a–174–20 of Connecticut's Regulations for the Abatement of Air Pollution, which were submitted on November 9, 1989 and September 12, 1991. public comments were submitted on the NPR by one party.

Response to Public Comments

On June 14, 1990, R.R. Donnelley and Sons Company submitted comments on the action. The company operates printing presses in Connecticut and other States, and commented on changes in the Connecticut regulations that affect the printing and graphic arts industry. Specifically, R.R. Donnelley and Sons commented adversely on capture efficiency determination procedures, recordkeeping requirements, continuous monitoring requirements, and compliance periods for control and capture efficiency determinations. For more detail on these responses, see the "Response to Comments" memorandum available in the docket located at the Regional Office listed in the **ADDRESSES** section.

Comment: The company has commented that under the Recordkeeping Requirements and Test Methods outlined in subsection 22a–174–20(aa), it states that capture efficiency determinations shall be performed "using a test method recommended or approved by the Administrator." The company felt that it was only appropriate for U.S. EPA to require the State regulations to conform to a guidance document or test method that

[2] This numbering refers to the paragraphs that existed in 40 CFR 60.503 prior to its last revision on February 14, 1989 (54 FR 6678).

has been developed and verified, subjected to public review and comment, and approved by U.S. EPA.

EPA Response: EPA, States, and the regulated community have recognized the importance of capture efficiency in determining compliance with volatile organic compound regulations for some time. When EPA issued SIP calls to States in May of 1988, EPA recognized and identified the lack of a capture efficiency test method in State regulations as a deficiency. At that time, EPA had not identified nor fully developed an acceptable protocol or test method to determine capture efficiency. In light of the technical issues that needed to be resolved for capture efficiency, EPA asked that all States commit to adopting methodologies for determining capture efficiency when they became available from EPA. Connecticut went a step further than EPA required and revised its regulations to affirm that capture efficiency would be determined using EPA's recommended approach.

The company raised a valid concern in that it did not have the opportunity to comment on the explicit test method that sources in Connecticut would be subjected to. Therefore, on September 12, 1991, the Connecticut Bureau of Air Management submitted a letter as an amendment to the SIP revision. The letter asked that the last sentence of subdivision 22a–174–20(aa)(7) which reads, "The owner or 'operator' of any premise subject to this section shall determine capture efficiency using a test method recommended or approved by the 'Administrator'," be withdrawn from consideration. Based on that request, EPA will not consider that portion of the rule for approval. However, since the rest of the regulations remain approvable, EPA is approving the remainder of the regulations.

Connecticut has agreed to adopt a specific capture efficiency test method into its regulations. On September 26, 1990, EPA transmitted guidance to the State of Connecticut regarding the adoption of capture efficiency requirements. That letter transmitted an August 3, 1990 memorandum entitled "Model Regulatory Language for Capture Efficiency Testing" and an April 16, 1990 memorandum entitled "Guidelines for Developing a State Protocol for the Measurement of Capture Efficiency (CE)." With this detailed guidance, Connecticut is expected to adopt capture efficiency test methods into its regulations. The public will have the opportunity to comment on these test methods during the normal public notice and hearing process.

Comment: R.R. Donnelley commented that it understands the requirements for maintaining records of the VOC content of materials when compliance with the new regulations is to be achieved by use of low-VOC materials. However, in operations where control equipment, such as carbon adsorption or incineration is employed, it fails to see the need for extensive daily records as proposed.

They continue that an accurate, annual VOC usage report will better provide the necessary information regarding consumption of all VOC-containing materials. R. R. Donnelley further suggests that if this were unacceptable, a suitable alternative would be the maintenance of monthly consumption data and daily records of hours of operation, so that average daily emissions could be estimated. Those records would be made available to the State or EPA, if needed.

EPA Response: Records of VOC usage are necessary for determining compliance with the add-on control requirements of Connecticut's graphic arts regulation. Regardless of the type of control equipment used, Connecticut's regulations require a defined overall percent emission reduction for all graphic arts facilities, consistent with EPA policy. In order to demonstrate compliance by determining an overall percent reduction in VOC emissions, records of VOC input into the process must be maintained. Ultimately, the issue is whether daily records are necessary.

The company has suggested that when carbon adsorption is used compliance could be determined by an overall solvent balance. EPA agrees. Connecticut has required that sources keep daily records of VOC usages in subsection 22a–174–20(aa).

Specifically, daily records must be maintained of the amount and VOC content of each coating as applied on each coating line. EPA believes that, while other records may potentially provide information on daily VOC usage, records of VOC contents and usage are readily available and do not impose an unreasonable burden. In fact, almost any recordkeeping scenario would mandate similar records to determine VOC emissions.

For operations using incineration, it is stated that the incinerator must achieve a 90 percent reduction regardless of materials input. Again, Connecticut's regulations and EPA policy require an overall percent reduction and not simply a destruction efficiency of 90 percent. Therefore, maintaining a 90 percent destruction efficiency will not verify compliance.

EPA policy requires that compliance be determined over no greater than a 24 hour period. EPA policy in this regard is dictated by the need to have enforceable emission limits over a short term period. In addition, attainment plans for achieving and maintaining the ozone standard are developed using daily emissions. Permitting longer term compliance periods could permit facilities to emit more on certain days in exchange for lower emissions at a later date. EPA policy is meant to ensure that additional emissions do not occur on a day that they would contribute excessively to a violation of the ozone standard. Using average daily emission calculations would not be adequate to achieve this goal. This issue is discussed further in the response to comments about "compliance periods."

Beyond this, daily records are consistent with the compliance and enforcement needs of the Agency. Continuing violations and excess emissions are criteria necessary to determine the appropriateness and magnitude of enforcement actions. By requiring daily records to be maintained, the State or EPA can make an assessment of how long a source has been in violation of an emission limitation or control efficiency requirement, and approximate the emissions beyond the allowable emission rate. In this regard, daily records can help ensure that agencies with limited resources can readily quantify the magnitude of a violation and focus enforcement actions accordingly.

Comment: The SIP revisions include provisions for continuous monitoring of afterburners and carbon adsorbers. In the case of thermal incinerators, R.R. Donnelley feels that exhaust temperature (or, alternatively, combustion chamber temperature) is the appropriate parameter to measure. However, the company does not feel that the proposed monitoring requirements for catalytic incinerators and carbon adsorbers are appropriate.

In the case of carbon adsorption, the company continues, the proposed revisions require continuous VOC monitoring of each exhaust stream and the pressure drop across the adsorber. A typical carbon adsorption system is comprised of multiple units, connected in parallel, operating in a semi-continuous mode. As each of these individual carbon bed units reaches the point of media saturation, the company states that it is taken off-line and desorbed. The VOC concentration in the

stack just prior to the desorption step would be significantly higher than that in the exhaust streams of the other units, and therefore, would not be representative of the system's control efficiency.

R.R. Donnelley points out that the EPA recognized the variable VOC discharge in the NSPS adopted for this type of operation (40 CFR 60 subpart QQ) and provided for a 30 day overall materials mass balance test as the only way to accurately measure the performance of such a system. R.R. Donnelley feels that as long as the NSPS is being met, there is no additional value to continuously monitoring the exhaust stack.

EPA Response: The continuous monitoring requirements in Connecticut's regulations are not intended to directly demonstrate compliance with the regulations. Instead, these monitoring requirements have been established as meaningful indicators of equipment performance. Significant fluctuations in monitored values may indicate problems in the operation of the control equipment. To use monitoring for continuous compliance determinations, inlet and outlet VOC concentrations and flow rates would need to be monitored, as well as the daily recordkeeping discussed above.

The commenter makes several valid points regarding the limitations of the continuous monitors for purposes of demonstrating continuous compliance. However, since the monitors are indicators of proper control equipment performance, the requirement for their usage remains valid.

For catalytic incinerators, exhaust gas temperature and temperature rise across the bed are to be monitored. The comment states that wide fluctuations in the amount of VOC entering the incinerator would cause wide variations in both of these measured parameters. EPA agrees that nonconstant VOC input to a catalytic incinerator will not provide an immediate indication of operational problems. However, over a period of hours or days, continued low exhaust gas temperatures and/or temperature rises across the bed, when compared with daily records of VOC input to process may indicate that the catalyst needs replacement. As a measure of performance, discerning use of this monitoring data will provide valuable insight as to the equipment performance.

Similarly, for carbon adsorption, in the case where multiple beds serve a single printing line or lines, changes in pressure drop across the bed may indicate improper performance of one or more of the beds. As an indicator of performance, an increased pressure drop may indicate that a bed is plugged partially or a decreased pressure drop may indicate channeling through the packing. Neither demonstrate a violation, but both suggest that a problem may exist which warrants attention.

Further, continuous VOC monitoring of each exhaust stream may indicate that a bed may not have been desorbed properly due to a malfunction of the desorption system or perhaps that the carbon bed is nearing the end of its useful life. It is obvious that near the end of a carbon bed unit's cycle, VOC concentration will be higher than at the beginning of the cycle. However, continuously rising VOC concentrations at the beginning or in the middle of a bed's cycle will indicate a problem with performance. In addition, in most cases continuous monitors should be utilized to determine when desorption should take place rather than timed cycles which have more potential to allow excess emissions of VOCs.

The comments raised indicate real concerns and limitations on the use of continuous monitoring for graphic arts, or any other, facilities using add-on control equipment. Nevertheless, despite limitations under certain circumstances, continuous monitoring remains a viable method to identify trends in performance that will help ensure proper operation of air pollution control equipment.

Comment: R.R. Donnelley commented that the capture and control requirements of the graphic arts regulations as detailed in subdivisions 22a–174–20(v)(2)(c) and 22a-174(v)(3) specify compliance averaging periods of one hour for incineration or the lesser of one adsorption cycle or 24 hours for carbon adsorption systems. As discussed in an earlier comment, it feels that the best measure of a carbon adsorption system is the performance over a longer compliance averaging period, namely the 30 day period as specified in the NSPS for publication rotogravure printing. It especially favors application of this standard to this industry since it provides for a combined capture and control efficiency of an entire facility to a high degree of accuracy. This combined efficiency measurement eliminates the inaccuracies that might be encountered when determining overall efficiency by multiplying a short-term capture efficiency determination (using a yet-unspecified technique) by an adsorber efficiency determined over a short time period, both of which are subject to significant errors.

EPA Response: As discussed under the recordkeeping response to comments, EPA policy for sources in nonattainment areas which must plan for attainment is that compliance must be determined over no greater than a 24 hour period. Averaging over longer time periods may make planning for and achieving the ozone standard impossible, because of the need to restrict or plan for emissions on a daily basis.

New sources in attainment areas are not required to keep daily records since no plan to achieve the ozone standard is necessary. Sources in nonattainment areas, new or existing, must be in compliance on a short term basis. New Source Performance Standards (NSPS) for the graphic arts industry mandate that on a facility wide basis over a one month time period, the volatile portion of inks on average must not exceed 16 percent VOC by weight. RACT requires that each and every ink not exceed approximately 22.7 percent VOC content by weight at any time. Depending upon fluctuations of VOC contents and daily usages in use at a given facility, RACT may be more stringent than the NSPS. The NSPS are not established in place of RACT and are not intended to represent RACT.

Most importantly, EPA policy in this regard is articulated in a memorandum from John O'Connor, Acting Director of the Office of Air Quality Planning and Standards, dated January 20, 1984. The memorandum discussed why averaging periods can be no longer than 24 hours, and set forth explicit criteria to allow for averaging periods greater than 24 hours in State Implementation Plan regulations. Connecticut's regulations are consistent with EPA policy in this regard and are, therefore, approvable.

Final Action

EPA is approving the Connecticut SIP revisions containing the revised VOC regulations in section 22a–174–20 of Connecticut's Regulations for the Abatement of Air Pollution, which were submitted on November 9, 1989 and September 12, 1991. These revisions correct deficiencies of Connecticut's Ozone Attainment Plan. EPA is not addressing today whether this action meets the requirements of section 182(a)(2)(A).

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

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impac' ›n a

substantial number of small entities. (See 46 FR 8709.)

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 the 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 section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated September 26, 1991.

William K. Reilly,

Administrator

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(58) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(58) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on November 9, 1989 and September 12, 1991.

(i) *Incorporation by reference.* (A) Letters from the Connecticut Department of Environmental Protection dated November 9, 1989 and September 12, 1991 submitting revisions to the Connecticut State Implementation Plan.

(B) Section 22a–174–20 of the Regulations of the Connecticut Department of Environmental Protection Concerning Abatement of Air Pollution, effective October 31, 1989, except for the last sentence of 22a–174–20(aa)(7).

[FR Doc. 91–25025 Filed 10–17–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6892

[AK–932–4214–10; AA–5964]

Withdrawal of National Forest System Lands for the Sixmile Creek Recreation Area; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 473 acres of National Forest System lands from surface entry and mining for a period of 20 years for the Forest Service to protect the Sixmile Creek Recreation Area. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

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

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from settlement, sale, location, or entry under the public land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the recreational values of the Forest Service Sixmile Creek Recreation Area:

Seward Meridian

Chugach National Forest

Two parcels of land described as follows:

(a) Beginning at a point within sec. 6, T. 7 N., R 1 E., unsurveyed, at the center of the East Fork bridge, at approximately mile 61.6 on the Seward-Anchorage Highway, a strip of land lying between the right bank of East Fork Sixmile Creek and a line 200 feet west of the centerline of the highway, northeasterly to a section line between secs. 25 and 26 of T. 8 N., R. 1 W., unsurveyed.

(b) Beginning on the section line between secs. 10 and 15, T. 8 N., R. 1 W., unsurveyed, at the Hope Highway, a strip of land lying between the right bank of Sixmile Creek and a line 200 feet west of the highway, northerly to approximately mile 5.7 on the Hope Highway on the section line between secs. 15 and 22, T. 9 N., R. 1 W., unsurveyed.

The areas described aggregate approximately 473 acres.

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

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

Dated: October 15, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–25194 Filed 10–17–91; 8:45 am]

BILLING CODE 4310–JA–M

---

43 CFR Public Land Order 6893

[AK–932–4214–10; AA–2838, A–053428]

Withdrawal of Public Lands for the King Salmon Air Force Station; Partial Revocation of Air Navigation Site 169, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 640 acres of public lands from surface entry and mining but not from mineral leasing for a period of 20 years to protect the United States Air Force King Salmon Station. This action also revokes a Departmental Order insofar as it affects 520 acres of public lands withdrawn for use by the Federal Aviation Administration as Air Navigation Site No. 169. These lands, no longer needed by the Federal Aviation Administration, are within the United States Air Force King Salmon Station and have been used under permit to the United States Air Force.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13,

Anchorage, Alaska 99513-7599, 907-271-5477.

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

1. Subject to valid existing rights, the following described lands are hereby withdrawn from settlement, sale, location, or entry under the public land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)) but not from leasing under the mineral leasing laws, to protect a United States Air Force Station:

Seward Meridian

(a) Demolition Area

T. 17 S., R. 44 W.,
Sec. 33, S½NW¼ and N½N½SW¼.
The area described contains 120 acres.

(b) Petroleum, Oils, and Lubricants Tank Farm

T. 17 S., R. 45 W.,
Sec. 22, N½NW¼SE¼ and N½S½NW¼SE¼.
The area described contains 30 acres.

(c) Main Base Area

T. 17 S., R. 45 W.,
Sec. 23, NE¼, N½NW¼, SE¼NW¼, and N½SE¼.
The area described contains 360 acres.

(d) Radar Site

T. 17 S., R. 45 W.,
Sec. 24, S½N½SE¼SW¼, S½SE¼SW¼, and SW¼SW¼SE¼;
Sec. 25, W½NW¼NE¼, W½NW¼SW¼NE¼, NE¼NW¼SW¼NE¼, SW¼SW¼SW¼NE¼, NE¼NW¼, and N½SE¼NW¼.
The areas described aggregate 130 acres.
The total of the areas described aggregate 640 acres.

2. The Departmental Order dated October 15, 1941, as amended, which withdrew public lands for Air Navigation Site No. 169, is hereby revoked insofar as it affects all of the lands described in paragraphs 1(b), 1(c), and 1(d), aggregating 520 acres.

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

4. At 10 a.m. on November 18, 1991, the lands will be opened to mineral leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. 181.

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

Dated: October 15, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-25195 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-JA-M

---

43 CFR Public Land Order 6894

[CO-932-4214-10; COC-0102703]

Withdrawal of Public Lands and National Forest System Lands for the Fryingpan-Arkansas Reclamation Project; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 2,122.58 acres of public and National Forest System lands for 50 years. The lands being withdrawn are for the protection of existing facilities, which are a part of the Fryingpan-Arkansas Reclamation Project as authorized by Public Law 87-590. This project supplies water, generates and transmits hydroelectric power and energy, provides flood control, and other useful and beneficial purposes in the State of Colorado. The 797.34 acres of public lands are withdrawn from surface entry and mining under the United States mining laws, the 1,325.24 acres of National Forest System lands are withdrawn from location and entry under the United States mining laws only. All of the lands have been and continue to be open to mineral leasing.

EFFECTIVE DATE: October 18, 1991.

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

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

1. Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, for the Bureau of Reclamation Fryingpan-Arkansas Project:

Sixth Principal Meridian

T. 21 S., R. 66 W.,
Sec. 3, lot 1;
Sec. 11, NE¼NE¼.

T. 9 S., R. 80 W.,
Sec. 9, W½SW¼;
Sec. 16, W½NW¼, NW¼SW¼, N½SW¼SW¼, and SW¼SW¼SW¼;
Sec. 18, lot 19;
Sec. 19, lot 46;
Sec. 20, SW¼NW¼;
Sec. 21, W½NW¼NW¼.

T. 10 S., R. 80 W.,
A strip of land being 60 feet in width, being 30 feet either side of the centerline of the Mount Elbert Conduit, crossing the following public lands in the W½SW¼ of section 17 and the SE¼NE¼ of section 18. The conduit centerline being more particularly described at 45 FR 22197-22198, April 3, 1980, as corrected at 45 FR 24924, April 11, 1980.

T. 11 S., R. 80 W.,
Sec. 9, N½S½;
Sec. 26, N½NE¼NE¼, NW¼NE¼, N½NW¼, SW¼NW¼, N½SE¼NW¼, and SW¼SE¼NW¼.
The areas described aggregate approximately 797.34 acres of public lands in Pueblo and Lake Counties.

2. Subject to valid existing rights, the following described National Forest System lands, which are under the jurisdiction of the Secretary of Agriculture, are hereby withdrawn from location and entry under the United States mining laws only (30 U.S.C. ch. 2 (1988)), for the Bureau of Reclamation Fryingpan-Arkansas Project:

Sixth Principal Meridian

San Isabel National Forest

T. 10 S., R. 80 W.,
A strip of land being 60 feet in width, being 30 feet either side of the centerline of the Mount Elbert Conduit, crossing the following National Forest System lands in the NE¼NW¼ and W½W½SE¼ of section 20, and the S½NE¼ of section 29. The conduit centerline being more particularly described at 45 FR 22197-22198, April 3, 1980, as corrected at 45 FR 24924, April 11, 1980.

T. 11 S., R. 80 W.,
Sec. 5, SW¼SE¼;
Sec. 7, E½NE¼ and NE¼SE¼;
Sec. 8.

T. 9 S., R. 81 W.,
Sec. 10, lots 2 and 6, and SW¼;
Sec. 11, lots 3, 4, 5, 6, 7, and 13, and NE¼NW¼;
Sec. 14, lots 16 and 17;
Sec. 15, NW¼.
The areas described aggregate approximately 1,325.24 acres of National Forest System lands in Lake County.

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

4. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: October 16, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-25328 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-JB-M

---

43 CFR Public Land Order 6895

[CA-940-4214-10; CACA 1568]

Withdrawal of National Forest System Land for the Secret Canyon Recreation Site; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 60 acres of National Forest System land from mining for a period of 20 years for the United States Department of Agriculture, Forest Service, to protect the Secret Canyon Recreation Site. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

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

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the United States Department of Agriculture's Secret Canyon Recreation Site:

Mount Diablo Meridian

T. 20 N., R. 11 E.,

Sec. 31, S½ lot 5 and S½S½ lot 8.

The area described contains 60 acres in Sierra County.

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

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

Dated: October 16, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-25327 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-40-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development

48 CFR Parts 705, 706, 719, 726, and 752

[AIDAR Notice 91-4 (Final)]

Disadvantaged Enterprises

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development Acquisition Regulation (AIDAR) is being amended to adopt as final and make amendments to the interim rule that implemented the requirements of section 567 of the FY 1991 Foreign Operations, Export Financing, and Related Programs Appropriations Act concerning contracting and subcontracting with disadvantaged enterprises.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, MS/PPE, telephone (703) 875-1534.

SUPPLEMENTARY INFORMATION: The Agency is implementing legislative changes in the provisions concerning contracting and subcontracting with disadvantaged enterprises. An interim rule was issued on May 9, 1991 and published in the **Federal Register** on June 13, 1991 (56 FR 27207) with a 30-day comment period.

The one comment received was that the definition of "small disadvantaged business" should be amended either to refer correctly to the FAR definition of "small disadvantaged business concern" or to provide a definition specific to the provisions of section 567 of the FY 1991 Foreign Operations, Export Financing, and Related Programs Appropriation Act. As a result, the definition is being revised to have the same meaning as it did before the interim rule was approved. The FAR definition, which was incorporated in the interim rule, includes coverage of small business concerns owned and controlled by disadvantaged Indian tribes or by Native Hawaiian Organizations; these organizations, as opposed to individuals, are not separately covered by section 567.

The other change is editorial and is being made to clarify that businesses which are not small may qualify as disadvantaged enterprises for the subcontracting requirement.

The changes being made by this notice are not considered significant rules under FAR section 1.301 and subpart 1.5. This Notice will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. It is not considered a major rule under Executive Order 12291, and has been submitted to OMB for review. This Notice does not establish any information collection as contemplated by the Paperwork Reduction Act.

List of Subjects

48 CFR Parts 705, 706 and 726

Government procurement.

48 CFR Parts 719

Government procurement, Small business.

48 CFR 752

Government procurement, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 48 CFR chapter 7 which was published at 56 FR 27207-27210 on June 13, 1991, is adopted as a final rule with the following change:

PART 726—OTHER SOCIOECONOMIC PROGRAMS

1. The authority citation for part 726 continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

2. Paragraph (e) of section 726.101 is revised to read as follows:

726.101 Definitions

* * * * *

(e) Small disadvantaged business means a small business concern (as defined in FAR 19.001) that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged (as defined in this

section), or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals (as defined in this section) and that has its management and daily business controlled by one or more such individuals.

* * * * *

726.301 [Amended]

3. Paragraph (a) in section 726.301 is amended by removing the word "entities." and adding "enterprises, including disadvantaged enterprises which are not small." at the end of the paragraph.

Dated: October 3, 1991.

John F. Owens,

Procurement Executive.

[FR Doc. 91-25126 Filed 10-17-91; 8:45 am]

BILLING CODE 6116-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1825

[NASA FAR Supplement Directive 89-9]

RIN 2700-AB10

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement; Correction

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule; correction.

SUMMARY: NASA is correcting an error in an amendment to part 1825. The amendment was part of miscellaneous changes to the NASA FAR Supplement (NFS) appearing in the **Federal Register** on September 26, 1991 (56 FR 48737).

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: David K. Beck, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, telephone: (202) 453-8250.

SUPPLEMENTARY INFORMATION: NASA has published miscellaneous amendments to the NASA FAR Supplement. An amendment to part 1825 is in error and is corrected by this notice. The amendment had the effect of erroneously removing from section 1825.102(b)(2) a format for nonavailability determinations.

Dated: October 11, 1991.

Darleen A. Druyun,

Assistant Administrator for Procurement.

The following correction is made in NASA FAR Supplement Directive 89-9, part 1825, published in the **Federal Register** on September 26, 1991 (56 FR 48737).

1825.102 [Corrected]

On page 48747, first column, correct amendatory instruction 11.a. to read as follows:

In section 1825.102, paragraph (b) is amended by removing (b)(3), revising (b)(1), redesignating (b)(2) as (b)(2)(ii) introductory text and republished, and adding (b)(2)(i) to read as follows:

[FR Doc. 91-25073 Filed 10-17-91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

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

ACTION: Rescission of closures to directed fishing for groundfish.

SUMMARY: NMFS is rescinding the closures to directed fishing for Pacific cod in the Western and Central Regulatory Areas (WG, CG) of the Gulf of Alaska (GOA). This action is necessary to achieve the total allowable catches (TACs) for Pacific cod in those regulatory areas. The intent of this action is to ensure optimum use of Pacific cod stocks.

EFFECTIVE DATES: 12:00 noon, Alaska local time (A.l.t.), October 11, 1991, until further notice.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish of the GOA (FMP) governs the groundfish fishery in the exclusive economic zone of the GOA management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations set forth at 50 CFR 611.92 and 50 CFR part 672.

TACs for target species are specified annually under § 672.20(a)(2). The 1991 TACs specified for Pacific cod in the Western and Central Regulatory Areas (WG, CG) are 30,000 metric tons (mt) and 45,000 mt respectively, all of which were apportioned to domestic annual processing (DAP) (56 FR 8723, March 1, 1991).

Previously, under § 672.20(c)(2), NMFS prohibited directed fishing for Pacific cod in the WG beginning 12:00 noon, A.l.t., on March 23, 1991, (56 FR 12852, March 28, 1991) and in the CG beginning 12:00 noon, A.l.t., April 29, 1991, (56 FR 20144, May 2, 1991).

Trawl fisheries (other than pelagic trawling for pollock), and fishing with hook-and-line gear are limited in the GOA by prohibited species catch allowances of Pacific halibut (PSC) (§ 672.20 (e) and (f)). At the time the directed fisheries for Pacific cod were closed in the WG and CG, remaining amounts of that species were expected to be needed as bycatch for anticipated groundfish fisheries targeting for species other than Pacific cod throughout the rest of the fishing year. However, GOA trawl fisheries are expected to be closed due to attainment of the halibut PSC allotted to trawl gear by October 14, 1991, and hook-and-line gear was prohibited on July 8, 1991, (56 FR 32119, July 15, 1991) for a similar reason. Consequently, remaining amounts of Pacific cod will no longer be needed as bycatch. NMFS is reopening the directed fishery for Pacific cod in the WG and CG to allow additional harvest of that species.

With this action, operators of vessels fishing with any gear except hook-and-line gear may fish for Pacific cod in the WG and CG.

Classification

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

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 11, 1991.

David S. Crestin,

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

[FR Doc. 91-25056 Filed 10-11-91; 3:48 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 901184-1042]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the 1991 allocation of prohibited species catch (PSC) of Pacific halibut to domestic annual processing (DAP) vessels using trawl gear in the Gulf of Alaska (GOA) has been reached. Therefore, NMFS is prohibiting directed fishing for (1) pollock by vessels using non-pelagic trawl gear; and (2) groundfish, except for pollock, by DAP vessels using any trawl gear in the GOA. This action is necessary to avoid exceeding the PSC limit of Pacific halibut established for trawl gear. The intent of this action is to ensure optimum use of groundfish while conserving Pacific halibut stocks.

EFFECTIVE DATE: 12:00 noon, Alaska local time (A.l.t.), October 14, 1991, until the initiation of the 1992 fishing season.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the GOA (FMP) governs the groundfish fishery in the Exclusive Economic Zone in the GOA under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Under 50 CFR 672.20(c)(2), 1991 Pacific halibut PSC limits were established and allocated to gear types in the GOA. The notice of final specifications of groundfish total allowable catch and Pacific halibut PSC (56 FR 8723, March 1, 1991) established the 1991 gear allocation of Pacific halibut for trawl gear as 2,000 metric tons (mt).

Under § 672.20(f)(3), the Regional Director has determined that the PSC limit for Pacific halibut for trawl gear in the GOA will soon be reached. Therefore, NMFS is prohibiting directed fishing for: (1) Pollock by DAP vessels using non-pelagic trawl gear; and (2) groundfish, except for pollock, by DAP vessels using any trawl gear in the GOA, from 12:00 noon A.l.t., October 14, 1991, for the remainder of the fishing year.

Classification

This action is taken under 50 CFR 672.20, and as in compliance with Executive Order No. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 11, 1991.

David S. Crestin,

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

[FR Doc. 91–25100 Filed 10–11–91; 4:35 pm]

BILLING CODE 3510–22–M

---

50 CFR Part 675

[Docket No. 901199–1021]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of closure.

SUMAMRY: The Director, Alaska Region, NMFS (Regional Director), has determined that the secondary allowance of the prohibited species catch (PSC) of Pacific halibut for the domestic annual processing (DAP) flatfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) soon will be caught. Therefore, NMFS is closing the BSAI to directed fishing wih trawl gear for yellowfin sole and "other flatfish" in the aggregate. This action is necessary to prevent the secondary allowance of Pacific halibut for the flatfish fishery from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving Pacific halibut stocks.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), October 15, 1991, through midnight, A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the BSAI management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and parts 620 and 675.

The final rule for amendment 16 to the FMP (54 FR 2700; January 24, 1991) established PSC limits for Pacific halibut for groundfish fisheries in the BSAI area. Under § 675.21(a)(5), the secondary PSC limit of Pacific halibut caught while conducting any domestic annual harvest trawl fishery for groundfish in the BSAI during any fishing year is 5,333 metric tons (mt). Section 675.21(b)(1) requires that the PSC limit of Pacific halibut be further apportioned into bycatch allowances, one of which is assigned to the DAP flatfish fishery. The final notice of initial specifications of groundfish in the BSAI for 1991 (56 FR 6290; February 15, 1991) established the secondary Pacific halibut allowance for the DAP flatfish fishery at 800 mt.

Under § 675.21(c)(1)(iv), the Regional Director has determined that U.S. fishing vessels using trawl gear while participating in the DAP flatfish fishery will catch the secondary PSC allowance of Pacific halibut in the BSAI area by October 15, 1991. Therefore, NMFS is closing the BSAI area to U.S. fishing vessels with trawl gear and engaged in the directed fishery for yellowfin sole and "other flatfish" in the aggregate from 12 noon, A.l.t., October 15, 1991, through midnight, A.l.t., December 31, 1991.

In accordance with § 675.20(h)(8) and § 675.21(b)(4)(iv), vessels fishing with trawl gear in the Bering Sea and Aleutian Islands area cannot retain at any particular time during a trip amounts of yellowfin sole and "other flatfish" in the aggregate that are equal to or greater than 20 percent of the amount of all other fish species retained at the same time during the same trip as calculated in round weight equivalents.

Classification

This action is taken under §§ 675.20 and 675.21 and complies with Executive Order 12291.

List of Subjects in 50 CFR 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 15, 1991.

Richard H. Schaefer,

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

[FR Doc. 91–25173 Filed 10–15–91; 3:44 pm]

BILLING CODE 3510–22–M

---

50 CFR Part 685

[Docket No. 910489–1241]

RIN 0648–AD98

Pelagic Fisheries of the Western Pacific Region

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 3 to the Fishery

Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). This rule prohibits longline fishing within 50 nautical miles (nm) of certain Northwestern Hawaiian Islands (NWHI) as well as within corridors between those islands. The intent of this action is to provide a protected species zone around the centers of activity of the endangered Hawaiian monk seal (*Monachus schauinslandi*), thereby eliminating the incidental take of monk seals in fishing operations. The final rule also establishes a process for adjusting the size of the protected species zone and/or changing the conservation and management measures to conserve Hawaiian monk seals and other protected species in the area.

EFFECTIVE DATE: This action is effective at 0000 hours local time October 14, 1991.

ADDRESSES: Copies of Amendment 3 and the environmental assessment are available from Kitty B. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813 (808–523–1368), or E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

Send comments on the collection of information to the Director, Southwest Region, NMFS (see above), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Project 0648–0214, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California, (213) 514–6660, or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii, (808) 955–8831.

SUPPLEMENTARY INFORMATION: An interagency task force consisting of NMFS, the U.S. Fish and Wildlife Service, the Hawaii Department of Land and Natural Resources, the U.S. Coast Guard, and the Western Pacific Fishery Management Council (Council) recommended closing to longline fishing the area where monk seals are active. At a public hearing in Honolulu, Hawaii, on February 26, 1991, representatives of several environmental groups stated that they favored closures of 50 nm or more to guarantee that there would be no taking of monk seals by longline gear, and proposed mandatory observer coverage in a buffer zone around the NWHI. Several representatives of the fishing industry indicated that they believed interactions were rare and would be limited to waters much closer to the islands. They felt that a closure of 20–30 nm would be sufficient with observer coverage out to 50 nm.

The Council subsequently met in an open session in Honolulu on February 27 through March 1, 1991, and concluded that prohibiting longline fishing in waters within 50 nm of the NWHI, including corridors connecting islands more than 100 nm apart, would be appropriate. In the Council's view, there was no evidence to suggest that there would be interactions beyond these boundaries. Because evidence of continuing interactions of the fishery with the seals warranted establishing a closed area, this was done by emergency rule (56 FR 15842) on April 18, 1991, as modified at 56 FR 33211, July 19, 1991. The details for these actions can be found in the cited publications and will not be restated here.

A proposed rule to establish permanently this action was published in the **Federal Register** on August 2, 1991 (56 FR 37070). At that time, a summary of the rapid growth of the longline fishery and the actions taken to prevent interaction of fishing vessels with monk seals was presented.

In addition, in order to prevent persons from circumventing the closure by claiming to be transiting the protected species zone, NMFS has supplemented the regulations submitted with Amendment 3 by the Council, to include a requirement that fishing vessel operators notify the NMFS Southwest Enforcement Office immediately upon entering and exiting the zone. Notification shall include the name of the vessel, name of the operator, date and time of the entry or exit, and location of the vessel by latitude and longitude to the nearest minute.

Comments Received and Responses

Comments were received from the Pacific Seabird Group and the Marine Mammal Commission (Commission). Although the Pacific Seabird Group favors an observer program to ensure compliance, it supports the closure. A discussion of the major comments of the Marine Mammal Commission follows:

Comment: The Commission recommended that the amendment be returned to the Council with a request that it be modified to designate a protected species zone extending to 100 nm from the islands (including waters between the islands), and to require that operators of vessels intending to fish in the waters 50–100 nm from the NWHI notify NMFS before fishing so that an observer could be assigned on a representative sample of vessels. The observers would determine whether any interactions with monk seals occur in those waters. The protected species zone could be reduced in size if observations demonstrate that interactions do not occur in this broader zone. The Commission indicated that monk seals have been sighted more than 50 nm from shore and that there is no information to support a conclusion that monk seals do not regularly use waters 50 nm or more offshore. The Commission indicated there was insufficient justification for the argument that closing a zone larger than 50 nm would be burdensome to the fleet.

Response: Though individual animals have been assigned beyond 50 nm, available data indicate that the monk seal range consists of the islands and banks of the NWHI and the corridors within that area. The 50–nm protected species zone includes all known areas of monk seal habitation, including most of the offshore banks. Close to 100 percent of the monk seal population can be expected to be found within this extensive area, and it is assumed that any monk seals hooked or snagged came in contact with longline gear deployed within this area. Keeping fishermen beyond 50 nm is expected to prevent longline vessels from interacting with monk seals, although it does not eliminate all possibility of interaction. The conclusion that interaction beyond 50 nm is unlikely is logical even though individual animals may be found far from shore on occasion. There have been no reports of interactions or sightings of hooked or injured seals since the closure went into effect.

Because interaction outside the area is unlikely, placing observers on vessels fishing beyond the protected species zone is not expected to yield results that would justify the expense; however, this rule does not prevent imposition of an observer requirement. The rulemaking procedure contained in the final rule permits the Regional Director to initiate rulemaking to allow placement of observers aboard vessels if necessary. The rule alerts fishermen to this possibility. Observers also my be placed on a vessel volunteering to take observers if the opportunity occurs.

Regarding the impact of different area closures on the longline fishery, longline vessels fish a large area, from near shore to beyond 200 nm. The area covered is determined by the extensive migratory habits of the resources sought, which include blue marlin, swordfish, mahi mahi, and various tunas. Logbooks are available for the first 6 months of 1991. The data show that 163,444 fish were caught off the Main Hawaiian Islands, the NWHI, and outside the U.S. exclusive economic zone (EEZ). The

catch was distributed as follows: (1) Main Hawaiian Islands, 72,680 (44 percent), (2) outside the EEZ, 66,325 (41 percent), and (3) NWHI, 24,439 (15 percent). Much of the NWHI harvest was caught in the 50–nm protected species zone. Although this catch might be recovered from outside the zone, the risk of producing a significant economic loss by forcing vessels farther offshore increases as the size of the closed zone increases. The catch per unit of effort of broadbill swordfish, the major target species of the longline fleet, was 2.89 fish per thousand hooks off the Main Hawaiian Islands, 10.7 off the NWHI, and 12.97 outside the EEZ. The figures on catch in the various areas may not be indicative of normal conditions as they cover only the first 6 months of 1991. The movement of the various species may fluctuate widely depending on environmental conditions, and the fleet must adjust to those changes.

The modified emergency rule published on July 19, 1991, contained a new definition of longline gear, which encompasses all longline gear regardless of length. That definition is included in this final rule to ensure the full protection of monk seals as intended by the closure.

Finally, rejection of the amendment would mean that fishing could resume in the closed area when the emergency closure ends on October 13, 1991. Under the Magnuson Act, emergency rules can be in place for 90 days, with a possible extension for a second 90-day period. The current emergency closure cannot be extended any longer under the Magnuson Act.

Comment: The proposed process for adopting new measures that may be needed to conserve protected species is unclear and seems unnecessary when emergency procedures exist.

Response: The anticipatory rulemaking procedure in Amendment 3 permits the Regional Director to amend the regulations without the Council submitting an amendment to the FMP. This would include publication of a proposed rule with a period for public review and comment. This is a faster way to respond to a problem that needs to be resolved but which is not an emergency, and it does not require a Council FMP amendment document. If an emergency does arise with regard to vessels interacting with monk seals, the Secretary still has emergency powers available. Therefore, Amendment 3 introduces a third way to amend the regulations, which, unlike an emergency action, is permanent until rescinded or modified.

No event has been identified that would trigger initiation of this rulemaking process by the Regional Director. This approach has been taken, and is often taken, when future problems that might occur are unknown. The anticipatory rulemaking procedure will permit the Regional Director to take a wide range of actions, depending on the circumstances that exist at the time. His action does not hinge on a single criterion. Also, a rulemaking procedure includes an opportunity for public review and comment. All comments on a proposed action would be taken into consideration before any new management measures are implemented.

Comment: Section 685.11(c) of the proposed rule states that the initial size of the protected species zone would be 50 nm from the geographic centers of the various NWHI. This wording does not mention the corridors between the islands.

Response: The definition of the protected species zone was contained in the final rule implementing Amendment 2 to the FMP (56 FR 24731, May 31, 1991). The definition was corrected to include the corridors by a notice in the **Federal Register** on August 2, 1991, (56 FR 37023). References to the protected species zone mean the zone as modified by the August 2, 1991, notice.

Comment: There are areas in Amendment 3 where a more complete discussion could have been provided, such as a reference to the new definition of longline gear for the NWHI, a discussion of the monk seal sightings far from shore, a discussion of the recent declines in beach counts, a recognition that no one knows where the interactions have occurred, and a discussion of the suggestion by the Commission on taking observers in a 50–nm area outside the protected species zone.

Response: All the above subjects have been taken into consideration in determining to issue this final rule, and the Council has a copy of the Commission's letter. These comments will also be considered in future amendments.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that Amendment 3 and its implementing rule are necessary for the conservation and management of the pelagic fishery resources of the western Pacific region and are consistent with the Magnuson Act and other applicable law.

The Southwest Region, NMFS, in cooperation with the Council, prepared an environmental assessment (EA) for the amendment. The Assistant Administrator has determined that there will not be a significant impact on the environment. A copy of the EA is available from the Regional Director or the Council (see **ADDRESSES**).

The Assistant Administrator has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This final rule will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects are anticipated on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic effect on a substantial number of small entities. This determination is based on the regulatory impact review (RIR), which is incorporated into the amendment. The displacement of a portion of the longline effort outside the protected species zone, as currently defined, is not expected to have a significant economic effect, because the number of boats involved is small and the harvest can be anticipated to be recovered outside the area.

This rule contains a collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This information collection has been approved by the Office of Management and Budget (OMB), OMB Control Number 0648–0214. Operators of longline fishing vessels are required to notify the NMFS Southwest Enforcement Office immediately upon entering and departing the protected species zone. The public reporting burden for this collection of information is estimated to be 10 minutes, 5 minutes for the pre-transit notification and 5 minutes for the post-transit notification. Send comments on reducing the burden estimate or any other aspect of this collection of information, including suggestions on how to reduce the burden, to the Regional Director, Southwest Region, NMFS, and to the Office of Information and Regulatory Affairs (see **ADDRESSES**).

The Council has determined that the proposed action is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Hawaii. A letter requesting concurrence with this determination was forwarded to the appropriate state agency, and the State of Hawaii has concurred.

The biological opinion issued for Amendment 2, which defined the protected species zone and required reporting from fishermen active within the zone, states that closing the area to longline fishing is a reasonable and prudent alternative, under which the fishery would not jeopardize the continued existence of the Hawaiian monk seal. This amendment implements that alternative.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

In order to afford maximum opportunity for public comment and participation, the Administrative Procedure Act (5 U.S.C. 553) requires that, generally, final rules be published not less than 30 days before they become effective. This 30-day period may be shortened or waived if the rulemaking agency publishes with the rule an explanation of what good cause justifies an earlier date. This rule, implementing Amendment 3 to the FMP, makes permanent with few changes certain management measures that were promulgated, with a request for comments, by emergency rule on April 18, 1991 (as modified on July 19, 1991). The public has had opportunities to comment on that emergency rule as well as to participate in the development of Amendment 3. The emergency rule is effective until October 13, 1991. To prevent a lapse in the management regime, which includes urgent measures necessary to protect monk seals and assess conditions in and impacts of the fishery, this rule should be effective when the emergency rule expires. However, the public comment period on the proposed rule ended on September 16, 1991, and although this final rule has been published as expeditiously as possible, it is not possible to provide a full 30 days before the emergency rule will expire. Accordingly, good cause is found for making this rule effective on 0000 hours local time, October 14, 1991.

List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 11, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

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

2. In § 685.2, the definition for "Longline gear" is revised and a new definition for "Northwestern Hawaiian Islands" is added, in alphabetical order, to read as follows:

§ 685.2 Definitions.

* * * * *

Longline gear means a type of fishing gear consisting of a main line that exceeds one (1) nautical mile in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

* * * * *

Northwestern Hawaiian Islands means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161° W. longitude.

* * * * *

3. In § 685.5 new paragraphs (r) and (s) are added, in alphabetical order, to read as follows:

§ 685.5 Prohibitions.

* * * * *

(r) Fish for management unit species with longline gear within the protected species zone in the Northwestern Hawaiian Islands.

(s) Fail to notify the NMFS Southwest Enforcement Office of intent to enter or depart the protected species zone as required under § 685.14.

* * * * *

4. In § 685.11, the section heading is revised and paragraphs (a) through (c) are revised, to read as follows:

§ 685.11 Protected species conservation.

(a) If the Regional Director determines that additional measures are needed in a particular area to prevent adverse effects of longline fishing on protected species, the Regional Director will, with the Council's concurrence, initiate rulemaking, which could include:

(1) Requiring additional reporting from vessels fishing;

(2) Enlarging the protected species zone;

(3) Restricting the type of gear used;

(4) Requiring observers to be taken on fishing trips; or

(5) Adopting any other management measures necessary to protect endangered or threatened species.

(b) If an observer requirement is established under paragraph (a)(4) of this section, the operator of a fishing vessel subject to the permit requirements of § 685.9 of this part shall inform the Pacific Area Office at least 72 hours (not including weekends and holidays) before leaving port of the operator's intent to fish within an area in which observers are required. The operator shall provide this notice by contacting the Pacific Area Office, telephone (808) 955–8831. The notice must include the name of the vessel, the name of the operator, the intended departure date and location, and a telephone number at which the operator or his agent may be contacted during the business day (8 a.m. to 5 p.m. local time) to indicate whether an observer will be required on the fishing trip.

(c) The initial size of the protected species zone is 50 nm from the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island, as defined in § 685.2.

* * * * *

5. A new § 685.14 is added, to read as follows:

§ 685.14 Transit notification.

The operator of a longline fishing vessel subject to this part transiting the protected species zone shall notify the NMFS Southwest Enforcement Office at (808) 541–2727 immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of entry or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

[FR Doc. 91–25075 Filed 10–11–91; 4:02 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 202
Friday, October 18, 1991

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 312, 322, 327 and 381

[Docket No. 90-004W]

RIN No. 0583-AB30

Imported Canadian Product: Further Implementation of the United States-Canada Free-Trade Agreement

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is withdrawing its proposal of June 29, 1990, that would have amended the Federal meat and poultry products inspection regulations by exempting the Canadian inspection system and imported Canadian product from various views and inspection requirements. The proposed changes were intended to facilitate trade of meat and poultry products between the United States and Canada under the United States-Canada Free-Trade Agreement. FSIS does not intend to proceed with this rulemaking in view of the comments received.

DATES: This withdrawal is effective October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3473.

SUPPLEMENTARY INFORMATION: On June 29, 1990, FSIS published a proposed rule (55 FR 26695) to amend various provisions of the Federal meat and poultry products inspection regulations to exempt Canadian meat and poultry products intended for export to the United States from various requirements including the requirement that imported product be subject to reinspection by United States import inspectors. FSIS also proposed to exempt the Canadian inspection system from various requirements applicable to other foreign countries desiring to obtain and/or maintain their eligibility to export product to the United States, and to relieve USDA officials from conducting certain review activities. In addition, FSIS proposed to add a new export stamp to be applied to United States product intended for export to Canada and to waive the requirement that an export certificate accompany product intended for export to Canada. Lastly, FSIS proposed to provide new procedures applicable to United States establishments exporting product to Canada and to Canadian establishments exporting products to the United States. If the proposed provisions had been made final, such provisions would have been employed first on an experimental basis for a one-year period. After the one-year period had expired, operations under the provisions would have been evaluated and determinations made on what permanent changes were necessary.

The proposal was intended to facilitate trade of meat and poultry products between Canada and the United States in keeping with the goal of the United States-Canada Free-Trade Agreement. A considerable number of commenters opposed the changes proposed in the rulemaking.

Based on its consideration of the comments received, the Agency has concluded it will not proceed with this rulemaking. Accordingly, FSIS hereby withdraws the proposed rule published in the Federal Register on June 29, 1990 (55 FR 26695).

Done at Washington, DC on: October 15, 1991.

Ronald J. Prucha,
Acting Administrator.

[FR Doc. 91-25193 Filed 10-17-91; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Part 318

[Docket No. 88-016P]

RIN 0583-AA76

Increased Level of Sodium Citrate as an Anticoagulant in Fresh Blood of Livestock

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the chart of approved substances in 9 CFR 318.7(c)(4) to increase the maximum use level of sodium citrate as an anticoagulant in fresh blood of livestock from 0.2 percent to 0.5 percent. Additionally, the permitted level of sodium citrate would be clarified to indicate it is a percent based on weight. This proposed rule is in response to a petition submitted by American Meat Protein Corporation.

DATES: Comments must be received on or before December 17, 1991.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under "Supplementary Information.")

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Food Ingredient Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205-0080.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator, FSIS, has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Effects on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612). This proposal would permit an increased use level of sodium citrate as an anticoagulant in fresh blood of livestock. The addition of sodium citrate

facilitates the cleaning and sanitizing of equipment, and the separation of red blood cells from plasma. The use of sodium citrate in this proposed manner is optional to manufacturers. This proposal imposes no new requirements on industry. Decisions by individual manufacturers on whether to use sodium citrate as an anticoagulant in fresh blood of livestock at the proposed level would be based on their conclusions that the benefits would outweigh any implementation costs.

Because the use of sodium citrate is optional, it is difficult at this time to determine the number of small entities that might choose to use this substance. It is also difficult to accurately assess the economic impact on small entities. Accordingly, FSIS seeks comments from interested parties on how many manufacturers might choose to use sodium citrate as an anticoagulant in fresh blood of livestock, as well as data on the economic impact of this proposed change.

Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 88-016P. All comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4:00 p.m., Monday through Friday.

Background

FSIS has been petitioned by American Meat Protein Corporation, Ames, Iowa, to increase the maximum use level of sodium citrate as an anticoagulant in blood to 0.5 percent. The Federal meat inspection regulations currently permit the use of sodium citrate for this purpose at a level of 0.2 percent (9 CFR 318.7(c)(4)).

At the 0.2 percent level, the petitioner contends, whole blood has a tendency to coagulate in the holding tank and in the collection buckets. In addition, the separator becomes clogged due to the coagulation of raw product. Data submitted by the petitioner show that these problems were resolved when the level of sodium citrate was increased to 0.5 percent. Data also indicate that use of the higher level of sodium citrate resulted in the plasma being separated from the red cells more efficiently.

Sodium citrate is listed in 21 CFR 182.1751 as a substance generally recognized as safe (GRAS) when used in accordance with good manufacturing practices. Sodium citrate, along with citric acid, is listed in 9 CFR 318.7(c)(4) as an anticoagulant to prevent clotting of fresh blood of livestock at 0.2 percent with or without water. The Food and Drug Administration (FDA) has determined, in an October 1988 letter, that the proposed increase in the level of use for sodium citrate as an anticoagulant in fresh blood of livestock is consistent with its regulations.[1] When water is used to make a solution of sodium citrate added to blood, not more than 2 parts water to 1 part of sodium citrate may be used. However, the regulations do not specify whether the 0.2 percent level is based on weight or on volume.

The Proposal

After reviewing the petitioner's data and information, FSIS has determined that the use of sodium citrate at the 0.5 percent level would be in accordance with the provisions of the Federal Meat Inspection Act and would not affect the wholesomeness of meat products because sodium citrate is a substance generally recognized as safe when used in accordance with good manufacturing practices. Therefore, FSIS is proposing to amend the chart of approved substances in 9 CFR 318.7(c)(4) to increase the use level of sodium citrate as an anticoagulant in fresh livestock blood from 0.2 percent to 0.5 percent. In order to reflect Agency policy and industry practice, this proposal would also clarify that the use level of sodium citrate is based on the ingoing weight of the product. FSIS has determined that the petitioner has presented technical data that demonstrates the efficacy of sodium citrate for the intended purpose at the 0.5 percent level.

This proposal would revise the manner in which the entry for citric acid is presented in the chart of substances in 9 CFR 318.7(c)(4). In the chart, under the Class of substance "Anticoagulants," citric acid is listed with sodium citrate. Due to the increased use level of sodium citrate, citric acid will no longer be listed with sodium citrate, but as a separate entry.

[1] A copy of FDA's letter is available, without charge, from the FSIS Hearing Clerk.

List of Subjects in 9 CFR Part 318

Meat inspection, Food additives.

For reasons discussed in the preamble, FSIS is proposing to amend 9 CFR part 318 to read as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4), the Class of substance "Anticoagulants" would be revised to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Anticoagulants	Citric acid	To prevent clotting.	Fresh blood of livestock.	0.2 percent with or without water. When water is used to make a solution of citric acid added to blood of livestock, not more than 2 parts of water to 1 part of citric acid shall be used.
	Sodium citrate	do	do	Not to exceed 0.5 percent based on ingoing weight of the product. When water is used to make a solution of sodium citrate added to blood of livestock, not more than 2 parts of water to 1 part of sodium citrate shall be used.
*	*	*	*	*

Done at Washington, DC, on: September 23, 1991.

R.J. Prucha,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 91-25060 Filed 10-17-91; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 928 and 932

[Docket No. 910815-1215]

RIN 0648-AD09

Implementing the Coastal Zone Act Reauthorization Amendments of 1990; Phase One

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This NPRM is issued to provide interested persons with an opportunity to contribute to the development of NOAA's regulations to implement certain provisions of Public Law 101-508, the Coastal Zone Act Reauthorization Amendments of 1990 (1990 Reauthorization), which amended the Coastal Zone Management Act (CZMA). Because of the large scope of the 1990 Reauthorization and the substantial rulemaking required to implement many of its new provisions, NOAA has decided to pursue a phased approach to the rulemaking. The first phase includes regulations to implement the new Coastal Zone Enhancement Grants Program (new section 309), revised procedures for conducting reviews of performance under section 312, and new authority for interim sanctions under section 312(c). Regulations for the Enhancement Grants Program are required by the 1990 Reauthorization within one year of enactment (or by November 5, 1991). The regulations will provide the procedures for NOAA and the coastal States to follow in awarding enhancement grants and carrying out reviews of performance, and the criteria that NOAA will apply in evaluating enhancement grant proposals and in deciding whether to invoke interim sanctions. Interested persons are invited to submit detailed written comments.

DATES: Comments must be received by December 2, 1991.

ADDRESSES: Submit comments concerning this Notice of Proposed Rulemaking to: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue NW., suite 701, Washington, DC 20235 (tel. 202/606-4100).

FOR FURTHER INFORMATION CONTACT: Vickie Allin or Dee Garner, Policy Coordination Division (202/606-4100).

SUPPLEMENTARY INFORMATION:

I. Authority

This Notice of Proposed Rulemaking is issued under the authority of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464).

II. Availability of Comments

All comments submitted in response to this Notice of Proposed Rulemaking will be available during normal business hours 8 a.m.-4:30 p.m.) in suite 701, Universal South Building, 1825 Connecticut Avenue NW., Washington DC 20235.

III. Regulatory Issues

A. General Background

The Coastal Zone Management Act (CZMA) was enacted to encourage and assist coastal States and territories (States) in developing and implementing management programs to preserve, protect, develop and, where possible, restore or enhance the resources of our Nation's coast. On November 5, 1990, the President signed the Coastal Zone Act Reauthorization Amendments of 1990, which reauthorized the CZMA through FY 1995. The purpose of the reauthorization was to revitalize and strengthen the CZMA, particularly in the area of water quality. To do so, the reauthorization added several major new provisions, including:

- A new Coastal Nonpoint Pollution Control Program, which requires each coastal State with a federally approved coastal zone management (CZM) program to develop a program to be implemented through section 306 of the CZMA and section 319 of the Clean Water Act, to protect coastal waters from nonpoint source pollution. Program approval and oversight are shared between NOAA and the Environmental Protection Agency (EPA);
- A new enhancement grants program which encourages each coastal State to improve its CZM program in one or more of eight identified national priority areas: Coastal wetlands management and protection, natural hazards management (including potential sea and Great Lakes level rise), public improvements, reduction marine debris, assessment of cumulative and secondary impacts of coastal development, special area management planning, ocean resource planning, and siting of coastal energy and government facilities;
- A new "Coastal Zone Management Fund" (CZM Fund) consisting of Coastal Energy Impact Program loan repayments form which the Secretary of Commerce shall pay (subject to appropriations) for the Federal administrative costs of the program and fund special projects, emergency State assistance and other discretionary CZM activities;
- New requirements for expanded public participation opportunities in the program evaluation process and expedited production of final evaluation findings, and new authority to impose interim sanctions involving suspension of financial assistance for 6 to 36 months if a State or National Estuarine Research Reserve (Reserve) designated under section 315 of the CZMA is failing to adhere to its federally-approved program or management plan of the terms of financial assistance awards;
- A new requirement for the Secretary to provide technical assistance and management-oriented research to support development and implementation of State CZM programs;
- Authorization for NOAA to make annual achievement awards to individuals and local governments for outstanding accomplishments in the field of coastal zone management;
- Clarification of the scope of the CZMA's Federal consistency provisions, which state that Federal actions in or affecting the coastal zone must be consistent with federal-approved State coastal management programs, and overturning the Supreme Court's 1984 decision in *Secretary of the Interior* v. *California*, in which the Court held that OCS oil and gas lease sales were not subject to Federal consistency;
- Modifications to the National Estuarine Research Reserve System under 315 of the CZMA, including increasing the maximum amount of Federal financial assistance for land or water acquisition at an individual Reserve from $4M and $5M, and increasing the maximum Federal share of costs for managing Reserves and supporting educational activities from 50 to 70 percent;
- Reorganization and consolidation of CZM program approval requirements and other technical changes, including new statements of findings and purpose, new and revised policies and objectives,

and new and revised statutory definitions. Authority to make program development grants is reinstituted through FY 1993, and the significant improvement provisions of section 306(a) are deleted; and

• Addition of three new program approval requirements at section 306(d) (14), (15) and (16), dealing with public participation in permitting processes, consistency determinations and other similar decisions, providing a mechanism to ensure that all State agencies will adhere to the program, and requiring enforceable policies and mechanisms to implement the applicable requirements of the new Coastal Nonpoint Pollution Control Programs, respectively. The public participation and State agency adherence requirements must be met within 3 years of enactment. The enforceable policies for nonpoint source pollution must be met on the same schedule as the development of the Coastal Nonpoint Pollution Control Programs.

B. Approach to Rulemaking

Because of the substantial scope of these changes and the statutory requirement to develop regulations for the Coastal Zone Enhancement Grants Program within 12 months from the date of enactment of the 1990 Reauthorization, NOAA has decided to undertake a phased rulemaking. This will allow us to concentrate the necessary resources to meet the statutory deadline for the enhancement grants rulemaking, and also make necessary changes to the regulations on review of performance to implement the new procedures and interim sanctions in an equitable and consistent manner.

NOAA believes it is premature to undertake rulemaking on other aspects of the reauthorization. For example, NOAA needs more information before proceeding to rulemaking on program approvability requirements for the new nonpoint pollution control programs. This is because EPA must issue guidance on management measures for sources of nonpoint pollution on the basis of which States are to develop their programs. EPA has 18 months in which to develop this guidance. In addition, NOAA and EPA have joint approval authority for these programs. NOAA's regulations need to reflect agreement between NOAA and EPA on who will have authority to approve which parts of the program. Thus, rulemaking to implement the Coastal Nonpoint Pollution Control Program will be a later phase of the rulemaking process.

Similarly, NOAA will not proceed with rulemaking immediately to implement the new program approval requirements of section 306(d) (14), (15) and (16). This is because no State is required to meet these requirements until, at the earliest, 3 years from the date of enactment (or November 1993), and because the requirements of sections 306(d) (14) and (15) have been partially met already by existing State programs. NOAA will incorporate the requirements of sections 306(d) (14) and (15) into its program approval regulations and issue guidance to the States on meeting these requirements. The new requirement of section 306(d) (16) that State CZM programs contain enforceable policies to implement the new Coastal Nonpoint Pollution Control Programs will be incorporated into program approval regulations for these programs, when those regulations are developed.

The changes to the National Estuarine Research Reserve System (section 315 of the CZMA) are non-controversial conforming changes which will be included as a part of a separate rulemaking that will make other necessary clarifying changes to NOAA's existing section 315 regulations.

NOAA does not propose to issue regulations on the CZM Fund, the technical assistance program, or the CZM achievement awards at this time. Also, NOAA does not intend to revise its Federal consistency rules at this time. The changes to the Federal consistency provisions, except for overturning the Supreme Court's decision on outer continental shelf (OCS) oil and gas lease sales, merely codify NOAA's existing regulations. NOAA wishes to gain more experience with the new provisions, the issues likely to arise in their implementation, and the public and interagency concerns, before deciding how to address rulemaking on this subject.

Under the phased rulemaking approach described above, Phase I consists of:

(1) Regulations to implement the Coastal Zone Enhancement Grants Program (section 309 of the CZMA), required by statute within 12 months of enactment, and

(2) Regulatory revisions and new regulations to implement the procedural requirements and interim sanction provisions of section 312—Review of Performance.

C. Preliminary Comments

On February 22, 1991, OCRM distributed issue papers on the rulemaking for the Coastal Zone Enhancement Grants Program and Review of Performance to approximately 225 interested parties on a mailing list established for this rulemaking and maintained by OCRM. Thirty-eight comments were received. After considering these comments, NOAA has prepared this proposed rule.

D. Legislative Amendments and Issues to be Resolved Through Rulemaking—Phase I

1. Coastal Zone Enhancement Grants Program

The new Coastal Zone Enhancement Grants Program encourages each coastal State to improve its CZM program in one or more of eight identified areas. Beginning in FY 1991, the Secretary is authorized to make grants (not less than 10 percent and not more than 20 percent of the amounts appropriated under sections 306 and 306A, up to a maximum of $10,000,000 annually) to coastal States to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives. As part of this effort, the Secretary is required to evaluate and rank State proposals for funding, and make funding awards based on those proposals. The Secretary has the authority to suspend a State's eligibility for enhancement grant funding for at least one year, if the Secretary finds that the State is not undertaking the actions committed to under the terms of the enhancement grant.

NOAA must issue regulations relating to the new enhancement grants program within 12 months of enactment (by November 5, 1991). The regulations must establish: "(1) Specific and detailed criteria that must be addressed by a coastal State (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State) as part of the State's development and implementation of coastal zone enhancement objectives; (2) administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal States; and (3) other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals."

Since the statute required NOAA to implement the new enhancement grants program immediately, NOAA adopted an interim approach for FY 1991. This allowed time for development of the statutorily-mandated regulations and identification of each State's priority needs for improvement with regard to

the coastal zone enhancement objectives. In FY 1991, NOAA set aside 10 percent of the funds allocated under section 318(a)(2) for section 309 purposes. These funds were allocated to States based on the formula and weighting factors at existing 15 CFR 927.1(c).

The process developed by NOAA for determining a State's priority needs has been set forth in NOAA guidance on "section 309 Assessments and Strategies," issued on May 10, 1991, or as amended. NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Programs Division, Universal South Building, room 724, 1825 Connecticut Avenue, NW., Washington, DC 20235. Interested persons are invited to submit detailed written comments on the NOAA guidance as part of this proposed rule.

The process for determining a State's priority needs has two stages. First, each State will develop a public assessment document ("Assessment") that reviews each enhancement objective as it applies to the State and identifies the relative importance of each objective. Based on the Assessment, NOAA, after careful consultation with the State, will identify the priority needs for improvement in the State.

Once NOAA has identified the priority management issues, the second stage involves the development of a multi-year strategy ("Strategy"). The State, in consultation with NOAA, will propose a Strategy that will identify specific program changes that the State will seek to achieve in the identified priority areas. The Strategy must be approved by NOAA and will guide the development of the State's FY 1992 and subsequent year section 309 grant proposals.

The proposed regulations implementing the new Coastal Zone Enhancement Grants Program under section 309 of the CZMA, as amended, assume that a State has completed an Assessment and Strategy in accordance with NOAA guidance. The proposed regulations are set forth in 15 CFR part 932, replacing the regulations currently codified at 15 CFR part 932.

The proposed regulations at 15 CFR 932.1 set forth in the basic eligibility requirements for receiving financial assistance under section 309. The objectives of assistance under section 309(b), (c) and (d) are provided at proposed 15 CFR 932.2.

Section 309(b) authorizes the Secretary to make grants to coastal States to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives. The term "program change" is defined at proposed 15 CFR 932.3 to include State actions that change current management programs, such as the development of new or revised enforceable policies, authorities and State coastal land acquisition and management programs. Other key terms, such as "project of special merit," "fiscal needs" and "technical needs," are also defined at proposed 15 CFR 932.3.

Proposed regulations for allocating funds under section 309 are set forth at 15 CFR 932.4. Section 309(f) authorizes the Secretary to allocate not less than 10 percent and not more than 20 percent of the amounts appropriated under section 318(a)(2), up to a maximum of $10,000,000 annually. NOAA proposes to annually determine the amount of funds to be devoted to section 309, taking into account the amount appropriated under section 318(a)(2) of the CZMA, as amended.

NOAA proposes to award section 309 funds by: (1) Weighted formula and (2) individual review of projects of special merit. Projects proposed for funding under both categories are not State entitlements and, therefore, would be required to meet the identified criteria discussed below. NOAA would annually determine the proportion of available funds to be awarded to all eligible coastal States by weighted formula and the proportion to be awarded to eligible coastal States based on NOAA's review of individual project proposals of special merit.

Under the weighted formula approach, NOAA would establish State weighted formula funding targets. The weighted formula funding targets would be the State based allocation determined by operation of the formula at existing 15 CFR 927.1(c), multiplied by a weighting factor derived from NOAA's evaluation and ranking of the quality of the State's Strategy, as supported by the State's Assessment. The application of the weighting factor could result in a weighted formula funding target that is higher or lower than the State's base allocation.

NOAA proposes to award the remaining section 309 funds, which are not awarded by the weighted formula approach, based on an annual review of projects of special merit. NOAA would limit the funding of projects of special merit to the highest ranked proposals based on criteria set forth at proposed 15 CFR 932.(b).

Section 309 requires that the Secretary "evaluate and rank State proposals for funding." NOAA interprets the word "rank" to mean that a State's Strategy or project would be assigned a position or rank, relative to other State submissions, according to its satisfaction of the applicable criteria. NOAA anticipates that the ranking under the weighted formula approach could result in several ranking categories (so that some States would be assigned the same rank.)

This proposed allocation process would allow each coastal State that has a NOAA approved Assessment and Strategy to pursue an enhancements program, while at the same time provide incentive for States to develop and submit more aggressive proposals which commit to making the greatest improvements toward the coastal zone enhancement objectives.

The proposed regulations set forth the criteria for section 309 project selection at 15 CFR 932.5. States would be required to meet minimum criteria for projects that would be funded by weighted formula. For projects of special merit, States would be required to meet both minimum criteria and additional criteria that include the merit of the project. NOAA would evaluate and rank projects of special merit using a point system. Following the first year of funding under this Part, NOAA would consider a State's past performance in assessing the merit of the State's individual project proposals.

The proposed regulations also set forth pre-application procedures for financial assistance under section 309 at 15 CFR 932.6. States would be expected annually to consult with the Assistant Administrator or his/her designee and to submit a pre-proposal on a schedule to be determined by the Assistant Administrator of his/her designee. The pre-proposal would include information on the section 309 projects the State proposes for funding during the next fiscal year.

The procedures for submission of formal applications and for reviewing and approving projects under section 309 are set forth at proposed 15 CFR 932.7. Applications for financial assistance under section 309 will be included with applications for financial assistance under Subpart J of existing 15 CFR Part 923. States would be notified of their section 309 awards at the same time that they are notified of their section 306/306A awards.

The proposed regulations set forth the procedures for revising a State's Assessment and Strategy at 15 CFR 932.8. States would be required to submit proposed revisions to the Assistant Administrator prior to the initiation of the contemplated change. Based on the extent to which the

proposed revision(s) change the original scope of the State's Strategy, the Assistant Administrator could require the State to provide public review and comment on the proposed revision(s) in accordance with NOAA guidance.

2. Review of Performance (Program Evaluation)

Section 312 of the CZMA requires a continuing review of the performance of coastal States with respect to coastal management, and detailed written findings on the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs of section 303(2)(A) through (K), and adhered to the terms of any grant or cooperative agreement. Section 312 further requires that a public meeting be conducted as part of each evaluation and that opportunity be provided for oral and written comment by the public. Evaluation reports must be issued following each review of State performance.

The 1990 Reauthorization mandated changes to the procedures for carrying out evaluations of State coastal management programs and national estuarine research reserves. (Any changes to procedures for evaluation of estuarine reserves will be included as a part of a separate rulemaking to revise NOAA's section 315 regulations.) These changes require: A 45 day notice for public meetings, written response to all written comments on the evaluation, and completion of the final evaluation report within 120 days after the last public meeting held in the State. The 1990 Reauthorization also authorized new interim sanctions (section 312(c)) which provide for suspension and redirection of any portion of financial assistance awards to State coastal management programs or estuarine reserves if the State if failing to adhere to its approved program or reserve management plan, or a portion of the program or plan. Final sanction provisions at section 312(d) now require the Secretary to withdraw program approval and financial assistance if the State fails to take the actions required under section 312(c).

The basic requirements for review of performance are set forth at existing 15 CFR Part 928. They define key terms, such as "continuing review," and provide that evaluations will be conducted in the course of continuing reviews and that written findings will be prepared. These proposed regulations would revise existing 15 CFR 928.4(b)(2) to require that notice of public meeting(s) be provided at least 45 days in advance. They would revise existing 15 CFR 928.3(b)(7) to require that final findings be completed within 120 days of the last public meeting in the State and that copies of the final findings document be sent to all persons and organizations who write, attend a public meeting, or are interviewed during the evaluation. Persons who attend a public meeting or are interviewed during an evaluation would be asked to complete a card or sign-in sheet containing their name and address and indicating a desire to receive the final findings. A new proposed regulation has been added at existing 15 CFR 928.3(b)(8) requiring that all final findings documents contain a section which specifically identifies, summarizes and responds to the written comments received during the evaluation process.

In addition, NOAA has determined that two of the statutory changes to section 312(b)—namely, the requirement to respond in writing to all written comments received and the requirement to complete the evaluation within 120 days of the last public meeting—will increase the workload associated with the evaluation process. Therefore, NOAA is proposed in two discretionary changes to the procedures on review of performance to make the increased workload manageable.

First, NOAA proposes to revise the definition of "continuing review" at existing 15 CFR 928.2(a) to state that evaluations of State coastal management programs would be conducted and written findings prepared at least once every three years, rather than at least once every two years as currently provided. (NOAA's estuarine reserve regulations at existing 15 CFR 922.40(b) already provide for evaluation of estuarine reserves at least once every three years.) The phrase "but not more than once every year" would be deleted, so as not to restrict unnecessarily NOAA's flexibility to conduct issue or problem specific evaluations, as described below.

Second, because NOAA recognizes that significant changes can occur in three years, NOAA is proposing a new regulation at existing 15 CFR 928.3(b)(9) providing for issue or problem specific evaluations to be conducted between scheduled evaluations. These issue or problem specific evaluations would serve two principle purposes: (1) To follow-up on potentially serious problems or issues identified in the most recent scheduled evaluation, or (2) to evaluate evidence of potentially serious problems or issues that may arise during the day-to-day monitoring of State/Reserve performance of grant tasks and other program implementation activities in the interim between scheduled evaluations. These issue or problem specific evaluations would still be subject to the public participation and other minimum requirements of section 312.

The proposed regulations set forth the process for invoking interim sanctions at existing 15 CFR 928.5(a). The proposed regulations replace the old regulations on reduction of financial assistance for failure to make significant improvements, which were deleted because the significant improvement provisions were deleted in the 1990 Reauthorization. The proposed process for invoking interim sanctions would include notice to the State and opportunity to comment on and rebut the finding of non-adherence on which the sanctions are based before any action is taken. Indicators of non-adherence would be provided to inform States of what NOAA expects and on what basis interim sanctions might be invoked.

Implementing the statutory changes to section 312(d) requires some revision of NOAA's regulations at existing 15 CFR 928.5(b) on Withdrawal of Program Approval and Financial Assistance. The proposed revisions would delete references to "unjustifiable deviation," which have been removed from the statute, and replace them with the requirement that the Assistant Administrator would withdraw program approval and financial assistance if he/she finds that a State has failed to take the actions required under the interim sanction provisions of section 312(c).

IV. Other Actions Associated with the Notice of Proposed Rulemaking

A. Executive Order 12291: Regulatory Impact Analysis

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the Order and, "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. NOAA has concluded that this is not a "major" regulatory action, as defined by the Executive Order, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to

complete with foreign-based enterprises in domestic or export markets.

The proposed rules would provide for enhancement of State CZM programs in eight national objective areas and will improve the evaluation of their performance. The proposed rules only serve to strengthen the framework for making rational coastal management decisions and will not result in any major direct or indirect economic or environmental impacts. Therefore, preparation of an RIA is not required.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider explicitly the effect of regulations on "small entities." A Regulatory Flexibility Analysis was not prepared for this regulatory action. This proposed rule sets forth procedures for the Coastal Zone Enhancement Grants Program and review of performance. The proposed rules affect only State governments, which are not "small government entities," as defined by the RFA. Accordingly, the General Counsel of the Department has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and therefore, a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6), is not required.

C. Paperwork Reduction Act

The Paperwork Reduction Act is intended to minimize the reporting burden on the regulated community as well as minimize the cost of Federal information collection and dissemination. Information requirements of section 312—Review of Performance—embody existing procedures and would not constitute any increase inn reporting on the part of any affected party.

The proposed rule to implement section 309—Coastal Zone Enhancement Grants—contains a collection of information requirement subject to the Paperwork Reduction Act. This collection of information requirement is a one-time requirement for Assessments of State priority needs for improvement in the eight national priority areas and Strategies for making those improvements and is necessary to implement section 309(d) of the CZMA, as amended, which requires the Secretary of Commerce to identify each State's priority needs for improvement, after careful consultation with the States. These Assessments and Strategies would replace an existing reporting requirement (Part C of the annual performance report) for FY 1991. Therefore, the paperwork burden has been minimized.

In addition, States would be required to provide pre-proposals containing their proposed enhancement grant projects annually in April of each year, in order that NOAA may carry out the individual evaluation and ranking of proposals required by statute and provide States with timely information on approved projects to include in their joint section 306/306A/309 financial assistance award applications. This procedure for pre-proposals would replace a similar procedure for interstate grants, authorization for which was repealed in the Coastal Zone Act Reauthorization Amendments of 1990.

Public reporting burden for this collection is estimated to average 480 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and developing the Assessments and Strategies.

A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of that Act. Comments from the public on the collection of information requirements contained in the proposed rule are specifically invited and should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, Attn: Desk Officer for the Department of Commerce.

D. National Environmental Policy Act (NEPA)

NOAA has determined that this regulatory action, if adopted, would not significantly affect the quality of the human environment. Therefore, an environmental assessment or environmental impact statement will not be prepared.

E. Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects

15 CFR Part 928

Administrative practice and procedure, Coastal zone, Grant programs-natural resources, and Natural resources.

15 CFR Part 932

Coastal zone, Grant programs-natural resources, Natural resources, and Reporting and recordkeeping requirements.

Accordingly, NOAA proposes to amend 15 CFR Chapter IX as set forth below.

PART 928.—REVIEW OF PERFORMANCE

1. The authority citation for Part 928 is revised to read as follows:

Authority: Section 312 of the Coastal Zone Management Act, as amended (16 U.S.C. 1458).

2. Section 928.1 is revised to read as follows:

§ 928.1 General.

This part sets forth the requirements for review of approved State coastal zone management (CZM) programs pursuant to section 312 of the Act (16 U.S.C. 1458). This part defines "continuing review" and other important terms, and sets forth the procedures for:

(a) Conducting continuing reviews of approved State CZM programs;

(b) Providing for public participation;

(c) Invoking interim sanctions for non-adherence to an approved coastal zone management program or a portion of such program; and

(d) Withdrawing program approval and financial assistance.

3. Section 928.2 is amended by revising paragraphs (a), (c), (d), and (g) to read as follows:

§ 928.2 Definitions.

(a) *Continuing review* means monitoring State performance on an ongoing basis. As part of the continuing review, evaluations of approved CZM programs will be conducted and written findings will be produced at least once every three years.

* * * * *

(c) *Interim sanction* means suspension and redirection of any portion of financial assistance extended to any coastal State under 16 U.S.C. 1451–1464, if the Secretary determines that the coastal State is failing to adhere to the management program or a State plan developed to manage a national estuarine reserve, or a portion of the program or plan approved by the Secretary, or the terms of any grant or cooperative agreement funded under 16 U.S.C. 1451–1464.

(d) *Approved CZM program* means those elements of the program approved by the Secretary, under 15 CFR Part 923 (Development and Approval Provisions),

including any changes to those elements made by approved amendments and routine program implementation.

* * * * *

(g) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

4. Section 928.3 is amended by revising the section heading, paragraphs (a), (b)(7), (c)(1)(ii), (c)(3) introductory text, and (c)(3)(iii); and by adding paragraphs (b) (8) and (9) to read as follows:

§ 928.3 Procedure for conducting continuing reviews of approved State CZM programs.

(a) As required by section 312(a) of the Act, the Secretary shall conduct a continuing review of the performance of coastal States with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the State has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (K) (16 U.S.C. 1452), and adhered to the terms of any grant, loan, or cooperative agreement funded under 16 U.S.C. 1451–1464.

(b) * * *

(7) The Assistant Administrator will issue final findings to the State CZM program manager and the head of the State CZM agency within 120 days of the last public meeting in the State. Copies of the final findings will be sent to all written commentors and to persons and organizations who participated in the evaluation, and who complete a card or sign-in sheet provided by the evaluation team indicating that they wish to receive the final findings. Notice of the availability of the final findings will also be published in the **Federal Register**.

(8) The final findings will contain a section entitled "Response to Written Comments." This section will include a summary of all written comments received during the evaluation and NOAA's response to the comments. If appropriate, NOAA's response will indicate whether NOAA agrees or disagrees with the comment and how the comment has been addressed in the final findings.

(9) The Assistant Administrator may conduct issues or problem-specific evaluations between scheduled evaluations of approved State CZM programs. If the Assistant Administrator conducts an issue or problem specific evaluation, he/she will comply with the procedures and public participation requirements of 15 CFR 928.3 and 928.4.

(c) * * *

(1) * * *

(ii) Addressed the coastal management needs identified in section 303(2)(A)–(K); and

* * * * *

(3) Procedure for assessing how the State has addressed the coastal management needs identified in section 303(2)(A)–(K). The assessment of the extent to which the State has addressed the coastal management needs identified in section 303(2)(A)–(K) will occur as follows:

* * * * *

(iii) The findings concerning how the State has addressed the coastal management needs of section 303 will be used by the Assistant Administrator in negotiating the next financial assistance award.

* * * * *

5. Section 928.4 is amended by revising paragraphs (a), (b)(2), and (b)(3) to read as follows:

§ 928.4 Public participation.

(a) As required by section 312(b) of the Act, in evaluating a coastal State's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days notice of such public meetings by placing a notice in the **Federal Register**, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process.

(b) *Requirements.* (1) * * *

(2) Each State will issue a notice of the public meeting(s) in its evaluation by placing a notice in the newspaper(s) of largest circulation in the coastal area where the meeting(s) is being held and by taking other reasonable action to communicate with persons and organizations known to be interested in the evaluation, such as sending a notice of the meeting(s) to persons on its mailing list and publishing a notice in its newsletter, at least 45 days before the date of the public meeting(s). The State will provide a copy of such notice to the Assistant Administrator. States are encouraged to republish the newspaper notice at least 15 days before the date of the public meeting(s). The State will inform the public that oral or written comments will be accepted and that attendance at the public meeting(s) is not necessary for submission of written comments.

(3) Notice of the availability of final findings will be published in the **Federal Register**. The notice will state that copies of the final findings will be available to the public upon written request. Copies of the final findings will be sent to persons and organizations who participated in the evaluation, in accordance with 15 CFR 928.3(b)(7).

6. Section 928.5 is amended by revising paragraphs (a), (b)(1), and (b)(2)(i) and (iii) to read as follows:

§ 928.5 Enforcement.

(a) *Procedures and criteria for invoking and lifting interim sanctions.* (1) As required by section 312(c) of the Act:

(i) The Secretary may suspend payment of any portion of financial assistance extended to any coastal State, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal State is failing to adhere to—

(A) The management program or a State plan developed to manage a national estuarine reserve established under section 315 of the Act (16 U.S.C. 1461), or a portion of the program or plan approved by the Secretary; or

(B) The terms of any grant or cooperative agreement funded under 16 U.S.C. 1451–1464.

(ii) Financial assistance may not be suspended under paragraph (a)(1)(i) of this section unless the Secretary provides the Governor of the coastal State with—

(A) Written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

(B) Written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal State to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(iii) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.

(2) *Requirements.* (i) The Assistant Administrator will identify the need for interim sanctions through the continuing review process. The Assistant Administrator will use the criteria at 15

CFR 928.5(a)(3) in determining when to invoke interim sanctions.

(ii) The Assistant Administrator will issue the State a preliminary finding of non-adherence with the approved CZM program, or a portion thereof, and/or with a term or terms of a grant or cooperative agreement. This preliminary finding of non-adherence may be contained in the draft evaluation findings, or in a preliminary notification letter to the State CZM program manager. If the preliminary finding is contained in a preliminary notification letter, the Assistant Administrator will comply with the applicable public participation requirements of section 312(b) and NOAA's regulations at § 928.4. The draft evaluation findings or preliminary notification letter containing a preliminary finding of non-adherence will explain that if the finding of non-adherence is issued, the State is subject to suspension of financial assistance and, if the State fails to take the actions specified pursuant to section 312(c) and this part, to withdrawal of program approval and financial assistance.

(iii) The State will be given 30 days from receipt of the draft evaluation findings or preliminary notification letter to comment on and rebut the preliminary finding of non-adherence. During this 30 day period, the State may request up to 15 additional days to respond, for a maximum of 45 days from receipt of the draft evaluation findings or preliminary notification letter.

(iv) After considering the State's comments, the Assistant Administrator will decide whether or not to issue a final finding of non-adherence. If the Assistant Administrator decides to issue a final finding of non-adherence, he/she will do so in the final evaluation findings issued pursuant to section 312(b) or in a final notification letter as provided by paragraph (a)(2)(ii) of this section. The Assistant Administrator may invoke interim sanctions provided by section 312(c) immediately or at any time after issuing the final evaluation findings or final notification letter containing the finding of non-adherence, but not later than the next regularly scheduled evaluation.

(v) If the Assistant Administrator decides to invoke interim sanctions, he/she will do so in a letter to the Governor of the State and the State CZM program manager. The letter will contain the information required in section 312(c)(2)(A) and (B). This information will include the amount of financial assistance to be suspended and redirected, the actions the State should take in order to have the suspension withdrawn, how the suspended funds shall be expended to take the required actions, and a schedule for taking the required actions. The letter will also contain the length of the suspension, which may not last for less than 6 months or more than 36 months. The Assistant Administrator will establish he length of the suspension based on the amount of time that is reasonably necessary for the State to take the required actions. If the State can take the required actions faster than expected, the suspension can be withdrawn early (but not in less than six months).

(vi) The State must respond to the final notification letter by developing a proposed work program to accomplish the required actions on the schedule set forth in the final notification letter. The State may propose an alternative approach to accomplishing the required actions and/or an alternative schedule. The Assistant Administrator's approval of the State's work program will signify his/her agreement with the approach and schedule for accomplishing the actions necessary to withdraw the suspension.

(vii) The Assistant Administrator will monitor State performance under the work program. This may involve additional direction to the State through the grant administration process and/or a visit to the State by appropriate NOAA program staff, evaluation staff and/or other experts to work with the State on a specific problem or issue. The Assistant Administrator will consider proposals to revise the work program on a case-by-case basis, providing that the State will still be able to accomplish the necessary actions within a maximum of 36 months.

(viii) The State must document that it has taken the required actions on the schedule established under this section. The State must provide its documentation in writing to the Assistant Administrator. The Assistant Administrator may conduct a follow-up evaluation or otherwise revisit the State at his/her discretion.

(ix) If the Assistant Administrator determines that the required actions have been taken, the Assistant Administrator will promptly notify the Governor and the State program manager, in writing, the NOAA has withdrawn the suspension of financial assistance. If, however, the State does not take the required actions, then the Assistant Administrator will invoke the final sanction provisions of section 312(d) on program termination and withdrawal of all financial assistance.

(3) *Criteria for invoking interim sanctions.* (i) The Assistant Administrator may consider the following indicators of non-adherence to an approved State CZM program in determining whether to invoke interim sanctions.

(A) Ineffective or inconsistent implementation of legally enforceable policies included in the CZM program. Indicators of ineffective or inconsistent implementation could include: evidence of non-compliance with core authorities by the regulated community; insufficient monitoring and inspecting of coastal development to ensure that it conforms to program requirements and applicable conditions; or inadequate enforcement action when development is found not to be in compliance with the program or permit under which it is authorized or is found to be an unpermitted activity.

(B) Inadequate monitoring of the actions of State and local agencies for compliance with the program. Indicators of inadequate monitoring of these agencies could include: evidence of noncompliance of networked agencies with the CZM program, unresolved conflicts between agencies regarding what constitutes compliance with the program, or lack of a mechanism to ensure that all State agencies will adhere to the program or to approved local coastal programs pursuant to NOAA's regulations at 15 CFR 923.40 and new section 306(d)(15).

(C) Non-compliance of local coastal programs with the approved State program. Indicators of non-compliance could include: local permitting or zoning decisions that are inconsistent with State standards or criteria, widespread granting of variances such as to render a zoning program ineffective in meeting State standards or criteria, changes to local comprehensive plans or zoning maps that are inconsistent with State standards or criteria, or inadequate monitoring and enforcement, as described in paragraph (a)(3)(i)(A) of this section.

(D) Ineffective implementation of Federal consistency authority. Indicators of ineffective implementation could include: not reviewing Federal activities, Federal licenses and permits, including offshore oil and gas exploration and development, and Federal financial assistance to State and local governments for consistency with the approved CZM program or employing review procedures that are not in accordance with State and 15 CFR part 930.

(E) Inadequate opportunity for intergovernmental cooperation and public participation in management program implementation. Indicators of inadequate opportunity could include: not carrying out procedures necessary to insure adequate consideration of the

national interest in facilities which are necessary to meet requirements which are other than local in nature, not implementing effectively mechanisms for continuing consultation and coordination, not providing required notice that a management program decision would conflict with a local zoning ordinance, decision or other action, or (after November 5, 1993) not providing opportunities for public participation in permitting processes, consistency determinations and other similar decisions pursuant to new section 306(d)(14).

(F) Non-adherence to the terms of a grant or cooperative agreement, including the schedule for funded activities. The Assistant Administrator will also consider the extent to which priorities for expenditure of Federal funds reflect an appropriate priority for activities necessary to implement and enforce core program authorities effectively.

(G) Not submitting changes to the approved program for Federal approval in a timely fashion or developing and implementing changes to the approved program without Federal approval which are inconsistent with the Act or the approved program or which result in a reduced level of protection of coastal resources.

(ii) The Assistant Administrator may consider whether an indication of non-adherence is of recent origin (in which case the State may be given a reasonable opportunity to correct it) or has been repeatedly brought to the State's attention without corrective action in determining whether to invoke interim sanctions.

(b) *Withdrawal of program approval and financial assistance.* (1) As required by section 312(d) and 312(e) of the Act:

(i) The Secretary shall withdraw approval of the management program of any coastal State and shall withdraw financial assistance available to that State under 16 U.S.C. 1451–1464 as well as any unexpended portion of such assistance, if the Secretary determines that the coastal State has failed to take the actions referred to in paragraph (a)(1)(ii)(A) of this section.

(ii) Management program approval and financial assistance may not be withdrawn under paragraph (b)(1)(i) of this section, unless the Secretary gives the coastal State notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under paragraph (b)(1)(i) of this section, the Secretary shall provide the coastal State with written specifications of the actions that should be taken, or not engaged in, by the State in order that such withdrawal may be canceled by the Secretary.

(2) *Requirements.* (i) If the Assistant Administrator determines that the State has not taken the actions required in § 928.5(a)(2), the Assistant Administrator will provide the Governor and the State CZM program manager with written notice of this finding and NOAA's obligation to withdraw program approval and financial assistance under 16 U.S.C. 1451–1464. The State will be given 30 days from receipt of this notice to respond with evidence that it has taken the actions specified pursuant to § 928.5(a)(2). During this 30 day period, the State may request up to 30 additional days to respond, for a maximum of 60 days from receipt of notice.

(ii) * * *

(iii) If the State does not request a public hearing or submit satisfactory evidence that it has taken the actions specified pursuant to § 928.5(a)(2) within 30 days of publication of this notice, and the Assistant Administrator determines that the State has failed to take the actions specified pursuant to § 928.5(a)(2), the Assistant Administrator will withdraw program approval and financial assistance and will notify the State in writing of the decision and the reasons for it. The notification will set forth actions that must be taken by the State which would cause the Assistant Administrator to cancel the withdrawal.

* * * * *

7. Part 932 is revised to read as follows:

PART 932—COASTAL ZONE ENHANCEMENT GRANTS PROGRAM

Sec.
932.1 General.
932.2 Objectives.
932.3 Definitions.
932.4 Allocation of section 309 funds.
932.5 Criteria for section 309 project selection.
932.6 Pre-application procedures.
932.7 Formal application for financial assistance and application review and approval procedures.
932.8 Revisions to assessments and strategies.

Authority: Section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456).

§ 932.1 General.

(a) The purpose of this part is to set forth the criteria and procedures for awarding coastal zone enhancement grants under section 309 of the Coastal Zone Management Act, as amended (16 U.S.C. 1456). This part describes the criteria States must address in developing and implementing coastal zone enhancement objectives, the procedures for allocating section 309 funds between weighted formula and individual review of proposals of special merit, how the amount of section 309 weighted formula grants will be determined, the criteria NOAA will use to evaluate and rank individual proposals of special merit, and the procedures for applying for financial assistance under section 309.

(b) A coastal State with an approved program under section 306 of the Coastal Zone Management Act (CZMA), as amended (16 U.S.C. 1455), is eligible for grants under this part if the State meets the following requirements:

(1) The State must have a NOAA approved Assessment and Strategy, submitted in accordance with NOAA guidance and § 932.8;

(2) The State must be found to be adhering to its approved program and must be making satisfactory progress in preforming grant tasks under section 306; and

(3) The State must be making satisfactory progress in carrying out its previous year's award under section 309.

(c) All applications for funding under section 309 of the CZMA, as amended, including proposed work programs, funding priorities and funding awards, are subject to the administrative discretion of the Assistant Administrator and any additional NOAA guidance.

(d) Grants awarded under section 309 may be used to support up to 100 percent of the allowable costs of projects under section 309 of the CZMA, as amended.

(e) All application and pre-proposal application forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Programs Division, 1825 Connecticut Avenue, NW., Suite 724, Washington, DC 20235.

§ 932.2 Objectives.

(a) The objective of assistance under this part is to encourage each State with a federally-approved coastal management program to continually improve its program in specified areas of national importance. The Secretary is authorized to make grants to a coastal State for the development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(b) As required by section 309(a) of the Act, for purposes of this part, the

term "coastal zone enhancement objective" means any of the following objectives:

(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

(2) Preventing or significantly reducing threats to life and destruction of property be eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.

(3 Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

(6) Preparing and implementing special area management plans for important coastal areas.

(7) Planning for the use of ocean resources.

(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

§ 932.23 Definitions.

(a) *Program change* means "routine program implementation" as defined in 15 CFR 923.84 and "amendment" as defined in 15 CFR 923.80, and includes the following:

(1) A change to coastal zone boundaries that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(2) New or revised authorities, including statutes, regulations, enforceable policies, administrative decisions, executive orders, and memoranda of agreement/ understanding, that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(3) New or revised local coastal programs and implementing ordinances that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(4) New or revised coastal land acquisition, management and restoration program that improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(5) New or revised Special Area Management Plans or plans for Areas of Particular Concern (APC), including enforceable policies and other necessary implementing mechanisms or criteria and procedures for designating and managing APCs that will improve a State's ability to achieve one or more of the coastal zone enhancement objectives.

(6) New or revised guidelines, procedures and policy documents which are formally adopted by a State and provide specific interpretations of enforceable CZM policies to applicants, local governments and other agencies that will result in meaningful improvements in coastal resource management and that will improve a State's ability to attain one or more of the coastal zone enhancement objectives.

(b) *Assessment* means a public document, prepared by a State and approved by NOAA in accordance with guidance on Assessments and Strategies issued by NOAA (hereafter referred to as the guidance[1]), that identifies the State's priority needs for improvement with regard to the coastal zone enhancement objectives. The Assessment determines the extent to which problems exist with regard to each of the coastal zone enhancement objectives and the effectiveness of current efforts to address those problems. The Assessment includes the factual basis for NOAA and the States to determine the priority needs for improvement of management programs in accordance with this part.

(c) *Strategy* means a comprehensive, multi-year statement of goals and the methods for their attainment, prepared by a State in accordance with NOAA guidance and these regulations and approved by NOAA, that sets forth the specific program changes the State will seek to achieve in one or more of the coastal zone enhancement objectives. The Strategy will address only the issue(s) identified in a State's Assessment as a priority need and will include specific tasks and milestones, as appropriate.

[1]NOAA guidance is available from the Office of Ocean and Coastal Resource Management, Coastal Program Division, Universal South Building, room 724, 1825 Connecticut Avenue, NW., Washington, DC 20235.

(d) *Project of Special Merit* means a project which NOAA will evaluate and rank based on the criteria at § 932.5(b).

(e) *Fiscal needs* means the extent to which a State must rely solely on Federal funds to complete a project under section 309 because State funds are not otherwise available.

(f) *Technical needs* means the extent to which a State lacks trained personnel or equipment or access to trained personnel or equipment to complete a project under section 309.

(g) *Assistant Administrator* means the Assistant Administrator for Ocean Services and Coastal Zone Management, or the NOAA Official responsible for directing the Federal Coastal Zone Management Program.

§ 932.4 Allocation of section 309 funds.

(a) (1) As required by section 309(e) of the Act, a State will not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section,

(2) As required by section 309(f) of the act, beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of the act shall be retained by the Secretary for use in implementing this section, up to a maximum of $10,000,000 annually.

(b) The Assistant Administrator will annually determine the amount of funds to be devoted to section 309, which shall be not less than 10 percent nor more than 20 percent of the total amount appropriated under section 318(a)(2) of the Coastal Zone Management Act, as amended (16 U.S.C. 1464), taking into account the total amount appropriated under section 318(a)(2). The total amount of funds to be devoted to section 209 shall not exceed $10,000,000 annually.

(c) Of the total amount determined in paragraph (b) of this section, the Assistant Administrator will annually determine the proportion to be awarded to eligible coastal States by weighted formula and the proportion to be awarded to eligible coastal States for projects of special merit. This determination will take into account the total amount appropriated under section 318(a)(2) of the CZMA, as amended.

(d) *Weighted formula funding.* (1) A weighted formula funding target will be determined for each State that meets the eligibility requirements at § 932.1(b). The weighted formula funding target will be the State base allocation determined by the operation of the formula at 15 CFR 927.1(c), multiplied by a weighting factor derived from the

Assistant Administrator's evaluation and ranking of the quality of the State's Strategy, as supported by the State's Assessment. The application of the weighting factor may result in a weighted formula funding target that is higher or lower than the State's base allocation. Each State's weighted formula funding target will be adjusted to reflect the funds available.

(2) The Assistant Administrator will determine each State's weighting factor based on an evaluation and ranking of the State's Strategy that takes into consideration the following:

(i) The scope and value of the proposed program change(s) contained in the Strategy in terms of improved coastal resource management;

(ii) The technical merits of the Strategy in terms of project design and cost effectiveness; and

(iii) The likelihood of success that the State will have in attaining the proposed program change(s), including an evaluation of the State's past performance and support for the Strategy.

(3) Each State will be notified individually of its weighting factor, the reasons for assigning this weighting factor, and any changes thereto. In consultation with the Assistant Administrator, a State may choose to make substantive changes to its approved Assessment and Strategy to improve its weighting factor, in accordance with the procedures at § 932.8.

(4) The Assistant Administrator may establish minimum and maximum weighted formula funding targets under § 932.4(d).

(e) *Funding for projects of special merit.* The Assistant Administrator will award the remaining section 309 funds, which are not awarded under § 932.4(d), to States based on an annual evaluation and ranking of projects of special merit, as defined in § 932.3(d). Funding of projects of special merit will be limited to the highest ranked projects based on the criteria at § 932.5(b).

(f) The Assistant Administrator will notify each State annually of the total amount of funds to be devoted to section 309 pursuant to § 932.4(b), the proportion to be awarded by weighted formula pursuant to § 932.4(c), the State's weighted formula funding target pursuant to § 932.4(d), and the total amount of funds available for funding for projects of special merit pursuant to § 932.4(e).

§ 932.5 Criteria for section 309 project selection.

(a) *Section 309 criteria for weighted formula funding.* (1) For those projects that will be funded by weighted formula, the Assistant Administrator will determine that:

(i) The project is consistent with the State's approved Assessment and Strategy and advances the attainment of the objectives of the Strategy;

(ii) Costs are reasonable and necessary to achieve the objectives of both the project and the Strategy. Allowability of costs will be determined in accordance with the provisions of OMB Circular A–87: Cost Principles for State and Local Governments; [2]

(iii) The project is technically sound;

(iv) The State has an effective plan to ensure proper and efficient administration of the project; and

(v) The State has submitted the required project information as specified in § 932.6(b)(1).

(2) In reviewing projects that will be considered under the weighted formula, the Assistant Administrator will take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(b) *Section 309 criteria for evaluation and ranking of projects of special merit.* (1) The Assistant Administrator will evaluate and rank State funding proposals of special merit which may be funded under § 932.4(e).

(2) In addition to meeting the criteria in paragraph (a)(1) of this section, proposals will be evaluated and ranked under this subsection using the following criteria:

(i) *Merit.* (90 points) The Assistant Administrator will review each application to determine the following:

(A) Degree to which the project significantly advances the program improvements and leads to a program change identified in the State's Strategy. In making this determination, the Assistant Administrator may consider the weighting factor derived from the evaluation of the quality of the State's Strategy, as supported by the State's Assessment, relative to the weighting factors assigned to other eligible States;

(B) Overall benefit of the project to the public;

(C) innovativeness of the proposal;

(D) Transferability of the results to problems in other coastal States; and

(E) The State's past performance under section 309.

(ii) *Fiscal needs.* (5 points) The Assistant Administrator will review each application to determine the "fiscal needs" of a State as defined in § 932.3(e).

(iii) *Technical needs.* (5 points) The Assistant Administrator will review each application to determine the "technical needs" of a State as defined in § 932.3(f).

(c) Section 309 funds not awarded to States under § 932.5(a) will be awarded to States under § 932.5(b).

§ 932.6 Pre-application procedures.

(a) *Pre-submission consultation.* Each State is expected to consult with the Assistant Administrator prior to the submission of its pre-proposal (see § 932.6(b)) and formal application for section 309 funding. The purpose of the consultation will be to determine whether the proposed projects are consistent with the purposes and objectives of section 309 and with the State's approved Strategy, to resolve any questions concerning eligibility for funding under section 309 (see § 932.1(b)), and to discuss preliminarily the State's recommendations regarding which projects should be funded by weighted formula and which projects should be individually evaluated and ranked as projects of special merit.

(b) *Pre-proposals.* After pre-submission consultation, States shall submit pre-proposals for section 309 funding annually on a schedule to be determined by the Assistant Administrator. These pre-proposals shall contain the following:

(1) A clear and concise description of the projects that the State proposes to be funded under section 309. This description shall explain the relationship of each proposed project to the State's approved Assessment and Strategy and how each proposed project will accomplish all or part of a program change that the State has identified in its Strategy. In addition, each project description shall include:

(i) A specific timetable for completion of each project;

(ii) A description of the activities that will be undertaken to complete each project and by whom;

(iii) The identification of any subawardees, pursuant to 15 CFR 923.95(d)(3)(ii); and

(iv) The estimated total cost for each project.

(2) Section 309 funds may be used for any of the following allowable uses which support the attainment of a program change:

(i) Personnel costs;

(ii) Supplies and overhead;

(iii) Equipment (pursuant to 15 CFR part 24);

[2] OMB Circular A–87: Cost Principles for State and Local Governments is available from the Office of Ocean and Coastal Resource Management, Policy Coordination Division, Universal South Building, room 701, 1825 Connecticut Avenue NW., Washington, DC 20235.

(iv) Projects, studies and reports; and

(v) Contractual costs including subcontracts, subawards, personal service contracts with individuals, memoranda of agreement/ understanding, and other forms of passthrough funding for the purpose of carrying out the provisions of section 309.

(3) Funds may not be used for land acquisition or low cost construction projects that are eligible for funding under section 306A of the Act (16 U.S.C. 1455).

(4) The State may recommend which projects should be funded by weighted formula under § 932.5(a) and which projects should be funded as projects of special merit under § 932.5(b).

(5) The pre-proposal shall contain documentation of fiscal needs and technical needs, if any. This documentation shall include:

(i) For fiscal needs, information on the current State budget (surplus or deficit), the budget of the applying agency (increase or decrease over previous fiscal year), future budget projections, and what efforts have been made by the applying agency, if any, to secure additional State funds from the Legislature and/or from off-budget sources such as user fees; and

(ii) For technical needs, identification of the technical knowledge, skills and equipment that are needed to carry out propsed projects and that are not available to the applying agency, and what efforts the applying agency has made, if any, to obtain the trained personnel and equipment it needs (for example, through agreements with other State agencies).

(6) The Assistant Administrator may request additional documentation of fiscal and technical needs.

(7) Following the first year of funding under section 309, the pre-proposal shall describe how the past year's work contributed to the attainment of a program change as defined in § 932.3(a) in one or more of the coastal zone enhancement objectives.

(8) The sum of estimated project costs for projects the State recommends be funded under § 932.5(a) should not exceed the State's weighted formula funding target pursuant to § 932.4(d).

(c) *Review of pre-proposals.* (1) The Assistant Administrator will make the final determination of which projects should be funded by weighted formula and which projects should be funded as projects of special merit, taking into account the State's recommendations.

(2) The Assistant Administrator may seek advice from technical experts in the fields of the coastal zone enhancement objectives as to the technical soundness and overall merit of section 309 project proposals.

(3) The Assistant Administrator will make the final determinations on project selection using the criteria at § 932.5(a) and evaluate and rank projects of special merit based on the criteria at § 932.5(b).

(4) If the Assistant Administrator determines that a State's project proposal(s) for weighted formula funding fails to meet the criteria at § 932.5(a), the Assistant Administrator may either reduce or deny the amount available to the State under § 932.4(d).

(5) Each state will be notified of the results of the review of pre-proposls, as described in paragraphs (c)(3) and (4) of this section, in time to include approved section 309 projects in their applications for financial assistance pursuant to subpart J of 15 CFR part 932.

§ 932.7 Formal application for financial assistance and application review and approval procedures.

(a) Application for financial assistance under this part must be developed and submitted on the same schedule as applications for financial assistance under Subpart J of 15 CFR part 923.

(b) Application for financial assistance under this part must be in a separate section of the application and must contain the information specified at § 932.6(b)(1) for each approved section 309 project.

(c) In addition to the information at § 932.6(b)(1), applications must also contain documentation of fiscal and technical needs, if any, pursuant to § 932.6(b)(5), and, following the first year of funding under section 309, a description of how the past year's work contributed to the attainment of a program change, pursuant to § 932.6(b)(7).

(d) Applications will be reviewed for conformance with the regulations at subpart J of 15 CFR part 923

(e) States will be notified of their section 309 awards at the time they are notified of their section 306/306A awards.

(f) If the Assistant Administrator seeks technical advice pursuant to § 932.6(c)(2), anonymous copies of the project reviews provided to the Assistant Administrator on projects proposed by a State will be made available to the State upon request after October 1 of each year.

(g) If the Assistant Administrator finds that a State is not undertaking the actions committed to under the terms of a section 309 grants, the Assistant Administrator shall suspend the State's eligibility for future funding under this section for at least one year.

(h) A State's eligibility for future funding under this section will be restored after the State demonstrates, to the satisfaction of the Assistant Administrator, that it will conform with the requirements under this part.

§ 932.8 Revisions to assessments and strategies.

(a) A State, in consultation with the Assistant Administrator, may propose to revise its approved Strategy. Revision(s) to an approved Strategy must be submitted to and approved by the Assistant Administrator prior to the initiation of the contemplated change.

(b) The Assistant Administrator will review such proposed revision(s) and determine if public review and comment is required. This determination will be based on the extent to which the proposed revision(s) changes the original scope of the State's Strategy.

(c) If the Assistant Administrator determines that public review and comment is necessary, he/she will notify the State of his/her determination. The State will be required to provide public review and comment in accordance with NOAA guidance.

(d) A State that wants to revise substantively the program changes identified in its approved Strategy or to address new enhancement objectives not identified as a priority in the original Assessment, also must revise the Assessment through a public process as described in NOAA's guidance.

(e) The Assistant Administrator will notify the State of his/her decision to approve or deny the proposed revision(s) to the Strategy.

(f) The Assistant Administrator will notify the State of any change in the weighting of the Strategy at the time he/she notifies the State of the approval of projects under this part. The new weighting will apply to the determination of the weighted formula funding target in the subsequent funding cycle.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: October 4, 1991.

Frank W. Maloney,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 91-24954 Filed 10-17-91; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404

[Regulations No. 4]

RIN 0960-AB00

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income; Listing of Impairments—Respiratory System

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed amendments revise the medical criteria for evaluating respiratory impairments for the disability programs in title III and title XVI of the Social Security Act. The revisions reflect advances in medical knowledge, treatment, and methods of evaluating respiratory impairments, and will provide up-to-date medical criteria for use in the evaluation of disability claims based on respiratory impairments.

DATES: To be sure that your comments are considered, we must receive them no later than December 17, 1991.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1759.

SUPPLEMENTARY INFORMATION: Medical criteria describing impairments considered severe enough to prevent a person from doing any gainful activity are found in the Listing of Impairments. The Listing of Impairments describes these criteria for each of the 13 major body systems. To establish disability under the Social Security Act, the evidence must show that a medically determinable physical or mental impairment has lasted or can be expected to last for a continuous period of not less than 12 months or can be expected to result in death.

The Listing of Impairments is an appendix to subpart P of part 404 of title 20 of the Code of Federal Regulations. This appendix is divided into a part A and a part B. The criteria in part A apply to evaluating impairments of adults but may be appropriate in some cases to evaluating impairments in children under age 18. Part B contains medical criteria only for the evaluation of impairments of children under age 18. Certain criteria in part A do not provide for the evaluation of the particular effects of certain disease processes in children (see §§ 404.1525 and 416.925). Where part A criteria are also repeated in Part B, such inclusion is intended to eliminate any question about their application to children. In part B, a structural and content relationship with part A counterparts has been maintained to the extent possible.

These proposed rules also revise the criteria we use when determining whether children's impairments meet or equal the severity of the impairments found in the respiratory listings. The Supreme Court's February 20, 1990, decision in Sullivan v. *Zebley, et al.*, ___ U.S. ___, 110 S.Ct. 885 (1990), requires us to provide an individualized assessment of the functional impact of a child's impairment(s) to a child seeking benefits because of disability under the supplemental security income program, when the severity of the child's impairment(s) does not meet or equal the severity of the impairment(s) found in the Listing of Impairments. Since the court's decision does not preclude the use of the listings as a basis for a decision that a child is disabled, the listings contained in these proposed rules will, when published as final rules, be used to determine that a child is disabled based on an impairment that meets or equals the severity of a listed impairment. Consistent with the Supreme Court's holding in *Zebley*, and the regulations for determining disability in children under the supplemental security income program, published on February 11, 1991, (56 FR 5534) we will not deny a child's claim based only on a finding that the child's impairment(s) does not meet or equal the criteria set out in these or any other listings.

In accordance with section 5036 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), a child's respiratory disorder will be evaluated, if possible, by a pediatrician or by a specialist in respiratory diseases of children.

When the Listing of Impairments was revised and published in the **Federal Register** on December 6, 1985 (50 FR 50068), we indicated that medical advancements in disability evaluation and treatment and program experience require that the listings be periodically reviewed and updated, and, accordingly, termination dates of the listings of from 4 to 8 years were specified. Appendix 1 of subpart P of regulations No. 4 provides that the current listings in part A of the respiratory system will no longer be effective on December 6, 1991 and part B criteria will no longer be effective on December 6, 1993. We are now proposing revisions to update the respiratory system listings in both 3.00 (part A) and 103.00 (part B), and to extend the effective date to 7 years from the date of publication of the final regulations.

The proposed revisions were developed with the assistance of representatives from medical professional groups, including the American Medical Association, the American Thoracic Society, the American Lung Association, the American College of Chest Physicians, the American Society of Internal Medicine, the American College of Physicians, the Cystic Fibrosis Foundation, and the American Nurses Association, and with the help of Federal and State representatives who have expertise in the evaluation of disability claims involving respiratory impairments.

The basic concept of the proposed revised listings is to put less emphasis on disease labeling, or diagnosis, and to emphasize the impact of impairments on a person's ability to work or, in the case of a child (a person who has not attained age 18), on the child's ability to perform age-appropriate activities. By age-appropriate activities, we mean the ability to function independently, appropriately, and effectively in an age-appropriate manner.

The proposed listings broaden the criteria to encompass disorders for which specific criteria have not been previously published (e.g., sleep-related breathing disorders) and to include state-of-the-art evaluative techniques. All of the techniques (tests, procedures, etc.) cited in the proposed regulations are generally available and have been published in the cumulative list of New or Improved Diagnostic Techniques in the **Federal Register** on May 9, 1990 at 55 FR 19357.

Following is a summary of the proposed changes in the respiratory system listings, including changes in the introductory material preceding the listing criteria which explains how the listing criteria are used.

Revisions to part A of the Listing of Impairments in appendix 1 of subpart P

3.00 Respiratory System

Introduction

We are proposing to make the following changes to the introductory material preceding the respiratory system listings in part A of the Listing Impairments.

We are proposing to expand 3.00A to state explicitly that evaluation of the severity and duration of a respiratory disorder should be performed only after prescribed therapy has been instituted, and expected therapeutic benefits have been achieved. A discussion is being included on the documentation which may be needed with a diagnosis of diffuse interstitial fibrosis or clinical findings suggesting cor pulmonale. This documentation may require measurement of carbon monoxide (CO) diffusing capacity or arterial blood gases at rest and during exercise in addition to evidence of the clinical evaluation and chest roentgenography and spirometry. We are also expanding 3.00A to include a discussion of pulmonary vascular disease with its specific documentation requirements.

We are proposing a modification of 3.00B to include other chronic persistent infections of the lung in addition to mycobacterial and mycotic infections, thereby broadening the applicability of the paragraph.

We are proposing a revision of 3.00C to provide greater specificity to the documentation requirements for episodic respiratory disease. Documentation must include information relating to the adherence to a prescribed therapeutic regimen, thus, again, serving to emphasize the important of treatment that the claimant is expected to have received.

The documentation requirements define the characteristics of an attack fulfilling the intensity component of the listing criteria, and specify that inpatient hospitalizations must last longer than 24 hours.

A new paragraph D is being added to the introductory material in 3.00 which recognizes the increasing number of children with cystic fibrosis surviving to adult life. The adult listings, therefore, should explicitly recognize this condition. A description of cystic fibrosis, including information concerning the proper diagnostic approach, has been added.

We are proposing to expand 3.00E, currently designated as 3.00D, to include more specific requirements for documentation of ventilatory function tests. The proposed revision is consistent with published standards for test performance approved by the American Thoracic Society (ATS) ("American Review of Respiratory Disease", Vol. 136, No. 5: pp. 1285–1298, 1987), and the National Institutes of Health Epidemiology Standardization Project. Criteria are outlined specifying what constitutes an acceptable study. This description includes the use of the back extrapolation technique for zero time, the requirement for early onset of peak flow rates, and specific criteria for reproducibility. Performance standards, as proposed, require that at least three acceptable spirograms be obtained, two which are reproducible. Comprehensive standards are provided for calibration of instruments other than those that generate the spirogram by direct pen linkage to a mechanical displacement device. Three levels of calibrations are required for primary flow sensing devices because some of these devices are not linear over the wide range of flow rates which occur in the spirogram. These requirements for accuracy and calibration are consistent with the standards for spirometers endorsed by the ATS.

The maximum voluntary ventilation (MVV) requirement was deleted as a criterion because it was considered to be effort-dependent, infrequently used in clinical practice, and poorly standardized among laboratories. In the past, the major usefulness of the MVV was that it provided confirmation of the degree of impairment indicated by the one second forced expiratory volume (FEV_1) when the test was of less than optimal quality. The proposed listings incorporate specific requirements to ensure the quality of forced expiratory spiromentry studies.

We are proposing to expand 3.00F1, currently designated as 3.00E1, to include a detailed description of the specification for performance of the single breath diffusing capacity of the lungs for carbon monoxide (DLCO) study to evaluate impairment of gas exchange. The listings are being revised to place greater emphasis on the use of DLCO as a measure of gas exchange prior to consideration of purchasing arterial gas analysis and exercise testing. The use of DLCO to estimate gas exchange impairment is based on state-of-the-art information that diffusing capacity is an important indicator of gas exchange and work capacity, and is an important predictor of mortality in lung disorders. The performance criteria for the test have been standardized by the ATS ("American Review of Respiratory Disease", Vol. 136, No. 5: pp. 1299–1307, 1987), and the standardization of criteria has been incorporated into the listings.

The criteria for resting arterial blood gas studies (ABGS) are being added to the proposed listings. In 3.00F2, we also specify that before purchase of ABGS at rest or during exercise, a program physician, preferably one with experience in the care of patients with pulmonary disease, must review all clinical and laboratory data in the record to determine whether obtaining the test would present a significant risk to the individual. In 3.00F2, we also require that ABGS should be purchased only from a laboratory certified by a State or Federal agency.

In 3.00F3, we specify that exercise testing with blood gas analysis should only be done after the DLCO has been estimated and the documentation has been found to be inadequate for the evaluation of the severity of functional impairment. In 3.00F3, we further specify that in individuals with an FEV_1 greater than 2.5 liters (L) or a DLCO greater than 60 percent of predicted normal, an exercise blood gas study would probably not be needed unless diffuse interstitial pulmonary fibrosis is noted on the chest roentgenogram or documented by lung biopsy.

In 3.00F4, currently designated as 3.00E2, we are revising the methodology for performance of an exercise test to include use of measurements at two exercise levels if the individual can satisfactorily complete the lower level of exercise at approximately 5 METs.

We are adding 3.00G to provide a more detailed description of chronic cor pulmonale and pulmonary vascular disease for which specific new criteria are provided.

We are also adding 3.00H to provide a description of sleep-related breathing disorders not currently addressed in the listings. Reference criteria are provided for the evaluation of these disorders.

3.01 Category of Impairments, Respiratory

We are proposing to make the following changes to the respiratory system listings.

3.02 Chronic Pulmonary Insufficiency

Paragraph A of listing 3.02 and Table I are being modified to delete the MVV for the reasons presented above in the discussion under 3.00E. The FEV_1 values are unchanged. Table I is modified so that rounding of reported height and volume values will not be necessary.

In proposed listing 3.02, paragraph B is being clarified to indicate that in cases of severe kyphoscoliosis, the measured span between the fingertips when the upper extremities are abducted 90 degrees should be substituted for height if greater than the standing height without shoes to ensure proper consideration of those individuals with

loss of height due to spinal deformity. Table II is modified so that rounding of reported height and volume values will not be necessary.

In proposed listing 3.02, paragraph C1, currently paragraph C2, is being revised to place emphasis on the documentation of a gas exchange abnormality to include single breath DLCO and ABGS at rest prior to consideration of exercise testing with measurement of ABGS. The DLCO criteria are being modified from less than 9 ml/min/mm Hg, or less than 30 percent of the predicted normal value, to less than 10.5 ml/min/mm Hg, or 40 percent of the predicted normal value. This revision represents updated information promulgated by the ATS correlating these proposed values for DLCO with work capacity and mortality. (American Thoracic Society Statement on Evaluation of Impairment/Disability Secondary to Respiratory Disease, "American Review of Respiratory Disease," Vol. 133, No. 6, pp. 1205–09, 1986.) Because of the variation in published predicted values, the listing criteria specify that the source of the predicted values should be reported or, if not published, should be submitted in the form of a table or nomogram.

Paragraph C2 of proposed listing 3.02 provides criteria for both resting and exercise ABGS. The major revision is the addition of criteria for resting hypoxemia. Resting arterial hypoxemia is associated with increased mortality and development of pulmonary hypertension. The levels of hypoxemia, as provided in the proposed listing, are considered to be at a level that ordinarily requires continuous domiciliary oxygen administration which would ordinarily preclude work-related activity. The current listing provides criteria for hypoxemia at three altitudes. For simplification of use without sacrificing validity, the listing is being revised to provide criteria for hypoxemia at two altitudes, i.e., less than 4,000 feet, and 4,000 feet and greater. The correction of hypoxemia for carbon dioxide tension is eliminated from the proposed tables because hypoxemia is considered to be the major determinant of impairment and mortality rather than alterations in the arterial carbon dioxide tension ($PaCO_2$). The requirement that the two measurements of resting arterial oxygen tension (PaO_2) be separated by an interval of three or more weeks in order to meet the requisite level of hypoxemia is based upon the degree of technical and biologic variability of arterial oxygen levels and is consistent with standards used in studies on mortality and performance in persons with chronic lung disease.

3.03 Asthma

In listing 3.03, paragraph B is being revised to include hospitalization for asthma of longer than 24 hours as equivalent to two asthma attacks in order to meet the frequency requirement of at least one attack every 2 months, or at least six times a year. The paragraph B criteria are also being revised to require that medical evidence of record over a period of at least 12 consecutive months should be used to determine the frequency of severe attacks.

3.04 Cystic Fibrosis

Listing 3.04 is being added to establish criteria for evaluating cystic fibrosis in adults because an increasing number of individuals with this disease are now living into adulthood. The listing provides new criteria for the evaluation of the pulmonary manifestations of this multisystem disorder.

3.07 Bronchiectasis

Paragraph B of the current listing 3.07 is being redesignated as paragraph A, and the current paragraph A is being expanded and redesignated as paragraph B. Listing 3.07, bronchiectasis, is somewhat similar to the clinical aspects of asthma and cystic fibrosis. Therefore, new paragraph B is being revised to make the episodic criteria consistent with listings 3.03 (Asthma) and 3.04 (Cystic fibrosis). Paragraph B is also being expanded to indicate that episodes of acute bronchitis or pneumonia or hemoptysis at least six times a year will be considered disabling.

3.10 Cor Pulmonale Secondary to Chronic Pulmonary Vascular Hypertension

In this proposed listing, chronic cor pulmonale, currently listing 3.11, is being redesignated as listing 3.10, and more specific criteria are being provided requiring that establishment of an impairment due to chronic cor pulmonale be associated with a specific etiologic disorder, and be documented by compatible clinical and laboratory findings (e.g., electrocardiogram tracings showing right ventricular hypertrophy).

3.11 Sleep-Related Breathing Disorders

We are adding a new listing for sleep-related breathing disorders and referring to the persistent functional consequences of this condition. When a sleep-related breathing disorder limits or precludes work activity, the physiologic basis for the impairment may be chronic cor pulmonale secondary to a chronic gas-exchange abnormality or a disturbance in cognitive performance. Reference listings are provided for the evaluation of these manifestations.

Revisions to part B of the Listing of Impairments in appendix 1 of subpart P.

103.00 Respiratory System

Introduction

We are proposing to make the following changes to the introductory material preceding the respiratory impairment listings.

New introductory material is included in 103.00A which provides a discussion of evaluation of the adverse effects of respiratory disease in light of the impact on ability to perform age-appropriate activities. In proposed 103.00B, currently 103.00A, we are revising and expanding the explanation to conform to state-of-the-art standards for documenting pulmonary insufficiency by ventilatory function testing. These updated standards for testing and the rationale for inclusion are essentially the same as those being proposed under 3.00E of part A of the Listing of Impairments. A statement describing the child's ability to understand instructions and effort to cooperate in the testing will still be considered an essential part of the report.

In 103.00B1, we are including more specific requirements for documentation of ventilatory function testing. The requirements include the use of the back extrapolation technique for zero time, the requirement for early onset of peak flow rates, and specific criteria for reproducibility. Performance standards, as proposed, require that at least three acceptable spirograms be obtained, two of which are reproducible. Guidelines are included for when spirometry should be repeated after administration of an aerosolized bronchodilator. Comprehensive standards are provided for calibration of instruments other than those that generate the spirogram by direct pen linkage to a mechanical displacement device. Three levels of calibrations are required for primary flow sensing devices because some of these devices are not linear over the wide range of flow rates which occur in the spirogram.

In 103.00B2a, new material is being added to explain the documentation requirements for chronic impairment of gas exchange and to provide guidance regarding the performance of blood gas studies. This explanation provides guidance regarding the use of pulse oximetry as a substitute for arterial

blood gas (ABG) testing in very young children. This provision for documenting gas exchange abnormalities is necessary because arterial blood samples are difficult to obtain in children under 3 years of age, and many children being evaluated will require oxygen periodically during which times blood gas determinations cannot be made. Further, invalid values can result because the procedure is painful and frequently causes crying. Pulse oximetry has been established as a safe and relatively painless procedure. It is more repeatable than ABGS and more accurate than transcutaneous techniques. It is becoming the state-of-the-art procedure for determining gas exchange abnormalities in very young children and is as available in hospitals and clinics as are blood gas determinations.

The introductory material in 103.00B is being revised and redesignated as 103.00C. A statement is being added which would require the quantitative pilocarpine iontophoretic test as the method for confirming the diagnosis of cystic fibrosis. This pilocarpine method, published by the Cystic Fibrosis Foundation, is the only acceptable testing procedure as it has the lowest false positive and false negative results of any techniques that are currently available to confirm the diagnosis of cystic fibrosis. The test is available in all Cystic Fibrosis Centers affiliated with the National Foundation and its State chapters, as well as in major university medical centers. Most children with suspected cystic fibrosis are referred to these centers for the diagnosis, evaluation, and ongoing management of this disorder. The proposed revisions reflect that children with this disorder experience a slow, progressively deteriorating clinical course to certain disabling impairment and death which usually occurs in late adolescence or young adulthood.

New material is being added to the introduction in 103.00D to provide an explanation of bronchopulmonary dysplasia (BPD) and the requirements for establishing the diagnosis. BPD was first reported in 1967 and had a very high mortality rate. Improvements in technology and patient management have resulted in increased survival and recovery of premature infants. Although the majority of infants with BPD do recover, some progress to chronic pulmonary disease, resulting in severe respiratory and related functional impairments.

Significant hypoxemia is a common result of chronic respiratory impairments and can be associated with various degrees of growth impairment. Therefore, reference criteria for evaluating interference with linear growth as a manifestation of lung disease has been included in each of the listings (103.03 (paragraph D), 103.04 (paragraph C), and 103.14 (paragraph G)).

103.01 Category of Impairments, Respiratory

We are proposing to make the following changes to the respiratory system listings in part B of the Listing of Impairments.

103.3 Asthma

The requirement that evidence of progression be obtained in being deleted. Progression means that the condition is increasing in the frequency or intensity of clinical disease. The proposed criteria incorporate findings that can be made only when there is sufficient evidence of sustained and unremitting progression.

Paragraphs A and B of listing 103.03 are being revised to ensure greater structural and content relationship with paragraphs A and B of listing 3.03 in part A. Paragraph A of listing 103.03 and the values specified in Table I provide for the use of pulmonary function testing, and paragraph B of listing 103.03 provides the clinical criteria for assessing pulmonary insufficiency. These listings are intended to represent the childhood counterparts of the proposed paragraphs A and B of listings 3.03 in part A.

A new paragraph C is being added to listing 103.03 to recognize that some children have persistent symptomatology related to bronchial asthma that may not meet or equal the listing criteria required under the proposed paragraphs A and B of 103.03 in part because of their drug regimen. The manifestations of underlying pulmonary insufficiency specified in 103.03C1–3 provide for objective evidence that is consistent with the level of severity intended under listing 103.03 in general.

Paragraph D is being added to listing 103.03 to provide that a growth impairment resulting from hypoxemia due to asthma should be evaluated under the criteria in listing 100.02.

103.10 Cystic fibrosis

Current listing 103.13 has been revised and redesignated as listing 103.04. Paragraph A of the proposed listing 103.04 incorporates and revises the criteria in paragraphs A and B of the current listing 103.13, and revises the FEV_1 values. The current values are set at 50 percent of predicted normal, and the proposed values have been set at 60 percent of predicted normal. The higher values are more consistent with studies that show good correspondence between clinical scoring systems based on the manifestations of lung disease and FEV_1 values set at the higher standard. Such scoring systems primarily reflect pulmonary status as measured by physical pulmonary findings, including radiographic evidence, nutritional status and level of activity. As a result of this change, forced expiratory pulmonary testing will permit more reliable evaluation of a functional impairment. Consistent with the revision of the FEV_1 threshold necessary to establish a disabling impairment, the extent of clinical evidence needed under paragraph A of proposed listing 103.04 for a finding of disability will now require that two of three listed manifestations be present rather than all three as is currently required.

A paragraph B is being added to listing 103.04 to evaluate children in whom a disabling irreversible pulmonary impairment can be presumed when associated with persistent chronic lower respiratory infections requiring intravenous antimicrobial therapy.

A paragraph C is being added to listing 103.04 to provide that a growth impairment resulting from hypoxemia due to cystic fibrosis should be evaluated under the criteria in listing 100.02.

103.14 Chronic Obstructive or Restrictive Pulmonary Disease Due to Any Cause

A new listing 103.14 is being added to address chronic obstructive or restrictive pulmonary disease due to any cause and to provide a means to evaluate chronic pulmonary impairments not covered under listings 103.03 and 103.04.

Paragraph A of listing 103.14 provides for evaluating obstructive lung disease under revised Table I and for evaluating restrictive lung disease under new Table III. These revisions also provide for structural and content relationship with paragraphs A and B of listing 3.02 in part A.

Paragraphs B, C, and D of listing 103.14 were developed specifically for the evaluation of children who have experienced respiratory distress in the neonatal period and subsequently developed chronic lung disorders such as BPD. However, other conditions such as congenital or acquired defects of the larynx and trachea, neuromuscular disorders and spinal cord injuries affecting respiration, and central

nervous system mediated hypoventilation can also be evaluated under this listing.

Paragraphs E and F of listing 103.14 specify other criteria for assessing manifestations of a pulmonary impairment in children, such as recurrent lower respiratory infection, acute respiratory distress, hypoventilation or chronic cor pulmonale.

Paragraph G of listing 103.14 provides criteria for evaluating interference with linear growth as a manifestation of lung disease.

Regulatory Procedures

Executive Order 12291

To the extent that Medicare entitlement and Medicaid eligibility are based on title II entitlement or title XVI eligibility, these proposed regulations also affect the Medicare and Medicaid programs.

The proposed changes will have a negligible program impact because they describe a level of severity comparable to the level of severity contained in the current listings. Additional administrative expenses, estimated at $1 million per year, will be needed for the increased documentation and testing required by the revisions.

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only disability claimants and beneficiaries under title II and title XVI of the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no reporting/recordkeeping requirements necessitating clearance by the Office of management and Budget. All information necessary to make the disability decisions discussed in these regulations is presently collected using forms which have the Office of Management and Budget's clearance.

(Catalog of Federal Domestic Assistance Program Nos. 98.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.807 Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404:

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: September 21, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: August 13, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-)

For the reasons set out in the preamble, part 404, subpart P, chapter III of title 20, Code of Federal Regulations is amended as set forth below.

1. The authority citation for subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797, 1801, 1802, and 1808.

2. Appendix 1 to Subpart P is amended by revising the third paragraph of the introductory text, by revising 3.00, Respiratory System, of part A, and by revising 103.00, Respiratory System, of part B to read as follows:

Appendix 1 to Subpart—Listing of Impairments

* * * * *

The respiratory system listings (3.00) of part A and 103.00 of Part B will no longer be effective on (*insert date 7 years after date of publication of final regulations in the* Federal Register), unless extended by the Secretary or revised and promulgated again.

* * * * *

Part A

* * * * *

3.00 Respiratory System

The respiratory system listings in 3.00 of the Listing of Impairments will no longer be effective on (*insert date 7 years after date of publication of final regulations in the* Federal Register), unless extended by the Secretary or revised and promulgated again.

A. *Introduction:* Impairments caused by chronic disorders of the respiratory system generally produce irreversible loss of pulmonary function due to ventilatory impairments, gas exchange abnormalities, or a combination of both. The most common symptoms attributable to these disorders are dyspnea on exertion, cough, wheezing, sputum production, hemoptysis, and chest pain. Because these symptoms are common to many other diseases, a thorough medical history, physical examination, and chest roentgenogram are required to establish chronic pulmonay disease. Pulmonary function testing is required to assess the severity of the functional impairment once a disease process is established by appropriate clinical and laboratory findings. The functional evaluation of the severity and duration of a respiratory disorder should be performed only after prescribed therapy has been instituted and sufficient time has elapsed for the results to be evaluated.

Alternations of ventilatory function can be due to obstructive airway disease (e.g., emphysema, chronic bronchitis, asthma), restrictive pulmonary disorders with primary loss of lung volume (e.g., pulmonary resection, thoracoplasty, chest cage deformity as in kyphoscoliosis or obestity), or infiltrative interstitial disorders (e.g., diffuse pulmonary fibrosis). Gas exchange abnormalities without significant airway obstruction can be produced by interstitial disorders. Disorders involving the pulmonary circulation (e.g., primary pulmonary hypertension, recurrent thromboembolic disease, primary or secondary pulmonary vasculitis) can produce pulmonary vascular hypertension and, eventually, pulmonary heart disease (cor pulmonale) and right heart failure. Persistent hypoxemia produced by any chronic pulmonary disorder also can result in chronic pulmonary hypertension and right heart failure. Chronic infection, caused most frequently by mycobacterial or mycotic organisms, can produce extensive and progressive lung destruction resulting in marked loss of pulmonary function. Some disorders, such as bronchiectasis, cystic fibrosis, and asthma, can be associated with intermittent exacerbations of such frequency and intensity that they produce a disabling impairment even when pulmonary function during periods of relative clinical stability is relatively well-maintained.

Impairments due to respiratory diseases usually can be evaluated solely on the basis of a complete medical history, physical examination, a chest roentgenogram or other imaging technique, and spirometric ventilatory function tests. In some situations, most typically with a diagnosis of diffuse interstitial fibrosis or clinical findings suggesting cor pulmonale, such as cyanosis or secondary polycythemia, an impairment may be underestimated on the basis of spirometry alone. More sophisticated pulmonary function testing may then be necessary to determine if gas exchange abnormalities contribute to the severity of a respiratory impairment. Additional testing might include measurement of diffusing capacity or resting arterial blood gases. Measurement of arterial blood gases during exercise is required only in rare circumstances. In disorders of the pulmonary circulation, right heart catheterization with angiography and/or direct measurement of pulmonary artery pressure usually is required to establish a specific diagnosis as well as to evaluate the severity of the impairment. When needed in such cases, the results of catheterization procedures will almost always be available from the records of treating physicians. Cardiac catheterization will not be purchased.

B. *Mycobacterial, mycotic, and other chronic persistent infections of the lung.* These disorders are evaluated on the basis of the resulting impairment in pulmonary function. Evidence of chronic infections, such as active mycobacterial diseases or mycoses with positive cultures, drug resistance, enlarging parenchymal lesions, or cavitation, is not, by itself, a basis for determining that an individual has a disabling impairment expected to last 12 months. However, if these factors are persistent, they should not be ignored. In those unusual cases of pulmonary infection that persist for a period approaching 12 consecutive months, the clinical findings, complications, therapeutic considerations, and prognosis must be carefully assessed to determine whether, despite relatively well-maintained pulmonary function, the individual nevertheless has an impairment that is expected to last for at least 12 consecutive months and prevent gainful activity. Chronic pulmonary infection occurring in the setting of immunodeficiency should be evaluated under criteria for the appropriate underlying disorder.

C. *Episodic respiratory disease.* When a respiratory impairment is episodic in nature, as can occur during exacerbations of asthma, cystic fibrosis, bronchiectasis, or chronic asthmatic bronchitis, the frequency and intensity of episodes that occur despite prescribed treatment are often the major criteria for determining the level of impairment. Documentation for these disorders should include hospital and/or physician records indicating the dates of treatment; clinical and laboratory findings on presentation, such as the results of spirometry and arterial blood gas studies (ABGS); the therapy administered; the time period required for treatment; and the clinical response. Exacerbations of asthma, cystic fibrosis or bronchiectasis, as referred to in paragraph B of listings 3.03, 3.04 and 3.07, are defined as prolonged symptomatic episodes lasting one or more days and requiring intensive treatment, such as intravenous bronchodilator or antibiotic administration or prolonged inhalational bronchodilator therapy in a hospital, emergency room or equivalent setting. Hospital admissions are defined as inpatient hospitalizations for longer than 24 hours. The medical evidence must also include information documenting adherence to a prescribed therapeutic regimen as well as a description of physical signs and spirometric results obtained between attacks that document the presence of baseline airflow obstruction.

D. *Cystic fibrosis* is a multisystem syndrome that is responsible for a wide and variable spectrum of clinical manifestations and complications. Confirmation of the diagnosis is based upon an elevated sweat sodium concentration accompanied by one or more of the following: The presence of chronic obstructive pulmonary disease; insufficiency of exocrine pancreatic function; or a positive family history. The quantitative pilocarpine iontophoresis procedure for collection and analysis of sweat content, published by the Cystic Fibrosis Foundation under the title "Procedure for the Quantitative Iontophoretic Sweat Test for Cystic Fibrosis," should be the method of testing. The pulmonary manifestations of this disorder should be evaluated under listing 3.04. The nonpulmonary aspects of cystic fibrosis should be evaluated under appropriate body systems. Because cystic fibrosis is a multisystem syndrome, the combined effects of multisystem involvement should be considered in case adjudication.

E. *Documentation of ventilatory function testing.* The results of spirometry that are used for adjudication under paragraphs A and B of listing 3.02 should be expressed in liters, body temperature and pressure, saturated with water vapor (BTPS). The reported one second forced expiratory volume (FEV_1) and forced vital capacity (FVC) should represent the largest of at least three satisfactory forced expiratory maneuvers. Peak flow should be achieved early in expiration, and the spirogram should have a smooth contour with gradually decreasing flow throughout expiration. The zero time for measuring of the FEV_1 and FVC, if not distinct, should be derived by linear back-extrapolation of peak flow to zero volume. A spirogram is satisfactory for measurement of the FEV_1 if the expiratory volume at the back-extrapolated zero time is less than 5 percent of the FVC or 0.1 liter (L), whichever is greater. The spirogram is satisfactory for measurement of the FVC if maximal expiratory effort continues for at least 6 seconds, or if there is a plateau in the volume-time curve with no detectable change in expired volume (VE) during the last 2 seconds of maximal expiratory effort. Two of the satisfactory spirograms should be reproducible for both pre-bronchodilator tests and, if indicated, post-bronchodilator tests. A value is considered reproducible if it does not differ from the largest value by more than 5 percent or 0.1 L, whichever is greater. The highest values of the FEV_1 and FVC, whether from the same or different tracings, should be used to assess the severity of the respiratory impairment.

Spirometry should be repeated after administration of an aerosolized bronchodilator under supervision of the testing personnel if the pre-bronchodilator FEV_1 value is less than 70 percent of the predicted normal value. If a bronchodilator is not administered, the reason should be clearly stated in the report. Ventilatory function studies performed to assess airflow obstruction without testing after bronchodilators cannot be used to assess levels of impairment in the range that prevents work activity unless the use of bronchodilators is contraindicated. Post-bronchodilator testing should be performed 10 minutes after bronchodilator administration. The dose and name of the bronchodilator administered should be specified. The values in paragraphs A and B of listing 3.02 must only be used as criteria for the level of ventilatory impairment that exists during the individual's most stable state of health.

The appropriately labeled spirometric tracing, showing the claimant's name, date of testing, distance per second on the abscissa and distance per liter on the ordinate, must be incorporated into the file. The manufacturer and model number of the device used to measure and record the spirogram should be stated. The testing device must accurately measure both time and volume, the latter to within 1 percent of a 3L calibrating volume. If the spirogram was generated by any means other than direct pen linkage to a mechanical displacement-type spirometer, the spirometric tracing must show a recorded calibration of volume units using a mechanical volume input such as a 3-liter syringe.

If the spirometer directly measures flow, and volume is derived by electronic integration, the linearity of the device must be documented by recording volume calibrations at three different flow rates of approximately 30 L/min (3 L/6 sec), 60 L/min (3 L/3 sec), and 180 L/min (3 L/sec). The volume calibrations should agree to within 1 percent of a 3L calibrating volume.The proximity of the flow sensor to the individual should be noted, and it should be stated whether or not a BTPS correction factor was used for the calibration recordings and for the individual's actual spirograms.

The spirogram must be recorded at a speed of at least 20 mm/sec, and the recording device must provide a volume excursion of at least 10 mm/L. If reproductions of the original spirometric tracings are submitted, they must be legible and have a time scale of at least 20 mm/sec and a volume scale of at least 10 mm/L to permit independent measurements of the spirograms. Calculation of FEV_1 from a flow-volume tracing is not acceptable, i.e., the spirogram and calibrations must be presented in volume-time format. A statement should be made in the pulmonary function test report of the individual's ability to understand directions as well as his or her efforts and cooperation in performing the ventilatory function tests.

The ventilatory function Tables in listing 3.02 are based on measurement of standing height without shoes. If an individual has marked spinal deformities (e.g., kyphoscoliosis), the measured span between the fingertips with the upper extremities abducted 90 degrees should be substituted for height when this measurement is greater than the standing height without shoes.

F. *Documentation of Chronic impairment of gas exchange.*—1. *Diffusing capacity of the lungs for carbon monoxide (DLCO).* A DLCO study should be purchased in cases in which there is documentation of chronic pulmonary disease, but the existing evidence, including properly performed spirometry, is not adequate to establish the level of functional impairment. Before purchasing DLCO measurements, the medical history, physical examination, reports of chest radiographic studies, and spirometric test results must be obtained and reviewed because favorable decisions can often be made based on available evidence without the need for DLCO studies. A DLCO study should not be purchased when full development of evidence short of purchase reveals that an impairment meets or equals any listing or when the claim can be decided favorably to the claimant on another basis.

The DLCO should be measured by the single breath technique with the individual relaxed and seated. At sea level, the inspired gas mixture should contain approximately 0.3

percent carbon monoxide (CO), 10 percent helium (He), 21 percent oxygen (O_2), and the balance nitrogen. At altitudes above sea level, the inspired O_2 concentration may be raised to provide an inspired O_2 tension of approximately 150 mm Hg. Alternatively, the sea level mixture may be employed at altitude and the measured DLCO corrected for ambient barometric pressure. Helium may be replaced by another inert gas at an appropriate concentration. The inspired volume (VI) during the DLCO maneuver should be at least 90 pecent of the previously determined vital capacity (VC). The inspiratory time for the VI should be less than 2 seconds, and the breath-hold time should be between 9 and 11 seconds. The washout volume should be between 0.75 and 1.00 L, unless the VC is less than 2 L. In this case, the washout volume may be reduced to 0.50 L; any such change should be noted in the report. The alveolar sample volume should be between 0.5 and 1.0 L and be collected in less than 3 seconds. At least 4 minutes should be allowed for gas washout between repeat studies.

A DLCO should be reported in units of ml CO, standard temperature, pressure, dry (STPD)/min/mm Hg for hemoglobin concentration and be based on a single breath alveolar volume determination. Abnormal hemoglobin or hematocrit values, and/or carboxyhemoglobin levels should be reported along with diffusing capacity. The DLCO value used for adjudication should represent the mean of at least two acceptable measurements, as defined above. In addition, two acceptable tests should be within 10 percent of each other or 3 ml CO(STPD)/min/mm Hg, whichever is larger. The percent difference should be calculated as 100 × (test 1—test 2)/average DLCO.

The ability of the individual to follow directions and perform the test properly should be described in the written report. The report should include tracings of the VI, breath-hold maneuver, and VE appropriately labeled with the name of the individual and the date of the test. The time axis should be at least 20 mm/sec and the volume axis at least 10 mm/L. The percentage concentrations of inspired O_2, and inspired and expired CO and He for each of the maneuvers should be provided, and the algorithm used to calculate test results noted. Sufficient data must be provided to permit independent calculation of results (and, if necessary, calculation of corrections for anemia and/or carboxyhemoglobin).

2. *Arterial blood gas studies (ABGS).* An ABGS performed at rest (while awake and sitting or standing) or during exercise should be analyzed in a laboratory certified by a State or Federal agency. If the laboratory is not certified, it must submit evidence of participation in a national proficiency testing program as well as acceptable quality control at the time of testing. The report should include the altitude of the facility and the barometric pressure on the date of analysis.

An ABGS performed at rest may be purchased when not available as evidence of record, or to verity treating source data, when there is documentation of chronic pulmonary disease but the existing evidence, including properly performed spirometry, is not adequate to establish the severity of functional impairment. Before obtaining resting ABGS, a program physician, preferably one experienced in the care of patients with pulmonary disease, must review all clinical and laboratory data short of this procedure, including spirometry, to determine whether obtaining the test would present a significant risk to the individual. Resting ABGS should not be purchased when full development of evidence short of purchase establishes that an impairment meets or equals any listing or when a claim can be decided favorably to the claimant on another basis.

3. *Exercise testing.* Exercise tests with measurement of arterial blood gases during exercise should be obtained in cases in which there is documentation of chronic pulmonary disease, but full development of existing evidence is not adequate to establish the level of functional impairment. In this context, full development means that results from spirometry and measurement of DLCO and resting ABGS have been obtained from treating sources or through purchase. Exercise arterial blood gas measurements will be required infrequently and should be purchased only after careful review of the medical history, physical examination, chest radiographic studies, spirometry, DLCO, electrocardiogram, hematocrit or hemoglobin, and resting blood gas results by a program physician, preferably one experienced in the care of patients with pulmonary disease, to determine whether obtaining the test would present a significant risk to the individual. An exercise test should not be purchased in cases where full development of existing evidence short of purchase of an exercise test establishes that the impairment meets or equals any listing or when the claim can be decided favorably to the claimant on another basis. Oximetry and capillary blood gas analysis are not acceptable substitutes for the measurement of arterial blood gases. Arterial blood samples obtained after the completion of exercise are not acceptable for establishing an individual's functional capacity.

Generally, individuals with an FEV_1 greater than 2.5 L or a DLCO greater than 60 percent of predicted normal would not be considered for exercise blood gas studies unless diffuse interstitial pulmonary fibrosis was noted on the chest roentgenogram or other imaging technique or was documented by a lung biopsy. The exercise test facility must be provided with the claimant's clinical records, reports of chest radiographic studies, and any spirometry, DLCO, and resting blood gas results obtained as evidence of record. The testing facility must determine whether exercise testing is clinically contraindicated; if it is, the reason for not performing the test must be reported in writing.

4. *Methodology.* Individuals considered for exercise testing first should have resting arterial blood partial pressure of oxygen (PaO_2), partial pressure of carbon dioxide ($PaCO_2$) and negative log of hydrogen ion concentration (pH) determinations by the testing facility. The sample should be obtained in either the sitting or standing position. The individual should then perform exercise under steady state conditions, preferably on a treadmill, for a period of 4–6 min at a speed and grade providing an oxygen consumption of approximately 17.5 ml/kg/min (5 METs). If a bicycle ergometer is used, an exercise equivalent of 5 METs (e.g., 450 kpm/min, or 75 watts, for a 176 lb. person) should be used. If the individual is able to complete this level of exercise without achieving listing-level hypoxemia, then he or she should be exercised at higher workloads to determine exercise capacity. A warm-up period of treadmill walking or cycling may be performed to acquaint the individual with the exercise procedure. If, during the warm-up period, the individual cannot achieve an exercise level of 5 METs a lower workload may be selected in keeping with the estimate of exercise capacity. The individual should be monitored by electrocardiogram (ECG) throughout the exercise and in the immediate post-exercise period. Blood pressure and an ECG should be recorded during each minute of exercise. During the final 2 minutes of a specific level of steady state exercise, an arterial blood sample should be drawn and analyzed for oxygen pressure (or tension) (PO_2), carbon dioxide pressure (or tension) (PCO_2), and pH. At the discretion of the testing facility, the sample may be obtained either from an indwelling arterial catheter or by direct arterial puncture. If possible, in order to evaluate exercise capacity more accurately, a test site should be selected that has the capability to measure minute ventilation, O_2 consumption, and carbon dioxide (CO_2) production. If the applicant fails to complete 4 to 6 minutes of steady state exercise, the testing laboratory should comment on the reason and report the actual duration and levels of exercise performed. This comment is necessary to determine if the individual's test performance was limited by lack of effort.

The exercise test report should contain representative ECG strips taken before, during and after exercise; resting and exercise arterial blood gas values; treadmill speed and grade settings, or, if a bicycle ergometer was used, exercise levels expressed in watts or kpm/min; and the duration of exercise. Body weight also should be recorded. If measured, O_2 consumption (STPD), minute ventilation (BTPS), and CO_2 production (STPD) also should be reported. The altitude of the test site, its normal range of blood gas values, and the barometric pressure on the test date must be noted.

G. *Chronic cor pulmonale and pulmonary vascular disease.* The establishment of an impairment due to chronic cor pulmonale requires association with a specific etiologic disorder and documentation by compatible clinical and laboratory findings. This may include descriptions of physical findings suggesting right ventricular overload (e.g., an early diastolic right-sided gallop, neck vein distention, hepatomegaly, dependent edema, etc.), evidence of polycythemia, arterial blood gas values demonstrating severe hypoxemia with or without CO_2 retention, ECG tracings showing right ventricular hypertrophy, reports of chest imaging studies that specifically describe characteristic changes of the right side of the heart, and reports of cardiac catheterization that include

hemodynamic assessment of the pulmonary circulation. (Cardiac catheterization will not be purchased.)

P-pulmonale on the ECG does not establish chronic pulmonary hypertension or chronic cor pulmonale. Evidence of florid right heart failure need not be present at the time of adjudication for the Listing of Impairments to be satisfied, but the medical evidence of record should establish that cor pulmonale is chronic and irreversible.

H. *Sleep-related breathing disorders.* Sleep-related breathing disorders (sleep apneas) are caused by periodic cessation of respiration associated with hypoxemia and frequent arousals from sleep. While many individuals with one of these disorders will respond to prescribed therapy, in some the disturbed sleep pattern and associated chronic nocturnal hypoxemia cause daytime sleepiness with chronic pulmonary hypertension and/or disturbances in cognitive function. Not all individuals with sleep apnea develop a functional impairment that affects work activity. When work activity is limited or precluded, the physiologic basis for the impairment may be chronic cor pulmonale secondary to a chronic gas exchange abnormality (see 3.00G) or a disturbance in cognitive performance that interferes with activities that require constant vigilance (adjudicate under Organic Mental Disorders, listing 12.02).

3.01 *Category of impairments, respiratory.*

3.02 *Chronic pulmonary insufficiency.* With:

A. Chronic obstructive pulmonary disease. With: The FEV_1 equal to or less than values specified in Table I corresponding to the person's height without shoes.

TABLE I

Height without shoes (inches)	FEV_1 equal to or less than (L, BTPS)
60.4 or less	1.05
60.5–63.4	1.15
63.5–65.4	1.25
65.5–67.4	1.35
67.5–69.4	1.45
69.5–71.4	1.55
71.5–or more	1.65

or

B. Chronic restrictive ventilatory disease. With: The FVC equal to or less than values specified in Table II corresponding to the person's height without shoes. In severe kyphoscoliosis, the measured span between the fingertips when the upper extremities are abducted 90 degrees should be substituted for height when this measurement is greater than the standing height without shoes.

TABLE II

Height without shoes (inches)	FVC equal to or less than (L, BTPS)
60.4 or less	1.25
60.5–63.4	1.35

TABLE II—Continued

Height without shoes (inches)	FVC equal to or less than (L, BTPS)
63.5–65.4	1.45
65.5–67.4	1.55
67.5–69.4	1.65
69.5–71.4	1.75
71.5–or more	1.85

or

C. Chronic impairment of gas exchange due to clinically documented pulmonary disease. With:

1. Single breath DLCO less than 10.5 ml/min/mm Hg or less than 40 percent of the predicted normal value. (Predicted values must either be based on data obtained at the test site or published values from a laboratory using the same technique as the test site. The source of the predicted values should be reported. If they are not published, they should be submitted in the form of a table or nomogram); or

2. Arterial blood gas values of PaO_2 measured while at rest (awake and siting or standing) in a clinically stable condition on at least two occasions, 3 more weeks apart:

a. At altitudes less than 4000 feet, a PaO_2 equal to or less than 55 mm Hg; or

b. At altitudes less than 4000 feet, or greater, a PaO_2 equal to or less than 50 mm Hg; or

3. Arterial oxygen tension during steady state exercise (equivalent to or less than 17.5 $ml0_2$ consumption/kg/min or 5 METs) with PaO_2 values equal to or less than specified in 3.02C2a or b.

3.03 *Asthma.* With: A. Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive pulmonary disease in 3.02A; or

B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each in-patient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks.

3.04 *Cystic fibrosis.* With: *A.* Impairment of pulmonary function as evaluated under the appropriate criteria in 3.02; or

B. Episodes of bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum) or respiratory failure (documented according to 3.00C), requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each in-patient hospitalization for longer than 24 hours for treatment counts as two episodes, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of episodes.

3.06 *Pneumoconiosis* (demonstrated by appropriate imaging technique). Evaluate under the appropriate criteria in 3.02.

3.07 *Bronchiectasis* (demonstrated by appropriate imaging technique). With: A. Impairment of pulmonary function due to extensive disease. Evaluate under the appropriate criteria in 3.02; or

B. Episodes of bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum) or respiratory failure (documented according to 3.00C), requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each in-patient hospitalization for longer than 24 hours for treatment counts as two episodes, and an evaluation of at least 12 consecutive months must be used to determine the frequency of episodes.

3.08 *Mycobacterial infection of the lung.* Evaluate under the appropriate criteria in listing 3.02 with reference to 3.00 B.

3.09 *Mycotic infection of the lung.* Evaluate under the appropriate criteria in listing 3.02 with reference to 3.00B.

3.10 *Cor pulmonale secondary to chronic pulmonary vascular hypertension.* Clinical evidence of cor pulmonale (3.00G) with: A. Mean pulmonary artery pressure greater than 40 mm Hg; or

B. Arterial blood gas values of PaO_2 measured while at rest (awake and sitting or standing) in a clinically stable condition on at least two occasions, 3 or more weeks apart. With:

1. At altitudes less than 4,000 feet, a PaO_2 equal to or less than 60 mm Hg; or

2. At altitudes of 4,000 feet or greater, a PaO_2 equal to or less than 55 mm Hg; or

C. Right ventricular enlargement on an appropriate chest imaging study and ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm or greater in lead V1 and progressive decrease in R/S amplitude from lead V1 to V5 or V6.

3.11 *Sleep-related breathing disorders.* Evaluate under criteria 3.10 (chronic cor pulmonale) or under 10.10 (obesity) or under 12.02 (abnormalities of cognitive function).

* * * * *

Part B

* * * * *

103.00 Respiratory System

The respiratory system listings in 103.00 of the Listing of Impairments will no longer be effective on (insert date 7 years after date of publication of final regulations in the **Federal Register**), unless extended by the Secretary of revised and promulgated again.

A. *Introduction.* Respiratory disorders, along with the associated impairment(s), must be established and substantiated by medical evidence. Evidence must be provided in sufficient detail to permit an independent medical reviewer to evaluate the severity of the impairment. The criteria for evaluating impairment severity are based on symptons, physical signs, partient laboratory test results, and response to prescribed treatment. A child's respiratory disorder will be evaluated, if possible, by a pediatrician or by a specialist in respiratory diseases of children.

Evaluation should include a consideration of adverse effects on the child's growth and development as described under the growth impairment and mental retardation listings, 100.02 and 112.05, respectively.

If the child's impairment does not meet or equal the listing(s), evaluation must also involve consideration of a child's ability to

function independently, appropriately, and effectively in an age-appropriate manner.

B. *Documentation.* 1. *Ventilatory function testing.* The results of spirometry that are used for adjudication, under the respiratory system listings should be expressed in liters, body temperature and pressure, saturated with water vapor (BTPS). The reported one-second forced expiratory volume (FEV_1) and force vital capacity (FVC) should represent the largest of at least three satisfactory forced expiratory maneuvers. Peak flow should be achieved early in expiration and the spirogram should have a smooth contour with gradually decreasing flow throughout expiration. The zero time for measurement of the FEV_1 and FVC, if not distinct, should be derived by linear back-extrapolation of peak flow to zero volume. A spirogram is satisfactory for measurement of the FEV_1 if the expiratory volume at the back-extrapolated zero time is less than 5 percent of the FVC or 0.1 L, whichever is greater. The spirogram is satisfactory for measurement of the FVC if maximal expiratory effort continues for at least 6 seconds, or if there is a plateau in the volume-time curve with no detectable change in expired volume during the last 2 seconds of maximal expiratory effort. Two of the satisfactory spirograms should be reproducible for both pre-bronchodilator tests and, if indicated, post-bronchodilator tests. A value is considered reproducible if it does not differ from the largest value by more than 5 percent or 0.1 L, whichever is greater. The highest values of the FEV_1 and FVC, whether from the same or different tracings, should be used to assess the severity of respiratory impairment.

Spirometry should be repeated after administration of an aerosolized bronchodilator under supervision of the testing personnel if the pre-bronchodilator FEV_1 value is less than the appropriate reference value in table I or II, as appropriate. If a bronchodilator is not administered, the reason should be clearly stated in the report. Ventilatory function studies performed to assess airflow obstruction without testing after bronchodilators cannot be used to assess levels of impairment in the range that interferes with age-appropriate major daily activities unless the use of bronchodilators is contraindicated. Post-bronchodilator testing should be performed 10 minutes after bronchodilator administration. The does and name of the bronchodilator administered should be specified. The values in listings 103.03, 103.10, and 103.14 must only be used as criteria for the level of ventilatory impairment that exists during the child's most stable state of health.

The appropriately labeled spirometric tracing, showing the child's name, date of testing, distance per second on the abscissa and distance per liter (L) on the ordinate, must be incorporated into the file. The manufacturer and model number of the device used to measure and record the spirogram should be stated. The testing device must accurately measure both time and volume, the latter to within 1 percent of a 3L calibrating volume. If the spirogram was generated by any means other than direct pen linkage to a mechanical displacement-type spirometer, the spirometric tracing must show a recorded calibration of volume units using a mechanical volume input such as a 3 liter syringe.

If the spirometer directly measures flow, and volume is derived by electronic integration, the linearity of the device must be documented by recording volume calibrations at three different flow rates of approximately 30 L/min (3 L/6 sec), 60 L/min (3 L/3 sec), and 180 L/min (3 L/sec). The volume calibrations should agree to within 1 percent of a 3L calibrating volume. The proximity of the flow sensor to the child should be noted, and it should be stated whether or not a BTPS correction factor was used for the calibration recordings and for the actual spirograms.

The spirogram must be recorded at a speed of at least 20 mm/sec and the recording device must provide a volume excursion of at least 10 mm/L. If reproductions of the original spirometric tracings are submitted, they must be legible and have a time scale of at least 20 mm/sec and a volume scale of at least 10 mm/L to permit independent measurements of the spirograms. Calculation of FEV_1 from a flow volume tracing is not acceptable, i.e., the spirogram and calibrations must be presented in volume-time format. A statement should be made in the pulmonary function test report of the child's ability to understand directions, as well as his or her effort and cooperation in performing the ventilatory function test.

The ventilatory function Tables in listings 103.03, 103.04, and 103.14 are based on measurement of standing height without shoes. If a child has marked spinal deformities (e.g., kyphoscoliosis), the measured span between the fingertips with the upper extremities abducted 90 degrees should be substituted for height when this measurement is greater than the standing height without shoes. The reported values used for entering the tables in listings 103.03, 103.04, and 103.14 should be rounded off as follows: e.g., a reported height of 120.4 centimeters should be rounded off to 120 centimeters. A height of 120.5 should be rounded off to 121 centimeters. A report of FVC or FEV_1 of 1.45 L should be rounded off to 1.4 L. An FVC or FEV_1 of 1.46 L should be rounded off to 1.5 L.

2. *Chronic impairment of gas exchange.* a. *Arterial blood gas studies (ABGS).* An ABGS performed at rest (awake and sitting or standing) should be analyzed in a laboratory certified by a State or Federal agency. If the laboratory is not certified, it must submit evidence of participation in a national proficiency testing program as well as acceptable quality control at the time of testing. The report should include the altitude of the facility and the barometric pressure on the date of analysis.

b. *Oximetry.* Pulse oximetry may be substituted for arterial blood gases in children under 3 years of age. The oximetry unit should employ the basic technology of spectrophotometric plethysmography as described in Taylor, M.B., and Whitwain, J.G., "Current Status of Pulse Oximetry," Anesthesia, 1986; Vol. 41, No. 9, pp. 943–949. The unit should provide a visual display of the pulse signal and the corresponding saturation. A hard copy of the readings (heart rate and saturation) should be provided. Readings should be obtained for a minimum of 5 minutes. The written report should describe patient activity during the recording, i.e., sleep rate, feeding, or exercise. Correlation between the actual heart rate determined by a trained observer and that displayed by the oximeter should be provided.

C. *Cystic fibrosis* is a multisystem syndrome that is responsible for a wide and variable spectrum of clinical manifestations and complications. Confirmation of the diagnosis is based upon an elevated sweat sodium concentration or chloride concentration. The quantitative pilocarpine iontophoresis procedure for collection and analysis of sweat content, published by the Cystic Fibrosis Foundation under the title "Procedure for the Quantitative Iontophoretic Sweat Test for Cystic Fibrosis," should be the method of testing. The pulmonary manifestations of this disorder should be evaluated under listing 103.04. The nonpulmonary aspects of cystic fibrosis should be evaluated under appropriate body systems. Because cystic fibrosis is a multisystem syndrome, the combined effects of multisystem involvement should be considered in case adjudication.

D. *Bronchopulmonary dysplasia (BPD).* Bronchopulmonary dysplasia is a form of chronic obstructive pulmonary disease that arises as a consequence of the treatment of acute lung injury in the newborn period due to hyaline membrane disease, meconium aspiration, neonatal pneumonia and apnea. The diagnosis is established by the requirement for continuous or nocturnal supplemental oxygen for more than 30 days, in association with characteristic radiographic changes and clinical signs of respiratory dysfunction, including retractions, rales, wheezing, and tachypnea.

103.01 Category of Impairments, Respiratory

103.03 *Asthma.* With:

A. FEV_1 equal to or less than the value specified in Table I; or

B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year. (Each in-patient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks); or

C. Persistent low-grade wheezing between acute attacks or absence of extended symptom-free periods requiring daytime and nocturnal use of sympathomimetic bronchodilators with two of the following:

1. Persistent prolonged expiration with radiographic evidence of pulmonary hyperinflation or peribronchial disease; or

2. Barrel or pigeon chest deformity related to underlying pulmonary dysfunction; or

3. Short courses of corticosteroids that average more than 5 days per month for at least 3 months during a 12-month period; or

D. Growth impairment as described under criteria in 100.02.

TABLE I

Height (cm.)	FEV_1 equal to or less than (L, BTPS)
199 or less	0.6
120–129	0.7
130–139	0.9
140–149	1.1
150–159	1.3
160–164	1.4
165–169	1.5
170 or more	1.6

103.04 *Cystic fibrosis.* With: A. An FEV_1 equal to or less than the appropriate value specified in Table II; for children in whom ventilatory function testing cannot be performed, the presence of two of the following:

1. History of dyspnea on mild exertion or accumulation of secretions as manifested by repetitive coughing or cyanosis; or

2. Persistent bilateral rales and rhonchi and/or substantial reduction of breath sounds related to mucous plugging of the trachea or bronchi; or

3. Radiographic evidence of extensive disease, such as thickening of the proximal bronchial airways or persistence of bilateral peribronchial infiltrates; or

B. Persistent pulmonary infection accompanied by superimposed, recurrent, symptomatic episodes of increased bacterial infection occurring at least once every 6 months and requiring intravenous antimicrobial therapy; or

c. Growth impairment as described under the criteria in 100.02.

TABLE II

[Applicable only for evaluation under 103.04A—cystic fibrosis]

Height (cm.)	FEV_1 equal to or less than (L, BTPS)
119 or less	0.7
120–129	0.8
130–139	1.0
140–149	1.3
150–159	1.5
160–164	1.8
165–169	2.0
170 or more	2.2

103.14 *Chronic obstructive or restrictive pulmonary disease due to any cause.* With: A. FEV_1 equal to or less than the value specified in Table I of listing 103.03 for obstructive disease, or FVC equal to or less than the value specified in Table III for restrictive disease; or

B. Continuous need for: 1. Mechanical ventilation; or 2. Nocturnal supplemental oxygen as required by persistent or recurrent episodes of hypoxemia with:

a. At altitudes less than 4,000 feet: PaO_2 equal to or less than 60 mm Hg (or O_2 saturation less than the appropriate corresponding value) at rest; or

b. At altitudes of 4,000 feet or greater : PaO_2 equal to or less than 55 mm Hg (or O_2 saturation less than the appropriate corresponding value) at rest; or

c. The presence of a tracheostomy in a child under 3 years of age; or

D. Bronchopulmonary dysplasia characterized by two of the following:

1. Prolonged expirations; or

2. Intermittent wheezing or increased respiratory effort as evidenced by retractions, flaring and tachypnea; or

3. Hyperinflation and scarring on a chest radiograph; or

4. Bronchodilator or diuretic dependency; or

5. A continuous requirement for nocturnal supplemental oxygen; or

6. Poor weight gain; or

E. Two hospital admissions within a 6-month period for recurrent lower respiratory tract infections or acute respiratory distress associated with:

1. Chronic wheezing or chronic respiratory distress;

2. Poor weight gain; or

F. Hypoventilation ($PaCO_2$ greater than 45 mm Hg) or chronic cor pulmonale as described under criteria in 104.02; or

G. Growth failure as described under criteria in 100.02.

TABLE III

Height (cm.)	FVC equal to or less than (L, BTPS)
119 or less	0.6
120–129	0.8
130–139	1.0
140–149	1.2
150–159	1.4
160–164	1.6
165–169	1.7
170 or more	2.0

* * * * *

[FR Doc. 91–24921 Filed 10–17–91; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-4-73]

RIN 1545-AC37

One Class of Stock Requirement; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking which was published in the **Federal Register** for Tuesday, August 13, 1991, (56 FR 38391). This proposed regulation relates to the requirement that small business corporations have only one class of stock.

FOR FURTHER INFORMATION CONTACT: Scott Carlson of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) at (202) 343–8459 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulation provides rules relating to the one class of stock requirement of small business corporations electing S status under section 1362 of the Code.

Need for Correction

As published, the proposed regulation contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulation which was the subject of FR Doc. 91–19185, is corrected as follows:

§ 1.1361-1 [Corrected]

1. On page 38396, column 3, under § 1.1361–1, paragraph (c)(4), line 8, the language "(l)(4)(ii) or (iii) of this section. However," is corrected to read "(l)(4)(ii), (iii), or (iv) of this section. However,".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–25059 Filed 10–17–91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[CO-002-88]

RIN 1545-AL41

Consolidated Return Regulations; Modification of Rules Relating to the Applicability of Other Provisions of Law in the Context of the Consolidated Return Regulations; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to section 1502 of the Internal Revenue Code of 1986, as amended, providing that section 304 will not apply to acquisitions of the stock of a corporation by one number of consolidated group from another member and providing special restoration rules for deferred gain that

results on an acquisition of the stock of a subsidiary member of a consolidated group by one member from another member.

DATES: The public hearing will be held on Tuesday, December 10, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, November 26, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Building, Second floor, room 2615, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (CO-002-88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for Thursday, July 25, 1991, at page 34044 (56 FR 34044).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on proposed regulations should submit not later than Tuesday, November 26, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-25058 Filed 10-17-91; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH-FRL-4023-2]

National Primary Drinking Water Regulations; Radionuclides

AGENCY: Environmental Protection Agency.

ACTION: Notice of corrections to proposed rule; notice of extension of public comment period.

SUMMARY: This notice corrects errors in the preamble to the proposed regulations for radionuclides in drinking water, published in the **Federal Register** on July 18, 1991, 56 FR 33050. Specifically, it corrects and clarifies the basis for the proposed practical quantitation level for radon in water. In addition, EPA is extending the public comment period for this proposal until November 15, 1991.

DATES: The comment period is extended until November 15, 1991.

ADDRESSES: Send written comments to Comments Clerk—Radionuclides, Drinking Water Standards Division, Office of Ground Water and Drinking Water (WH-550D), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Gregory Helms at (202) 260-7575, U.S. EPA Office of Ground Water and Drinking Water, Drinking Water Standards Division.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency proposed national primary drinking water standards for a group of radionuclide contaminants in drinking water on July 18, 1991 (56 FR 33050). On September 5, 1991, the Edison Electric Institute requested clarification of the background documentation for the radon PQL in the proposal. This notice clarifies EPA's evaluation of the PQL for radon.

Radon PQL

The preamble erroneously states on pages 33096-33097 that radon samples as low as 100 pCi/l were tested by 12 labs using liquid scintillation counting and by 4 labs using the Lucas Cell method, and that these data were used to evaluate the performance of these two methods and estimate the PQL. In fact, the PQL calculation was based on data from six laboratories using liquid scintillation in 100 minute count tests, as presented in reference EPA 1991r from the July 18 Notice. Sample concentrations in the test ranged from 100 to 500 pCi/l radon. Data from several additional labs were received later and were summarized in the reference EPA 1991n, but the raw data from these additional labs were not available for calculation of the PQL and were not included in the calculation.

The additional data summarized in reference EPA 1991n, and EPA's evaluation of them, will be made public in a notice of data availability at a future date.

Comment Period Extension

In addition, EPA has received several requests to extend the public comment period for this proposal, including requests from the Natural Resources Defense Council, the American Water Works Association, the city of Carson City, Nevada, and the Nuclear Information and Resource Service. EPA has decided to extend the public comment period for the July 18, 1991 radionuclides proposal until November 15, 1991, in order to provide these groups and any other interested parties additional time to prepare comments on the proposal, and also to provide the Edison Electric Institute additional time to assess EPA's proposed radon PQL.

Dated: October 15, 1991.

Martha G. Prothro,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 91-25323 Filed 10-17-91; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR-4, Notice No. 4]

Railroad Accident Reporting; Open Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Notice of open meeting.

SUMMARY: In order to explore matters related to FRA's accident/incident reporting system, FRA will hold an informal open meeting on October 22, 1991, in Washington, DC, with

representatives of various rail unions. The meeting will be open to any interested person who wishes to attend as an observer. FRA may schedule additional, informal meetings to the extent that interest is expressed by other parties.

DATES: The open meeting will be held on Tuesday, October 22, 1991, at 10 a.m.

ADDRESSES: The open meeting will be held in rooms 8236–8240, Nassif building, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Principal Program Person: Mr. Stan Ellis, Chief, Data Analysis Branch, Systems Support Div., Office of Safety Analysis, Office of Safety, FRA, Washington, DC 20590. Telephone: (202) 366–2760 (FTS 366–2760).

Principal Attorney: Ms. Billie Stultz, Dep. Asst. Chief Counsel for Safety, Office of the Chief Counsel, FRA, Washington, DC 20590. Telephone: (202) 366–0635 (FTS 366–0635).

SUPPLEMENTARY INFORMATION: On March 14, 1990, FRA issued an advance notice of proposed rulemaking (ANPRM) soliciting comments and suggestions from the public regarding methods of improving all aspects of FRA's injury and accident reporting system and its governing regulations (49 CFR part 225). 55 FR 9469. Interested parties were invited to participate in a public hearing on May 17, 1990, and to file written comments prior to May 25, 1990.

The written comments received by FRA provided additional information and raised further issues and subissues related to the matters discussed in the ANPRM. In addition, FRA received significant oral comments on same subject. Representatives of the railroads participating in the Association of American Railroads Committee on Uniformity in Reporting expressed an interest in exploring possibilities concerning the format in which accident/incident data is gathered pursuant to the FRA Guide for Preparing Accident/Incident Reports. Since these issues bore on regulatory obligations and might touch on issues within the scope of the advance notice, FRA determined that the meeting should be open to any interested person who wishes to observe. Consequently, FRA held open meetings on these matters with members of the AAR Uniformity Committee on June 13, 1991, and August 21, 1991.

Now, at the request of rail labor representatives, FRA has scheduled an open meeting to discuss the same area with representatives of various rail unions. This open meeting will be held on Tuesday, October 22, 1991, beginning at 10 a.m., in rooms 8236–8240 of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

The meeting will be open to any interested person who wishes to attend as an observer. FRA may schedule additional informal meetings to the extent that interest is expressed by other parties.

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

Walter C. Rockey, Jr.,

Executive Assistant to the Associate Administrator.

[FR Doc. 91–25146 Filed 10–17–91; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

49 CFR Parts 564 and 571

[Docket No. 85–15; Notice 10]

RIN 2127–AE07

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment; Replaceable Light Source Dimensional Information

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the lower beam headlighting requirements of Standard No. 108 by adding minimum photometric values at two zones and two test points above the horizontal. The purpose of this addition would be to maintain the ability of headlighting systems to illuminate overhead traffic signs. The notice also revises NHTSA's May 1989 proposal to ensure that replaceable light sources intended for replacement purposes, other than the HB Types presently incorporated, would have the dimensions and performance of the original replaceable light source. This notice would require the manufacturers of such light sources to file dimensional information with NHTSA in a public docket pursuant to a new regulation, proposed part 564, Replaceable Light Source Information. The part 564 replaceable light sources would have to be designed to meet certain performance requirements of paragraph S7.6 of Standard No. 108, and replaceable bulb headlamps equipped with part 564 bulbs would have to meet the requirements of paragraph S7.5 that presently apply to replaceable bulb headlighting systems. The intended benefit of the proposed changes is to afford manufacturers greater opportunities for design freedom and innovation, and to relieve them of the burden of petitioning for amendments to Standard No. 108 when new frontal lighting systems are developed.

DATES: Comment closing date for the proposal is December 17, 1991. The effective date of the final rule would be October 1, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA (202–366–5275).

SUPPLEMENTARY INFORMATION: On May 9, 1989, NHTSA published a notice of proposed rulemaking to amend the headlighting requirements of Standard No. 108 to make them more performance oriented (54 FR 20084). Under the first part of that notice, NHTSA proposed a roadway illumination system which could serve as a vehicle-based alternative to existing equipment-based headlighting systems. For the reasons announced in a final rule based on aspects of the proposal, published on March 26, 1991 (56 FR 12463), NHTSA has decided not to go forward with the proposal at the present time. Instead, it has decided to propose in this notice, minimum photometric values for certain lower beam test points and test zones above the horizontal where only photometric maxima are presently specified.

The second part of the notice proposed the establishment of a docket in which manufacturers of replaceable light sources would file information relating to the dimensions of any new light sources, and could thereafter proceed to manufacture and sell these light sources without the necessity of petitioning NHTSA for amendments to Standard No. 108 to allow them. This notice responds to concerns raised by the commenters by modifying the previous proposal.

Illumination of Overhead Signs.

An important aspect of the vehicle-based illumination performance proposal was the specific need to provide illumination for overhead signs. The present requirements of Standard No. 108 for headlighting photometry on the lower beam do not require any light above the horizontal (though imposing a maximum limit to prevent glare). Because of the trend towards retroreflective highway regulatory and

informational signs rather than self-illuminated ones, the absence of such a requirement in Standard No. 108 has caused concern to the Federal Highway Administration (FHWA), NHTSA's companion agency in DOT. Energy and maintenance costs for self-illuminated signs constitute such a large burden for the States that they are choosing to install retroreflective signs when they install new signs or refurbish old ones.

Given the desirability for drivers to have headlighting above the horizontal, the question is presented of the quantum of light that is required for motor vehicle safety. There are currently two existing efforts to ensure that there is continued illumination above the horizontal. The first effort is represented by the SAE Lighting Committee. The latest proposed revision of Recommended Practice J1383 Performance Requirements for Motor Vehicle Lighting (presently under final approval within the SAE) would establish two zones of minimum intensity above the horizontal. The first is located from 8L to 8R and H to 4U, with a minimum of 64 candela. The second is located from 4L to 4R and H to 2U, with a minimum of 135 candela. This proposed SAE revision is based upon recommendations by the CIE's Technical Committee on headlighting (TC 4.10) to the GTB, the European vehicle and lamp manufacturers' group of experts. These values offer an opportunity toward harmonization and are a simple means to assure that headlamps provide some illumination for overhead signs.

The second effort is represented in SAE Technical Paper 870238, "The Potential Impact of Automotive Headlight Changes on the Visibility of Reflectorized Highway Signs" (1987) by John Arens, an employee of FHWA. SAE 870238 states that the generally accepted distances for the detection and legibility of overhead signs on limited access roads, required to initiate proper motorist reactions, are 1200 and 900 feet respectively. Based upon this, and utilizing a 3.4 candela per meter per meter legend luminance as the minimally acceptable sign brightness, Arens determined the minimum intensity for two existing "maximum" points in the upper right quadrant for lower beam photometry. Arens concluded that these two minimum intensities, approximately equal to one-third of the existing maximum, should be required, rather than the implied zero that now exists. Thus, at test point 0.5U between 1R and 3R, a maximum of 2700 candela exists; Arens recommends a minimum of 1000 candela for that test point. At test point 1.5U between 1R and 5R a maximum of 1400 candela is specified; Arens believes the minimum candela that Standard No. 108 should specify for that test point ought to be 450.

Because the standard contains no minimum lighting specifications above the horizontal, substantial differences exist in headlamp designs that otherwise provide light in a manner that meets the photometric specifications of Standard No. 108 for test points at horizontal and below horizontal. Because of the greater prevalence of cyclists, and illuminated overhead signs, and a greater concern for glare than exists in the United States, traditionally headlamps originating outside the United States have been designed with a sharp cutoff of the beam that allows substantially less light from being projected or reflected upwards.

Applying contemporary headlamp designs to the values recommended by Arens, NHTSA believes that typical U.S. headlamps already provide illumination that essentially falls between the Arens minimum and the standard's maximum. On the other hand, elliptical lower beam headlamps, now being manufactured in Germany and Japan, have the capability of producing essentially no illumination above the horizontal. Data from one of these headlamps show a range of intensity from 93 to 125 candela at the point where Arens recommends 450. If future U.S. vehicle lighting technology should be influenced by such designs, the public can expect a deterioration in its present ability to read overhead signs that are not self-illuminated.

NHTSA wishes to have comments on the proposed additions to the photometric requirements. Given the fact that some existing headlamp designs might not meet the proposed minima, NHTSA is also proposing that the new test points not be applicable until the 1993 model year. Implementation of the proposed additional photometric requirements should not increase glare because current headlamp designs, except as mentioned above, already produce light intensities within the range that would exist after implementation.

In order to implement this proposal, changes would be required for Figures 15 and 17 of Standard No. 108, as well as Tables 1 and 2 of SAE J579 DEC84. Tables 1 and 2 as proposed to be modified would no longer be referenced in the text of Standard No. 108, but would comprise new Figures 27 and 28. As a result, Figure 26 would be revised to reference both new Figures.

Additional Types of Replaceable Light Sources

NHTSA's desire to make Standard No. 108 more performance oriented led it to the tentative conclusion that future designs of replaceable light sources should no longer be specified in Standard No. 108. To ensure that replaceable light sources manufactured for replacement are interchangeable with those used as original equipment, and that photometric performance equivalent to the original is provided, NHTSA proposed new part 564, Replaceable Bulb Dimensional Information. This would require manufacturers of replaceable bulbs, used as original equipment in the headlighting systems, to submit to the agency dimensional information as specified in the regulation, such as filament position dimensions and tolerances, dimensions pertaining to the filament capsule and its supports, and bulb base interchangeability dimensions and tolerances. The agency has established similar information dockets relative to tire rim combinations (Standard No. 109), and vehicle identification number (49 CFR part 565), and has found that they have worked well to date.

The proposal was generally supported as adequate for reducing the existing regulatory burden and for assuring that future light sources would meet the needs of vehicle manufacturers and their customers. Stanley Electric and Hella both commented that new light sources should be scrutinized by an international standards organization such as the IEC. Others stated their confidence in the ability of the SAE to provide that overview. As a practical matter, NHTSA expects the development of few future light sources with filaments. Since the trend in vehicle lighting designs is toward high intensity discharge technology, the need for additional light sources with filaments will diminish. Volvo wished to add non-filament aspects to the proposed part 564, but NHTSA views this request as premature, since the characteristics of these systems are only in the developmental stage.

Under the original proposal, dimensional information would be submitted not later than 30 days after a light source entered production. Updating would be required upon changes to the light source. The regulation would cover only filament-type replaceable light sources, as the agency has insufficient information about the characteristics of other types to include them.

Commenters suggested various modifications. GM, Ford, and GE brought to the agency's attention the fact that the NPRM had failed to include dual filament light sources within the scope of the dimensional reporting requirements. This was an oversight which has been corrected in the supplemental proposal. Ford also requested that an alternate method of specifying the filament location be permitted, using filament centers instead of a filament tolerance box. NHTSA concurs because this alternative method of specifying the filament location supports the agency's intent to ensure that replaceable light sources manufactured for replacement are interchangeable with their original equipment counterparts.

GM also recommended changes in section II, to accord with industry technology, *i.e.*, use of "bulb" instead of "filament capsule", and "bulb support" in place of "capsule support." NHTSA has not followed this recommendation because it finds a conflict between GM's terminology and that used by the SAE in its materials. For example, a "bulb" is the entire replaceable unit, not just the "capsule".

In developing the new proposed part 564, NHTSA has modified its terms to enhance fairness and enforceability. Under the new proposal, manufacturers would submit information before, and not after, a new light source enters production, specifically, 60 days in advance. The Administrator is required to review the submission promptly, and provide a response within 30 days. This will allow completion of the review process before manufacture begins, instead of after production has begun, and should result in less disruption of the manufacturing process should the submission be found unacceptable by NHTSA. After information has been accepted for filing, no changes in it would be permitted. Finally, the word "Information" in the title of the part and appendix A is not longer modified by the word "Dimension." Although most of the information required to be provided is dimensional in nature, the manufacturer would also be required to provide information relating to the electrical specifications and the marking/designation of the light source, and this is non-dimensional in nature.

Performance of Replaceable Light Sources Other Than Type HB

In developing the supplemental notice, NHTSA tentatively concluded that additional replaceable light sources ought not to be allowed, even if information relating to them met the requirements of part 564, unless the light sources met current performance requirements for the HB Types, and unless headlamps equipped with them performed with equivalence to those equipped with single and dual filament HB Type light sources. Thus, the supplemental notice departs from the original notice in proposing appropriate amendments to Standard No. 108 which, in effect, would incorporate part 564 by reference.

Specifically, after NHTSA had accepted information for filing in part 564, Standard No. 108 would require the light source to be designed to conform to that information, and to be tested in the same manner as the current HB Type replaceable light sources. The standard would also require that headlamps equipped with single and dual filament part 564 light sources meet the same performance requirements as headlamps equipped with single and dual filament HB Type light sources.

Because of the equivalence of performance that would be required of all replaceable light sources, NHTSA proposes to amend the definition of "standardized replaceable light source" to drop the word "standardized". and to amend it to substitute "replaceable light source". A "replaceable light source" would be one designed to conform to paragraph S7.6. Paragraph S7.6 would drop the word "Standardized" from its title and contain two groups of replaceable light sources: Those designed to conform to subparagraphs (a) through (e) (Types HB1 through HB5), and those designed to conform to new subparagraph (g) (i.e., in accordance with their dimensional and performance specifications on file in part 564). New subparagraphs (f) and (h) would contain certification and marking requirements appropriate for subparagraphs (a) through (e), and subparagraph (g) light sources respectively.

Current subparagraphs (f) through (i) contain testing requirements for the HB Types that appear adaptable for other kinds of replaceable light sources, and these would be amended as appropriate. These are proposed as new subparagraphs (i) through (k). Proposed new subparagraph (i) combines old subparagraphs (f) and (g) since subparagraph (f) was only one sentence long. Finally, old subparagraph (j) would become the final sentence to subparagraph (a); subparagraph (j) references Figure 3 and subparagraph (a) is the only place in S7.6 concerned with Figure 3.

Paragraph S7.5 Replaceable Bulb Headlamp System would also be amended where appropriate. By adding the word "replaceable" before "lights source" whenever it appears in S7.5, NHTSA means to ensure in the simplest manner possible that both groups of light sources under the umbrella definition of "replaceable light source" are included. The effect of the proposal would be to require that headlamps meet applicable photometrics regardless of whether the light source was designed to meet HB specifications or those on file in part 564. However, new dual filament bulbs would be restructed to headlamp systems providing photometrics of Figure 17 (Type HB2), and could not be used in systems providing the photometrics associated with systems using Type HB1 or Type HB5 photometrics. NHTSA asks for comments on this point.

For clarity's sake, the notice sets forth the complete text of both S7.5 and S7.6 as it would appear revised.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has preliminarily considered the economic impacts of this proposal and has made a tentative determination that it is not major within the meaning of E.O. 12291 nor significant under Department of Transportation policies and procedures. To the best of NHTSA's knowledge, only two headlamps are not currently designed to meet the proposed photometric values, these being of ellipical reflector design. Further, implementation of this proposal would affect the cost of that headlamp only minimally. Therefore, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. It is not anticipated that a rule based on the proposal would have a significant effect upon the environment. The design and composition of headlamps or light sources would not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact upon a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, headlamps, and light sources, those affected by the proposal, are generally not small businesses within the meaning

of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions would be significantly affected only if the price of new vehicles, headlamps, and light sources is more than minimally impacted. As noted above, the agency believes that substantially all current headlamps and light sources are designed to meed the proposed photometric requirements.

Executive Order 12612 (Federalism)

This proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act. The reporting and recordkeeping requirements associated with this proposal is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 Administration: National Highway Traffic Safety Administration; *Title:* Replaceable Light Source Dimensional Information; *Need for Information:* To provide an alternative to rulemaking for standardizing headlamp light source dimensions and performance. *Proposed Use of Information:* Use by manufacturers of replacement light sources for headlamps; *Frequency:* two per year; *Burden Estimate:* 24 hours; *Respondents:* two per year; FORMS: None; *Average Burden Hours Per Respondent:* 12. For further information contact: the Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SE, Washington, DC 202590 (202 (366-4735 or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503 (202) 395-7340.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

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. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

571.108 [Amended]

2. In § 571.108 Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, section S4, definition of "Replaceable bulb headlamp" would be amended by removing the word "standardized".

3. In section S4, the definition of "Standardized replaceable light source" would be removed and a new definition "Replaceable light source" would be added in alphabetical order to read:

"*Replaceable light source* means an assembly of a capsule, base, and terminals that is designed to conform to the requirements of paragraph S7.6 of this standard.

4. Paragraph S5.71 would be amended by adding the words "replaceable light source," between the words "lamp" and "reflective device".

5. Paragraph S7.2(d) would be added to read:

"(d) Unless stated otherwise, a tolerance of +/-¼ degree is permitted during photometric performance tests for any headlamp or beam contributor, and the test points 10U-90U shall be measured from the normally exposed surface of the lens face."

6. Paragraph S7.3.2(a)(3) would be removed.

7. Paragraph S7.3.2(e) would be added to read:

"(e) The photometric performance of Figure 28".

8. Paragraphs S7.3.3.(c), S7.3.5(c), and S7.36(c) would be added to read:

"(c) The photometric performance of Figure 27."

9. In paragraph S7.3.4, the reference to "(d)" would be revised to "(e)".

10. In paragraph S7.3.8(b) the last sentence would be removed.

11. Paragraph S7.3.8(g) would be added to read:

"(g) The photometric performance of Figure 28."

12. Paragraph S7.3.9(d) would be added to read:

"(d) The photometric performance of Figure 27."

13. Paragraph S7.4(a)(1)(iii) would be revised to read: "(iii) Figure 28."

14. Paragraph S7.4(a)(2)(ii) would be revised to read:

"(ii) Figure 27."

15. Paragraph S7.4(d) would be removed, and paragraphs S7.4 (e), (f), (g), (h), and (i) redesignated "(d)", "(e)", "(f)","(g)", and "(h)" respectively.

16. Paragraph S7.5 would be revised to read:

"S7.5 *Replaceable Bulb Headlamp System.* Each replaceable bulb headlamp system shall be designed to conform to the following requirements:

(a) The system shall provide only two lower beams and two upper beams and shall incorporate not more than two replaceable light sources in each headlamp.

(b) The photometrics as specified in paragraphs (c) through (e) of this section (depicted in Figure 26) using any replaceable light source of the type intended for use in such system.

(c) The test requirements of sections 4.1, 4.1.4, and performance requirements of section 5.1.4 of SAE J1383 APR85, using the photometric requirements specified in paragraphs (d) and (e) of this section.

(d) For a headlamp equipped with dual filament replaceable light sources, the following requirements apply:

(1) Headlamps designed to conform to the external aiming requirements of S7.7.5.1 shall have no mechanism that allows adjustment of an individual light source, or, if there are two light sources, independent adjustment of each reflector.

(2) The lower and upper beams of a headlamp system consisting of two lamps, each containing either one or two replaceable light sources, shall be provided as follows:

(i) The lower beam shall be provided in one of the following ways:

(A) By the outboard light source (or upper one if arranged vertically) designed to conform to:

(*1*) The lower beam requirements of Figure 27 if the light sources in the headlamp system are Type HB1 or Type HB5, or a combination thereof; or

(*2*) The lower beam requirements of Figure 17, if the light sources are Type HB2, or any dual filament replaceable light source other than Type HB1 and HB5;

(B) By both light sources in the headlamp, designed to conform to the lower beam requirements specified above.

(ii) The upper beam shall be provided in one of the following ways:

(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to:

(*1*) The upper beam requirements of Figure 27, if the light sources in the headlamp system are Type HB1 or Type HB5, or a combination thereof; or

(*2*) The upper beam requirements of Figure 17, if the light sources are Type HB2; or dual filament replaceable light sources other than Type HB1 and Type HB5; or

(B) By both light sources in the headlamp, designed to conform to the upper beam photometrics specified above.

(*3*) The lower and upper beams of a headlamp system consisting of four lamps, each containing a single replaceable light source, shall be provided as follows:

(i) The lower beam shall be provided by the outboard lamp (or the upper one if arranged vertically), designed to conform to:

(A) The lower beam requirements of Figure 27, if the light sources in the headlamp system are only Type HB1 or Type HB5, or a combination thereof; or

(B) The lower beam requirements of Figure 15, if the light sources are Type HB2, or dual filament replaceable light sources other than Type HB1 and Type HB5. The lens of each such headlamp shall be marked with the letter "L".

(ii) The upper beam shall be provided by the inboard lamp (or the lower one if arranged vertically), designed to conform to:

(A) The upper beam requirements of Figure 27, if the light sources in the headlamp system are Type HB1 or Type HB5, or a combination thereof; or

(B) The upper beam requirements of Figure 15, if the light sources are Type HB2, or dual filament replaceable light sources other than Type HB1 or Type HB5. The lens of each such headlamp shall be marked with the letter "U."

(e) The following requirements apply to a headlamp system equipped with any combination of replaceable light sources except those combinations specified in paragraph (d) of this section:

(1) Headlamps designed to conform to the external aim requirements of S7.7.5.1 shall have no mechanism that allows adjustment of an individual replaceable light source, or, if there are two replaceable light sources, independent adjustment of each reflector.

(2) The lower and upper beams of a headlamp system consisting of two lamps, each containing a combination of two replaceable light sources (other than those combinations specified in paragraph (d) of this section) shall be provided only as follows:

(i) The lower beam shall be provided in one of the following ways:

(A) By the outboard light source (or the uppermost if arranged vertically) designed to conform to the lower beam requirements of Figure 17; or

(B) By both replaceable light sources, designed to conform to the lower beam requirements of Figure 17.

(ii) The upper beam shall be provided in one of the following ways;

(A) By the inboard light source (or the lower one if arranged vertically) designed to conform to the upper beam requirements of Figure 17; or

(B) By both replaceable light sources, designed to conform to the upper beam requirements of Figure 17.

(3) The lower and upper beams of a headlamp system consisting of four lamps, using any combination of replaceable light sources except those combinations specified in paragraph (d) of this section, each lamp containing only a single replaceable light source, shall be provided only as follows:

(i) The lower beam shall be produced by the outboard lamp (or upper one if arranged vertically), designed to conform to the lower beam requirements of Figure 15. The lens of each such headlamp shall be permanently marked with the letter "L."

(ii) The upper beam shall be produced by the inboard lamp (or lower one if arranged vertically), designed to conform to the upper beam requirements of Figure 15. The lens of each such headlamp shall be marked with the letter "U."

(f) Each lens reflector unit manufactured as replacement equipment shall be designed to conform to the requirements of paragraphs (d) and (e) of this section when any replaceable light source appropriate for such unit is inserted in it.

(g) The lens of each replaceable bulb headlamp shall bear permanent marking in front of each replaceable light source with which it is equipped that states the HB Type, if the light source is designed to conform to paragraphs (a) through (e) of section S7.6, or the bulb marking/designation provided in compliance with section VIII of appendix A of part 564 of this chapter, if the light source is designed to conform to paragraph (g) of section S7.6. No marking need be provided if the only replaceable light source in the headlamp is Type HB1.

(h) The system shall be aimable in accordance with section S7.7.

(i) Each headlamp shall meet the requirements of sections S7.4(h) and (i), except that the sentence in paragraph (h) to verify sealing according to section S8.10 *Sealing* does not apply.

17. Paragraph S7.6 would be revised to read:

"S7.6 *Replaceable Light Sources.* Each replaceable light source shall be designed to conform to the following requirements:

(a) A Type HB1 replaceable light source shall be designed to conform to the dimensions specified in Figure 3 and shall incorporate a silicone O-ring. Its maximum power on the lower beam shall be 50 watts, and on the upper beam, 70 watts. Its luminous flux in lumens shall be 700 +/− 15% on the lower beam and 1200 +/− 15% on the upper beam. A general tolerance shall apply to Figure 3 as follows: +/− 0.004 in. (0.10 mm) to all linear dimensions and +/− degree 00 minutes to all angular dimensions except for referenced dimensions and unless otherwise specified.

(b) A Type HB2 replaceable light source shall be designed to conform to the dimensions specified in Figure 23. Its maximum power on the lower beam shall be 65 watts, and on the upper beam, 72 watts. Its luminous flux in lumens shall be 910 +/− 10% on the lower beam, and 1500 +/− 10% on the upper beam.

(c) A Type HB3 replaceable light source shall be designed to conform to

the dimensions specified in Figure 19. Its maximum power shall be 70 watts. Its luminous flux in lumens shall be 1700 +/− 12%.

(d) A Type HB4 replaceable light source shall be designed to conform to the dimensions specified in Figure 20. Its maximum power shall be 60 watts, and its luminous flux in lumens shall be 1000 +/− 15%.

(e) A Type HB5 replaceable light source shall be designed to conform to the dimensions specified in Figure 24. Its maximum power shall be 60 watts on the lower beam, and 70 watts on the upper beam. Its luminous flux in lumens shall be 1000 +/− 15% on the lower beam, and 1350 +/− 15% on the upper beam.

(f) Each replaceable light source designed to conform to paragraphs (a) through (e) of this section and manufactured on or after December 1, 1989, shall be marked with the symbol DOT and with a name or trademark in accordance with S7.2. In addition, the base of each such light source shall be marked with its HB Type designation.

(g) Any other replaceable light source shall be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter.

(h) Each replaceable light source designed to conform to paragraph (g) of this section, shall be marked with the bulb marking designation specified for such light source in compliance with section VIII of appendix A of part 564 of this chapter, with the symbol DOT, and with a name or trademark in accordance with S7.2.

(i) The filament of a replaceable light source shall be seasoned before measurement of maximum power and luminous flux. Such measurement shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be design voltage, 12.8v. The measurement of luminous flux shall be in accordance with the Illuminating Engineering Society of North America, LM–45; IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps (April 1980), shall be made with the black cap installed on Type HB1, Type HB2, Type HB4, and Type HB5, and on any other replaceable light source so designed, and shall be made with the electrical conductor and light source base shrouded with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for the Types HB3 and HB4 shall be with the base covered with a white cover shown in Figures 19–1 and 20–1. The white covers are used to eliminate the likelihood of incorrect lumen measurement that will occur should the reflectance of the light source base and electrical connector be low.

(j) The capsule, lead wires and/or terminals, and seal on each Type HB1, Type HB3, Type HB4, and Type HB5 light source, and on any other replaceable light source which uses a seal, shall be installed in a pressure chamber as shown in Figure 25 so as to provide an airtight seal. The diameter of the aperture in Figure 25 on a replaceable light source designed to conform to paragraph (e) of this section shall be that figure furnished for such light source in compliance with section IV.8 of appendix A of part 564 of this chapter. An airtight seal exists when no air bubbles appear on the low pressure (connector) side after the light source has been immersed in water for one minute while inserted in a cylindrical aperture specified for the light source, and subjected to an air pressure of 70kPa (10 P.S.I.G.) on the glass capsule side.

(k) After the force deflection test conducted in accordance with S9, the permanent deflection of the glass envelope shall not exceed 0.005 in. (0.13 mm) in the direction of the applied force.

18. Figures 15, 17, and 26 would be revised as indicated below.

FIGURE 15.—PHOTOMETRIC TEST POINT VALUES

Test points (degrees)	cd max.	cd min.
Upper Beam:		
2U–V		1,500
1U–3L and 3R		5,000
H–V	70,000	40,000
H–3L and 3R		15,000

FIGURE 15.—PHOTOMETRIC TEST POINT VALUES — Continued

Test points (degrees)	cd max.	cd min.
H–6L and 6R		5,000
H–9L and 9R		3,000
H–12L and 12R		1,500
1–½D–V		5,000
1–½D–9L and 9R		2,000
2–½D–V		2,500
2–½D–12L and 12R		1,000
4D–V	5,000	
Lower Beam:		
10U–90U	125	
{8L to 8R, H to 4U		64}
{4L to 4R, H to 2U		135}
1U–1–½L to L	700	
½U1–½L to L	1,000	
½D–1–½L to L	3,000	
1–½U–1R to R	1,400	
[1–½U–1R to 5R]		[450]
½U–1R to 3R	2,700	[1,000]
½D–1–½R	20,000	10,000
1D–6L		1,000
1–½D–2R		15,000
1–½D–9L and 9R		1,000
2D–15L and 15R		850
4D–4R	12,500	
4D–V	7,000	
H–V	5,000	

FIGURE 17.—PHOTOMETRIC TEST POINT VALUES

Test points (degrees)	cd max.	cd min.
Upper Beam:		
2U–V		1,500
1U–3L and 3R		5,000
H–V	75,000	40,000
H–3L and 3R		15,000
H–6L and 6R		5,000
H–9L and 9R		3,000
H–12L and 12R		1,500
1–½D–V		5,000
1–½D–9L and 9R		2,000
2–½D–V		2,500
2–½D–12L and 12R		1,000
4D–V	12,000	
Lower Beam:		
10U–90U	125	
{8L to 8R, H to 4U		64}
{4L to 4R, H to 2U		135}
1U–1–½L to L	700	
½U–1–½L to L	1,000	
½D–1–½L to L	3,000	
1–½U–1R to R	1,400	
[1–½U–1R to 5R]		[450]
½U–1R to 3R	2,700	[1,000]
½D–1–½R	20,000	10,000
1D–6L		1,000
1–½D–2R		15,000
1–½D–9L and 9R		1,000
2D–15L and 15R		850
4D–4R	12,500	

FIGURE 26.—TABLE OF PHOTOMETRIC REQUIREMENTS FOR 1. FOUR HEADLAMP SYSTEMS (4); 2. TWO HEADLAMP SYSTEMS (2)

Light Source / Type	HB1	HB2	HB3	HB4	HB5
HB1	Fig. 27 (2 or 4)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 27 (2 or 4)
HB2	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)
HB3	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)

FIGURE 26.—TABLE OF PHOTOMETRIC REQUIREMENTS FOR 1. FOUR HEADLAMP SYSTEMS (4); 2. TWO HEADLAMP SYSTEMS (2)—Continued

Light Source / Type	HB1	HB2	HB3	HB4	HB5
HB4	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)
HB5	Fig. 27 (2 or 4)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 15(4) Fig. 17(2)	Fig. 27 (2 or 4)

19. Figures 27 and 28 would be added as indicated below.

FIGURE 27.—PHOTOMETRIC TEST POINT VALUES

Upper Beam			Lower Beam		
Test points (degrees)	cd. max.	cd. min.	Test points (degrees)	cd. max.	cd. min.
2U-V		1,000	10U-90U	125	
			{8L to 8R, H to 4U}		{64}
			{4L to 4R, H to 2U}		{135}
1U-3L and 3R		2,000	1U-1-1/2L to L	700	
H-V	75,000	20,000	1/2U-1-1/2L to L	1,000	
			1/2D-1-1/2L to L	2,500	
			1-1/2U-1R to R	1,400	
H-3L and 3R		10,000	[1-1/2U-1R to 5R]		[450]
H-6L and 6R		3,250	1/2U-1R to 3R	2,700	[1000]
H-9L and 9R		1,500	1/2D-1-1/2R	20,000	8,000
H-12L and 12R		750	1D-6L		750
			1-1/2D-2R		15,000
1-1/2D-V		5,000	1-1/2D-9L and 9R		750
1-1/2D-9L and 9R		1,500	2D-15L and 15R		700
2-1/2D-V		2,500	4D-4R	12,500	
2-1/2D-12L and 12R		750			
4D-V	5,000				

FIGURE 28.—Photometric Test Point Values

Upper Beam					Lower Beam		
Headlamp type	1A1, 1C1, 1G1		2A1, 2C1, 2G1		Headlamp type	2A1, 2C1, 2G1	
Test points (degrees)	cd. max.	cd. min.	cd. max	cd. min.	Test points (degrees)	cd. max.	cd. min.
2U-V		750		750	10U-90U		
					{8L to 8R, H to 4U}		{64}
					{4L to 4R, H to 2U}D125		{135}
1U-3L and 3R		3,000		2,000	1U-11/2L to L	700	
H-V	60,000	18,000	15,000	7,000	1/2U-1-1/2L to L	1,000	
					1/2D-1-1/2L to L		2,500
					1-1/2U-1R to R		
H-3L and 3R		12,000		3,000	[1-1/2U-1R to 5R]		[450]
H-6L and 6R		3,000		2,000	1/2U-1R to 3R	2,700	[1,000]
H-9L and 9R		2,000		1,000	1/2D-1-1/2R	20,000	8,000
H-12L and 12R		750		750	1D-6L		750
					1-1/2D-2R		15,000
1-1/2D-V		3,000		2,000	1-1/2D-9L and 9R		750
1-1/2D-9L and 9R		1,250		750	2D-15L and 15R		700
2-1/2D-V		1,500		1,000	4D-4R	12,500	
2-1/2D-12L and 12R		600		400			
4D-V	5,000		2,500				

20. A new part 564 would be added to read as follows:

PART 564—REPLACEABLE LIGHT SOURCE INFORMATION

Sec.
564.1 Scope
564.2 Purpose.
564.3 Applicability.
564.4 Definitions.
564.5 Reporting requirements.

Appendix A—Information to be Submitted for Replaceable Light Sources

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 564.1 Scope.

This part requires manufacturers of original equipment replaceable light sources used in motor vehicle headlighting systems to submit dimensional, electrical specification, and marking/designation information as specified in this part.

§ 564.2 Purpose.

The purpose of this part is to ensure the availability to replacement light source manufacturers of the manufacturing specifications of original equipment light sources and thus ensure also that replacement light sources are interchangeable with original equipment light sources and provide equivalent performance, and that redesigned or newly developed light sources are designated as distinct and different and noninterchangeable with previously existing light sources.

§ 564.3 Applicability.

This part applies to manufacturers of replaceable light sources that are used as original equipment in motor vehicle headlighting systems.

§ 564.4 Definitions.

All terms defined in the Act and the regulations and standards issued under its authority are used as defined therein.

§ 564.5 Reporting requirements.

(a) Each manufacturer of a replaceable light source used as original equipment in a headlighting system on a motor vehicle, other than a replaceable light source meeting the requirements of paragraphs (a) through (e) of section S7.6 of § 571.108 of the chapter shall furnish the information specified in appendix A of this part to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Attn: Replaceable Light Source Docket.

(b) The manufacturer shall submit the information specified in appendix A of this part not later than 60 days before it intends to begin the manufacture of the replaceable light source to which the information applies. Each submission shall consist of one original set of information and 10 legible reproduced copies, all of 8½ by 11-inch paper.

(c) The Administrator shall promptly review each submission, and inform the manufacturer not later than 30 days after its receipt whether the submission has been accepted. The Administrator shall not accept any submission that does not contain all the information specified in appendix A of this part, or if the information indicates that it is interchangeable with any light source for which information has been filed, or with any standard replaceable light source specified in § 571.108 of this chapter.

(d) Information submitted under this section is made available for public inspection not later than the date on which a vehicle equipped with a new or revised replaceable light source is offered for sale.

Appendix A—Information to be Submitted for Replaceable Light Sources

I. Filament Position Dimensions and Tolerance using either Direct Filament Dimensions or the Three Dimensional Filament Tolerance Box A. Lower beam filament dimensions or filament tolerance box dimensions and relation of these to the bulb base reference plane and centerline

1. Axial location of the filament centerline or the filament tolerance box relative to the bulb base reference plane
2. Vertical location of the filament centerline or the filament tolerance box relative to the bulb base centerline
3. Transverse location of the filament centerline or the filament tolerance box relative to the bulb base centerline
4. Filament tolerance box dimensions, if used

B. Upper beam filament dimensions or the filament tolerance box dimensions, and relation of these to the bulb base reference plane and centerline

1. Axial location of the filament centerline or the filament tolerance box relative to the bulb base reference plane
2. Vertical location of the filament centerline or the filament tolerance box relative to the bulb base centerline
3. Transverse location of the filament centerline or the filament tolerance box relative to the bulb base centerline
4. Filament tolerance box dimensions, if used

C. If the replaceable light source has both a lower beam and an upper beam filament, the dimensional relationship between the two filament centerlines or the filament tolerance boxes may be provided instead of referencing the upper beam filament centerline or filament tolerance box to the bulb base centerline or reference plane

II. Dimensions Pertaining to Filament Capsule and Capsule Supports

A. Maximum length from bulb base reference plane to tip of filament capsule
B. Maximum radial distance from bulb base centerline to periphery of filament capsule and/or supports
C. Location of black cap relative to low beam filament centerline, filament tolerance box or other to-be-specified reference
D. Size, length, shape, or other pertinent features and dimensions for providing undistorted walls for the filament capsule

III. Bulb Base Interchangeability Dimensions and Tolerance

A. Angular locations, diameters, key/keyway sizes, and any other interchangeability dimensions for indexing the bulb base in the bulb holder
B. Diameter, width, depth, and surface finish of seal groove, surface, or other pertinent sealing features
C. Diameter of the bulb base at the interface of the base and its perpendicular reference surface
D. Dimensions of features related to retention of the bulb base in the bulb holder such as tabs, keys, keyways, surfaces, etc.

IV. Bulb Holder Interchangeability Dimensions and Tolerance

A. Mating angular locations, diameters, key/keyway sizes, and any other interchangeability dimensions for indexing the bulb base in the bulb holder
B. Mating diameter, width, depth, and surface finish of seal groove, surface, or other pertinent sealing features
C. Mating diameter of the bulb holder at the interface of the bulb base aperture and its perpendicular reference surface
D. Mating dimensions of features related to retention of the bulb base in the bulb holder such as tabs, keys, keyways, surfaces, and etc.

V. Wiring Harness Connector to Bulb Base Interchangeability Dimensions and Tolerances

A. Maximum depth of harness connector insertion into bulb base
B. Location of electrical pins in bulb base
C. Dimensions of electrical pins in bulb base—length, diameter, width, thickness and etc.
D. Fit of harness connector into bulb base providing all necessary dimensions, key/keyway controls, and dimensions, tapers and etc.
F. Dimensions and location of locking features for wiring harness connector to bulb base
G. Identification of upper beam, lower beam, and common terminals

VI. Seal Specifications (if replaceable light source is intended to be of a sealed base design)

A. Type
B. Material
C. Dimensions

VII. Electrical Specifications For Each Filament at 12.8 volts

A. Maximum power (in watts)
B. Luminous Flux with tolerance (in lumens) with black cap if so equipped, measured in accordance with the document: Illuminating Engineering Society of North American, LM-45; *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980)

VIII. Bulb Markings/Designation—ANSI number, ECE identifier, Manufacturer's part number, individually or in any combination

IX. All Other Dimensions or Performance Specifications Necessary for Interchangeability Purposes Not Listed Above

Issued on: October 9, 1991.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 91-24839 Filed 10-17-91; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 56, No. 202
Friday, October 18, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Cancellation of Public Meeting

The October 21, 1991 meeting, 1:30–3 p.m., of the Committee on Rulemaking of the Administrative Conference, notice of which appeared in the **Federal Register**, Thurs., 9/19/91, Vol. 56, No. 182, page 47446, is now cancelled.

Dated: October 10, 1991.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 91–25116 Filed 10–17–91; 8:45 am]

BILLING CODE 6710–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Alaska Region; Legal Notice of Appealable Decisions

AGENCY: USDA, Forest Service.

ACTION: Notice.

SUMMARY: In accordance with 36 CFR part 217, Deciding Officers in the Alaska Region will publish notice of decisions subject to administrative appeal in the legal notice section of the newspapers referenced in the Supplementary Information Section of this notice. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive Notice of Decisions that are subject to Administrative Appeal. Newspaper publication of Notices of Decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing legal Notices of Decision subject to Appeal under 36 CFR part 217 shall be effective on October 31, 1991.

FOR FURTHER INFORMATION CONTACT: Thomas J. Sheehy, Regional Appeals Coordinator, Alaska Region, USDA, Forest Service, PP&B, P.O. Box 21628, Juneau, Alaska 99802, Area Code 907–586–8887.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Alaska Region will give legal Notice of Decisions subject to appeal under 36 CFR part 217 as set forth in the **Federal Register**, Vol. 56, No. 80, page 19080, April 25, 1991.

Dated: October 8, 1991.

Michael A. Barton,

Regional Forester

[FR Doc. 91–25117 Filed 10–17–91; 8:45 am]

BILLING CODE 3410–11–M

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming; Legal Notice of Appealable Decisions

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Rocky Mountain Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice section of the newspapers listed in the SUPPLEMENTARY INFORMATION section of this notice. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36 CFR part 217 shall begin April 5, 1990.

FOR FURTHER INFORMATION CONTACT: John P. Halligan, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, 11177 W. 8th Ave., Box 25127, Lakewood, Colorado 80225, Area Code 303–236–9430.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Rocky Mountain Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. As provided in 36 CFR 217.5(d), the timeframe for appeal shall be based on the date of publication of a notice of decision in the primary newspaper.

Decisions by the Regional Forester

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published in the Rocky Mountain News, published daily in Denver, Denver County, Colorado. Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in *The Rapid City Journal*, published daily in Rapid City, Pennington County, South Dakota. For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: Coloradoan, published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: Greeley Tribune, published daily in Greeley, Weld County, Colorado.

Boulder District: Boulder Daily Camera, published daily in Boulder, Boulder County, Colorado.

Clear Creek District: Clear Creek Courant, published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: Sulphur Sky High News, published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Collbran and Grand Junction Districts: Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.
Paonia District: Delta County Independent, published weekly in Delta, Delta County, Colorado.
Cebolla and Taylor River Districts: Gunnison Country Times, published weekly in Gunnison, Gunnison County, Colorado.
Norwood District: Telluride Times-Journal, published weekly in Telluride, San Miguel County, Colorado.
Ouray District: Montrose Daily Press, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.
Comanche District: Plainsman Herald, published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the La Junta Tribune Democrat, published daily in La Junta, Otero County, Colorado, and in the Ark Valley Journal, published weekly in La Junta, Otero County, Colorado.
Cimarron District: Tri-State News, published weekly in Elkhart, Morton County, Kansas.
South Platte District: Daily News Press, published daily in Castle Rock, Douglas County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the High Timber Times, published weekly in Conifer, Jefferson County, Colorado, and in the Fairplay Flume, published weekly in Fairplay, Park County, Colorado.
Leadville District: Herald Democrat, published weekly in Leadville, Lake County, Colorado.
Salida District: The Mountain Mail, published daily in Salida, Chaffee County, Colorado.
South Park District: Fairplay Flume, published weekly in Fairplay, Park County, Colorado.
Pikes Peak District: Gazette Telegraph, published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decision

Bears Ears District: Northwest Colorado Daily Press, published daily in Craig, Moffat County, Colorado. In addition, notice of decisions by the District Ranger will also be published in the Hayden Valley Press, published weekly in Hayden, Routt County, Colorado, and in the Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.
Yampa and Hahns Peak Districts: Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.
Middle Park District: Middle Park Times, published weekly in Kremmling, Grand County, Colorado.
North Park District: Jackson County Star, published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Friday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: Aspen Times, published weekly in Aspen, Pitkin County, Colorado.
Blanco District: Meeker Herald, published weekly in Meeker, Rio Blanco County, Colorado.
Dillon District: Summit Sentinel, published twice weekly in Frisco, Summit County, Colorado.
Eagle District: Eagle Valley Enterprise, published weekly in Eagle, Eagle County, Colorado.
Holy Cross District: Vail Trail, published weekly in Minturn, Eagle County, Colorado.
Rifle District: Rifle Telegram, published weekly in Rifle, Garfield County, Colorado.
Sopris District: Valley Journal, published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.
The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District: The North Platte Telegraph, published daily in North Platte, Lincoln County, Nebraska.
Samuel R. McKelvie National Forest: The Valentine Newspaper, published weekly in Valentine, Cherry County, Nebraska.
Fall River and Wall Districts: The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.
Pine Ridge District: The Chadron Record, published weekly in Chadron, Dawes County, Nebraska.

Black Hills National Forest, South Dakota and eastern Wyoming

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below).

District Ranger Decisions

Tongue District: Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: Buffalo Bulletin, published weekly in Buffalo, Johnson County, Wyoming.
Medicine Wheel District: Lovell Chronicle, published weekly in in Lovell, Big Horn County, Wyoming.
Tensleep District: Northern Wyoming Daily News, published daily in Worland, Washakie County, Wyoming.
Peintrock District: Greybull Standard, published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.
Douglas District: Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.
Brush Creek and Hayden Districts: Rawlins Daily Times, published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Forest Supervisor Decisions

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: Powell Tribune, published twice weekly in Powell, Park County, Wyoming.
Wapiti and Greybull Districts: Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.
Wind River District: The Dubois Frontier, published weekly in Dubois, Teton County, Wyoming.
Lander District: Wyoming State Journal, published twice weekly in Lander, Fremont County, Wyoming.

Dated: October 11, 1991.

Gary E. Cargill,

Regional Forester.

[FR Doc. 91–25118 Filed 10–17–91; 8:45 am]

BILLING CODE 3410–11–M

Coyote Hollow Timber Sale Project, Dixie National Forest, Garfield County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to harvest timber in the Coyote Hollow area of the Escalante Ranger District, Dixie National Forest. The area is approximately 18 miles northwest of Escalante, Utah.

DATES: The Forest Service has received public comments concerning this project on the following occasions: May 13, 1991 (scoping letter) and August 28, 1991 (public meeting/field trip). All comments received from previous scoping efforts will be incorporated into the analysis process. Additional written comments to be considered in the Draft EIS (DEIS) should be submitted on or before November 18, 1991.

ADDRESSES: Submit written comments to: District Ranger, Escalante Ranger District, Dixie National Forest, P.O. Box 246, Escalante, UT 84726.

FOR ADDITIONAL INFORMATION: Direct questions about the proposed action and EIS to David Keefe, Interdisciplinary Team Leader, Escalante Ranger District, P.O. Box 246, Escalante, UT 84726, phone (801)826–4221.

SUPPLEMENTARY INFORMATION: The proposed project area encompasses approximately 3,888 acres on National Forest System Lands. The area is characterized by stands of aspen, Englemann spruce and subalpine fir bordering Coyote Hollow.

Most of the area was logged in the mid 1960's. Present use of the area includes permitted cattle, fuelwood and Christmas tree gathering, hunting, off road vehicle traveling, and snowmobiling. The analysis area includes land designation under the Dixie National Forest Land and Resource Management Plan as; Roaded Natural Recreation (2B); Wildlife Habitat MIS Species (4B); and Wood Production and Utilization (7A).

The proposed action is to harvest stands of aspen and Englemann spruce/subalpine fir using both even and uneven aged management practices. The objectives are to increase size class diversity, growth and yield, forest health, and stand and species diversity.

Preliminary issues that have been identified through scoping to date include project effects on: Visual quality in the travel corridor, threatened and endangered species, economic efficiency of the sale, impacts to the local economy, old growth, bit game forage/cover ratios, MIS habitat, wildlife impacts from increased road access, forest health, growth and yield, size class diversity, maintenance of aspen stands, and regeneration of spruce.

A reasonable range of alternatives will be considered. One of these will include the "no action" alternative in which the proposed action will not be implemented, but current management activities would continue (recreation, cattle grazing, fuelwood gathering, etc.).

The EIS plan will tier to the Dixie National Forest Land Resource Management Plan (DNF–LRMP) FEIS (1986) which has specified Forest Plan goals, objectives, desired future condition, management area direction, and standards and guidelines for this area.

As lead agency, the Forest Service will analyze and document direct, indirect, and cumulative environmental effects of a range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest is the responsible official.

The comment period on the drart EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the proposed action participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may discuss the adequacy of the statement or the merits of the alternatives discussed (see CEQ Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS. *City of Angoon* v. *Hodel*, 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). This is to ensure that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final EIS.

The DEIS is expected to be available for review by November 1991. The Record of Decision and FEIS is expected to be available by March 1992.

Dated: October 10, 1991.

Hugh C. Thompson,

Forest Supervisor, Dixie National Forest.

[FR Doc. 91–25063 Filed 10–17–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology.

Title: Manufacturing Technology Centers.

Form Number: N/A.

Type of Request: Reinstatement of previously approved collection.

Burden: 20 respondents; 800 reporting hours; average response time is 40 hours.

Needs and Uses: In accordance with the provisions of the Omnibus Trade and Competitiveness Act of 1988, 15 U.S.C. 278k, the National Institute of Standards and Technology seeks to announce the availability of funds, announce a public briefing for potential applicants, and request proposals for up to three new Manufacturing Technology Centers. The purpose of the information collection is to secure sufficient information from proposers to make it possible for the National Institute of Standards and Technology to determine applicant eligibility and select awardees.

Affected Public: Non-profit institutions.

Frequency: One-time response.

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 DOC Clearance Officer, Edward Michals, (202) 377-3271, 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 3235, New Executive Office Building, Washington, DC 20503.

Dated: October 15, 1991.

Edward Michals,

Department Clearance Officer, Office of Management and Organizations.

[FR Doc. 91-25187 Filed 10-17-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 1992.

Antidumping duty proceedings and firms	Periods to be reviewed
Canada	
Replacement Parts for Self-Propelled Bituminous Paving Equipment A-122-057	
Allatt Paving Equipment	9/1/90-8/31/91
Hong Kong	
Sweaters Wholly or in Chief Weight of Man-Made Fiber a-582-802	
Afasia Knitting Factory (HK), Ltd	4/27/90-8/31/91
Apace Knitting Factory	
Bond Manufacturing Company, Ltd	
Chung Cheung Knitting Factory	
Comitex Knitters, Ltd	
Esquel Enterprises, Ltd	
Everest Knitwear, Ltd	
Fang Brothers Knitting, Ltd	
Fortuna Knits	
Gee Cheung Knitting	
Great Wind	
Greenwood Knitters	
Hayward Knitters	
Just Fashions International	
Ken Shing Knitting Factory	
Kent Phone	
King A Knitting Facting	
Ko Tang Knitting Factory	
Lamagwa	
Liaoning Knitwear	
Maurice Knitters	
Peninsula Knitters, Ltd	
Shui Ling Industries Co., Ltd	
Simee Knitting Factory	
Sun Hing Knitting Factory, Ltd	
Tai Wah Garment & Knitting Factory	
Three Stars Knitting Factory	
Union Knitting Factory Co., Ltd	
Wai Tai Knitwear	
Wing Yick Knitting Factory	
Wiseknit Factory	
Italy	
Pads for Woodwind Instrument Keys A-475-017	
Pads Manufacture	9/1/90-8/31/91
Korea	
Sweaters Wholly or in Chief Weight of Man-Made Fiber A-580-806	
Baik Yang Co., Ltd	4/27/90-8/31/91
Bangil Industries Ltd	
Boun Kyung	
Bum Yang Apparel	
Chai-Knit Trading Co., Ltd	
Chang Jae	
Cheon Woo Express	
Chin Ji Industries	
Chongju Textiles Co., Ltd	
Choongbang Co., Ltd	
Chun Ji Ind. Co., Ltd	
Chunji Sanup Inc.	
Dae Kyung Industries	
Dae Yu Industries	
Daelim	
Daewoo Corporation	
Daishin Trading Co., Ltd	
Do Sung Textile Co., Ltd	
Dong Kwang Corporation	
Dong Woo Co., Ltd	
Dong Woo Silk Co., Ltd	
Doo Seung Textile Co., Ltd	
Doo San Ind. Co., Ltd	
Full Bright Ind. Co., Ltd	
Goo San Trading	
Ha Yang Knitting Factory	

Antidumping duty proceedings and firms	Periods to be reviewed
Hanil Habsum Sumryu, Inc	
Hanil Synthetic Fiber Ind. Co., Ltd	
Hanjoo Shpg. Intl	
Hanjoo Corporation	
Hanlim	
Hoe Jun Knit Goods Co., Ltd	
Hwa Jin Apparel	
Hwa Man Industries	
Hyop Sung	
Hyop Woon Enterprise	
Jo Woo	
Jung Wong	
Jung Woo Co., Ltd	
Kee Ryung Ind. Co., Ltd	
Kolon Sangsa Inc	
Kook Industries	
Kuk Rim	
Kunja Ind. Co., Ltd	
Ryu Keung Industrial Co., Ltd	
Ryu Kyung	
Sam Han Sytheticfiber Co., Ltd	
Sam Jin Industries	
Sam Jing Industries	
Samdo Muelsan Inc	
Samsung Muelsan, Inc	
Sangjin Muelsan, Inc	
Se Dong Co., Ltd	
Shen Heung Textile	
Shin Chang Knitting	
Shinwon Tong-Sang Co., Ltd	
Suh Cheon Company, Ltd	
Sung Hwa Garment	
Sunny Sangsa Inc	
Tae Kwang Industrial Co., Ltd	
Uksung Co., Ltd	
Wahjin	
Woorin Trading	
Yak Jin Trading Corporation	
Ye In	
Yoo Chang Enterprise	
Young Woo & Co., Ltd	
Yurim Company, Ltd	
Yuwon Trading	
Taiwan	
Sweaters Wholly or in Chief Weight of Man-Made Fiber A-583-808	
Bay Flower Knitting Co., Ltd	4/27/90-8/31/91
Bonanaza Industries Co., Ltd	
Chen & Yu Corporation	
Chen Hwa Knitting	
Chailie International	
Chin Shing Knitting	
Chun Te Enterprises	
Chung Ling Co., Ltd	
Chung Shing Textiles	
Chung Tai Industries Co., Ltd	
Chwelco, Ltd	
Danzas	
Diing Luh Yuh Enterprises	
Finery Garments Manufacturing Co., Ltd	
Hsing Tai Knitting	
Hualey Knitwear	
Jau Perng Knitting	
Jiing Sheng Knitting	
Keelung Clothing Co., Ltd	
Maco Knitting	
Modern Knitting Mills	
New Northern Knitting Co., Ltd	
Oriental Knitting Co., Ltd	
Taih Yung Enterprise Co., Ltd	
The Workshop Industrial Co., Ltd	
Union Culling Knits	
Yuan Hwei Ind	
Yung Lien Garments	
Countervailing Duty Proceedings	
Argentina	
Certain Welded Carbon Steel Pipe and Tube Products C-357-801	1/1/90-12/31/90
New Zealand	
Lamb Meat C-614-503	4/1/90-3/31/91

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) and § 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c) (1989).

Dated: October 10, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-25188 Filed 10-17-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Killer Whales; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Marine Fisheries Service (NMFS) will hold a public meeting to hear comments on issues raised about the capture, care and maintenance of killer whales for purposes of public display.

DATES: The meeting will be held on Friday, November 22, 1991, beginning at 9 a.m. Written comments received by December 1, 1991 will be made part of the record of the meeting.

ADDRESSES: Written comments should be addressed to the INFORMATION CONTACT listed below. The meeting will be held in the Lobby Conference Room, Silver Spring Metro Center #1, 1335 East-West Highway, Silver Spring, Maryland 20910.

For more information contact Ann D. Terbush, Chief, Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway (SSMC#1), Silver Spring, Maryland 20910 (301/427-2289).

Dated: October 10, 1991.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 91-25091 Filed 10-17-91; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council (Council) has scheduled the following committee and technical team meetings:

The Individual Fishing Quota Technical Implementation Team (IFQ Technical Implementation Team) will meet October 15-17, 1991, at the National Marine Fisheries Service, Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, room 2079, Seattle, WA. On October 15 the IFQ Technical Implementation Team will begin its meeting at 1 p.m., to discuss the details of implementing, monitoring and enforcing the Council's preferred alternative for an IFQ system for the sablefish and halibut fisheries off Alaska.

A recently appointed Group of Industry Members (Industry Group) will meet October 17-18 and November 4-5, 1991. On October 17 the Industry Group will begin its meeting at 3 p.m., at the same location above, and discuss the same agenda item above, as the IFQ Technical Implementation Team.

On November 4-5 the Industry Group will meet in the Federal Building, Bureau of Indian Affairs Conference Room 9109 Mendenhall Road, Juneau, AK. On November 4 the Industry Group will begin its meeting at 8 a.m. No agenda has been set yet for this meeting.

The Gulf of Alaska and Bering Sea/Aleutian Island Groundfish Fishery Management Plans' Teams (GOA/BSA Groundfish Plan teams) will meet on November 12-15, 1991, at the same location, above, as the IFQ Technical Implementation Team. On November 12 the GOA/BSA Groundfish Teams will begin meeting at 1 p.m., to review the results of recent surveys and to prepare final stock assessment and fishery evaluation documents. The Teams also will develop recommendations for the 1992 specifications and apportionments

for the groundfish species under the Council's jurisdiction.

For more information, contact Chris Oliver, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: October 11, 1991.

David S. Crestin,

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

[FR Doc. 91-25113 Filed 10-17-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 18, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 16 and 23, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 40872 and 41833) of proposed additions to the procurement list. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Eraser, Mechanical Pencil, Refill—7510-01-318-8641, 7510-01-332-8794.

Services

Janitorial/Custodial, North Hills USARC, 9225 Peebles Road, Allison Park, Pennsylvania.

Janitorial/Custodial, COL Harold Steele USARC, 6482 Aurelia Street, Pittsburgh, Pennsylvania.

Janitorial/Custodial, U.S. Army Reserve Center, 950 Saw Mill Run Boulevard, Pittsburgh, Pennsylvania.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91-25170 Filed 10-17-91; 8:45 am]

BILLING CODE 6820-23-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 18, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodities and services to the procurement list:

Commodities

Case, Spectacle—6540-01-188-6023.

Envelope Case, Map and Photograph—8460-01-113-7575

Services

Grounds Maintenance, The Kennedy Center, Washington, DC.

Janitorial/Custodial, Federal Building, First & Water Streets, Alpena, Michigan.

Janitorial/Grounds Maintenance, Federal Aviation Administration, Air Traffic Control Tower and Automated Flight Service Station, Islip, New York.

Janitorial/Grounds Maintenance, Federal Aviation Administration, Air Traffic Control Tower, Framingdale, New York.

Beverly L. Milkman

Executive Director.

[FR Doc. 91-25171 Filed 10-17-91; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Rule Amendment Relating to Give-Up Charges and Payment of Floor Brokerage

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule amendment.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted a proposed rule amendment to the Commodity Futures Trading Commission for its review. The purpose of the rule amendment is to establish the CME's policy on the payment of brokerage to floor brokers executing give-up trades.

Acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Trading and Markets with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of the proposed rule amendment is in the public interest and will assist the Commission in considering the views of interested persons. Accordingly, the Division, on behalf of the Commission, is publishing the proposed rule amendment for public comment.

DATES: Comments must be received on or before November 18, 1991.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Associate Director, or Christopher K. Bowen, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: By letter dated August 26, 1991, the CME submitted a proposed amendment to Exchange Rule 851 under section 5a(12) of the Commodity Exchange Act ("Act"). Currently, under Exchange Rule 851, when a clearing member transmits an order which is to be transferred to another clearing member, the clearing member transmitting the order may charge a fee, called a give-up charge, for reach contract purchased or sold. The rule further states that this fee shall be paid by the clearing member to whom the order is transferred and may be charged to the customer.

The Exchange has represented that the rate of floor brokerage paid for such transactions often is arrived at between the floor broker and the executing clearing member but is paid by the carrying broker. According to the Exchange, this situation has caused confusion and disputes among its members.

The proposed CME rule amendment would add a further provision to this rule relating to the payment of floor brokerage. Proposed Rule 851.B would require that if an order is directed to one clearing member for execution and to another clearing member to carry the position, it shall be the obligation of the clearing member carrying the position to pay the floor broker at the rate agreed between the carrying clearing member and the floor broker. If there is no such agreement, the rule would provide for payment at the rate agreed upon by the floor broker and the executing clearing member. Finally, the rule amendment would provide that the carrying and executing clearing members could allocate the cost of floor brokerage between them in any manner that they deem appropriate.

Acting pursuant to the authority delegated pursuant to Commission Regulation 140.96, the Director of the Division of Trading and Markets, with the concurrence of the General Counsel, has determined, on behalf of the Commission, that publication of the proposed rule amendment is in the public interest and will assist the Commission in considering the views of interested persons. Accordingly, the Division, on behalf of the Commission, is publishing the proposed rule amendment or public comment. The Commission requests comments on any aspects of the proposed rule amendment that members of the public believe may raise issues under the Act or Commission regulations.

Copies of the CME submission are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies may also be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254-6314.

Any person interested in submitting written data, views, or comments on the proposed rule amendment should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW. 20581 by the specified date.

Issued in Washington, DC on October 11, 1991.

Andrea M. Corcoran,

Director, Division of Trading and Markets.

[FR Doc. 91-25071 Filed 10-17-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Public Water Supply Reservoir in the County of Spotsylvania, VA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: An Environmental Impact Statement will be prepared to evaluate project alternatives and the public interest review factors for the proposed public water supply reservoir.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Hal Wiggins, U.S. Army Corps of Engineers, Norfolk District, 10703 Courthouse Road, Breezewood Office Park, suite 270, Fredericksburg, Virginia 22407, (703) 898-3586.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The County of Spotsylvania proposes a 671 acre public water supply reservoir which would involve the flooding of an estimated 232 acres of non-tidal seasonally-flooded palustrine forested wetlands and an estimated 32 acres of non-tidal, palustrine/reverine open water wetlands which are part of the Po River wetland complex, adjacent to the Po River in Spotsylvania County, Virginia. Other impacts are also potentially significant, including a reduction in average downstream flows of almost 15%. The proposed reservoir will provide a 7.7 MGD capacity until the year 2010 for the County of Spotsylvania.

2. Alternatives

Alternatives which will be investigated include, but will not be limited to, the Hunting Run alternative reservoir site which would only flood approximately 17 acres of non-tidal wetlands and reduce downstream flows by less than 2%.

3. Scoping Process

A pre-application scoping meeting was held with State and Federal agencies in September of 1988 and formal agency scoping comments were requested in October of 1988. Two more scoping comments were requested in October of 1988. Two more scoping meetings were held with State and Federal agencies in June of 1989 and July of 1991. Significant issues which have been identified thus far include wetland destruction and reductions to downstream flows. A public notice requesting written public comments will be published on or about October 15, 1991.

4. Public Scoping Meeting

If it is determined that a public scoping meeting is necessary to assist the Corps in identifying significant issues which should be addressed in the DEIS, the date and location of the meeting will be announced by separate public notice when scheduled.

5. DESIS Availability

It is estimated that the DEIS will be available to the public for review and comment in the spring of 1992.

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91-25121 Filed 10-17-91; 8:45 am]

BILLING CODE 3710-EN-M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS) in Conjunction With a Special Area Management Plan (SAMP) for the Fox River and Chain-O-Lakes Areas in McHenry and Lake Counties, IL

AGENCY: U.S. Army Corps of Engineers, Chicago District, DoD.

ACTION: Notice of intent.

SUMMARY: Under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers has regulatory authority over discharges of dredged or fill materials in the Nation's waters and over structures or work in navigable waterways. In response to their permitting process, a DEIS will be prepared to present the cumulative environmental impacts of potential permitting actions along the Fox River and Chain-O-Lakes from the Illinois-Wisconsin state line to Algonquin Dam. Recreational boating demand has increased pressure on this area such that environmental impacts of future new construction (e.g., marinas and launch ramps) need to be evaluated in order to develop permitting guidelines for the area.

FOR FURTHER INFORMATION CONTACT: Ms. Rose Austin, 312/886–0451; U.S. Army Corps of Engineers, Chicago District; 111 N. Canal St.; Chicago, Illinois 60606–7206.

SUPPLEMENTARY INFORMATION: 1. The DEIS will evaluate a number of management strategies related to the regulatory authority of the U.S. Army Corps of Engineers. A primary concern in the study area is the heavy use of the area for recreational boating and the impact on the environment, particularly water quality. An assessment of the cumulative impacts of present and potential increased use of the waterways on various environmental parameters will be undertaken. The purpose of the DEIS is to provide a basis for developing permitting guidelines for the future.

2. The alternatives to be evaluated will include a range of permitting options from denying all permit applications to issuing without restriction. Various criteria for issuing or denying permits will be developed as alternatives during the DEIS evaluation process.

3. The public involvement program will be undertaken as part of the SAMP public involvement program. The SAMP committee is composed of representatives from federal, state, and local agencies as well as local environmental groups and interested citizens. Public meetings have been held and will continue to be held throughout the SAMP and DEIS processes. Should the authorization for the SAMP cease, the public meetings will continue as part of the DEIS process.

4. Significant issues to be analyzed in depth are: Boating carrying capacity, safety concerns, water quality, sediment quality, shoreline erosion, wetlands, and recreation demand.

5. No formal public scoping meeting is currently scheduled. The dates and times of any future scoping meetings and/or public meetings will be announced to the general public in press releases and public notices to those having expressed interest in the study.

6. The DEIS is expected to be available in mid 1993. Under the authority of the Corps regulation, "Environmental Quality: Procedures for Implementing the National Environmental Policy Act (NEPA)" (title 33, Code of Federal Regulations, parts 230 and 325), § 230.22, entitled: Limitations on actions during the NEPA process; and the "Regulations For Implementing The Procedural Provisions of the National Environmental Policy Act" (title 40, CFR parts 1500–1508), § 1506.1, also entitled: Limitations on actions during the NEPA process, subsection (c); permit processing of applications for most activities in all areas of the Fox River/Chain-O-Lakes from the state line to Algonquin Dam which are under the Chicago District's jurisdiction pursuant to Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act, have been suspended pending completion of the Final EIS. The suspension covers permit applications and activities, as follows:

a. Types of permit applications affected:

(1) Permit applications which have been received by the Chicago District but not yet assigned to a project manager.

(2) Permit applications currently being evaluated by a project manager.

(3) All future permit applications.

b. Activities to be suspended:

(1) New marina construction.

(2) Enlarging existing marinas.

(3) New commercial, public and multi-user dock systems.

(4) Enlarging commercial, public and multi-user dock systems.

(5) Commercial, public, multi-user and private boat launches/ramps.

(6) Increasing the number of boat launches/ramps for commercial, public, multi-user and private use.

(7) Commercial, public and multi-user boat hoists and lifts in or over the waterway or any structures for placing boats in the water where a portion of the structure will be over or be placed into the waterway, either temporarily or permanently.

(8) Excavation and/or dredging of any area not previously improved for navigation.

c. Activities that will not be affected:

(1) New marina construction; enlarging marinas; new commercial, public and multi-user dock systems and enlarging commercial, public and multi-user dock systems *Provided That* existing boat slips providing dockage of the same size and for an equivalent number of boats are removed. The applicant must demonstrate to the Corps' satisfaction that the structures to be removed have appropriate federal, state and local authorizations and they are currently in use. Determinations will be made on a case-by-case basis.

(2) Maintenance dredging of previously improved navigable areas, including channels and lake areas.

(3) Adding slip(s) to platted single family waterfront residences.

Dated: September 27, 1991.

Randall R. Inouye,

Lieutenant Colonel, U.S. Army District Engineer.

[FR Doc. 91–25122 Filed 10–17–91; 8:45 am]

BILLING CODE 3710–HN–M

Environmental Advisory Board Meeting

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is open to the public.

DATES: The meeting will be held from 8 a.m., Tuesday, November 5, 1991 to 10:30 a.m., Thursday, November 7, 1991.

ADDRESSES: The meeting will be held at the Sheraton West Port in St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: Dr. William L. Klesch, Chief, Office of Environmental Policy, Office of the Chief of Engineers, Washington, DC 20314–1000, (202) 272–0166.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the 50th Meeting of the EAB, "Environmental Protection and Restoration," is:

Tuesday, November 5, 1991

0800—Welcome, Charge to the Board, Old Business.

1015—Definitions and Policy Implications of Environmental Protection and Restoration—Expectations.

1330—Technical Aspects of Environmental Protection and Restoration—Can It Be Accomplished?
1550—The Environmental Value of Protection and Restoration—Economics and the Environment in Partnership.
1750—Adjourn.

Wednesday, November 6, 1991

0800—Institutional Arrangements for Environmental Protection and Restoration—Traditional Partners, Their Views.
1020—Institutional Arrangements for Environmental Protection and Restoration—Potential Partners, Their Views.
1330—Educational Aspects of Environmental Protection and Restoration—An Educator's Perspective on the Corps' Role.
1530—Adjourn.

Thursday, November 7, 1991

0800—Report to Chief of Engineers and Response.
1000—Comments from Public.
1030—Adjourn.

William L. Klesch,

Chief, Office of Environmental Policy, Policy & Planning Division, Directorate of Civil Works.

[FR Doc. 91-25120 Filed 10-17-91; 8:45 am]

BILLING CODE 3710-92-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, October 23, 1991. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be open for public observation at 10:30 a.m. at the same location and will include status reports on the upper Delaware ice jam project, proposed rules for Scenic Rivers protection, pricing proposal to encourage water conservation, and amendment of compact section 15.1(b) to fund the F.E. Walter Reservoir project.

The subjects of the hearing will be as follows:

Status of Compliance: Golf Course Irrigation. Several golf courses have been directed to appear before the Commission at 1 p.m. and explain why they have not complied with the Commission's directive to complete and submit an "Inventory of Golf Course Water Use."

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *City of Vineland D-87-40 CP.* An application for approval of a ground water withdrawal project to supply up to 60 million gallons (mg)/30 days of water to the applicant's distribution system from new Well No. 13, and to increase the existing withdrawal limit from all wells to 400 mg/30 days. The project is located in the City of Vineland, Cumberland County, New Jersey.

2. *Borough of Slatington D-90-97 CP.* A surface water withdrawal project to provide up to 0.6 million gallons per day (mgd) of water from Slatington Springs for an interim period of five years, after which the withdrawal will be reduced to a maximum of 0.51 mgd. The withdrawal project will serve the Borough of Slatington and adjoining portions of Washington Township. The intake will be located just east of the Pennsylvania Turnpike near the headwaters of Slatington Springs, an intermittent tributary of the Lehigh River, in Washington Township, Lehigh County, Pennsylvania.

3. *DuPont Country Club D-90-104.* An application for approval of a withdrawal of surface water from Brandywine Creek and Husbands Run, a tributary of Brandywine Creek, for purposes of irrigation of the applicant's Rockland Golf Courses. Up to 0.36 mgd of water is withdrawn from Brandywine Creek and pumped to a small reservoir on Husbands Run to augment the Husbands Run inflow when necessary. Water is withdrawn from the reservoir, also at a rate of up to 0.36 mgd, for distribution to the golf course irrigation system. The Brandywine Creek intake is located on the east bank approximately 1000 feet upstream of the Husbands Run confluence. The Husbands Run reservoir is located approximately 1200 feet upstream of its Brandywine Creek confluence. Both intakes are located west of the intersection of Rockland Road and New Bridge Road, New Castle County, Delaware.

4. *Garden State Water Company/ Hamilton District D-91-2 CP.* An application for approval of a ground water withdrawal project to supply up to 51.8 mg/30 days of water to the applicant's distribution system from new Well No. 13, and to increase the existing withdrawal limit of 84 mg/30 days from all wells to 140 mg/30 days. The project is located in Hamilton Township, Mercer County, New Jersey.

5. *Evesham Municipal Utilities and Kings Grant Equities Inc. D-91-15 CP* An application for approval of a sewage treatment plant (STP) modification and expansion project consisting of the construction of an additional infiltration basin for the discharge of tertiary treated effluent from an STP serving the Kings Grant Planned Unit Development and for approval of a spray irrigation discharge of up to 0.6 mgd to continue until the new infiltration basin is operational. The applicant seeks approval to expand the average treatment capacity from 0.3 mgd to 0.6 mgd. Treated effluent will be discharged to the proposed 1.5 acre infiltration basin, the two existing 2.5 acre infiltration basins, and the proposed 57 acre spray irrigation field. The project is located approximately 2,400 feet east of Kettle Run Road, in Kings Grant, Evesham Township, Burlington County, New Jersey.

6. *South Jersey Water Supply Company D-91-24 CP.* An application for approval of a ground water withdrawal project to supply up to 2.16 mg/30 days of water to the applicant's distribution system from new Well No. 4, and to limit the withdrawal from all wells to 11 mg/30 days. The project is located in Harrison Township, Gloucester County, New Jersey.

7. *Avondale Borough Sewer Authority D-91-29 CP.* A sewage treatment plant (STP) modification project to increase the peak capacity of the applicant's existing 0.30 mgd secondary STP from 0.75 mgd to 0.961 mgd. The average treatment capacity will remain at 0.30 mgd. The STP will continue to serve the Borough of Avondale and is located on the east bank of Indian Run approximately 300 feet above its confluence with East Branch White Clay Creek in the Borough of Avondale, Chester County, Pennsylvania. The treated effluent will continue to discharge to Indian Run.

8. *Township of Blythe Municipal Authority, D-91-51 CP.* A surface water withdrawal project that will continue to serve the applicant's two distribution systems: The West System comprising all or portions of Branch, Reilly, Cass, and Foster Townships; and the East System, comprising all or portions of Blythe, New Castle, Schuylkill, and East Norwegian Townships, and Middleport, New Philadelphia, and Saint Clair Boroughs. To serve the West System, up to 0.93 mgd will be withdrawn from Crystal Run Reservoir (located in Cass

and Foster Townships) on Crystal Run; 0.15 mgd will be withdrawn from Taylorsville Creek in Foster Township; and up to 0.10 mgd from an unnamed tributary of the West Branch Schuylkill River in Cass Township. To serve its East System, the applicant will also withdraw up to 1.6 mgd from the Silver Creek Reservoir (from an intake located on Silver Creek in Blythe Township); and 0.5 mgd from the Moss Glen Reservoir (located in Blythe and Schuylkill Townships) on an unnamed tributary of Big Creek. Further, for emergency use, the applicant seeks approval for withdrawal of up to 0.275 mgd from the Caparrel Mine Pool in Blythe Township. The project is located entirely within Schuylkill county, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Proposed Comprehensive Plan Revision with Respect to Recreational Areas in the State of New Jersey. A proposal to revise the Comprehensive Plan by the deletion of the New Jersey facilities from the list of non-urban areas included in Phase I of the Plan, July 1962, and the inclusion of the new current list of water-related recreational projects located in the New Jersey portion of the Delaware River Basin.

Dated: October 10, 1991.

David B. Everett,

Chief Engineer.

[FR Doc. 91-25119 Filed 10-17-91; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 18, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: October 15, 1991.

Wallace R. McPherson, Jr.,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Extension.
Title: Teacher Follow-up Survey.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 6,838.
Burden Hours: 2,873.
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Teacher Follow-up Survey will survey a sample of teachers who participated in the 1990-91 Schools and Staffing Survey. The Department will use the information to determine a teacher attrition rate and to look at characteristics of persons who leave the teaching profession and those who stay.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: National Adult Literacy Survey (NALS).
Frequency: Nonrecurring.
Affected Public: Individuals or households.
Reporting Burden:
Responses: 15,025.
Burden Hours: 17,579.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The goal of the NALS is to assess the literacy skill levels of adults living in the United States. The Department will use the information to report to Congress, to determine the nature and extent of literacy problems in the adult population, and to more appropriately target educational efforts.

[FR Doc. 91-25192 Filed 10-17-91; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.167A]

Office of Educational Research and Improvement; Library Services and Construction Act (LSCA) Library Literacy Program

AGENCY: Department of Education.

ACTION: Extension of deadline date for transmittal of applications to permit response to a statutory priority.

SUMMARY: On June 12, 1991, the Secretary published in the **Federal Register** (56 FR 27156) a notice inviting applications for new awards for fiscal year 1992 for the LSCA Library Literacy Program. Detailed information was included in that notice.

The purpose of this notice is to extend the closing date for transmittal of applications so that potential applicants may have the opportunity to respond to a new statutory priority. Applicants who have already submitted their applications may amend or resubmit their applications to compete under the new priority.

DATES: The Secretary extends the deadline date for transmittal of applications from November 8, 1991 to December 13, 1991.

SUPPLEMENTARY INFORMATION: Under the Library Literacy Program the Secretary provides Federal financial

assistance to State and local public libraries for literacy projects. The Secretary of Education announces this priority in order to implement recent amendments to the Library Services and Construction Act. Those amendments, enacted July 25, 1991 by the National Literacy Act of 1991, direct the Secretary to give priority to programs based on need and coordination with certain organizations providing literacy services. The amendments were effective on the date of their enactment, and therefore must be implemented with respect to fiscal year 1992 grants. The Secretary encourages applicants to use the most recent and reliable data published by U.S. Government or other sources concerning the need factors encompassed by the priority.

This statutory priority is supportive of the President's AMERICA 2000 strategy, particularly in its emphasis on coordination with community organizations. The Secretary urges applicants to involve individuals and organizations from throughout the community in the planning and operation of programs, and to develop a community-wide strategy for eliminating illiteracy.

PRIORITY: Under 34 CFR 75.105(c)(2)(i), and section 601(f) of the Library Services and Construction Act (20 U.S.C. 375(f)), as enacted by section 502 of the National Literacy Act of 1991, the Secretary gives a preference to applications that meet the following competitive priority. The Secretary awards up to 15 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Priority for programs and services in areas of greatest need and which coordinate literacy services. In awarding grants under section 601 the Secretary gives priority to programs and services that—

(1) Will be delivered in areas of greatest need that have highest concentrations of adults who do not have a secondary education or its equivalent, and that—

(A) Have few community or financial resources to establish the program described under section 601 without Federal assistance, or

(B) Have low per capita income, unemployment or underemployment; and

(2) Coordinate with literacy organizations and community based organizations providing literacy services.

FOR FURTHER INFORMATION CONTACT: Carol Cameron Lyons or Barbara Humes, Program Officers, Library Development Staff, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315. Deaf or hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: U.S.C. 375.

Dated: October 15, 1991.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–25244 Filed 10–17–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92–27–000, et al.]

The United Illuminating Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 10, 1991.

Take notice that the following filings have been made with the Commission:

1. The United Illuminating Co.

[Docket No. ER92–27–000]

Take notice that on October 3, 1991, The United Illuminating Company (UI) tendered for filing rate schedules for coordination transactions involving the exchange with or sale of capacity and energy to Massachusetts Municipal Wholesale Electric Company (MMWEC). The sales are pursuant to a System Power Sales Agreement (Agreement) dated May 1, 1990, and UI proposes that service under the Agreement commence on that same date.

Copies of the filing were served upon MMWEC and on the Massachuesetts Department of Public Utilities.

Comment date: October 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. PSI Energy, Inc.

[Docket No. ER92–30–000]

Take notice that PSI Energy, Inc. (PSI), on October 4, 1991, tendered for filing Modification Nos. 6 and 8 pursuant to the Interconnection Agreement between PSI and Indiana Michigan Power Company, dated February 21, 1964, and a Greentown Substation Maintenance Agreement between the same two parties, dated September 1, 1987.

Modification No. 6 amends the Interconnection Agreement by updating the descriptions of some of the interconnection points. An appendix I is also added for coordination of the 765,000 volt development between the two companies.

Modification No. 8 modifies Modification No. 6 by updating the schematic diagram and the in service date contained in appendix I.

The Greentown Substation Maintenance Agreement defines the maintenance responsibility for each company in the joint owned Greentown Substation. The method and term for billing for maintenance work performed on the other parties equipment is also provided for.

Copies of the filing were served on Indiana Michigan Power Company, American Electric Power Service Corporation, the Michigan Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: October 25, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. St. Joseph Light & Power Co.

[Docket No. ER92–28–000]

Take notice that St. Joseph Light & Power Company (SJLP) on October 3, 1991, tendered for filing the April 14, 1987 Letter of Intent Between SJLP and Associated Electric Cooperative, Inc. (AECI). The Letter of Intent indicates the desire of SJLP and AECI to add a new type of service known as Delivery Point Service. SJLP requests that the filing be permitted to become effective April 29, 1987.

Comment date: October 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Long Island Lighting Co.

[Docket No. ER92–26–000]

Take notice that on October 3, 1991, Long Island Lighting Company (LILCO) tendered for filing proposed changes in its FERC Rate Schedule 34, pursuant to which LILCO transmits power and energy from the Power Authority of the State of New York (Power Authority) to two Power authority customers in LILCO's service area, Grumman Corporation and Brookhaven National Laboratory.

The proposed changes would increase revenues from such service by $236,100 based on the 12-month period ending May 31, 1992. LILCO proposes to increase the rates in order to reflect changes in the Company's cost of service and delivery points.

Copies of this filing were served upon the Power Authority, Grumman Corporation and Brookhaven National Laboratory, and the New York State Public Service Commission.

Comment date: October 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Co.

[Docket No. ER92-24-000]

Take notice that on October 3, 1991, Northeast Utilities Service Company (NUSCO), as agent for The Connecticut Light and Power Company and Western Massachusetts Electric Company (collectively referred to as the NU Companies), tendered for filing Letter Agreements providing for the transfer of certain NU Companies' capacity purchase to Boston Edison Company (BE) and Public Service Company of New Hampshire (PSNH), respectively.

NUSCO requests that the Commission waive its standard notice and filing requirements to the extent necessary to permit the Letter Agreements to become effectively May 1, 1990.

NUSCO states that a copy of the rate schedule has been mailed to BE and PSNH.

Comment date: October 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Long Island Lighting Co.

[Docket No. ER92-25-000]

Take notice that Long Island Lighting Company (LILCO or Company) on October 3, 1991, tendered for filing proposed changes in its FERC Rate Schedule 32, pursuant to which LILCO transmits power and energy from the Power Authority of the State of New York (Power Authority) to the three municipal electric utilities on Long Island: The Villages of Greenport, Rockville Centre and Freeport.

The proposed changes would increase revenues from such service by $515,401 based on the 12-month period ending May 31, 1992. LILCO proposes to increase the rates in order to reflect changes in the Company's cost of service and delivery points.

Copies of this filing were served upon the Power Authority, the Municipal Electric Utilities Association of New York State, the Incorporate Villages of Greenport, Freeport and Rockville Centre, and the New York State Public Service Commission.

Comment Date: October 24, 1991, in accordance with Standard Paragraph E end of this notice.

7. Consumers Power Co.

[Docket No. ER92-22-000]

Take notice that on October 3, 1991, Consumers Power Company (Consumers) tendered for filing Service Agreements for Limited-Term Prescheduled Interruptible Wholesale Electric Service with the Cities of Bay City, Hart, St. Louis, Portland, Eaton Rapids and Holland and Edison Sault Electric Company.

Comment date: October 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas City Power & Light Co.

[Docket No. ER92-20-000]

Take notice that on October 3, 1991, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 2 to Municipal Wholesale Firm Power Contract, between KCPL and the City of Slater, Missouri, dated June 4, 1991, and associated agreements. KCPL states that the Amendatory Agreement provides a new 34 kv delivery point and provides for the related 34 kv line facilities.

KCPL requests an effective date of August 1, 1991, and therefore requests waiver of the Commission's notice requirements.

Comment date: October 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Co.

[Docket No. ER92-19-000]

Take notice that on October 3, 1991, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 5 to Municipal Participation Agreement (MPA), between KCPL and the City of Independence, Missouri, dated April 19, 1991. KCPL states that the Amendatory Agreement provides a new interconnection and revises an existing interconnection.

KCPL requests an effective date of June 1, 1991, and therefore requests waiver of the Commission's notice requirements.

Comment date: October 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas Power and Light Co.

[Docket No. ER92-29-000]

Take notice that on October 4, 1991, Kansas Power and Light Company (KPL) tendered for filing revised exhibits 4A to Transmission Agreements with Kansas Gas and Electric Company, Centel Corporation—Western Power Division, and Missouri Public Service Company. KPL states that these revised exhibits reflect updated loss amounts associated with transmission services rendered to each party under various load conditions.

Copies of the filing were served upon Kansas Gas and Electric Company, Centel Corporation—Western Power Division, and Missouri Public Service Company.

Comment date: October 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. The Connecticut Light and Power Co.

[Docket No. ER92-23-000]

Take notice that on October 3, 1991, The Connecticut Light and Power Company (CL&P) tendered for filing two Letter Agreements that extend the term of a previously filed Capacity Exchange Agreement dated June 1, 1985, between the CL&P and The United Illuminating Company (UI).

CL&P requests that the Commission waive its standard notice and filing requirements to the extent necessary to permit the temporary extension in term to become effective November 1, 1986.

CL&P states that a copy of the rate schedule has been mailed to UI.

Comment date: October 24, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Dayton Power and Light Company

[Docket No. ER91-650-000]

Take notice that the Dayton Power and Light Company (Dayton) tendered for filing on September 19, 1991, an executed Letter Agreement extending the term of the existing Purchase and Resale Agreement (Agreement) between Dayton and the Village of Minster, Ohio (Village).

The proposed Letter Agreement extends the term of the existing Agreement to allow Village to continue to purchase energy requirements from third parties who will use their existing Interconnection Agreement Rate Schedules to deliver the energy requirements to Dayton for final delivery to Village. An October 1, 1991, effective date has been requested. A copy of this filing was served upon Village and the Public Utilities Commission of Ohio.

Comment date: October 24, 1991, 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 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. 91-25094 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2205-006 Vermont]

Central Vermont Public Service Corp., Availability of Environmental Assessment

Ooctober 10, 1991

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license of the constructed and proposed Lamoille Hydroelectric Project located on the Lamoille River in Chittendon and Franklin Counties, near Milton and Fairfax, Vermont, and has prepared an Environmental Assessment (EA), for the constructed and proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the constructed and proposed project and has concluded that approval of the project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Dos. 91-25156 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-350-001, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

October 10, 1991.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP91-350-001]

Take notice that on October 1, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252-2511, pursuant to section 7(c) of the Natural Gas Act, filed an amendment to the application for a certificate of public convenience and necessity which it filed in this proceeding on November 7, 1990. By this amended application, Tennessee seeks authority to abandon 17,300 Dekatherms (Dth) per day of firm sales service for Colonial Gas Company (Colonial) under Tennessee's Rate Schedule CD-6, effective November 1, 1991. Tennessee will provide Colonial a firm transportation service of up to 17,300 Dth per day pursuant to Tennessee's Rate Schedule FT upon the effective date of the abandonment authorization requested, all as more fully set forth in the amended application which is on file with the Commission and open to public inspection.

To effectuate its proposal, Tennessee requests (1) withdrawal of its request for a certificate of public convenience and necessity to render a certain firm transportation service to Colonial and (2) that the Commission grant abandonment authorization of an additional 7,300 Dth per day of firm sales service rendered for Colonial under Tennessee's Rate Schedule CD-6 effective as of November 1, 1991. No new facilities need be constructed to implement the proposed transportation service.

Comment date: October 31, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Stingray Pipeline Company; United Gas Pipe Line Company; United Gas Pipe Line Company; United Gas Pipe Line Company

[Docket Nos. CP92-43-000[1], CP92-45-000, CP92-46-000, CP92-47-000]

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. related [3] dockets	Applicant (date filed)	Shipper name	Peak day,[1] average annual	Points of [2]		Start up date, rate schedule	Related dockets
				Receipt	Delivery		
CP92-43-000 (10-7-91)	Stingray Pipeline Company, 701 East 22nd Street, Lombard, Illinois 60148.	MidCon Marketing Corp.	100,000 25,000 9,125,000	LA, OLA, OTX	LA, OTX	08-01-91, ITS interruptible.	ST91-10149-000 RP89-70-000
CP92-45-000 (10-7-91)	United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478.	Ledco, Inc	488,629 488,629 178,349,585	OLA, LA, TX, MS	LA, MS, FL, AL	09-16-91, ITS interruptible.	ST91-10594-000 CP88-6-000

Docket No. related [3] dockets	Applicant (date filed)	Shipper name	Peak day,[1] average annual	Points of [2]		Start up date, rate schedule	Related dockets
				Receipt	Delivery		
CP92-46-000 (10-7-91)	United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478.	Arkla Energy Marketing Company.	1,163 1,163 424,495	MS, LA	MS	08-27-91, FTS firm.	ST91-10349-000 CP88-6-000
CP92-47-000 (10-7-91)	United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478.	Equitable Resources Marketing Company.	262,000 262,000 95,630,000	LA, OLA, TX, MS, OTX.	LA, TX, FL, MS, AL, OTX.	09-10-91, ITS interruptible.	ST91-10498-000 CP88-6-000

[1] Quantities are shown in MMBtu.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX, respectively.
[3] The CP and RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

3. United Gas Pipe Line Co.

[Docket Nos. CP92-53-000, CP92-54-000, CP92-55-000, CP92-56-000]

Take notice that on October 7, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by United and is summarized in the attached appendix.

Comment date: November 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP92-53-000 (10-7-91)	Associated Intrastate Pipeline Company (marketer).	209,600 209,600 76,504,000	On LA	ON LA, MS	1-14-88, ITS, Interruptible.	ST91-10595-000, 9-12-91.
CP92-54-000 (10-7-91)	Arkla Energy Marketing Company (marketer).	209,600 209,600 76,504,000	Various	Various	2-12-88, ITS, Interruptible.	ST91-10497-000, 9-10-91.
CP92-55-000 (10-7-91)	Centran Corporation (marketer).	20,960 20,960 7,650,400	On LA, MS	On LA, MS, TX, AL	11-7-90, ITS, Interruptible.	ST91-10496-000, 9-10-91.
CP92-56-000 (10-7-91)	Enron Gas Marketing, Inc. (marketer).	524,000 524,000 191,260,000	Various	Various	1-20-89, ITS, Interruptible.	ST91-10540-000, 9-16-91.

4. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP92-24-000]

Take notice that on October 4, 1991, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed a prior notice request with the Commission in Docket No. CP92-24-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point in order to provide an interruptible transportation service for Texaco Gas Marketing, Inc. (Texaco), an end-user, under the blanket certificates issued in Docket Nos. CP82-401-000 and CP86-435-000, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Northern proposes to transport up to 800 MMBtu per day equivalent of natural gas on a peak day pursuant to an October 3, 1991, agreement under its Rate Schedule IT-1. Northern indicates that it would receive the gas in Kansas, New Mexico, Oklahoma, and Texas, and would deliver Texaco's gas at a new delivery point in Lea County, New Mexico. Northern states that Texaco would reimburse Northern for the estimated $9,000 construction fee for the proposed delivery point. Northern further indicates that it would transport 200 MMBtu on an average day and 292,000 MMBtu annually for Texaco's use as compressor fuel at its Teague Switch compressor station.

Comment date: November 25, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural

Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed 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. 91-25095 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-151-004]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 10, 1991.

Take notice that Carnegie Natural Gas Company (Carnegie) on October 8, 1991, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Twenty-Second Revised Sheet No. 8
Twenty-Second Revised Sheet No. 9

Carnegie has requested waiver of the notice requirements so as to permit the tariff sheet to become effective on October 9, 1991.

Carnegie states that the tariff sheets are being filed to reflect a voluntary reduction in the rate under Carnegie's Rate Schedule LVIS during the Summer Period. Carnegie states that by reducing the Summer Period Rate Schedule LVIS rate, its Rate Schedule LVIS customer will have the opportunity to purchase from Carnegie during the Summer Period at the same rate as Carnegie's other resale customers that purchase gas from Carnegie under Rate Schedule CDS.

Carnegie states that copies of the filing were served on all jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25154 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EC92-1-000 and EL92-5-000]

Commonwealth Atlantic Limited Partnership; Filing

October 11, 1991.

Take notice that on October 10, 1991, Commonwealth Atlantic Limited Partnership ("Commonwealth") filed an application for the Commission to disclaim jurisdiction under section 203 of the Federal Power Act, 16 U.S.C. 824b, or, in the alternative, to grant authorization under section 203 and waive part 33 of the Commission's regulations, 18 CFR part 33, with respect to proposed changes in Commonwealth's ownership structure and the contemplated disposition of the general partnership interest in Commonwealth to an investor that will not be an electric utility, a public utility holding company, or an affiliate of either. Commonwealth requests that the Commission act on an expedited basis.

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 October 31, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 91-25096 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-50-000]

Consolidated Edison Company of New York; Filing

October 11, 1991.

Take notice that on October 7, 1991, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing a Rate Schedule and three Supplements, constituting an agreement to provide transmission service for the Long Island Lighting Company ("LILCO"). The Rate Schedule provides for transmission of power and energy from sources in upstate New York to LILCO. Con Ed requests waiver of notice requirements so that the Rate Schedule and the Supplements can be made effective as of September 18, 1988, July 1, 1989, July 1, 1990, and July 1, 1991. Included as part of the filing is a Certificate of Concurrence in the Rate Schedule signed by LILCO.

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 October 28, 1991. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the 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. 91-25163 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-1-24-000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

October 10, 1991.

Take notice that Equitrans, Inc. (Equitrans) on October 8, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, with the proposed effective date of November 1, 1991:

Thirtieth Revised Sheet No. 10
Twentieth Revised Sheet No. 34

Equitrans states that the purpose of the filing is to implement an Out-Of-Cycle Purchased Gas Cost Adjustment (PGA) to reflect an increase in Equitrans' pipeline supplier rates under Texas Eastern Transmission Corporation's Rate Schedule CD-1 filed in Docket No. TQ92-1-17 on October 1, 1991, and Kentucky West Virginia Gas Co.'s Rate Schedule PLS-1 filed in Docket No. TQ92-2-46 on October 1, 1991. Equitrans states that the filing is necessary in order to have the rates charged to Equitrans' jurisdictional customers more closely reflect the experienced cost of gas being incurred by the Applicant.

Equitrans states that copies of the filing has been served upon its purchasers 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 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 91-25155 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-9-000]

Boundary Gas, Inc.; Proposed Changes in FERC Gas Tariff

October 10, 1991.

Take notice that on October 7, 1991, Boundary Gas, Inc. (Boundary) tendered for filing Original Tariff Sheets No. 4A, 9A, and 35A, First Revised Tariff Sheet Nos. 9, 36, and 38, and Second Revised Tariff Sheet Nos. 3, 4, 14, 35, and 41 to its FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets are proposed to become effective on November 6, 1991.

Boundary states that the purpose of this filing is to make changes, which Boundary and the fourteen Boundary stockholders who purchase gas from Boundary have agreed to make, in the Base 2 Gas Sales Agreement, which constitutes Rate Schedule G-1 of Boundary's Tariff. Boundary has proposed to (1) amend the excess gas pricing calculation in its tariff to make it clear that Boundary can reoffer excess gas dedicated to one Repurchaser to other Repurchasers at a price which includes less than the original Repurchaser's full aliquot share of the monthly demand charge, and (2) to reflect the merger of two Boundary Repurchasers, Manchester Gas Company and Gas Service, Inc. into EnergyNorth Gas Service, Inc., which has replaced them as a Boundary stockholder and Repurchaser.

Boundary states that copies of the filing were served upon each of the Boundary Repurchasers and their respective state regulatory agencies.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 17, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 91-25153 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-164-000 and RP91-164-001]

Granite State Gas Transmission Inc.; Informal Settlement Conference

October 11, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on October 24, 1991, at 10 a.m., (to continue on October 25, 1991, if necessary) at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact John J. Keating at (202) 208-0762 or Anja M. Clark at (202) 208-2034.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25165 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-143-004 and RP91-231-000]

Great Lakes Gas Transmission Limited Partnership; Place Tariff Sheets Into Effect

October 10, 1991.

Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed on September 30, 1991 a motion to place into effect on November 1, 1991, subject to refund, the increase in rates and charges suspended herein by the Commission's order of May 31, 1991, and which is contained in the tariff sheets attached to the filing. Great Lakes states that the revised tariff sheets provided for an annual rate increase for Great Lakes' jurisdictional transportation services.

Great Lakes states that at this time, it does not know whether the Commission will continue to approve its historical rolled-in ratemaking methodology or whether the Commission will approve an incremental ratemaking methodology

for its new firm transportation service for SEMCo and its increased firm transportation services for TransCanada PipeLines Limited (TransCanada) and Northern Minnesota Utilities (NMU). Therefore, Great Lakes states, it has enclosed tariff sheets marked "primary" provide for maximum rates that could apply to Great Lakes' various jurisdictional services under the rate design scenarios presented to the Commission by parties to this proceeding. In effect, Great Lakes maintains, incremental rates would apply to SEMCo's new service and to TransCanada's and NMU's increased services; Great Lakes' proposed rolled-in rates would apply to all other services. Great Lakes states that because this rate structure will result in Great Lakes billing and collecting over its filed cost of service, it is willing to establish an escrow account into which any such overage will be promptly placed to be returned to the appropriate customers at final Commission disposition of the rate design issue.

Great Lakes states that it has included an alternate set tariff sheets that contains rate for all jurisdictional services based upon the historically approved, rolled-in methodology.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 91-25158 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2255-003—Wisconsin]

Nekoosa Papers Inc.; Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

October 10, 1991.

The license for the Centralia Project No. 2255, located on the Wisconsin River, Wood County, Wisconsin, expires on July 31, 1993. The statutory deadline for filing an application for new license was July 31, 1991. An application for new license has been filed as follows:

Project No.	Applicant	Contact
2255-003	Nekoosa Papers Inc., 100 Wisconsin River Dr., Port Edwards, WI 54469.	Mr. Richard J. Grund, Nekoosa Papers Inc., 100 Wisconsin River Dr., Port Edwards, WI 54469 (715) 887-5481.

The following is an approximate schedule and procedures that will be followed in processing the application:

Date	Action
Oct. 20, 1991	Commission notifies applicant that its application has been accepted.
Nov. 1, 1991	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
Jan. 1, 1992	Commission's deadline for applicant for filing a final amendment, if any, to its application.

Upon receipt of any additional information and the information filed in response to the public notices of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Michael Dees at 202-219-2807.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25159 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-2-59-001]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 11, 1991.

Take notice that Northern Natural Gas Company (Northern), on October 8, 1991, tendered for filing changes in its F.E.R.C. Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

On September 30, 1991, Northern filed revised tariff sheets in an out-of-cycle PGA filing in accordance with § 154.308 of the Commission's Regulations. In calculating its Field ISS, Field Sales, and E-1 rates to be effective October 1, 1991, Northern failed to include the Current Commodity Rate Adjustment for Demand Costs for Jurisdictional Field Sales derived in Schedule D1, Workpaper No. 2, of Northern's Quarterly PGA filing at Docket No. TQ92-1-59. Thus, the Cumulative PGA Adjustment to the referenced rates should have been reduced by $0.1092 per MMBtu effective October 1, 1991, in Northern's filing at Docket No. TQ92-2-59. The revised tariff sheets Sub Ninety-Ninth Revised Sheet No. 4B and Sub One Hundredth Sixth Revised Sheet No. 1C filed by Northern on October 8, 1991, at Docket No. TQ92-2-59-000 reflect such change.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before October 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25160 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1403-004]

Pacific Gas & Electric Co.; Issuance of Annual License

October 11, 1991.

On June 29, 1989, Pacific Gas & Electric Company, licensee for the Narrows Project No. 1403, filed an application for a new license pursuant to the Federal Power Act and the Commission's regulations thereunder. Project No. 1403 is located on the Yuba River in Yuba County, California.

The license for Project No. 1403 was issued for a period ending July 31, 1991. Section 15(a) of the Federal Power Act (FPA), 16 U.S.C. 808(a), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA.

Notice is hereby given that an annual license for Project No. 1403 is issued to Pacific Gas & Electric Company for a period effective August 1, 1991, through July 31, 1992, or until the issuance of a new license for the project or other resolution under the FPA, whichever comes first.

If issuance of a new license (or other resolution) does not take place on or before July 31, 1992, an annual license will be issued each year thereafter, effective August 1 of each year, until such time as a new license is issued (or other resolution is effective), without further notice being given by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25166 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-40-001]

Raton Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 11, 1991.

Take notice that Raton Gas Transmission Co., (Raton) on September 12, 1991 tendered for filing Substitute Twentysecond Revised Sheet No. 4 as part of its FERC Gas Tariff, with a proposed effective date of October 1, 1991.

Raton states that the tariff sheet is being filed to reflect an increase in commodity charge of 3.75 cents per Mcf due to change in Spot Gas purchase from purchase price based on interruptible supply to a supplier of firm Spot Gas.

Raton states that copies of the filing have been served on Raton's two customers and to the state commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before October 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25161 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-10-000]

South Georgia Natural Gas Co., Proposed Changes in FERC Gas Tariff

October 11, 1991.

Take notice that on October 9, 1991, South Georgia Natural Gas Company (South Georgia) tendered for filing the following proposed tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of November 1, 1991:

First Revised Sheet No. 18
First Revised Sheet No. 19
First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 34E
First Revised Sheet No. 34F
First Revised Sheet No. 34G
Second Revised Sheet No. 34H

South Georgia states that the purpose of the filing is to revise those Sections to South Georgia's General Terms and Conditions to its gas sales tariff and the General Terms and Conditions for Rate Schedules FT and IT which set forth the standards and procedures by which South Georgia measures gas for its customers. South Georgia states that it is currently in the process of installing electronic flow computers at certain meter stations throughout its system which will ultimately replace the existing chart and digital recorder measurement equipment. For this reason, South Georgia has revised sections 4 and 5 of the General Terms and Conditions to its Tariff to incorporate measurement by electronic flow computation.

South Georgia states that copies of the filing were mailed to all of South Georgia's jurisdictional purchasers, shippers and interested state Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 214 and 211 of the Commission's rules of Practice and Procedure (18 CFR 385.214, 385.211). All such petitions or protests should be filed on or before October 21, 1991 Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25162 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-15-030]

Trunkline Gas Co.; Compliance Filing

October 11, 1991.

Take notice that on October 9, 1991, Trunkline Gas Company (Trunkline) tendered for filing the revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, as set forth in Appendix A attached to the filing.

Trunkline states that this filing is in compliance with the Commission's "Order On Initial Decision" of July 22, 1991 in Docket Nos. RP87-15-019, and its "Order on Remand" of July 22, 1991 in Docket No. RP87-15-027 (Phase I).

Trunkline states that the tariff sheets which it submitted reflect: (1) The elimination of Trunkline's minimum commodity bill from its tariff effective April 22, 1988, rather than May 1, 1987, as previously ordered by the Commission; and (2) the reclassification of LNG minimum bill charges incurred by Trunkline from the commodity to the demand component of rates, effective May 1, 1987.

Trunkline states that it seeks the recovery by direct bill to its jurisdictional sales customers of: (1) Its fixed cost commodity minimum bill charges for the period January 1, 1988 through April 22, 1988; (2) certain Trunkline LNG Company (Trunkline LNG) minimum bill costs which would have been recovered in the demand component of Trunkline's rates instead of the commodity component, offset by commodity recoveries of such costs; and (3) appropriate carrying charges.

Trunkline requests any waiver of the Commission Regulations and the terms of its tariff necessary to effect the acceptance of the proposed tariff sheets.

Trunkline states that it has served a copy of the filing on its jurisdictional sales customers, interested state commissions and parties to the proceeding in the above-referenced docket number.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before October 21, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25164 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-152-003]

Williams Natural Gas Co.; Make Tariff Sheets Effective

October 10, 1991.

Take notice that on October 8, 1991, Williams Natural Gas Company (WNG), moves that the Revised Tariff Sheets specified below filed with the Commission in Docket No. RP91-152 on May 8, 1991, be made effective November 7, 1991:

First Revised Volume No. 1

Substitute First Revised Sheet No. 5A
Substitute Fourth Revised Sheet No. 6
Substitute Fourth Revised Sheet No. 6A
Second Substitute Fourth Revised Sheet No. 9

Original Volume No. 2

Substitute Fifth Revised Sheet No. 144
Substitute Seventh Revised Sheet No. 309

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-25157 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4022-6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5073 or (202) 260-5075.

Availability of environmental Impact Statements Filed October 07, 1991 Through October 11, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910366, Draft EIS, FHW, NC, US 1 Improvements, Secondary Road 1853 at Lakeview to Secondary Road 1180 south of Sanford, Funding, Section 404 Permit, Lee and Moore Counties, NC, Due: December 05, 1991, Contact: Nicholas Graf (919) 856-4346.

EIS No. 910367, Draft EIS, AFS, ID, Coeur d'Arlene Nursery Pest Management, Implementation, Idaho Panhandle National Forests, Kootenai County, ID, Due: December 02, 1991, Contact: Sally Campbell (503) 326-7755.

EIS No. 910368, Final EIS, AFS, AK, Bohemia Mountain Timber Sales, Implementation and COE Permit, and Duncan Salt Chuck Creek Designation and Nondesignation into the Wild and Scenic River System, Tongass National Forest, Stikine Area, AK, Due: November 18, 1991, Contact: Tamara Malone (907) 772-3841.

EIS No. 910369, Final EIS, EPA, NJ, Upper Passaic River Basin 201 Facilities Plan, Upgrading and Expansion, Construction Grant, Somerset, Morris and Union Counties, NJ, Due: November 18, 1991, Contact: Robert Hargrove (212) 264-1892.

EIS No. 910370, Final EIS, FHW, WI, WI-TH-54 Improvements, Wisconsin Rapids to US 51 in Plover, Funding, Section 404 Permit, City of Wisconsin, Wood and Portage Counties, WI, Due: November 18, 1991, Contact: Robert W. Cooper (608) 264-5940.

EIS No. 910371, Draft EIS, SFW, AK, Federal Subsistence Management Program for Federal Public Lands in Alaska, Implementation, AK, Due: December 09, 1991, Contact: Richard Pospahala (907) 786-3447.

EIS No. 910372, Final EIS, NPS, CA, Santa Monica Mountains National Recreation Area, Cheeseboro Canyon and Palo Comado Canyon Land Exchange, Ventura and Los Angeles Counties, CA, Due: November 18, 1991, Contact: David Gackenbach (818) 597-1036.

EIS No. 910373, Draft EIS, NOA, SC, North Inlet/Winyah Bay National Estuarine Research Reserve Management Plan, Site Designation, Funding, Georgetown County, SC, Due: December 02, 1991, Contact: Susan Durdan (202) 606-4122.

Amended Notices

EIS No. 910280, Draft EIS, UMT, IL, Chicago Central Area Circulator Transit System Improvement, from Division Street (north) Halsted Street and the Chicago River, the Stevenson Expressway, and Lake Michigan, Funding, Cook, DuPage, Kane, Lake, McHenry and Will Counties, IL, Due: October 25, 1991, Contact: Donald Gismondi (312) 353-2865.

Published FR 08-23-91—Review period extended.

Dated: October 15, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-25180 Filed 10-17-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4022-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 30, 1991 Through October 4, 1991 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D-AFS-L65152-AK Rating EC2, Kelp Bay Timber Harvest Project, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Baran of Islands, AK.

Summary: EPA is concerned that proposed best management practices may not ensure that the Alaska Water Quality Standard (WQS) are being met, or that fisheries are adequately protected. Additional information, including a detailed monitoring plan should be provided in the final EIS.

ERP No. D-BLM-K60022-CA Rating EO2, Eagle Mountain Class III Nonhazardous Solid Waste Landfill Project and Specific Plan, Federal Land Exchange, Right-of-Way Approval, Section 404 Permit, Riverside County, CA.

Summary: EPA expressed environmental objections regarding potential project impacts to air quality and noted that the project as proposed may not be in conformity with section 176 of the Federal Clean Air Act. Additional information and analysis of surface and ground water impacts is needed. EPA recommends that alternatives that focus on waste reduction be more closely examined in the final EIS.

ERP No. D-BLM-L65158-OR Rating LO, Lower Deschutes Wild and Scenic River Management Plan,

Implementation, Jefferson Sherman and Wasco Counties, OR.

Summary: EPA has no objections to the preferred alternative.

ERP No. D–COE–K34008–CA Rating 3, North Delta Multipurposes Water Program, Sacramento, Cosumnes and Mokelumne River, section 10 and 404 Permit, Sacramento County, CA.

Summary: EPA provided a single set of comments to both agencies for their respective projects. EPA noted that it considered both draft EIS to be inadequate and recommended that a single EIS should be prepared to address project alternatives, environmental impacts and mitigation measures to reduce or eliminate adverse impacts. EPA recommended that greater consideration should be given to urban and agricultural water conservation and these projects should not proceed to final design until water quality standards are adopted. If these issues are not satisfactorily resolved, the proposed projects may be candidates for referral to the Council on Environmental Quality.

ERP No. D–IBR–K28013–CA Rating 3, South Delta Water Management Program, Phase I of Water Banking Program, Implementation, COE section 10 and 404 Permits, San Joaquin River, San Joaquin Delta, CA.

Summary: EPA provided a single set of comments to both agencies for their respective projects. EPA noted that it considered both draft EISs to be inadequate and recommended that a single EIS should be prepared to address project alternatives, environmental impacts and mitigation measures to reduce or eliminate adverse impacts. EPA recommended that greater consideration should be given to urban and agricultural water conservation and these projects should not proceed to final design until water quality standards are adopted. If these issues are not satisfactorily resolved, the proposed projects may be candidates for referral to the Council on Environmental Quality.

ERP No. D–UAF–J10009–SD Rating EC2, Ellsworth Air Force Base Minuteman II of the 44th Strategic Missile Wing Deactivation, Implementation, Rapid City, Pennington County, SD.

Summary: EPA has concerns related to potential water quality impacts. The FEIS needs to clearly address: (1) The proximity of the water supply wells to the launch control facility and launch facility; (2) the potential hydraulic modifications of the aquifer and well integrity; (3) borrowed fill material so the location does not interfere with local water recharge areas; and (4) the designation of Wellhead Protection Areas.

ERP No. D–USA–G13001–NM Rating LO, White Sands Missile Range Aerial Cable Test Capability Facility, Construction, Integration and Development, Jim Site or Fairview Mountain Site Selection, Socorro, Lincoln, Otero, and Sierra Counties, NM.

Summary: EPA has no objection to the proposed action as described.

Final EISs

ERP No. F–USA–11027–00, Lexington Facility of Lexington-Bluegrass Army Depot Closure and Realignment of functions to Tobyhanna Army Depot, Lackawanna and Wyoming Counties, PA; Letterkenny Army Depot, Fulton and Franklin Counties, PA and Washington County, MD; Redstone Arsenal, Madison County, AL; and Anniston Army Depot, Calhoun County, AL.

Summary: EPA concludes that the issues raised in the original comments were satisfactorily addressed.

ERP No. F–USA–J11006–00, Pueblo Depot Activity Realignment, Transfers of Ammunition Mission to Red Army Depot, Davis, Salt Lake, Tooele and Utah Counties, UT; Bowie County, TX and Pueblo County, CO.

Summary: Review of the FEIS was not deemed necessary. No formal letter was sent to the Agency. Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F–VAD–F99008–IL, Northeastern Illinois Area National Cemetery Development, Construction and Operation, Site Selection, Fort Sheridan, Grant Park, Cissna Park, Possible Section 404 Permit Lake, Kankakee and Iroquois Counties, IL.

Summary: EPA recommended that the proposal to turn the ravines, bluffs and beaches into a nature pressure be adopted and that adequate buffers between the gravesites and the natural areas be incorporated into the layout plan.

Dated: October 15, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-25181 Filed 10–17–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4022–8]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing a meeting of the Ozone Transport Commission to be held on October 29, 1991.

This meeting is for the Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on October 29, 1991.

ADDRESSES: The meeting will be held at: The Radisson Suites Hotel, 18th Street & Benjamin Franklin Parkway, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Williams S. Baker, Chief, Air Programs Branch, United States Environmental Protection Agency, 26 Federal Plaza, room 1037A, New York, New York 10278, (212) 264–2517.

FOR PRESS INQUIRIES CONTACT: John Haggerty, New Jersey Department of Environmental Protection, CN402, Trenton, N.J. 08625–0402, (609) 292–2994.

FOR DOCUMENTS CONTACT: Robert Perciasepe, Chairman, Ozone Transport Commission, Maryland Department of the Environment, 2500 Broening Highway, Building 30A, Room 2101A, Baltimore, Maryland 21224, (301) 631–3084.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 new provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the Commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with appropriate matters within the transport region.

The purpose of this notice is to announce that this Commission will meet on October 29, 1991. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of Transport Commissions are not subject to the provisions of the Federal Advisory Committee Act. This

meeting will be open to the public as space permits, beginning at 8:30 a.m.

TYPE OF MEETING: Open.

AGENDA: The meeting begins at 9 a.m. and is expected to last until 4 p.m. The purpose of the meeting is to continue to organize the Commission, and to receive reports from its committees, particularly on regional air quality simulations and draft resolutions.

William J. Muszynski,

Acting Regional Administrator, EPA Region II.

[FR Doc. 91-25174 Filed 10-17-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

City of Los Angeles, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200404-001.

Title: City of Los Angeles—Board of Harbor Commissioners/Yang Ming Marine Transport, Ltd Marine Terminal Agreement.

Parties:

City of Los Angeles,
Yang Ming Marine Transport, Ltd.

Synopsis: The Agreement, filed October 8, 1991, provides an Order that establishes the compensation to be paid by Yang Ming during a holdover period as authorized by and in accordance with section 3(b) of Permit No. 681.

Agreement No.: 224-200576.

Title: Jacksonville Port Authority/Associated Container Transportation (Australia) Ltd., Marine Terminal Agreement.

Parties:

The Jacksonville Port Authority ("JPA"),
Associated Container Transportation (Australia) Ltd.

Synopsis: The Agreement, filed October 4, 1991, provides discounts from the tariff for wharfage, receiving, delivery of containers, chassis and crane rental. The term of the Agreement is for three years.

Agreement No.: 203-011271-006.

Title: U.S./Peru Discussion Agreement.

Parties:

Crowley Caribbean Transport, Inc.,
Empresa Naviera Santa,
Lykes Bros. Steamship Co., Inc.,
Compania Chilena De Navegacion Interoceanica (CCNI),
Empremar S.A.,
Nedlloyd Lines.

Synopsis: The proposed amendment changes the name of the Agreement to the U.S./Chile and Peru Discussion Agreement.

Agreement No.: 203-011290-008.

Title: Vessel Operators Hazardous Material Association Agreement.

Parties:

America-Africa-Europe Line GmbH,
Atlantic Container Line B.V.,
Australia-New Zealand Direct Line,
Compagnie Generale Maritime,
Crowley Maritime Corporation,
Evergreen Marine Corporation, (Taiwan), Ltd.,
Farrell Lines, Inc.,
Hamburg-Sudamerikanische, Dampfshifffahrts Gesellschaft, Eggert & Amsinck (Columbus Line),
Hapag-Lloyd AG,
Independent Container Line Ltd.,
A/S Ivarans Rederi,
Kawasaki Kisen Kaisha Ltd.,
Mitsui O.S.K. Lines, Ltd.,
A.P. Moller-Maersk Line,
Nedlloyd Lijnen B.V.,
Nippon Yusen Kaisha Line,
P&O Containers, Ltd.,
Sea-Land Service, Inc.,
Senator Linie GmbH & Co. KG,
Wilh. Wilhelmsen Ltd. AS,
Zim Israel Navigation Shipping Co., Ltd.

Synopsis: The amendment would delete America-Africa-Europe Line GmbH as a party to the Agreement; reinstate article 7.2, which was inadvertently deleted previously; and relocate article 8.5.

Agreement No.: 203-011351.

Title: CSAV/GWF Cooperative Working Agreement.

Parties:

Compania Sud Americana de Vapores S.A. ("CSAV"),
Great White Fleet Ltd. ("GWF").

Synopsis: The Agreement would permit the parties to consult and agree, subject to voluntary adherence, on rates, conditions of service, sailing schedules and the exchange of space for up to 70 sailings per fruit season in the trade between Chile and the East and West Coasts of the United States. The parties have requested a shortened review period.

Dated: October 11, 1991.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 91-25070 Filed 10-17-91; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

[Wildlife Order 178; 2-D-IN-569B]

Portion, Cannelton Locks and Dam, Perry County, IN; Transfer of Property

Pursuant to section 2 of Public Law 80-537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667b-d), notice is hereby given that:

1. By letter from the General Services Administration dated August 27, 1991, the property, consisting of 128.39 acres of land improved with a parking area, known as a portion of Cannelton Locks and Dam, Perry County, Indiana, has been transferred to the Fish and Wildlife Service, Department of the Interior.

2. The above described property was transferred for wildlife conservation in accordance with the provisions of section 1 of said Public Law 80-537 (16 U.S.C. 667b), as amended, Public Law 92-432.

Dated: October 3, 1991.

Earl E. Jones,

Commissioner, Federal Property Resources Service.

[FR Doc. 91-25124 Filed 10-17-91; 8:45 am]

BILLING CODE 6820-96-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those

information collections recently submitted to OMB.

1. Self-Evaluation and Recordkeeping Required by Regulations Implementing Section 504 of the Rehabilitation Act of 1973 (45 CFR 84.6(c))—extension with no change—0990–0124—Recipients of DHHS funds must evaluate their policies/practices and take action to comply with the requirements of Section 504, Rehabilitation Act of 1973. Recipients with 15 or more employees must maintain and permit public inspection of their self-evaluation for three years. Respondents: State or local governments, businesses or other for-profit, non-profit institutions, small businesses; Annual Number of Recordkeepers: 380; Average Burden per Response: 80 hours; Estimated Total Annual Burden: 30,400 hours.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619–0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address:

OMB Report Management Branch
New Executive Office Building, room 3208
Washington, DC 20503

Dated: October 10, 1991.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 91–25210 Filed 10–17–91; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

Interagency Committee on Smoking and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Interagency Committee on Smoking and Health.

Time and Date: 9 a.m.–3:30 p.m., November 6, 1991.

Place: The Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

Status: Open to the public, limited only by space available.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health on the: (a) Coordination of all research and education programs and other activities within the Department and with other Federal, State, local, and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, Federal agencies, and State and local public health agencies with respect to smoking and health activities.

Matters To Be Discussed: The agenda will include a discussion on protecting young children (0–6 years) from the health effects of environmental tobacco smoke.

Agenda items are subject to change as priorities dictate. Members of the audience must register in advance to address the Committee during the Public Comment Session.

Contact Person for More Information: To obtain substantive program information, summaries of the meeting, roster of committee members or to register for the Public Comment Session, please contact Michele Chang, Interagency Committee on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, CDC, Mailstop K50, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/488–5701 or FTS 236–5701.

Dated: October 10, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91–25111 Filed 10–17–91; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91N–0412]

The Upjohn Co.; Withdrawal of Approval of a Supplemental New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a supplemental new drug application (NDA 11 839/S–055) for Provera Tablets held by The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199 (Upjohn). This supplemental application provides for a PVC blister pack. At FDA's request, Upjohn asked the agency to withdraw approval of the supplemental application. Under the supplemental application, Upjohn was marketing a 28-tablet blister pack that was not consistent with the approved dosage regimens.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8038.

SUPPLEMENTARY INFORMATION: On July 5, 1990, FDA approved a supplemental new drug application (NDA 11–839/S–055) for Provera (medroxyprogesterone) Tablets, which provided for the packaging of the 2.5-milligram tablets in a PVC blister pack. Later, FDA became aware that Upjohn was marketing Provera Tablets in a blister package termed a "convenience pack," which contained twenty-eight 2.5-milligram tablets. This packaging was not consistent with the approved dosage regimen. Furthermore, the promotional material concerning this "convenience pack" indicated that it was to be used for menopausal hormone replacement therapy, which is an unapproved indication.

The supplemental application for the blister pack did not indicate Upjohn's intention to package the product in units of 28 tablets. FDA did not intend to approve a blister package containing this number of tablets or to approve a package for an unapproved indication.

Accordingly, FDA asked Upjohn to request voluntary withdrawal of this supplemental application. By letter dated November 9, 1990, Upjohn requested withdrawal of NDA 11–839/S–055, and stated that promotion of the blister pack and other promotion of Provera Tablets for use in hormone replacement therapy had ceased. The letter also stated that Upjohn had discontinued shipment of the 28-tablet Provera blister pack, and would immediately begin a market withdrawal of the blister pack.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of supplement S–055 to new drug application NDA 11–839 is withdrawn, effective October 18, 1991.

Dated: October 10, 1991.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 91–25105 Filed 10–17–91; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Medicare Program; Meetings of the Advisory Committee on Medicare-Physician Relationships

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces meeting of the Advisory Committee on Medicare-Physician Relationships on November 4, 1991.

DATES: November 4, 1991, 8 a.m.–3 p.m. The entire meeting will be held in Executive Session November 4 pursuant to section 552b(c)(9)(B) of title 5, U.S. Code, for discussion and preparation of comments the Committee wishes to submit to the Secretary.

ADDRESSES: The meeting will be held in room 305H, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Matthew Crow, Executive Director, Advisory Committee on Medicare-Physician Relationships, Room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Telephone (202) 245–7874.

SUPPLEMENTARY INFORMATION: In accordance with The Federal Advisory Committee Act, the Secretary of Health and Human Services established the Advisory Committee on Medicare-Physician Relationships. The Committee advises the Secretary on the existing Medicare policies and procedures that directly relate to physicians' provision of services to Medicare's beneficiaries, and on Peer Review Organization (PRO) and carrier policies and procedures. The Advisory Committee looks at the methods to improve Medicare carrier services, responsiveness to physicians. This Committee does not consider payment issues.

The Committee consists of the Senior Medical Advisor of the Health Care Financing Administration (HCFA) as chair, and seven members selected by the Secretary who are practicing physicians representing the primary care, internal medicine, and surgical disciplines. Members are invited to serve for the duration of the Committee. The members are: Lanny R. Copeland, M.D., Ulton G. Hodgin, Jr., M.D., Edward A. Rankin, M.D., Barbara Ann P. Rockett, M.D., Mark C. Rogers, M.D., Richard B. Tompkins, M.D., and Susan L. Turney, M.D. The chairperson is Nancy E. Gary, M.D.

This meeting will be conducted in closed session in order to permit the free and frank exchange of views, to protect against premature disclosure of matters under consideration before recommenations have been adopted, and to avoid the confusion that might result from disclosure of tentative or proposed recommendations and rationales that are not in fact adopted.

The Committee is to report to the Secretary through the Administrator, HCFA, not later than December 31, 1991.

Authority: Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. 2)).

Dated: October 11, 1991.

Matthew Crow,

Executive Director, Advisory Committee on Medicare-Physician Relationships.

[FR Doc. 91–25166 Filed 10–17–91; 8:45 am]

BILLING CODE 4120–01–M

Office of the Assistant Secretary for Health

Meeting of the Advisory Committee Scientific Integrity, Public Health Service

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee on Scientific Integrity, Public Health Service, on Sunday, November 17, 1991 at the Hyatt Regency Cambridge in Cambridge, Massachusetts. The meeting will take place from 8:30 a.m. to 4:30 p.m. at the hotel at 575 Memorial Drive, Cambridge, Mass 02139. The meeting will be open to the public. Tentatively, the meeting is in the Molly Pitcher room.

The charge of the Committee is to review and evaluate, on an ongoing basis, the efficacy of policies and procedures of the Department of Health and Human Services in detecting, deterring, investigating, and resolving allegations of scientific misconduct and to make recommendations to the Secretary and the Assistant Secretary for Health on improving these policies and procedures.

The purpose of the meeting will be to discuss the June 13, 1991 **Federal Register** Notice (56 FR 27384–94) Policies and Procedures for Dealing With Possible Scientific Misconduct in Extramural Research and the public's responses, as well as develop recommendations on the policies and procedures. Discussion items will include but will not be limited to the definition of scientific misconduct, due process protections, the availability of hearings, and protection for accusers ("whistleblowers").

Henrietta D. Hyatt-Knorr, Executive Secretary, Advisory Committee on Scientific Integrity, Office of Scientific Integrity Review, Rockwall II, suite 1113, 5515 Security Lane, Rockville MD 20852, (301) 443–5300, will furnish the meeting agenda and a roster of the Committee members upon request.

The Committee welcomes statements for the record by interested parties either in person or in writing. If you desire to make a presentation, please contact the Executive Secretary for further instructions and a scheduled time. If you intend to observe the meeting, please inform the Executive Secretary since attendance is presently limited to a total of 50 persons.

Lyle W. Bivens,

Director, Office of Scientific Integrity Review.

[FR Doc. 91–25178 Filed 10–17–91; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on September 27, 1991.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Disability Report/Vocational Report—0960–0141—The information collected on forms SSA–3368–BK/SSA–3369–F6 used by the Social Security Administration (SSA) to make determinations for disability claims. (In conjunction with the requirements set forth in 20 CFR 1320.18, Emergency and expedited processing, we are requesting a waiver of the public commenting period.) The affected public is comprised of individuals who have filed for disability benefits.

	SSA–3368–BK	SSA–3369–F6
Number of Respondents.	1,800,000	400,000
Frequency of Response.	1	1
Average Burden Per Response.	28½ min.	30 min.
Estimated Annual Burden.	855,000 hrs.	200,000 hrs.
Total	2,200,000	
	1	
	28.77 min.	
	1,055,000 hrs.	

2. Medical History and Disability Report—Widow, Widower, Surviving Divorced Wife or Disabled Child—0960–000—The information collected on the form SSA–3820–F6 is used by the Social Security Administration to determine eligibility for Social Security disability benefits/Supplemental Security Income payments. In addition, this information is also needed by SSA to properly

evaluate and adjudicate an individual's disability as prescribed by current public law and Federal regulation including regulations implementing a recent decision issued by the U.S. Supreme Court (*Sullivan* v. *Zebley*) concerning evaluating a child's claim for disability. (In conjunction with the requirements set forth in 20 CFR 1320.18, Emergency and expedited processing, we are requesting a waiver of the public commenting period.) The affected public is comprised of individuals (widows, widowers, surviving divorced wives and disabled children) who have filed for disability benefits/payments.

Number of Respondents: 453,000.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: October 7, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91-24725 Filed 10-17-91; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-48]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 18, 1991.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD publishes a Notice, on a weekly basis, to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.). Today's Notice is for the purpose of announcing that no additional properties have been reviewed for suitability this week.

Dated: October 11, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 91-25097 Filed 10-17-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-1-4212-11; AZA 25940]

Classification of Public Lands; Arizona

ACTION: Recreation and Public Purposes (R&PP) Act Classification; Arizona.

Maricopa County Board of Supervisors proposes to develop a regional park in the San Tan Mountains on public lands legally described as:

Gila and Salt River Meridian, Arizona

T. 3 S., R. 7 E.,
Sec. 4, S½SW¼, W½SW¼SE¼;
Sec. 8, E½, E½SW¼;
Sec. 9, S½NE¼, W½, SE¼;
Sec. 10, W½NE¼. W½;
Sec. 16, N½;
Sec. 17, E½, E½NW¼;
Sec. 19, lots, 2, 3, 4, E½, SE¼NW¼, E½SW¼;
Sec. 20, E½E½;
Sec. 21, all;
Sec. 22, SW¼, W½W½SW¼SE¼;
Sec. 28 to 32, incl., all.
Aggregating 6908.61 acres, more or less, in Pinal County.

The land has been examined and found suitable for classification for lease and patent for recreation and public purposes under the provisions of the R&PP Act of June 14, 1926, as amended (44 Stat. 741: 43 U.S.C. 869; 869-4) and the regulations contained in 43 CFR 2740 and 43 CFR 2912.

In addition, the land is determined to meet general classification criteria of 43 CFR 2410.1 (a-d) and specific public purposes classification criteria of 43 CFR 2430.4 (a and c).

Classification of this land under the provisions of the above cited R&PP Act segregates the land from appropriations under the public lands laws and the mining laws, but not from applications under the mineral leasing laws or the R&PP Act for a period of eighteen months from the date this notice is published in the **Federal Register** (43 CFR 2741.5(2)).

Detailed information concerning this classification is available from the Phoenix District Office, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the Phoenix District Manager.

Dated: October 9, 1991.

William T. Childress,

Acting District Manager.

[FR Doc. 91-25131 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-32-M

[OR-050-4333-12:GP2-014]

Oregon: Emergency Closure of Public Lands

October 4, 1991.

ACTION: Notice is hereby given that effective immediately the following described public lands in Deschutes County are closed to all vehicle access:

T. 17 S., R. 13 E., all public lands in Sections 20, 21, 28 and 29, situated south of the Nelson Road, west of Waugh Road, and north of Alfalfa Market Road east of Bend. Public lands along the Deschutes River southwest of Redmond in T. 15 S., R. 12 E., W½SW¼, Section 25 lying west of the Deschutes River, E½NE¼, Section 26, and the NE¼SE¼, Section 35; T. 16 S., R. 12 E., E½SE¼SE¼, Section 3, E½SW¼, NW¼SE¼, Section 9.

SUMMARY: The purpose of these closures along the Deschutes River and east of Bend is to prevent further environmental damage from illegal trash dumping, juniper cutting, riparian degradation, soil compaction and erosion resulting from the creation of tracks and roads from off-road vehicle use, and to help reduce user conflicts and conflicts with adjacent private landowners.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8341.2. The closure will remain in effect until an activity plan which addresses

these urban interface issues can be completed and implemented.

Donald L. Smith,

Acting District Manager.

[FR Doc. 91-25065 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-33-M

[WY-060-02-4120-14]

Availability of Draft Environmental Assessment and Public Hearing: West Black Thunder Coal Lease Application

AGENCY: Bureau of Land Management, Interior, Wyoming.

ACTION: Notice of Availability of the Draft Environmental Assessment (EA) for the West Black Thunder Coal Lease Application (WYW118907) and Notice of Public Hearing.

SUMMARY: This Notice announces the availability of the Draft Environmental Assessment for the Thunder Basin Coal Company application for a coal lease for an estimated 400 million tons of federal coal reserves under 3,225 acres located west of and adjacent to their existing Black Thunder Mine, Campbell County, Wyoming. The EA was prepared to assist the BLM in making a decision on the proposed lease. A public hearing to receive comments on the EA, the fair market value, and the maximum economic recovery rate (MER) has been scheduled for November 20, 1991, at the Holiday Inn in Gillette, Wyoming, at 7 p.m.

Prior to the meeting, an open house is scheduled from 3 to 5 p.m. that same day at the same location.

DATES: Comments on the EA must be received at the address below no later than c.o.b. December 5, 1991.

ADDRESSES: Comments should be sent to Nancy Doelger, Casper BLM Office, 1701 East E Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: For more information or to obtain a copy of the EA, contact Nancy Doelger at the office identified above or by phone at (307) 261-7600.

SUPPLEMENTARY INFORMATION: Thunder Basin Coal Company (TBCC) filed an application on December 21, 1989, with the BLM for a coal lease for the following subject lands:

Sixth Principal Meridian

T. 43 N., R. 70 W.
Sec. 18 All
Sec. 19 All
Sec. 29: Lots 3-6, 9-16
Sec. 30 All
Sec. 31: Lots 5-12
Sec. 32: Lots 1-8
Sec. 33: Lots 3-6

These lands contain 3,224.61 acres more or less, and are located west of and adjacent to their existing Black Thunder Mine. The application was filed as a lease-by-application (LBA) for the purpose of extending the producing life of the existing mine. The EA will be available for review and comment on or before November 1, 1991. The Office of Surface Mining (OSM) and the U.S. Forest Service (FS) have been identified as cooperating agencies in the preparation of the EA. All comments received will be considered in preparation of the final EA.

Dated: October 11, 1991.

Robert A. Bennett,

Acting State Director.

[FR Doc. 91-25109 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-22-M

[CA-060-02-4410-08]

Availability of Environmental Assessment of the 1989/1990 Amendment; Review of the California Desert Conservation Area Plan

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act of 1976 and with 43 CFR 1610.5-5 and 43 CFR 1610.7-2, the Bureau of Land Management has prepared an environmental assessment (EA) of 19 proposed amendments to the 1980 California Desert Conservation Area (CDCA) Plan. The EA is available for a 60-day public review and comment period. Following the public comment period, there will be a 30-day protest period during which time those persons or agencies who participated in the planning process may protest any of the proposed amendment decisions to the BLM Director.

The amendments include 13 proposals which address the designation of Areas of Critical Environmental Concern (ACEC's), two proposals for changes in multiple-use class (MUC), a proposal addressing changes in both MUC and vehicle access, two proposals on changes in ephemeral grazing allotments, and a proposal for delineating desert tortoise management categories.

Copies of the EA may be obtained from the California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507; phone (714) 653-3264. Copies will be available for review at public libraries throughout Southern California and at the Bureau's California State Office, 2800 Cottage Way, Sacramento, CA 95825; Ridgecrest Resource Area (RA) Office, 325 S. Richmond Road, Ridgecrest, CA 93555; Palm Springs-South Coast RA Office, 63-500 Garnet Ave., North Palm Springs, CA 92258; El Centro RA Office, 333 S. Waterman, El Centro, CA 92243; Barstow RA Office, 150 Coolwater Lane, Barstow, CA 92311; and Needles RA Office, 101 W. Spikes Rd., Needles, CA 92363.

DATES: Comments on the EA should be submitted or postmarked no later than December 16, 1991. There will also be an opportunity for public comments on the document at the California Desert District Advisory Council meeting to be held in the American Legion Hall in Lone Pine, California, at 10:15 a.m. on October 24, 1991. For further information on the meeting, call 1-800-446-6743.

ADDRESSES: Comments should be addressed to Gerald E. Hillier, District Manager, Bureau of Land Management, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507.

FOR FURTHER INFORMATION CONTACT: Molly S. Brady, Chief, Planning and Environmental Assistance, California Desert District; phone (619) 653-4197.

SUPPLEMENTARY INFORMATION: Nineteen proposed amendments were considered. The following 13 addressed Areas of Critical Environmental Concern (ACEC's):

#1 Designate a 2,950-acre ACEC at Manix, approximately 25 miles east of Barstow, for the protection of late Pleistocene paleontological and archaeological resources. Plans of operation for all mining activities would be required, and recreational collection of fossils would be prohibited. Existing authorized grazing, recreation, and mining would be allowed to continue, but modification of facilities would require review and approval by the Bureau.

#2 Enlarge the existing 5,120-acre Black Mountain Cultural Area ACEC by adding 32,480 acres to protect outstanding cultural resources. The ACEC is 22 miles northwest of Barstow. Cultural resources would be protected through partial closure to vehicles and withdrawal of approximately 500 acres of significant rock art sites from mining.

#3 Combine the existing 1,694-acre Edom Hill-Willow Hole ACEC with the Coachella Valley Preserve (7,000 acres) and the Whitewater Floodplain (Indian Avenue) Preserve (1,230 acres) to form the 9,924-acre Coachella Valley Fringe-toed Lizard Research Natural Area/ACEC (RNA/ACEC). The Coachella Valley Fringe-toed Lizard and the Least Bell's Vireo, both Federally and State-listed, and two Federal candidate plant

species will be protected through the following actions: closure to off-highway vehicles, removal of exotic plants, and other actions defined in the Edom Hill-Willow Hole ACEC Activity Plan and the Coachella Valley Preserve System Management Plan (1986).

#4 Delete the 2,500-acre Halloran Wash ACEC located 15 to 20 miles northeast of Baker and immediately north of Interstate 15. The areas was designated at ACEC for protection of cultural resources. A 1982 amendment to the CDCA Plan added an area containing petroglyphs to the ACEC. Recent on-site examination showed that all rock art is on private land outside the ACEC boundary, and deletion of the ACEC has been proposed.

#5 Designate the Amboy Crater (640 acres) an NNL/ACEC. The crater is located 2.5 miles west of the San Bernardino County town of Amboy. An existing 5,760-acre NNL (National Natural Landmark) surrounds the crater. The Bureau will request the National Park System which manages NNL's to reduce the size of the NNL to 640 acres. The crater will be protected by actions outlined in the Amboy Crater NNL Plan of 1986.

#6 Redesignate the 80-acre Bigelow Cholla Natural Area an RNA/ACEC. The area lies on both sides of Interstate 40 in the Sacramento Mountains, in the southwest portion of Section 22, T9N, R20E. This is the northern-most population and the densest-known concentration of Bigelow (Teddy Bear) Cholla in the California Desert Conservation Area. The area is withdrawn from mineral entry under the mining laws but not from mineral leasing. The area would be managed cooperatively with the University of California, which owns the adjoining 640-acre parcel, for research and recognition of the Unusual Plant Assemblage.

#7 Redesignate the 18,320-acre Cima Dome Outstanding Natural Area (ONA) an ONA/ACEC. This well-known geologic feature is located in the north-central portion of the East Mojave National Scenic Area (EMNSA) and is withdrawn from mineral entry under the mining laws but not from mineral leasing. Outstanding features of the dome include a Joshua Tree forest. It would be managed as described in the East Mojave National Scenic Area Plan (1988).

#8 Redesignate the Cinder Cones NNL an NNL/ACEC. The 24,960-acre ACEC would be composed of an existing 24,320-acre NNL and 640 additional acres. The cinder cones would be protected by a 20,320-acre withdrawal from mineral entry under the mining laws but not from mineral leasing and by controlling mineral extraction in the remaining area. In addition, the ACEC would be managed as described in the EMNSA Plan.

#9 Redesignate the 6,680-acre Granite Mountains RNA an RNA/ACEC. The area would continue to be managed cooperatively with the University of California for the protection of an unusually diverse range of plants and wildlife. Management guidelines of the EMNSA Plan would also apply, including a proposed withdrawal of 11,280 acres from mineral entry under the mining laws but not from mineral leasing and the closure of several vehicle routes.

#10 Redesignate the 49,065-acre Kelso Sand Dunes ONA an ONA/ACEC for protection of a unique ecosystem with great species diversity. This is the portion of the Kelso Sand Dunes Wilderness Study Area (CDCA-250) which was recommended for wilderness designation. Management of the area would be as described in the EMNSA Plan and would include maintaining a mineral withdrawal and continuing a motorized vehicle closure.

11 Designate a 44,160-acre NNL/ACEC in the Turtle Mountains for the protection of a unique environment containing special cultural, wildlife, and botanical resources, sensitive soils, diverse topography, and opportunities for primitive types of recreation. The area of the proposed ACEC is the core of the recommended portion of the Turtle Mountains Wilderness Study Area (CDCA-307). It has been closed to vehicles since 1976. A large part of the ACEC coincides with the area designated as an NNL. The Mopah Springs ACEC is within the proposed ACEC and would be incorporated into the new ACEC.

#12 Designate a 2,040-acre ACEC at the Desert Lily Preserve, about 10 miles northeast of Desert Center and just east of Highway 177. This area has outstanding displays of the desert lily when winter rains are plentiful. The area was withdrawn from mineral entry in 1972 and has been protected by a fence on the side adjacent to the highway since 1975 for protection fro off-road activity. Under ACEC management, the mineral withdrawal and protection by fencing would continue, along with other actions to be determined in preparing the ACEC management plan.

#13 Designate a 27,767-acre portion of the Imperial (Algodones) Dunes NNL an NNL/ACEC. The area coincides with the portion of the Algodones Dunes Wilderness Study Area (CDCA-360) which the CDCA Plan recommended suitable for wilderness designation. It is bordered on the south by Highway 78, on the west by the new Coachella Canal, and on the north by Mammoth Wash. This portion of the dunes system was closed to vehicles in the 1970's to protect essential habitats for plant species endemic to the dunes. The Imperial Dunes Recreation Area Management Plan (RAMP) of 1987 continued this closure. The management actions set forth in the RAMP for this area will be applied to this ACEC.

The six remaining amendments address changes in multiple use class (#s 14 and 15), changes in MUC and vehicle access (#16), changes in ephemeral grazing allotments (#s 17 and 18), and delineation of desert tortoise management categories (#19).

Dated: October 8, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91-25132 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-40-M

[UT-060-02-4410-14]

Intent To Prepare an Environmental Impact Statement for the Cockrell Oil Corporation Coalbed Methane Project in Carbon County, Utah

October 29, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Cockrell Oil Corporation Coalbed Methane Project in Carbon County, Utah and Notice of Scoping Meeting.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Moab District, will be directing the preparation of an EIS to be prepared by a third party contractor on the impacts of the Cockrell Oil Corporation Coalbed Methane Project. The project involves the development of approximately 16,630 mineral acres for the production of methane gas from the underlying Blackhawk coal formation. The project would be located in the Emma Park area of Carbon County, Utah and would include Federal, State and private surface and mineral subsurface. A public scoping meeting will be held November 13, 1991.

SUPPLEMENTARY INFORMATION: Cockrell Oil Corporation of Houston, Texas proposes to develop approximately 16,630 mineral acres for the production of methane gas from the underlying Blackhawk coal formation. Of this total,

67 percent (11,165 acres) of the mineral estate is administered by the BLM, 9 percent (1,458 acres) of the mineral state is administered by the State of Utah, and the remaining 24 percent (4,007 acres) of the mineral estate is privately owned.

In order to fully develop the coalbed methane resource a well spacing pattern of 320 acres (one well per 320 acres) is planned with the possibility of 1 additional well per 320 acres. This spacing pattern would allow Cockrell to dewater the coalbeds within the field and achieve maximum desorption of methane from the coal. Based upon this spacing pattern, it is anticipated that a maximum of eighty-three (83) wells would be needed for subsurface disposal of produced water. Of this total, fifty-seven (57) wells would be on federal mineral estate, twenty-three (23) would be on privately owned mineral estate and seven (7) would be on State of Utah mineral estate.

The Bureau of Land Managements' scoping process for this EIS will include: (1) Identification of issues to be addressed; (2) Identification of viable alternatives, and (3) Notifying interested groups, individuals and agencies so that additional information concerning these issues can be obtained.

A public scoping meeting will be held at 7 p.m. November 13, 1991, at the BLM office at 900 North 700 East, Price, Utah.

The scoping process will consist of a news release announcing the start of the EIS process; letters of invitation to participate in the scoping process; and a scoping document which further clarifies the proposed action, alternatives and significant issues being considered to be distributed to selected parties and available upon request.

Written comments will be accepted until December 1, 1991. Comments should be sent to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532, Attention: Cockrell Coalbed Methane Project.

FOR FURTHER INFORMATION CONTACT: Daryl Trotter at (801) 259-6111.

Gene Nodine,

District Manager.

[FR Doc. 91-25134 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-DQ-M

[UTU-65722]

Utah; Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with title IV of the Federal Oil and Gas Royalty Management Act Pub. L. 97-451), a petition for reinstatement of oil and gas lease UTU-65722 for lands in San Juan County, Utah, was timely filed and required rentals and royalties accruing from August 1, 1991, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease UTU-55722 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective August 1, 1991, subject to the original terms and conditions and the increased rental and royalty rates cited above.

Robert Lopez,

Chief, Minerals Adjudication Section.

[FR Doc. 91-25110 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-920-41-5700; WYW50520]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

October 9, 1991.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3109.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW50520 for lands in Uinta County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW50520 effective June 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

F.R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 91-25130 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-22-M

[CA-010-4212-13; CACA 28966]

Realty Action; Exchange of Public Lands in Placer County, CA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Selected Public Land

Placer County

T.13N., R.10E., MDM
Sec. 18, Lots 1, 2, 3, 4, S½ of Lot 5, S½ of Lot 8, 10, 11, 13
T.14N., R.9E., MDM
Sec. 35, Lot 3, E½NW¼, SW¼SW¼
Containing 380 acres, more or less

The above land is being considered for possible transfer to a nonprofit conservation organization such as The Trust For Public Land or the Nature Conservancy. In exchange the public would receive private land located on the North Fork or South Fork of the American River, Merced River, or marshlands, and waterfowl habitat located in the California Central Valley. This proposal is considered to be in the public interest and is consistent with current land use plans.

SUPPLEMENTARY INFORMATION: The above Federal lands would be transferred subject to a reservation to the U.S. for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945); also rights-of-way of record will be identified as prior existing rights.

All necessary clearances, including archaeology, and rare plants and animals shall be granted prior to conveyance of title by the U.S.

Publication of this notice in the **Federal Register** segregates the public land described herein from settlement, location and entry under the public land laws and from the mining laws for a period of two years.

ADDRESSES: For a period of 45 days from publication of this notice in the **Federal Register** interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, California 95630.

FOR ADDITIONAL INFORMATION: Contact Mike Kelly at the above address or at (916) 985-4474.

D.K. Swickard,

Area Manager.

[FR Doc. 91-25128 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-40-M

[ES-030-02-4212-18; ES-20066-009]

Public Lands in Minnesota Determined Eligible for Transfer to the State of Minnesota Pursuant to the Minnesota Public Lands Improvement Act of 1990

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of list of public lands to be transferred.

SUMMARY: Final notice is hereby given that certain public lands located in Minnesota have been determined to be eligible for transfer to the State of Minnesota. Transfer will be pursuant to the Minnesota Public Lands Improvement Act of 1990 (104 STAT 1019; Public Law 102-442) (Act) which grants certain specified unclaimed islands and uplands and certain other public lands to the State of Minnesota for the purposes of public recreation, protection of fish, wildlife, and plants, and the protection of resources and values. The transfer will be by Congressional grant and will be effective on October 18, 1991.

The purpose of this public notice is to announce the availability of a list containing the legal description and other information regarding the public lands that will be transferred to the State of Minnesota.

DATES: The list will be available to the public on October 18, 1991.

ADDRESSES: Requests for copies of the list should be sent to Gary Bauer, District Manager, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

FOR FURTHER INFORMATION CONTACT: Larry Johnson, Realty Specialist, Bureau of Land Management, P.O. Box 631, Milwaukee, WI 53201-0631; telephone no. (414) 297-4413 or (FTS) 362-4413.

SUPPLEMENTARY INFORMATION: The Act will transfer to the State of Minnesota the surface estate of specified public lands in Minnesota for the purposes of public recreation, protection of fish, wildlife, and plants, and the protection of resources and values. It also authorizes the Secretary of the Interior (Secretary) to resolve claims of ownership of non-mineral interests in certain other public lands in Minnesota and to transfer such lands to claimants thereof on terms that recognize the equities of such claimants in such lands.

The Act also required the Secretary to notify the residents of Minnesota as to the nature and location of the public lands to be granted to the State under the Act. That Public notification was accomplished by the publication of a public notice in the **Federal Register** on January 17, 1991 and the legal notices in 10 daily or weekly newspapers located throughout Minnesota during the period of January 24 to February 1, 1991, and the issuance of press releases to newspapers and radio stations located throughout Minnesota. Additionally, books, containing the legal descriptions and maps showing the locations of the public lands eligible for transfer, were available for public inspection at each County Auditor's office in Minnesota and at all Congressional offices located throughout Minnesota. The purpose of the public notification was twofold: (1) To notify residents of Minnesota as to the location of public lands to be granted or otherwise transferred under the Act, and (2) To identify any person(s) who has a claim of ownership of the non-mineral interests in the identified public lands. Written claims of ownership were accepted until April 18, 1991.

Those parcels of public land that have been claimed by a person or persons will not be transferred to Minnesota on October 18, 1991. Instead they will be retained as public lands pending resolution by the Secretary of the claim of ownership.

The transfer of the unclaimed public lands to the State and the resolution of the claims of ownership are subject to very specific requirements contained in the Act.

William S. Fulcer,

Acting District Manager.

[FR Doc. 91-25136 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-GJ-M

[MT-060-02-4212-13; MTM-75701]

Notice of Realty Action: Private Exchange-Montana

AGENCY: Bureau of Land Management.

ACTION: The Bureau of Land Management proposes to exchange public land for private land with William R. and Lela M. French. This proposed exchange involves only the surface estate. The public and private lands are in Phillips County.

SUMMARY: The public will gain private lands with wetlands and wildlife habitat for piping plover, upland birds, antelope and mule deer. Consolidation of public land will occur which allows for better range management. Disposal of the public lands is in conformance with the Phillips Management Framework Plan. Disposal of public lands with relatively low public value will help meet the management goals for the area where the public will gain private land. This exchange is in the public interest. The Bureau of Land Management advised State and local officials about the proposed exchange.

The following described public lands are suitable for disposal by exchange under section 206 of the Federal Land Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian Montana

T. 24 N., R. 31 E.,
Section 1: Lots 1, 2, 3, 4, S½S½;
Section 3: SW¼SE¼;
Section 10: W½NE¼, NW¼, NW¼SW¼, NW¼SE¼;
Section 11: E½NE¼;
Section 12: All;
Section 13: E½NW¼;
T. 24 N., R. 32 E.,
Sectoin 6: Lots 3, 4, 5, SE¼SW¼;
Section 7: Lots 1, 2, 3, 4, E½W½;
T. 25N., R. 31 E.,
Section 25: SE¼NE¼;
T. 25 N., R. 32 E.,
Section 30: Lot 2, SW¼NE¼, SE¼NW¼;
T. 26 N., R. 30 E.,
Section 25: N½SW¼;
T. 26 N., R. 31 E.,
Section 30: Lots 3, 4, E½SW¼;
T. 29 N., R. 29 E.,
Section 12: All;
Section 13: N½NW¼;
T. 29 N., R. 30 E.,
Section 18: SE¼;
Totaling 3,152.45 acres.

The United States will exchange this public land to acquire the following described private land:

Principal Meridian Montana

T. 25 N., R. 30 E.,
Section 6: S½NE¼;
T. 26 N., R. 30 E.,
Section 14: S½;
Section 15: SE¼;
Section 20: SW¼SW¼;
Section 22; N½, SE¼;
Section 23: N½;
Section 26: S½SE¼;
Section 29: E½NW¼, NE¼SW¼;
T. 25 N., R. 31 E.,
Section 2: NW¼ Lot 4, S½ Lot 4, NW¼SE¼NW¼, N½SW¼NW¼;
Section 3: Lot 1, N½ Lot 2;
T. 26 N., R. 31 E.,
Section 27: SW¼;
Section 29: N½;
Section 30: NE¼;
Section 33: S½NE¼, N½S½;
Section 34: E½W½, SW¼NW¼NE¼, NW¼SW¼NE¼, S½SW¼NE¼, NW¼SW¼, W½NE¼SE¼, S½SE¼;
Total 2,938.96 acres.

DATES: Interested parties may submit comments to the Bureau of Land Management by December 2, 1991. The State Director will weigh adverse comments. The State Director may vacate or change this notice. Without any objections this notice will become the final determination of the Department of Interior.

FOR COMMENTS AND FURTHER INFORMATION CONTACT: Submit your

comments on this proposed exchange to the address shown below. Information related to the exchange, including the environmental assessment, is available at the same address.

Phillips Resource Area, Box B, Malta, MT 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws. This notice also segregates from the mining laws, but not from exchange under section 206 of the Federal Land Policy and Management Act of 1976. The segregation will last for two years from the date of publication of this notice. This exchange is subject to:

1. A reservation to the United States of a right-of-way for ditches or canals under 43 U.S.C. 945.
2. The reservation to the United States of all federal minerals will occur.
3. The following rights-of-way of record: Big Flat Electric Coop. Inc., MTM-57527 and MTM-58709; Triangle Telephone Coop. Inc., MTM-42864 and George L. Partridge, MTM-040449.
4. An equalization payment of $4,600.00 will be paid by Mr. and Mrs. William R. and Lela M. French.
5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).
6. The proposed completion date is December 1991.

Dated: October 9, 1991.

B. Gene Miller,

Acting District Manager.

[FR Doc. 91-25138 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-02-4212-13; N-53387]

Realty Action; Exchange of Public Lands, Clark County, NV

The following described public lands in Las Vegas, Clark County, Nevada, are being considered for disposal by exchange pursuant to section 206 of the Federal Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Mount Diablo Meridian, Nevada

T. 21 S., R. 63 E.,
Sec. 27: N½, SW¼.
Aggregating 480 acres (gross).

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice in the **Federal Register**, will segregate the public lands, as described in this Notice, from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

Dated: October 7, 1991.

Gary Ryan,

Associate District Manager, LV, NV.

[FR Doc. 91-25066 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-02-4212-11; N-41565-35]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 26: NW¼SE¼SW¼, SW¼NE¼SW¼.
Aggregating 20.00 acres (gross).

This parcel of land contains approximately 20 acres. The Clark County School District intends to use the land for a junior high school. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. and will be subject to:
1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: October 4, 1991.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 91-25067 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-HC-M

[WY-940-4730-12]

Filing of Plats of Survey: Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 42 N., R. 117 W., accepted October 9, 1991
T. 54 N., R. 91 W., accepted October 9, 1991

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515

Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $2.00 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, surveys and subdivisions.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: October 9, 1991.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 91-25129 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-22-M

[AK-932-4214-10; F-86826]

Cancellation of Proposed Withdrawal; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of approximately 14.38 acres of public lands requested by the National Park Service for administrative sites for management of the Gates of the Arctic National Park and Preserve near Coldfoot, Alaska. The lands have been and will remain subject to the provisions of existing withdrawals of record.

EFFECTIVE DATE: October 18, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

SUPPLEMENTARY INFORMATION: A Notice of proposed withdrawal and reservation of public lands for the National Park Service, serial number F-86826, was published in the **Federal Register** on June 8, 1990 (55 FR 23485). The National Park Service will be participating in joint agency use of certain lands in the Coldfoot area, therefore this application will no longer be needed. On October 3, 1991, the National Park Service cancelled its application for withdrawal of the lands.

At 8 a.m. Alaska Daylight Time, on the date of publication of this notice, all lands described in the **Federal Register** publication referred to above will be relieved of the segregative effect pursuant to 43 CFR 2310.2-1(c). The lands have been and will remain subject to the terms and conditions of Public Land Order Nos. 5150 and 5180, both as amended.

Dated: October 9, 1991.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 91-25133 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-JA-M

[ID-943-4214-; IDi-833]

Notice of Proposed Continuation of Withdrawal, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service proposes that the withdrawal of 620.36 acres for recreation and administrative sites and historical trails in the Payette and Salmon National Forests be continued for the period of years shown below. The lands are still being used for the purposes for which they were withdrawn. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing.

DATES: January 16, 1992.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-384-3163.

The U.S. Forest Service proposes that the existing land withdrawal made by Public Land Order No. 4503 be continued for the period of years shown below pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

To be continued for 20 years:

Pine Flat Recreation Area

T. 24 N., R. 4 E.,
Sec. 9, SW¼SE¼NW¼, by metes and bounds.

Horse Creek Hot Springs Recreation Area

T. 25 N., R. 17. E., unsurveyed,
Sec. 10, SE¼SW¼, by metes and bounds;
Sec. 15, N½NW¼, by metes and bounds.

To be continued 30 years:

Pilot Peak Lookout Administrative Site

T. 21 N., R. 8 E., unsurveyed,
Sec. 7, SE¼NW¼, by metes and bounds.

War Eagle Lookout Administrative Site

T. 23 N., R. 5 E.,
Sec. 24, N½NE¼SW¼NW¼.

Lewis and Clark Historical Trail

T. 19 N., R. 25 E.,
Sec. 9, NW¼SW¼NW¼ and S½SW¼ NW¼;
Sec. 10, S½SW¼SE¼;
Sec. 14, S½ of lot 2, lots 3 and 8, NW¼SW¼NE¼, S½SW¼NE¼, N½SW¼NW¼, N½SE¼NW¼, and N½NW¼SE¼;
Sec. 15, N½NW¼NE¼, SE¼NW¼NE¼, NE¼SW¼NE¼, N½SE¼NE¼, and NE¼NE¼NW¼.

Chief Joseph Historical Trail Sites

Area No. 1—Bannock Pass
T. 17 N., R. 27 E.,
Sec. 8, lot 4.

Area No. 2—Salt Creek
T. 16 N., R. 27 E.,
Sec. 5, SW¼SW¼SW¼;
Sec. 6, SE¼SE¼SE¼;
Sec. 7, E½NE¼NE¼ and NE¼SE ¼NE¼;
Sec. 8, W½NW¼NW¼.

Area No. 3—Nez Perce Creek
T. 14 N., R. 26 E.,
Sec. 22, S½SW¼SW¼.

Lake Creek Recreation Area

T. 20 N., R. 21 E.,
Sec. 33, S½N½NW¼SW¼ and S½NW¼ SW¼.

Sheephorn Lookout Administrative Site

T. 18 N., R. 20 E.,
Sec. 15, SE¼SE¼SW¼SW¼ and SW¼SE¼SW¼.

Wallace Lake Recreation Area

T. 22 N., R. 21 E.,
Sec. 8, E½SE¼SW¼ and W½SW¼SE¼.

To be continued for 50 years:

Hays Station Administrative Site

T. 22 N., R. 7 E., unsurveyed,
Sec. 26, SW¼NW¼, by metes and bounds.

To be continued for 100 years:

Boulder Creek Progeny Test Area

(formerly Boulder Creek Seed Orchard)

T. 21 N., R. 1 E.,
Sec. 17, NE¼NE¼SW¼, S½NW¼ NE¼SW¼, S½NE¼SW¼, NW¼NW¼ SE¼, and N½SW¼NW¼SE¼.

The areas described aggregate 620.36 acres in Adams, Idaho, Lemhi, and Valley Counties.

The withdrawal is essential for continued protection of substantial capital improvements on the sites and protection of historical trails. The withdrawal closed the lands to surface entry and mining but not to mineral leasing. No change in the segregative effect or use of the lands is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in

connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: October 11, 1991.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 91-25135 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-66-M

[MT-930-4214-10; MTM 80092]

Notice of Proposed Withdrawal and Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Fish and Wildlife Service, proposes to withdraw 915,946.73 acres of public mineral estate to protect the Charles M. Russell National Wildlife Refuge (CMR). This notice closes the lands up to 2 years from location and entry under the mining laws, but they will remain open to the mineral leasing laws.

EFFECTIVE DATE: Comments must be received by January 16, 1992. A public meeting will be held at 7:30 p.m. on January 14, 1992, in the Judith Room of the Park Inn, Lewiston, Montana.

ADDRESSES: Comments should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, 406-255-2935.

SUPPLEMENTARY INFORMATION: On October 11, 1991, a petition was approved allowing the Fish and Wildlife Service to file an application to withdraw the following described lands from location and entry under the mining laws, but not from the public land laws or mineral leasing laws, subject to valid existing rights:

Principal Meridian

Charles M. Russell National Wildlife Refuge

T. 21 N., R. 23 E.,
Secs. 1, 2, and 3;
Sec. 4, lots 1, 2, and 3, SE¼NE¼, and S½;
Sec. 5, lot 4, SW¼NE¼, S½NW¼, and S½;
Sec. 6, lots 1 to 12, inclusive, lot 17, S½NE¼, and SE¼;
Sec. 7, lots 5 to 12, inclusive, and E½;
Sec. 8, N½ and NW¼SW¼;
Sec. 9, N½N½, SW¼NE¼, S½NW¼, NE¼SW¼, and S½S½;
Sec. 10, N½N½, S½NE¼, NW¼SW¼, and S½S½;
Secs. 11 and 12;
Sec. 13, NW¼NE¼, N½NW¼, SW¼NW¼, S½SW¼, and SE¼;
Sec. 14, N½;
Sec. 15, NE¼;
Sec. 17;
Sec. 18, lots 1 to 6, inclusive, lots 10 and 11, N½NE¼, SW¼NE¼, and SE¼SE¼.

T. 22 N., R. 23 E.,
Secs. 1 to 5, inclusive;
Sec. 6, lots 1, 5, 7, 9, 10, and 11, E½SW¼, and SW¼SE¼;
Secs. 7 to 15, inclusive;
Sec. 16, lots 1, 2, and 3, SE¼NW¼, and SW¼;
Secs. 17 to 35, inclusive.

T. 21 N., R. 24 E.,
Secs. 1 to 6, inclusive;
Sec. 7, lots 1 to 4, inclusive, NE¼, E½W½, and N½SE¼;
Sec. 8, W½;
Secs. 9 to 13, inclusive;
Sec. 14, N½;
Secs. 15 and 17;
Sec. 18, lots 3 and 4, E½SW¼, and SE¼.

T. 22 N., R. 24 E.,
Secs. 1 to 15, inclusive, and secs. 17 to 30, inclusive;
Sec. 31, lots 1 to 12, inclusive, SE¼NW¼, E½SW¼, and W½SE¼;
Secs. 32 to 35, inclusive;
Sec. 36, lot 1, NW¼SW¼, and SE¼SW¼.

T. 21 N., R. 25 E.,
Secs. 1 to 12, inclusive;
Sec. 13, N½, N½S½, and SW¼SW¼;
Sec. 14, N½, SE¼SW¼, and NE¼SE¼;
Sec. 15, NE¼, W½, and E½SE¼;
Sec. 17, N½, N½S½, SE¼SW¼, and S½SE¼;
Sec. 18.

T. 22 N., R. 25 E.,
Secs. 1 to 15, inclusive, and secs. 17 to 35, inclusive.

T. 21 N., R. 26 E.,
Secs. 1 to 15, inclusive;
Sec. 16, lots 1 to 7, inclusive, NW¼, and N½SW¼;
Secs. 17 to 35, inclusive.

T. 22 N., R. 26 E.,
Secs. 1 to 15, inclusive, and secs. 17 to 35, inclusive.

T. 21 N., R. 27 E.,
Secs. 1 to 25, inclusive;

T. 22 N., R. 27 E.,
Secs. 1 to 15, inclusive, and secs. 17 to 35, inclusive.

T. 21 N., R. 28 E.,
Sec. 2, lot 4;
Secs. 3 to 10, inclusive;
Sec. 11, lots 5 to 8, inclusive;
Sec. 12, lots 6, 8, 9 and 10, and SE¼SE¼;
Secs. 13, 14, and 15;
Sec. 16, lots 1 and 2, NE¼NE¼, W½NE¼, E½NW¼, NW¼SW¼;
Secs. 17 to 23, inclusive, and secs. 27 to 30, inclusive.

T. 22 N., R. 28 E.,
Secs. 5 to 8, inclusive, secs. 13, 14, and 15, and secs. 17 to 34, inclusive;
Sec. 35, W½ and W½E½.

T. 18 N., R. 29 E.,
Secs. 1 and 2;
Sec. 11, lots 1 and 2, W½E½, and W½;
Sec. 12, lots 1 to 9, inclusive, E½NE¼, and SE¼.

T. 19 N., R. 29 E.,
Secs. 1, 2, and 3, secs. 10 to 15, inclusive, secs. 22 to 27, inclusive, secs. 34 and 35;
Sec. 36, lots 1 to 10, inclusive, SW¼NE¼, SE¼NW¼, and S½SE¼.

T. 20 N., R. 29 E.,
Secs. 1, 2 and 3, secs. 10 to 15, inclusive, and secs. 22 to 26, inclusive;
Sec. 27, E½ and SE¼;
Secs. 34 and 35;
Sec. 36, N½, N½SW¼, and SE¼.

T. 21 N., R. 29 E.,
Sec. 7, lot 5;
Sec. 14, lot 4;
Sec. 15, lots 3 to 7, inclusive, S½NW¼, SW¼, W½SE¼ and SE¼SE¼;
Sec. 16, lots 5 to 8, inclusive, NE¼SE¼, and S½S½;
Sec. 17, lots 3, 6, 7, and 8, NW¼SW¼, and S½S½;
Sec. 18, lots 2 to 8, inclusive, SW¼NE¼, SE¼NW¼, E½W¼, and SE¼;
Secs. 21 and 22;
Sec. 23, lots 3, 4, 6, and 7, SW¼NW¼, N½SW¼, and S½S½;
Sec. 24, lots 5 to 8, inclusive, and S½S½;
Sec. 25, lots 1, 2, and 4, N½NE¼, SW¼NE¼, W½, and NW¼SE¼;
Secs. 26, 27, 28, 33, 34, and 35;
Sec. 36, lots 2 and 3, W½NE¼, and E½SE¼.

T. 18 N., R. 30 E.,
Sec. 4;
Sec. 5, lots 1 to 4, inclusive, S½N½, NE¼SW¼, S½SW¼, and SE¼;
Sec. 6, lots 1 to 7, inclusive S½NE¼, and SE¼NW¼.

T. 19 N., R. 30 E.,
Secs. 1, 2, and 3;
Sec. 4, lots 1, 2, and 3, S½NE¼, SE¼NW¼, S½SW¼, and SE¼;
Sec. 5 to 11, inclusive, and sec. 15;
Sec. 16, SW¼;
Secs. 17 to 22, inclusive, and sec. 28;
Sec. 29, E½, N½NW¼, and NE¼SW¼;
Secs. 30 and 31;
Sec. 32, E½, SE¼NW¼, and SW¼;
Sec. 33.

T. 20 N., R. 30 E.,
Sec. 1;
Sec. 2, lot 9;
Sec. 5, lots 2, 3, 4, 7, and 8, SW¼NW¼, and S½SW¼;
Secs. 6, 7, and 8;
Sec. 9, lots 3, 4, 7, and 8, and W½SW¼;
Sec. 11, lots 1 to 4, inclusive, lot 7, E½E½, SW¼NE¼, and NW¼SE¼;
Secs. 12 and 13;
Sec. 14, lots 1, 4, 5, and 9;
Sec. 16, lots 2, 3, and 6, and NW¼NW¼;

Secs. 17 to 20, inclusive;
Sec. 21, lots 4 and 5;
Sec. 23, lots 1 and 2, lots 4 to 7, inclusive, S½NE¼, E½SW¼, and SE¼;
Secs. 24 and 25;
Sec. 26, lots 1, 2, 4, 5, and 8, NE¼, and E½SE¼;
Sec. 28, lot 2;
Sec. 29, lots 1, 2, 4, and 5, W½, and W½E½;
Secs. 30, 31, and 32;
Sec. 33, lots 7 to 10, inclusive, SE¼,SW½, and S½SE¼;
Sec. 34, lots 5 to 8, inclusive, and S½;
Sec. 35, lots 1 and 3, E½, SE¼NW¼, and SW¼.
T. 21 N., R. 30 E.,
Sec. 19, lot 4;
Sec. 30, lot 2;
Sec. 31, lots 4, 5, and 6;
Sec. 35, lots 4, 5, 6, and 9, SE¼SW¼, S½SE¼, and NE¼SE¼;
Sec. 36, lots 6 to 9, inclusive, S½SW¼, and SE¼.
T. 22 N., R. 30 E.,
Sec. 1.
T. 23 N., R. 30 E.,
Sec. 25.
T. 20 N., R. 31 E.,
Secs. 1 and 2;
Sec. 3, lots 1 to 4, inclusive, S½N½, and N½SE¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, N½S½, and S½SW¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, NW¼SW¼, and NE¼SE¼;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, and E½SW¼;
Sec. 7, lots 1 to 4, inclusive, NW¼NE¼, S½NE¼, E½W½, and SE¼;
Sec. 8, NE¼NE¼, S½NE¼, and S½;
Sec. 17, E½, N½NW¼, SE¼NW¼, and SW¼;
Secs. 18, 19, and 20;
Sec. 29, N½, SW¼, and S½SE¼;
Secs. 30, 31, and 32.
T. 21 N., R. 31 E.,
Secs. 1 to 15, inclusive;
Sec. 16, E½NE¼, E½SW¼, and SE¼;
Secs. 17 to 35, inclusive.
T. 22 N., R. 31 E.,
Secs. 1 to 5 inclusive;
Sec. 6, lots 1 and 2, SE¼NE¼, and SE¼NW¼;
Secs. 8 to 15, inclusive;
Sec. 16, NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 17, secs. 20 to 29, inclusive, and secs. 31 to 36, inclusive.
T. 23 N., R. 31 E.,
Sec. 25, N½NE¼, S½NW¼, SW¼, and S½SE¼;
Secs. 26 to 29, inclusive;
Sec. 30, lots 1 to 4, inclusive, E½W½, and S½SE¼;
Secs. 31 to 35, inclusive.
T. 21 N., R. 32 E.,
Secs. 1 to 12, inclusive, secs. 17, 18, 19, 30 and 31.
T. 22 N., R. 32 E.,
Secs. 1 to 15, inclusive;
Sec. 16, SW¼NW¼ and S½;
Secs. 17 to 35, inclusive.
T. 21 N., R. 33 E.,
Secs. 1 to 5, inclusive;
Sec. 6, lots 1 to 5, inclusive, S½NE¼, SE¼NW¼, N½SE¼, and SE¼SE¼;
Secs. 9 to 15, inclusive.
T. 22 N., R. 33 E.,
Secs. 1 to 15, inclusive, and secs. 17 to 36, inclusive.
T. 23 N., R. 33 E.,
Sec. 35;
Sec. 36, SW¼SW¼.
T. 21 N., R. 34 E.,
Secs. 6, 7, and 18.
T. 22 N., R. 34 E.,
Secs. 1 to 15, inclusive;
Sec. 16, E½E½ and SW¼SE¼;
Secs. 17 to 35, inclusive.
T. 23 N., R. 34 E.,
Sec. 22, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 23, E½, E½NW¼, SW¼NW¼, and SW¼;
Secs. 24 to 35, inclusive.
T. 22 N., R. 35 E.,
Secs. 1 and 2;
Sec. 3, lots 1 to 12, inclusive, NW¼SW¼, and SE¼;
Sec. 4, lots 1 to 12, inclusive, SW¼, and N½SW¼;
Sec. 5, lot 1 and lots 8 to 12, inclusive, and S½;
Secs. 6, 7, and 8;
Sec. 9, NW¼NE¼, S½NE¼, NW¼, and S½;
Sec. 10, NE¼, S½NE¼, and S½;
Secs. 11 to 32, inclusive;
Sec. 33, NE¼NE¼, W½NE¼, and NW¼SE¼;
Sec. 34, N½, NE¼SW¼ and SE¼;
Sec.35
T. 23 N., R. 35 E.,
Secs. 19 and 20;
Sec. 21, S½SW¼;
Sec. 22, SE¼NE¼, SW¼NW¼, N½SW¼ SE¼SW¼ and SW¼SE¼;
Sec. 23 S½NE¼, W½, N½SE¼, and SW¼SE¼;
Sec. 24 E½, S½NW¼, N½SW¼, and SE¼SW¼.
Sec. 25;
Sec. 26, NW¼NE¼, S½NE¼, N½NW¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 27, SW¼NE¼, NE¼NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 28, S½NE¼, NW¼, N½S½, and SW¼SW¼;
Sec. 29, NE¼, W½, S½SE¼, and NE¼SE¼;
Secs. 30 and 31;
Sec. 32, N½, NE¼SW¼, and SE¼;
Sec. 33, NW¼NW¼, SE¼NW¼, and S½;
Sec. 34, W½, W½SE¼, and SE¼SW¼.
Sec. 35, E½ E½W½, and SW¼SW¼.
T 21 N., R. 36 E.,
Secs. 1, 2, 3, 10, 11, and 12.
T. 22 N., R. 36 E.,
Secs. 1 to 35, inclusive;
Sec. 36, E½.
T. 23 N., R. 36 E.,
Sec. 1, lot 1, SE¼NE¼, SW¼, E½SE¼, and SW ¼SE¼;
Secs. 12, 13, 19, and 20;
Sec. 21, N½ and N½S½;
Secs. 22 to 27, inclusive;
Sec. 28, S½N½ and S½;
Secs. 29 to 35, inclusive.
T. 21 N., R. 37 E.,
Secs. 1 to 7, inclusive;
Sec. 8, N½, NE¼SW¼, and W½SW¼;
Sec. 9, N½ E½SW¼, and SE¼;
Secs. 10 to 13, inclusive;
Sec. 14, N½ N½SW¼, and E½SE¼;
Sec. 15, N½, W½SW¼, SE¼SW¼, and NE¼SE¼;
Sec. 17 SE¼NE¼, W½NE¼, W½, and SE¼.
T. 22 N., R. 37 E.,
Secs. 1 and 2;
Sec. 3, lots 1 and 2, S½NE¼, and S½;
Secs. 4 to 23, inclusive;
Sec. 24, N½, SW¼, W½SE¼, and NE¼SE¼;
Secs. 25 to 35, inclusive.
T. 23 N., R. 37 E.,
Secs. 1 to 9, inclusive;
Sec. 10, W½NW¼, SE¼NW¼, and S½
Sec. 11, E½, N½NW¼, NE¼SW¼, and S½SW¼;
Sec. 29, N½, SW¼, N½SE¼, and SE¼SE¼;
Sec. 30;
Sec. 31, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, E½W ½, W½SE¼, and SE¼SE¼;
Sec. 32, E½NE¼, SW¼NE¼, and S½;
Sec. 33 NE¼, W½, W½SE¼, and SE¼SE¼;
Sec. 34, N½, E½SW¼, SW¼SW¼, and SE¼;
Sec. 35;
Sec. 36, E½, E½W½, and NW¼NW¼.
T 21 N., R. 38 E.,
Secs. 2 to 11, inclusive secs. 14, 15, 17, and 18.
T. 22 N., R. 38 E.,
Secs. 1 to 4, inclusive;
Sec. 5, lots 1 and 2, and lots 4 to 9, inclusive, SE¼NE¼,W½SW¼ and E½SE¼;
Secs. 6 to 15, inclusive;
Sec. 16, NW¼NW¼, S½NW¼, and S½;
Secs. 17 and 18;
Sec. 19, lots 1 and 2, E½, E½NW¼, and NE¼SW¼;
Secs. 20, 21, and 22;
Sec. 23, NW¼ and S½;
Sec. 24, E½NE¼, NW¼NE¼, W½, and SW¼SE¼;
Secs. 26 to 29, inclusive;
Sec. 30, lots 2, 3, and 4, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Secs. 31 to 35, inclusive.
T. 23 N., R. 38 E.,
Secs. 1 to 35, inclusive;
T. 24 N., R. 38 E.,
Secs. 25 to 28, inclusive, secs. 33, 34, and 35;
Sec. 36, SW¼NW¼ and S½.
T. 22 N., R. 39 E.,
Secs. 1 to 9, inclusive;
Sec. 10 N½N½, SW¼NE¼, S½NW¼, and S½;
Sec. 11, NE¼, SE¼NW¼, and S½
Secs. 12 to 15, inclusive, and secs. 17 to 20, inclusive.
T. 23 N., R. 39 E.,
Secs. 1 to 35, inclusive.
T. 24 N., R. 39 E.,
Secs. 1 to 15, inclusive and secs. 17 to 36, inclusive.
T. 25 N., R. 39 E.,
Secs. 1 to 4, inclusive, secs. 9 to 15, inclusive, secs. 21 to 28, inclusive, secs. 33, 34, and 35.
T. 26 N., R. 39 E.,
Secs. 21 to 28, inclusive, secs. 33, 34, and 35.

T. 22 N., R. 40 E.,
Sec. 1, lots 1, 2, and 3, S½NE¼, SE¼NW¼, and S½;
Sec. 2 lots 2, 3, and 4, SW¼NE¼, SE¼NW¼, and S½SW¼;
Sec. 3, lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, W½SE¼, and SE¼SE¼;
Secs. 4 to 9, inclusive, secs. 17 and 18.
T. 23 N., R. 40 E.,
Secs. 1 to 35, inclusive.
T. 24 N., R. 40 E.,
Secs. 1 to 35, inclusive;
Sec. 36, N½ and E½SE¼.
T. 25 N., R. 40E.,
Secs. 1 to 36, inclusive.
T. 26 N., R. 40 E.,
Sec. 19;
Sec. 20, N½N½, SW¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 21;
Sec. 22, W½SE¼NE¼, SW¼NE¼, S½NW¼, and S½;
Sec. 23, SW½ and S½SE¼;
Sec. 24, NE¼NE¼, S½N½, and S½;
Secs. 25 to 36, inclusive.
T. 23 N., R. 41 E.,
Sec. 6.
T. 24 N., R. 41 E.,
Secs. 1 to 15, inclusive;
Sec. 16 E½NE¼;
Secs. 18 and 19;
Sec. 23, E½, NW¼, N½SW¼, and SE¼SW¼;
Secs. 24, 25, 30, and 31;
Sec. 36, S½NE¼, SE¼NW¼, N½SE¼.
T. 25 N., R. 41 E.,
Secs. 1 to 23, inclusive;
Sec. 24, NE¼, W½, NW¼SE¼, and S½SE¼;
Secs. 25 to 36, inclusive.
T. 26 N., R. 41 E.,
Sec. 1;
Sec. 2, lot 1, S½NE¼, and S½;
Sec. 3, lot 3;
Secs. 10 to 36, inclusive.
T. 20 N., R. 42 E.,
Secs. 1 and 11;
Sec. 12, N½, N½SW¼, SW¼SW¼, and SE¼;
Sec. 13, E½NE¼, NW¼NW¼, SW¼SW¼, E½SE¼, and SW¼SE¼;
Sec. 14, SW¼NE¼, W½, and NW¼SE¼;
Sec. 23, SW¼NW¼, S½SW¼, and SW¼SE¼;
Sec. 24, NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 25;
Sec. 26, E½NE¼, SW¼SW¼, and N½SE¼.
T. 21 N., R. 42 E.,
Secs. 1 and 2, secs. 11 to 14, inclusive, secs. 23 to 26, inclusive, secs. 35 and 36.
T. 22 N., R. 42 E.,
Secs. 1 to 4, inclusive, secs. 9 to 15, inclusive, and secs. 21 to 26, inclusive;
Sec. 27, E½, E½NW¼, NW¼NW¼, and SE¼SW¼;
Sec. 28, NE¼NE¼, W½NE¼, W½, and SW¼SE¼;
Secs. 34, 35, and 36.
T. 23 N., R. 42 E.,
Secs. 1, 2, and 3;
Sec. 4, lots 1 to 4, inclusive, S½N½, NE¼SW¼, and SE¼;
Secs. 5 and 6;
Sec. 7, lot 4, N½NE¼, and SE¼SW¼;
Sec. 8;
Sec. 9, NE¼;
Sec. 10, E½, NW¼, E½SW¼, and SW¼SW¼;
Sec. 11 to 15, inclusive;
Sec. 16, S½SW¼;
Secs. 17 and 18;
Sec. 19, lot 3, E½NE¼, NE¼SW¼, and SE¼;
Secs. 20 to 28, inclusive;
Sec. 29, SE¼NE¼ and W½;
Sec. 33, E½;
Sec. 34 and 35;
Sec. 36, SW¼NE¼, W½, and SE¼.
T. 24 N., R. 42 E.,
Secs. 5 to 11, inclusive;
Sec. 14, N½;
Secs. 15 to 20, inclusive;
Sec. 21, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 22, N½N½, SW¼NW¼, NW¼SW¼, and E½SE¼;
Sec. 23, E½NE¼, SW¼NE¼, NE¼NW¼, and S½;
Secs. 24 to 35, inclusive;
Sec. 36, N½NW¼ and S½S½.
T. 25 N., R. 42 E.,
Sec. 4, lots 3 to 12, inclusive, and S½;
Secs. 5 to 8, inclusive;
Sec. 9, N½, SW¼, and NE¼SE¼;
Sec. 10, NW¼NW¼, S½NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 15, W½ and W½E½;
Sec. 17, NE¼NE¼, NW¼NW¼, SW¼SW¼, E½SW¼, and W½SE¼;
Sec. 18;
Sec. 19, lot 4, NE¼, E½SW¼, and N½SE¼;
Sec. 30, lots 1 to 4, inclusive, S½NE¼, E½W½, and SE¼;
Sec. 31, lots 1 to 4, inclusive, NE¼, and E½NW¼.
T. 26 N., R. 42 E.,
Secs. 5 to 7, inclusive;
Sec. 8, N½NE¼, SW¼NE¼, W½, and S½SE¼;
Secs. 17 to 20, inclusive, and secs. 29 to 32, inclusive;
Sec. 33, N½, SW¼, and W½SE¼.
T. 20 N., R. 43 E.,
Secs. 5, 6 and 7;
Sec. 8, N½, N½S½, SW¼SW¼, and SE¼SE¼;
Sec. 17, SW¼NE¼, NW¼NW¼, S½NW¼, and SW¼;
Sec. 18.
T. 21 N., R. 43 E.,
Secs. 2 to 11, inclusive, secs. 14 and 15;
Sec. 16, W½W½ and SE¼SW¼;
Secs. 17 to 23, inclusive;
Sec. 26, N½, SW¼, and N½SE¼;
Secs. 27 to 32, inclusive.
T. 22 N., R. 43 E.,
Sec. 4, lots 1 and 2, S½N½, and S½;
Sec. 5, lots 3 and 4, S½N½, and S½;
Secs. 6, 7, and 8;
Sec. 9, W½ and SE¼;
Sec. 16, N½N½;
Secs. 17, to 21, inclusive, and secs. 27 to 35, inclusive.
T. 23 N., R. 43 E.,
Secs. 5 and 6;
Sec. 7, lots 1, 2, and 4, N½NE¼, SW¼NE¼, E½NW¼, SE¼SW¼, NW¼SE¼, and S½SE¼;
Sec. 17, S½NE¼ and S½;
Secs. 18, 19, and 20;
Sec. 21, W½ and S½SE¼;
Secs. 28 to 31, inclusive;
Sec. 32, N½, N½S½, and S½SW¼;
Sec. 33, N½ and N½S½.
T. 24 N., R. 43 E.,
Secs. 19 and 20, and secs. 29 to 32, inclusive.

The areas described aggregate 915,946.73 acres in Fergus, Garfield, McCone, Petroleum, Phillips, and Valley Counties.

The purpose of this withdrawal is to protect wildlife and wildland resources within the CMR.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director at the address specified above.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are grazing and public recreation.

The temporary segregation of the land in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the land.

Dated: October 11, 1991.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 91-25108 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-DN-M

[NV-940-92-4214-10; N-54955]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service proposes to withdraw approximately 1,582,560 acres of the Desert National Wildlife Refuge from mining entry to protect the integrity of the Desert National Wildlife Refuge. This notice closes the land for up to 2 years from mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by January 16, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702–785–6526.

SUPPLEMENTARY INFORMATION: On October 15, 1991, a petition was approved allowing the U.S. Fish and Wildlife Service to file an application to withdraw the following described national wildlife refuge lands from entry under the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 9 S., R. 55 E., that portion lying within Lincoln County.
T. 9 S., R. 55½ E.
TpS. 9 S., Rs. 56 to 61 E., inclusive.
T. 9 S., R. 62 E.,
Sec. 4, S½S½;
Sec. 5, NW¼SW¼, S½S½;
Sec. 6, Lots 2 to 7, inclusive, S½NE¼, SE¼ NW¼, E½SW¼, SE¼;
Secs. 7, 8, and 9;
Sec. 10, W½, W½E½;
Sec. 15, W½, W½E½;
Secs. 16 to 21, inclusive;
Sec. 22, W½, W½E½;
Sec. 27, W½, W½E½;
Secs. 28 to 33, inclusive;
Sec. 34, Lot 3, W½NE¼, NW¼SE¼.
T. 10 S., R. 55 E., that portion lying within Lincoln County.
T. 10 S., R. 55½ E.
Tps. 10 S., Rs. 56 to 61, inclusive.
T. 10 S., R. 62 E.,
Secs. 3 to 10, inclusive;
Sec. 14, NW¼NW¼, S½NW¼, SW¼;
Secs. 15 to 22, inclusive;
Sec. 23, W½, W½SE¼;
Secs. 26 to 35, inclusive;
Sec. 36, W½W½.
T. 11 S., R. 55 E., that portion lying within Lincoln County.
T. 11 S., R. 55½ E.
Tps. 11 S., Rs. 56 to 61 E., inclusive.
T. 11 S., R. 62 E.,
Sec. 1, Lot 4, SW¼NW¼, W½SW¼;
Secs. 2 to 12, inclusive;
Sec. 13, NE¼, N½NW¼, SW¼NW¼, S½;
Secs. 14 to 36, inclusive.
T. 12 S., R. 55 E., that portion lying within Lincoln County.
T. 12 S., R. 55½ E.
Tps. 12 S., Rs. 56 to 62 E., inclusive.
Tps. 12½ S., Rs. 56 to 62 E., inclusive.
T. 13 S., R. 54 E., that portion lying within Clark County.
T. 13 S., R. 55 E.
T. 13 S., R. 55½ E.
Tps. 13 S., Rs. 56 to 62 E., inclusive.
T. 14 S., R. 54 E., that portion lying within Clark County.
T. 14 S., R. 55 E.
T. 14 S., R. 55½ E.
Tps. 15 S., Rs. 56 to 62 E., inclusive.
T. 16 S., R. 57 E.,
Secs. 1 to 12, inclusive.
T. 16 S., R. 58 E.,
Secs. 1 to 27, inclusive;
Secs. 34, 35, and 36.
Tps. 16 S., Rs. 59 to 62 E., inclusive.
T. 17 S., R. 59 E.,
Secs. 1 to 18, inclusive;
Secs. 21 to 26, inclusive;
Sec. 27, N½, SW¼SW¼, S½SE¼;
Sec. 28;
Sec. 33;
Sec. 34, SW¼, NE¼SE¼, S½SE¼;
Secs. 35 and 36.
Tps. 17 S., Rs. 60 to 62 E., inclusive.
T. 18 S., R. 60 E.,
Secs. 1 to 18, inclusive;
Secs. 22, 23, and 25;
Sec. 25, N½;
Sec. 26, N½;
Sec. 27, N½.
Tps. 18 S., Rs. 61 and 62 E.

The area described contains approximately 1,582,560 acres in Clark and Lincoln Counties.

The purpose of the proposed withdrawal is to protect the integrity of the Desert National Wildlife Refuge.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands.

Dated: October 15, 1991.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 91–25189 Filed 10–17–91; 8:45 am]

BILLING CODE 4310–HC–M

[NM–940–4214–10; NMNM 86825]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,458.68 acres of public land in Sandoval County, to protect the rare and endemic plant populations and paleontological resources of the Ball Ranch Area of Critical Environmental Concern (ACEC). This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and meeting requests for a public meeting must be received by January 16, 1992.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, Bureau of Land Management, New Mexico State Office, 505–988–6071.

SUPPLEMENTARY INFORMATION: On October 7, 1991, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Merdian

T. 13 N., R. 6 E.,
Sec. 4, lots 3 and 4, S½NW¼, and SW¼;
Sec. 5, lots 1 and 2, S½NE¼, and SE¼.
T. 14 N., R. 6 E.,
Sec. 19, E½;
Sec. 20, W½;
Sec. 31, NE¼, and N½NE¼SE¼.

The areas described aggregate 1,458.68 acres in Sandoval County. The purpose of the proposed withdrawal is to protect the rare and endemic plant populations and paleontological resources of the Ball Ranch ACEC.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the New Mexico State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested

persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the New Mexico State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature, but only with approval of an authorized officer of the Bureau of Land Management during the segregative period.

Dated: October 10, 1991.

Kathy Eaton,

Acting State Director.

[FR Doc. 91–25137 Filed 10–17–91; 8:45 am]

BILLING CODE 4310–FB–M

[NM–940–4214–10; NMNM 25765]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of the Air Force has filed an application to withdraw 6,713.90 acres of public lands to be used as the Melrose Bombing Range, at Cannon Air Force Base, New Mexico. The U.S. Department of the Air Force has requested a temporary withdrawal in aid of legislation. The withdrawal is requested for a period of 5 years pending Congressional action. This notice closes the lands for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing.

DATES: Comments and requests for a meeting should be received on or before January 16, 1992.

ADDRESSES: Comments and meeting requests should be sent to the New Mexico State Director, BLM, P.O. Box 1449, Santa Fe, New Mexico 87504–1449.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505–988–6071.

SUPPLEMENTARY INFORMATION: On June 2, 1975, the United States Department of the Air Force filed an application to withdraw the following described public lands from location and entry under the United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 1 N., R. 30 E.,
Sec. 2, S½;
Sec. 11;
Sec. 20, S½SE¼;
Sec. 28.
T. 2 N., R. 30 E.,
Sec. 20, E½SE¼;
Sec. 21, SW¼ and W½SE¼;
Sec. 28, W½E½ and W½;
Sec. 29, E½E½;
Sec. 32, E½E½;
Sec. 33, W½E½, NW¼, and S½SW¼.
T. 1 S., R. 30 E.,
Sec. 2, lots 1 to 12, inclusive, and S½;
Sec. 3, lots 1 to 12, inclusive, and S½;
Sec. 4, lots 1 to 12, inclusive, and S½;
Sec. 6, lots 1 and 2;
Sec. 9 , N½ and N½S½;
Sec. 10, N½ and N½S½;
Sec. 11, N½ and N½S½.

The areas described aggregate 6,713.90 acres in Roosevelt County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the New Mexico State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the New Mexico State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are grazing leases or permits in the area between the impact or exclusive use area and the range boundary, but only with the approval of the U.S. Department of the Air Force

Dated: October 10, 1991.

Kathy Eaton,

Acting State Director.

[FR Doc. 91–25068 Filed 10–17–91; 8:45 am]

BILLING CODE 4310–FB–M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation (Reclamation), Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through December 1991. This notice is one of a variety of means being used to inform the public about proposed contractual actions for water service and repayment. The Reclamation announcements of individual repayment and water service contract actions will be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary of the Interior or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if Reclamation determines that the contract action may or will have "significant" environmental effects.

ADDRESSES: The identify of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Dick L. Porter, Chief, Contracts and Repayment Division, Bureau of Reclamation, 1849 C St. NW.,

Washington, DC 20240; telephone (202) 208–3014, [FTS] 268–3014.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the **Federal Register** dated December 6, 1983, Vol. 48, page 54785, Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution and, pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the **Federal Register** dated February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during October, November, or December of 1991. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notices of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(P–SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act
(BCP) Boulder Canyon Project

Pacific Northwest Region

Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, Idaho 83724–0043, telephone (208) 334–1894.

1. Cascade Reservoir Water Users, Boise Project, Idaho: Repayment contracts for irrigation and M&I water; 19,201 acre-feet of stored water in Cascade Reservoir.

2. Individual Irrigators, M&I, and Miscellaneous Water Users, Pacific Northwest Region, Idaho, Montana, Oregon, and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

3. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum for terms up to 40 years.

4. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $1.50 per acre-foot or $50 minimum per annum for terms up to 40 years.

5. Irrigation Districts and Similar Water User Entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. Forty-four Palisades Reservoir Shareholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

7. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for the term of up to 40 years.

8. Baker Valley Irrigation District, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for the term of up to 40 years.

9. Crooked River Project, Oregon: Irrigation repayment or water service contracts with several individuals, with the Ochoco Irrigation District, and with North Unit Irrigation District for a total of up to 25,000 acre-feet of storage space in Prineville Reservoir (Arthur R. Bowman Dam).

10. Minidoka-Palisades Project: Repayment contract with Palisades Water Users Inc., for additional 500 acre-feet of storage space in Palisades Reservoir.

11. Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

12. Five Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to other parties.

13. Bridgeport Irrigation District, Bridgeport, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

14. Hermiston Irrigation District, Umatilla Project, Oregon: Repayment contract for reimbursable cost for Safety-of-Dams repairs to Cold Springs Dam.

15. Ochoco Irrigation District and Various Individual Spaceholders, Crooked River Project, Oregon: Repayment contract for reimbursable cost for Safety-of-Dams repairs to Arthur R. Bowman Dam and Ochoco Dams.

16. The Dalles Irrigation District, The Dalles Project, Oregon: SRPA loan repayment contract; $2,000,000 proposed loan obligation.

17. Oroville-Tonasket Irrigation District, Chief Joseph Dam Project, Washington: SRPA loan repayment contract; $661,500 proposed loan obligation.

18. State of Idaho, Payette Division of the Boise Project, Idaho: Proposed repayment contracts with the State of Idaho for the sale of uncontracted space in Cascade and Deadwood Reservoirs.

19. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 2,300 acre-feet; $1.50 per acre-foot for a term of up to 40 years.

20. P.P.R.T. Water System, Inc., Idaho: Amendatory contract to defer the 1991 and 1992 construction installments of a contract for a loan to construct facilities authorized pursuant to the Emergency Drought Act of 1977. Replacement of facilities is needed and the contractor has experienced several years of drought conditions.

21. Douglas County, Oregon: SRPA loan repayment contract; proposed loan obligation of $20,715,760 and grant of $9,228,380.

22. Othello School District No. 147, Columbia Basin Project, Washington: 30 acre-feet for irrigation of lawns.

23. Ochoco Irrigation District, Crooked River Project, Oregon: 1-year temporary water service contract for 12,000 acre-feet of storage in Prineville Reservoir to reduce drought impacts.

Mid-Pacific Region

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone (916) 978–5030.

1. Tuolumne Regional Water District, CVP, California: Water service contract, up to 9,000 acre-feet from New Melones Reservoir.

2. Calaveras County Water District, CVP, California: Water service contract, up to 2,000 acre-feet from New Melones Reservoir; **Federal Register** notice published February 5, 1982, Vol. 47, page 5473.

3. Individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually,

Note: Copies of the standard form of temporary water service contract for the various types of service are available, upon written request, from the Regional Director at the address shown above.

4. Friant Division Contractors, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Friant-Kern and Madera Canals, or who divert from Millerton Reservoir, whose contracts expire 1991–1997 with two contracts expiring later. Water quantities in existing contracts range from 1,200 to 175,440 acre-feet.

5. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP as contemplated in the Coordinated Operation Agreement.

7. Madera ID. Madera Canal, CVP, California: Water Act contract to convey and/or store nonproject water through project facilities.

8. Cross Valley Canal Contractors, CVP, California: Renewal of existing long-term water service contracts with eight contractors on the Cross Valley Canal whose contracts expire on December 31, 1995. Water quantities in existing contracts range from 1,142 to 40,000 acre-feet.

9. Shasta Dam Area Public Utilities District, CVP, California: Renewal/Increase of M&I water supply contract. Less than 6,000 acre-feet.

10. U.S. Fish and Wildlife Service, CVP, California: Long-term contract for water supply for Federal refuge in Grasslands area of California.

11. North Kern Water Storage District, Buena Vista Water Storage District, Tulare Lake Basin Water Storage District, and Hacienda Water District, Kern River Project, California: Amendatory contract to provide storage space for M&I water.

12. Contra Costa Water District, CVP, California: Amendatory water service contract to add an additional point of delivery to accommodate the district's proposed Los Vaqueros Project. Amendment will also conform contract to current water ratesetting policies.

13. San Juan Suburban Water District, CVP, California: Amend Contract No. 14–06–0200–152A to provide for the current CVP water rates to conform the contract with the provisions of Section 105 and 106 of P.L. 99–546.

14. Centerville Community Services District, CVP, California: Water service contract for up to 800 acre-feet of M&I water annually.

15. Shasta County Water Agency, CVP, California: Amendatory water service contract to provide for reduction in annual entitlement of 800 acre-feet.

16. Mid-Pacific Region, California, Oregon, Nevada: Amendatory contracts to include the provision of the Act of July 2, 1956 (70 Stat. 483) and/or the Act of June 21, 1963 (77 Stat. 68) in existing water service contracts.

17. California Department of Corrections, CVP, California: Water service for up to 1,000 acre-feet of water annually to serve the Sierra Conservation Center (a State prison) near Jamestown, California.

18. Redwood Valley Water District, SRPA, California: Amendatory loan repayment contract.

19. Placer County Water Agency, CVP, California: Amend Contract No. 14–06–200–5082A to provide for the current CVP water rates.

20. Broadview Water District, CVP, California: Amend Contract No. 14–06–200–8092 to provide for change in point of diversion, right to construct new turnout on the San Luis Canal, and contract renewal.

21. Sutter Butte Mutual Water Company, CVP, California: Water service contract for a long-term supplemental water supply. Contact will assure Company's water users a alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

22. Paramount Citrus Association, CVP, California: Contract to convey nonproject water through Federal facilities with exemption of RRA under 43 CFR 426.18. Up to 4,000 acre-feet of water to be transferred through Friant-Kern Canal for delivery to Southern San Joaquin Municipal District.

23. Butte Slough Irrigation Company, CVP, California: Water service contract for a long-term supplemental water supply. Contract will assure company's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

24. Lindsay-Strathmore ID, Friant-Kern Canal, CVP, California: Warren Act contract to convey and/or store nonproject water through project facilities.

25. Madera ID, Hidden Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 29, 1992.

26. Chowchilla WD, Buchanan Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 29, 1992.

27. Truckee Carson Irrigation District, Newlands Project, Nevada: Warren Act contract to convey and/or store nonproject water in Project facilities.

28. Truckee Carson Irrigation District, Newlands Project, Nevada: Contract for repayment of construction costs of Newlands Project.

29. Santa Barbara County Water Agency, Cachuma Project, California: Repayment contract for reimbursement of funds expended under the Emergency Fund Act for continuation of water service.

30. San Luis Water District, CVP, California: Amendatory water service contract to provide that the District pay full O&M rate for all deliveries resulting from the Azhderian Pumping Plant enlargement and the cost of service rate for such deliveries beginning in 1996 and each year thereafter.

31. United Water Conservation District, SRPA, California: Amendatory loan repayment contract.

32. Carmichael Irrigation District, CVP, California: Water service contract for a long-term supplemental water supply. Contract will assure District's water users an alternate water supply during periods of deficiency in their appropriative water rights. Annual water quantity not determined at this time.

33. Delta Mendota Canal Contractors, CVP, California: Renewal of existing long-term water service contracts with numerous contractors on the Delta-Mendota Canal whose contracts expire in 1994–2003. Water quantities in existing contracts range from 70 to 50,000 acre-feet.

34. Sacramento County Water Agency, CVP, California: Long-term water service contract for 22,000 acre-feet for M&I use.

35. San Juan Suburban Water District, CVP, California: Long-term water service contract for 13,000 acre-feet for M&I use.

36. El Dorado County Water Agency, CVP, California: Long-term water service contract for 15,000 acre-feet for M&I use.

37. Eat Bay Municipal Utility District, CVP, California: Amendatory Contract No. 14–06–200–5183A to provide for current CVP water rates and temporary change in point of diversion.

38. City of Redding, CVP, California: Amendment to Contract No. 14–06–200–5272A to add point of diversion on turnout, Spring Creek Power Conduit, to facilitate proposed water treatment plant for Buckeye service area.

39. United States Department of Veteran Affairs, CVP, California: Contract for M&I water purposes in support of the new San Joaquin Valley National Cemetery under construction near Santa Nella, California.

40. Century Ranch Water Company, Inc., CVP, California: Long-term exchange contract for M&I, less than 100 acre-feet, Stony Creek Watershed above Black Butte Dam.

41. State of California, Department of Forestry, CVP, California: Water right exchange agreement, less than 100 acre-feet, above Black Butte Dam.

42. San Luis Water District, CVP, California: Amendment to Contract No. 14–06–200–7773A to transfer lands and allocated share of CVP water supply to San Luis Water District that were previously served by Romero Water District.

43. Romero Water District, CVP, California: Amendment to Contract No. 14–06–200–7758 to transfer lands and allocated share of CVP water supply to San Luis Water District.

44. ID's and similar water user entities: Amendatory water service contracts; purpose is to change the definition of "year."

45. Sacramento River water rights settlement contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP water rates and update standard contract articles.

Lower Colorado Region

Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, Nevada 89005, telephone (702) 293–8536.

1. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts—a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

2. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the City of Tucson, Arizona.

3. Contracts with five agricultural entities located near the Colorado River, BCP, Arizona: Water service contracts for up to 1,920 acre-feet per year total.

4. Gila River Indian Community, CAP, Arizona: Water service contract for delivery of up to 173,100 acre-feet per year.

5. Irrigation districts and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Public Law 97–293).

6. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts and amendments for repayment of Federal expenditures for construction of distribution systems.

7. State of Arizona, BCP, Arizona: Contract for an undetermined amount of Colorado River water for M&I use and for agricultural use and related purposes on State-owned land.

8. Imperial Irrigation District and/or the Coachella Valley Water District, California: Contract providing for exchange of up to 10,000 acre-feet of water per year from a well field to be constructed adjacent to the All-American Canal (AAC) for an equivalent quantity and quality of Colorado River water and for O&M of the well field, Lower Colorado Water Supply Project, California.

9. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California adjacent to the Colorado River for an aggregate consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the AAC from a well field to be constructed adjacent to the canal.

10. Hutcheson present perfected rights contract assignment to reflect the transfer of part of the right to Winterhaven, California, and to Yuma Associates, California, Supreme Court Decree in *Arizona* v. *California* and BCP.

11. County of San Bernardino, SRPA, California: Repayment contract for a $29.6 million loan.

12. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

13. Sturges Trust, Supreme Court Decree in *Arizona* v. *California* and BCP, Arizona: Contract for delivery of 8,500 acre-feet of Colorado River water per year for agricultural use as recommended by the State of Arizona and to recognize a 780 acre-foot present perfected right to the use of Colorado River water.

14. BCP, Arizona: Contracts for additional allocations of Colorado River water to cities located along the Colorado River in Arizona for up to 15,116 acre-feet per year as recommended by the Arizona Department of Water Resources.

15. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for its Federal Establishments' present perfected right of 500 acre-feet of diversions annually, and the Federal Establishments' perfected right pursuant to Executive Order No. 5125 (April 25, 1930).

16. Eastern Municipal Water District, SRPA, California: Repayment contract for a $31 million loan.

17. City of Yuma, Gila Project, Arizona: Contract to add an additional point of diversion and to provide for water treatment by the Yuma Desalting Plant.

18. Colorado River Commission of Nevada and Southern Nevada Water Authority, BCP, Nevada: Final allocations and contracts for Nevada's remaining apportionment of Colorado River water.

19. The Metropolitan Water District of Southern California or Imperial Irrigation District, California: Construction and funding contract to conserve water along a portion of the AAC in accordance with Title II AAC Lining Act dated January 25, 1988.

20. Elsinore Valley Municipal Water District, SRPA, California: Repayment contract for a $22.3 million loan.

21. Cibola Valley Irrigation and Drainage District and Mohave Valley Irrigation and Drainage District, BCP, Arizona: Amendments of current contracts for additional Colorado River water service areas, diversion points, and other minor changes.

22. Miscellaneous present perfected rights holders, BCP, Arizona and California: Contracts for Supreme Court decreed entitlements of Colorado River water as identified in *Arizona* v. *California*, as supplemented or amended and as required by section 5 of the BCP.

23. Federal Establishments' present perfected rights holders: Individual contracts for administration of Colorado River water entitlements of the

Colorado River, Fort Mojave, Fort Yuma, Quechan, Cocopah Indian Tribes.

24. Marble Canyon Lodge, BCP, Arizona: Water service contract for delivery of Colorado River Water.

Upper Colorado Region:

Bureau of Reclamation, P.O. Box 11568, (125 South State Street), Salt Lake City, Utah 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years from execution.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement in principle.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico. Contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

4. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract for 7,600 acre-feet per year for M&I use.

5. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract for 9,900 acre-feet per year for irrigation use.

6. Uintah Water Conservancy District, Jensen Unit, Central Utah Project, Utah: Amendatory repayment contract to reduce M&I water supply and corresponding repayment obligation.

7. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presentlty exceeding $2 million, pursuant to P.L. 96–550.

8. Conejos Water Conservancy District, San Luis Valley Project, Colorado: Amendatory contract to place OM&R costs on a variable basis commensurate with the availability of project water.

9. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Repayment contract for R&B work of selected project facilities.

10. San Juan Pueblo, San Juan-Chama Project, New Mexico: Repayment contract for up to 5,165 acre-feet of project water for irrigation purposes.

11. North Fork Water Conservancy District, Paonia Project, Colorado: Water lease agreement with the Ragged Mountain Water Users Association for 2,000 acre-feet of irrigation water.

12. City of El Paso, Rio Grande Project, Texas and New Mexico: Amendment to the 1941 and 1962 contracts to expand acreage owned by the City of 3,000 acres; expand terms of water rights assignments from 25 years to 75 years; and allow assignments outside City limits under authority of the Public Service Board.

13. Mancos Water Conservancy District, Manocs Project, Colorado: Amendatory contract to remove contract restrictions that prevent the Mancos Water Conservancy District from developing hydropower on the Mancos Project.

Great Plains Region

Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone (406) 657–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Great Plains Region: Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contract for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5-years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fort Shaw Irrigation District, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

3. Owl Creek Irrigation District, Owl Creek Unit, P–SMBP, Wyoming: Amendatory water service contract to reflect reduced water supply benefits being received from Anchor Reservoir.

4. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

5. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Water service contracts; proposed second round contract negotiations for sale of agricultural, municipal, domestic, and industrial water from the regulatory capacity of Ruedi Reservoir.

6. Cedar Bluff Irrigation District No. 6, Cedar Bluff Unit, P–SMBP, Kansas: Repayment contract; pending passage of congressional legislation, terminate the Cedar Bluff Irrigation District's contract. The use of the District's portion of the reservoir storage capacity will be sold to the State of Kansas for fish, wildlife, recreation, and other purposes.

7. Frenchman Valley Irrigation District, Frenchman Unit, P–SMBP, Nebraska: Pending passage of congressional legislation, renegotiate District's existing contract to reduce payments based on payment ability and reduced water supply.

8. Garrison Diversion Unit, P–SMBP, North Dakota: Repayment contract; renegotiation of the master repayment contract with Garrison Diversion Conservancy District to bring the terms in line with the Garrison Diversion Unit Reformulation Act of 1986. Negotiation of repayment contracts with irrigators and M&I users.

9. Corn Creek Irrigation District, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

10. East Bench Irrigation District, East Bench Unit, P–SMBP, Montana: D&MC contract for $300,000 for minor construction work over a 10-year period.

11. Glen Elder Unit, P–SMBP, Kansas: Negotiations for long-term contracts for agricultural water service from Waconda Lake.

12. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work

13. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs incurred by the United States for the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

14. Board of Water Commissioners of the City and County of Denver, the Colorado River Water Conservation District, and the Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Operating agreement for substitution of water in the proposed Woolford Mountain (Muddy Creek) Reservoir for Green Mountain Reservoir water.

15. Sargent Irrigation District, Middle Loup Division , P–SMBP, Nebraska: R&B loan repayment contract not to exceed $2,475,000.

16. Chinook Water Users Association, Milk River Project, Montana: SRPA

contract for loan of up to $6,000,000 for improvements to the Association's water conveyance system.

17. Heart River Unit, Dickinson Subunit, P–SMBP, North Dakota: Renegotiate water service contract No. I79r–1412 with the City of Dickinson. Existing contract expired September 24, 1989.

18. Malta Irrigation District, Malta Division, Milk River Project, Montana: R&B contract for repayment of $5,600,000 loan.

19. Midvale Irrigation District, Riverton Unit, P–SMBP, Wyoming: Long-term contract for water service from Boysen Reservoir.

20. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Pending passage of congressional legislation, negotiate amendatory contract to increase irrigable acreage within the project.

21. Palmetto Bend Project, Texas: Amendment of the tripartite contract among the United States, the Lavaca-Navidad River Authority and the Texas Water Development Board to transfer the Board's remaining repayment obligation and interest in the Palmetto Bend Project to the Authority.

22. Canadian River Municipal Water Authority, Canadian River Project, Texas: Amendatory contract to reflect credit for project lands transferred to the National Park Service under Public Law 101–628 for the Lake Meredith National Recreation Area.

23. City of Havre, Milk River Project, Montana: New long-term water service contract for up to 2,800 acre-feet annually.

24. Lakeview Irrigation District, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir.

25. Hidalgo County Irrigation District No. 6, Texas: SRPA contract for a 25-year loan for up to $5,762,400 to rehabilitate the District's irrigation facilities.

26. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

27. Shoshone, Heart Mountain, Willwood, and Deaver Irrigation Districts, Shoshone Project, Wyoming: R&B contracts for loans totalling $7,500,000 to rehabilitate project irrigation facilities.

28. City of Aurora, Fryingpan-Arkansas Project, Colorado: Long-term carriage contract for up to 1,000 acre-feet of conveyance capacity in the Fryingpan-Arkansas Project facilities.

29. Board of Commissioners of the City and County of Denver, Northern Colorado Water Conservancy District, Colorado River Water Conservation District, Colorado-Big Thompson Project, Colorado: Operating agreement for substitution of Williams Fork Reservoir water for Green Mountain Reservoir water.

30. Thirty Mile Canal Company, Nebraska: SRPA contract for a loan of $2,264,000 to reline the main canal, replace open laterals with buried pipe, and replace bridges.

31. City of Estes Park, Colorado-Big Thompson Project, Colorado: Modification of water service contract to change point of diversion and other administrative revisions.

32. City of Loveland, Colorado-Big Thompson Project, Colorado: Long-term conveyance contract for conveyance of up to 12,000 acre-feet of city-owned water annually through Federal project facilities.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on proposed contract or contract action must be submitted to the appropriate Reclamation officials at locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification, and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Dated: October 11, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91–25106 Filed 10–17–91; 8:45 am]

BILLING CODE 4310–09–M

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council.

DATES: The meeting begins at 8 a.m. on Friday, November 8, 1991.

ADDRESSES: The meeting will be held at the Best Western Inn Suites, 1450 Castle Dome Avenue, Yuma, AZ 85365.

FOR FURTHER INFORMATION CONTACT: Mr. Stan W. Gappa, Colorado River Salinity Program Coordinator, Bureau of Reclamation, D–5090, P.O. Box 25007, Denver, CO 80225; telephone: (303) 236–6782.

SUPPLEMENTARY INFORMATION: Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report. The Department of the Interior, the Department of Agriculture, and the Environmental Protection Agency will each present a progress report and a schedule of activities on salinity control in the Colorado River Basin. The Council will discuss Colorado River Basin Salinity Control activities and the content of their annual report.

The meeting of the Advisory Council is open to the public. Any member of the public may file a written statement with the Council before, during, or after the meeting, in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

Dated: September 20, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 91-25107 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Availability of a Final Environmental Assessment on the Effects of Enhancing and Expanding the Bear River Migratory Bird Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a Final Environmental Assessment (FEA) of the effects of enhancing and expanding the Bear River Migratory Bird Refuge near Brigham City, Utah.

DATES: Document is available October 18, 1991.

ADDRESSES: Copies of the FEA or the Finding of No Significant Impact (FONSI) may be obtained from Al Trout, Refuge Manager, Bear River Migratory Bird Refuge, 866 South Main, Brigham City, Utah 84302.

FOR FURTHER INFORMATION CONTACT: Al Trout, Refuge Manager, Bear River Migratory Bird Refuge, 866 South Main, Brigham City, Utah 84302, (801) 723-5887.

SUPPLEMENTARY INFORMATION: The Service found that the enhancement and expansion of the Bear River Migratory Bird Refuge will not have a significant impact on the human environment based on the following determinations:

1. Threatened and endangered species will be benefited.
2. The current loss of wildlife benefits on the Refuge over the last several years will be reversed.
3. Additional fresh water marsh habitat will be protected.
4. The ability to manage water within smaller marsh units will allow reduction and control of botulism outbreaks.
5. The local and regional economy will be benefited.
6. The adverse impacts on biological and physical resources will be minor and short-term.

Dated: October 10, 1991.

Galen L. Buterbaugh,

Regional Director, Region 6.

[FR Doc. 91-25127 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

[FES 91-23]

Proposed Land Exchange; Cheeseboro Canyon/Palo Comado Canyon; Santa Monica Mountains National Recreation Area; Availability of Final Environmental Impact Statement

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1989, Public Law 91-190, the National Park Service has prepared a final environmental impact statement (FEIS) on a proposal, set forth by a private development firm, to exchange private properties for lands within the Santa Monica Mountains National Recreation Area. The exchange would facilitate the proponent's access to a proposed golf course and residential development of Jordan Ranch in Ventura County, California. The proposed access also involves lands within Los Angeles County, California.

The draft environmental impact statement (DEIS) for this proposal was released for public review in November 1990 (55 FR 47125 and 55 FR 47144), and the public comment period closed February 8, 1991. Both the DEIS and FEIS evaluate two alternatives which include (1) no action, which would require the proponent to seek other access, and (2) approval of the exchange by the National Park Service which would result in approximately 59 acres of federally-owned land to be exchanged for approximately 864 acres of private lands, all within the boundaries of the National Recreation Area. There are other considerations with this exchange that are detailed in both the DEIS and FEIS. In addition, the FEIS contains responses to comments on the DEIS and modifications in the text as needed in response to those comments.

Approval of the exchange by the National Park Service would constitute an amendment of the National Recreation Area's General Management Plan and associated plans. Evaluation of the specific impacts of the proposed golf course and subdivision on Jordan Ranch is being accomplished through a Ventura County General Plan Amendment Application and its accompanying environmental impact report (EIR), prepared in accordance with the California Environmental Quality Act. The draft EIR was released for public review for the period of August 29, 1990 to October 29, 1990. A preliminary final EIR was completed in late summer 1991.

The 30 day no action period on the FEIS will expire on November 17, 1991. Requests for information on, or copies of the FEIS should be directed to the Superintendent, Santa Monica Mountains National Recreation Area, 30401 Agoura Road, Suite 100, Agoura Hills, CA 91301, telephone number (818) 597-1036. Copies of the FEIS are available for inspection at the above address, in libraries located in that vicinity and at the following address: Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, 600 Harrison St., suite 600, San Francisco, CA 94107-1372.

Dated: September 27, 1991.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 91-25088 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-70-M

General Management Plan, Environmental Impact Statement, Timpanogos Cave National Monument, Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an environmental impact statement for the General Management Plan, Timpanogos Cave National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the general management plan for Timpanogos Cave National Monument.

On February 3, 1991, a fire destroyed the visitor/administrative center at Timpanogos Cave National Monument. These facilities were approved for construction in 1962 and therefore many current laws, regulations and policies were not considered in the planning that justified their construction. Due to the need to evaluate alternatives for replacement facilities, the planing effort will constitute a revision of the park's general management plan. Since many of the remaining facilities within the park were constructed at the same time, they will also be evaluated relative to current laws, regulations, and policies when revising the general management plan. A full range of alternatives will be considered to address the issues identified during the planning process, including a no-action alternative. A development concept plan and interpretive prospectus will also be produced as a part of the general management planning process. The general management plan will be supported with an environmental impact statement.

Issues related to visitor use, interpretation, natural and cultural resource management, development, and the necessity and appropriateness of the existing concession operation will be assessed as a part of the planning process. In cooperation with the United States Forest Service, attention will also be given to resources outside the boundaries that may affect the integrity of the Monument.

The park and regional office are currently obtaining resource information, conducting visitor use surveys, and analyzing these data for use in preparing the environmental impact statement for the general management plan. Various forms of news media will be employed to encourage public participation in the planning process.

Scoping information may be obtained from the Superintendent, Timpanogos Cave National Monument, Rural Route 3, Box 200, American Fork, Utah 84003-9803, telephone (303) 756-5238, and anyone interested in being involved in each phase of this planning effort should contact the Superintendent.

Dated: October 2, 1991.

Homer L. Rouse,

Regional Director, Rocky Mountain Region.

[FR Doc. 91-25089 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-70-M

Farmington River Study Committee Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 s 10), that a meeting of the Farmington River Study Committee will be held Thursday, November 7, 1991.

The Committee was established pursuant to Public Law 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Farmington River segments. The meeting will convene at 7:30 p.m. at the Tolland Town Hall, Tolland, CT, for the following purpose:

1. Welcome, introductions—Skip Rogers;
2. Approval of minutes from 9/12/91 meeting;
3. Update on status of instream flow study;
4. River Conservation Planning Subcommittee;
   a. Update on local activity—town meetings, zoning regulations;
   b. Private land protection program;
   c. Resident/landowner questionnaire;
5. Discussion of plans for preparation of Draft Study Report;
6. Opportunity for public comment; and
7. Other business-
   a. Next meeting dates and locations.

Interested persons may make oral/written presentations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Chief, Office of Communications, National Park Service, North Atlantic Region, 15 State Street, Boston, MA, 02109 (617) 223-5199.

Dated: October 9, 1991.

Sandra E. Corbett,

Acting Regional Director.

[FR Doc. 91-25090 Filed 10-17-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub 398X)]

CSX Transportation, Inc.; Abandonment Exemption in Upshur County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 2.88-mile line of railroad between milepost 1.4, at Buckhannon, and milepost 4.28, at Lorentz, in Upshur County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or 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. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee 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 has been received, this exemption will be effective on November 14, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 25, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by November 4, 1991, with Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Karen Anne Koster, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 18, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 9, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-25062 Filed 10-17-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment 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 involving 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.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-55 (Sub-No. 400X)]

CSX Transportation, Inc.—Abandonment Exemption—in Harlan County, KY

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 1.26-mile line of railroad between milepost 247.21, at Gulston, and milepost 248.47, at Kathy, in Harlan County, KY.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or 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. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee 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 has been received, this exemption will be effective on November 17, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 28, 1991.[3]

Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by November 7, 1991, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Karen Anne Koster, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 23, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: October 8, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-25064 Filed 10-11-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment 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 involving 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.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[Docket No. AB-254 (Sub-No. 5)]

Providence and Worcester Railroad; Abandonment in Moshassuck Valley Industrial Track in Providence County, RI; Findings

The Commission has found that the public convenience and necessity permit the Providence and Worcester Railroad Company (P&W) to abandon 0.74 miles of railroad between branch milepost 1.16, near the Pawtucket/Lincoln town line, and branch milepost 1.90, near Saylesville, known as the Moshassuck Valley Industrial Track, in Providence County, RI.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase), to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: October 8, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-24977 Filed 10-17-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decision

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in

accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Davison, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers.

Volume I

Tennessee:
TN91-29 (Oct. 18, 1991)..... p.1232ii, p.1232jj.
TN91-30 (Oct. 18, 1991)..... p.1232kk, p.1232ll.
TN91-31 (Oct. 18, 1991)..... p.1232mm, p.1232nn.
TN91-32 (Oct. 18, 1991)..... p.1232oo, p.1232pp.
TN91-33 (Oct. 18, 1991)..... p.1232qq, p.1232rr.

Volume II

Oklahoma:
OK91-21 (Oct. 18, 1991)..... p.1012a, p.1012b.
OK91-22 (Oct. 18, 1991)..... p.1012c, p.1012d.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky:
KY91-7 (Feb. 22, 1991)..... p.343, pp.344-347.
KY91-25 (Feb. 22, 1991)..... p.383, pp.385-386.

Massachusetts:
MA91-1 (Feb. 22, 1991)..... p.421, pp.422-424,427.
MA91-2 (Feb. 22, 1991)..... p.439, pp.440-441,443.
MA91-3 (Feb. 22, 1991)..... p.453, pp.454-462b
MA91-5 (Feb. 22, 1991)..... p.465, pp.466-467.

New Hampshire:
NH91-2 (Feb. 22, 1991)..... p.679, pp.680-684b.
NY91-7 (Feb. 22, 1991)..... p.837, pp.838-839.
NY91-17 (Feb. 22, 1991)..... p.921, p.924.

Puerto Rico:
PR91-1 (Oct. 18, 1991)..... p.All.
PR91-2 (Oct. 18, 1991)..... p.All.
PR91-3 (Oct. 18, 1991)..... p.All.

Rhode Island:
RI91-1 (Feb. 22, 1991)..... p.1149, pp.1150,1153, pp.1154-1155.

Volume II

Indiana:
IN91-3 (Feb. 22, 1991)..... p.279, pp.280-289.
IN91-5 (Feb. 22, 1991)..... p.305, pp.306-313.
IN91-6 (Feb. 22, 1991)..... p.315, pp.317,324-334b.

Louisiana:
LA91-1 (Feb. 22, 1991)..... p.391, pp.391-394.

Missouri:
MO91-2 (Feb. 22, 1991)..... p.673, pp.674-677.

Wisconsin:
WI91-6 (Feb. 22, 1991)..... p.1217, p.1218.

Volume III

Colorado:
CO91-4 (Oct. 18, 1991)..... p.All.

Montana:
MT91-1 (Feb. 22, 1991)..... p.231, pp.241-244.

South Dakota:
SD91-3 (Feb. 22, 1991)..... p.399, p.400.

Utah:
UT91-8 (Oct. 18, 1991)..... p.All.
UT91-13 (Oct. 18, 1991)..... p.All.
UT91-15 (Oct. 18, 1991)..... p.All.

Washington:
WA91-1 (Feb. 22, 1991)..... p.451, pp.454-455, pp.457-475.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 11th day of October 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-25074 Filed 10-17-91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution, Avenue, NW., Washington, DC 20210.

Any complaint regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

The Employment and Training Administration has established a voice-mail service for the H–1A nurse attestation process. Call Telephone Number: 202–535–0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H–1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H–1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form:

(3) Listen to information on H–1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to the public examination of H–1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H–1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program. Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requiries that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons which to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 3rd day of October, 1991.

Robert J. Litman,

Acting Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[09/01/91 to 09/30/91]

CEO-name/facility name/address	St.	Approval date
Sister St. Joan Willert, Carondelet Health Care Corp., P.O. Box 5386, Tucson, AZ 85703, 602-721-3826.	AZ	09/17/91
Mr. Robert Rundio, Phoenix Memorial Hospital, 1201 South 7th Ave., Phoenix, AZ 85007, 602-258-5111.	AZ	09/17/91
Mr. Peter C. Frick, Scottsdale Mem. Hosp. Corp., 7400 East Osborn Road, Scottsdale, AZ 85251, 602-481-4000.	AZ	09/17/91
Ms. Saskia Thiadens, Aurora Lymphedema Clinic, 2211 Post Street, Ste 404, San Francisco, CA 94115, 415-921-2911.	CA	09/04/91
Mr. Jess R. Villaluna, California Nursing Express, I, 2720 E. Plaza Blvd Ste. G, National City, CA 91950, 619-475-6004.	CA	09/17/91
Mr. Donald H. Miller, Charter Suburban Hospital, 16453 So. Colorado Ave., Paramount, CA 90723, 213-531-3110.	CA	09/17/91
Mr. J. Dennis Sexton, All Children's Hospital, 900 Fifth Street S., St. Petersburg, FL 33731, 813-892-4422.	FL	09/17/91
Mr. Jim Worm, Hialeah Hospital, Versacare Medical Center, Hialeah, FL 33013, 305-693-6100.	FL	09/17/91
Mr. C. B. Eberhart, DeKalb Medical Center, 2701 North Decatur Road, Decatur, GA 30033, 404-501-1000.	GA	09/04/91
Sister Patricia Garrigan, St. Francis Hospital Incorp., 2122 Manchester Expressway, Columbus, GA 31995, 404-596-4140.	GA	09/24/91
Ms. Nanjean Painter, Sheridan Health Care Center, 2534 Elim Ave., Zion, IL 60099, 708-746-8435.	IL	09/16/91
Ms. Jacqueline L. Mason, Oak Brook Healthcare Centre, 2013 Midwest Road, Oak Brook, IL 60521, 708-495-0220.	IL	09/17/91
Ms. Rose Marie Betz, Carlton House Nursing Center, C.H. Nursing Center Inc. D/B/A, Chicago, IL 60613, 312-929-1700.	IL	09/17/91
Sister M. Sylvia Egan, St. Francis Reg'l Med. Ctr., 929 N. St. Francis, Wichita, KS 67214, 316-268-5764.	KS	09/18/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[09/01/91 to 09/30/91]

CEO-name/facility name/address	St.	Approval date
Mr. G. Rodney Wolford, Alliant Health System, 1200 E. Chestnut Street, Louisville, KY 40232, 502-629-8400.	KY	09/24/91
Mr. James K. Elrod, Willis-Knighton Health System, 2600 Greenwood Road, Shreveport, LA 71118, 318-632-4692.	LA	09/11/91
Mr. A. Jason Geisinger, Presentation Manor Nursing Ho, First Health Care Corp. d.b.a., Brighton, MA 02135, 617-782-8113.	MA	09/24/91
Mr. Glenn Wesselmann, St. John Hospital and Medical, 22101 Moross Road, Detroit, MI 48236, 313-343-3987.	MI	09/17/91
Mr. Bob Maher, Kennedy Mem. Hosp. at Saddle, 300 Market Street, Saddle Brook, NJ 07662, 201-368-6075.	NJ	09/17/91
Mr. Michael R. D'Agnes, Bayonne Hospital, 20 East 29th Street, Bayonne, New Jersey 07002, 201-858-5000.	NJ	09/17/91
Mr. Robert M. Hilsen, Woodcrest Center, Mediplex of NJ., Inc., New Milford, NJ 07646, 201-967-1700.	NJ	09/17/91
Mr. E Joseph Hummel, Kennedy Memorial Hospits U. M, Corporate Office, Cherry Hill, NJ 08034, 609-661-5226.	NJ	09/17/91
Ms. Olivia C. Caldwell, Green-Wood Health Care Center, John Henry Allen Lane & Church Street, Pleasantville, NJ 08232, 609-646-6900.	NJ	09/17/91
Mr. Richard Shedlovsky, Hebrew Hosp. for Chronic Sick, 2200 Givan Avenue, Bronx, NY 10475, 202-379-5020.	NY	09/17/91
Mr. Mark O'Neil, Jr., United Health Services Hospit, 33-57 Harrison Street, Johnson City, NY 13790, 607-763-6000.	NY	09/17/91
Mr. Eugene McCabe, North General Hospital, 1919 Madison Avenue, New York, NY 10035, 212-650-4000.	NY	09/24/91
Gladys McMoy, Multnomah County, 1120 SW 5, Portland, OR 97204, 503-248-5015.	OR	09/17/91
Ms. Emily Fedullo, Visiting Nurse Association, 1347 Fruitville Pike, Lancaster, PA 17604, 717-397-8251.	PA	09/17/91
Mr. Anthony Bunker, St. Paul Medical Center, 5909 Harry Hines Blvd., Dallas, TX 75235, 214-879-2660.	TX	09/05/91
Mr. Rick Truskoloski, Memorial City Rehabilitation, 3043 Gessner, Houston, Texas 77090, 713/462-2515.	TX	09/17/91
Mr. John A. Guest, Bexar County Hospital District, 4502 Medical Drive, San Antonio, TX 78229, 512-694-2055.	TX	09/17/91
Mr. William E. Ball, Vernon Home Health Care Agenc, Hospital Drive, Seymour, TX 76380, 817-888-5505.	TX	09/17/91
Mr. David Parmer, Baptist Hospital of SE Texas, College & 11th Street, Beaumont, TX 77704, 409-835-3187.	TX	09/17/91
Mr. Kenneth W. Jones, Dialysis Ser. Grp. of Farmvil, 1801 East 3rd Street, Farmville, VA 23901, 615-269-3573.	VA	09/17/91
Mr. Bernard Westfall, West Virginia University Hosp, Medical Center Drive, Morgantown, WV 26506, 304-598-4075.	WV	09/17/91
Total Attestations—35		

[FR Doc. 91-25183 Filed 10-17-91; 8:45 am]

BILLING CODE 4510-30-M

DEPRTMENT OF LABOR

Occupational Safety and Health Administration

Iowa State Standards; Notice of Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667; hereinafter called the Act) by which the Regional Administrators for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa Plan and the adoption of subpart J of part 1952 containing the decision. Iowa was granted final approval under section 18(e) of the Act on July 2, 1985.

The Iowa Plan provides for the adoption of Federal standards (by reference after comments and public hearing). By letter dated March 21, 1991, from Walter H. Johnson, Deputy Labor Commission, to Alonzo L. Griffin, Area Director, and Incorporated as part of the Plan, the State submitted State standards comparable to: Control of Hazardous Energy Sources (Lockout/Tagout); Final Rule, 29 CFR 1910.147, as published in the **Federal Register** (54 FR 36687, dated September 1, 1989). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on November 15, 1989; hearing scheduled for December 11, 1989 (no comments were received); and resolution adopted by the Division of Labor Services on January 19, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective March 14, 1990; and notice of its adoption was published by the State on February 7, 1990.

The State also submitted State standards comparable to: Air Contaminants; Final Rule, 29 CFR 1910.1000, as published in the **Federal Register** (54 FR 36767, dated September 5, 1989). This standard which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on November 15, 1989; hearing scheduled for December 11, 1989 (no comments were received); and resolution adopted by the Division of Labor Services on January 19, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on March 14, 1990; and notice of its adoption was published by the State on February 7, 1990.

The State also submitted State standards comparable to: Occupational Exposure to Formaldehyde; Correction, 29 CFR 1910.1048, as published in the **Federal Register** (54 FR 37531, dated September 11, 1989) This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on November 15, 1989; hearing scheduled for December 11, 1989 (no comments were received); and resolution adopted by the Division of Labor Services on January 19, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on March 14, 1990; and notice of its adoption was published by the State on February 7, 1990.

The State also submitted State standards comparable to: Control of Hazardous Energy Sources (Lockout/Tagout); Correction, 29 CFR 1910.147, as published in the **Federal Register** (54 FR 41364, dated October 6, 1989). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on November 15, 1989; hearing scheduled for December 11, 1989 (no comments were received); and resolution adopted by the Division of Labor Services on January 19, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on March 14, 1990; notice of its adoption was

published by the State on February 7, 1990.

The State also submitted State standards comparable to: Concrete and Masonry Construction Safety Standards; Final Rule; technical amendment, 29 CFR 1926.704, as published in the **Federal Register** (54 FR 41088, dated October 5, 1989). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on November 15, 1989; hearing scheduled for December 11, 1989 (no comments were received); and resolution adopted by the Division of Labor Services on January 19, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on March 14, 1990; notice of its adoption was published by the State on February 7, 1990.

The State also submitted State standards comparable to: Occupational Exposure to Control of Hazardous Energy Sources (Lockout/Tagout); Final Rule, suspension of effective date; 29 CFR 1910.147, as published in the **Federal Register** (54 FR 46610, dated November 6, 1989). This standards, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on February 7, 1990; hearing scheduled for March 6, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on March 16, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on May 9, 1990; notice of its adoption was published by the State on April 4, 1990.

The State also submitted State standards comparable to: Air Contaminants; Final Rule, corrections; 29 CFR 1910.1000, as published in the **Federal Register** (54 FR 47513, dated November 15, 1989). This standard which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on February 7, 1990; hearing scheduled for March 6, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on March 16, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on May 9, 1990; notice of its adoption was published by the State on April 4, 1990.

The State also submitted State standards comparable to: Grain Handling Facilities; Final Rule, supplemental statement of reasons; 29 CFR 1910.272, as published in the **Federal Register** (54 FR 49971, dated December 4, 1989). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on February 7, 1990; hearing scheduled for March 6, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on March 16, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on May 9, 1990; notice of its adoption was published by the State on April 4, 1990.

The State also submitted State standards comparable to: Air Contaminants; Final Rule, partial stay of effective date; 29 CFR 1910.1000, as published in the **Federal Register** (54 FR 50372, dated December 6, 1989). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on February 7, 1990; hearing scheduled for March 6, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on March 16, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on May 9, 1990; notice of its adoption was published by the State on April 4, 1990.

The State also submitted State standards comparable to: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Final Rule; partial response to court remand; 29 CFR 1910.1001, as published in the **Federal Register** (54 FR 52024, dated December 20, 1989). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on February 7, 1990; hearing scheduled for March 6, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on March 16, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on May 9, 1990; notice of its adoption was published by the State on April 4, 1990.

The State also submitted State standards comparable to: Excavations, 29 CFR 1926.650, 651, and 652 as published in the **Federal Register** (54 FR 45894, dated October 31, 1989). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on February 7, 1990; hearing scheduled for March 6, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on March 16, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on May 9, 1990; notice of its adoption was published by the State on April 4, 1990.

The State also submitted State standards comparable to: Hazard Communication, correction; 29 CFR 1926.59, as published in the **Federal Register** (54 FR 49279, dated November 30, 1989). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on February 7, 1990; hearing scheduled for March 6, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on March 16, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on May 9, 1990; notice of its adoption was published by the State on April 4, 1990.

The State also submitted State standards comparable to: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Final Rule, partial response to court remand; 29 CFR 1926.58, as published in the **Federal Register** (54 FR 52024, dated December 20, 1989). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on February 7, 1990; hearing scheduled for March 6, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on March 16, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on May 9, 1990; notice of its adoption was published by the State on April 4, 1990.

The State also submitted State standards comparable to: Excavations, effective date; 29 CFR 1926.650, 651, and 652, as published in the **Federal Register** (54 FR 53055, dated December 27, 1989). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on February 7, 1990; hearing scheduled for March 6, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on March 16, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on May 9, 1990; notice of its adoption was published by the State on April 4, 1990.

The State also submitted State standards comparable to: Occupational Exposure to Lead, Final Rule, statement of reasons; 29 CFR 1910.1025, as published in the **Federal Register** (55 FR 3146, dated January 30, 1990). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on April 4, 1990; hearing scheduled for April 27, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on June 8, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on August 1, 1990; notice of its adoption was published by the State on June 27, 1990.

The State also submitted State standards comparable to: Occupational Exposure to Hazardous Chemical in Laboratories, 29 CFR 1910.1450, as published in the **Federal Register** (55 FR 3300, dated January 31, 1990). This

standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on April 4, 1990; hearing scheduled for April 27, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on June 8, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on August 1, 1990; notice of its adoption was published by the State on June 27, 1990.

The State also submitted State standards comparable to: Air Contaminants, Final Rule, partial stay of effective date; 29 CFR 1910.1001, as published in the **Federal Register** (55 FR 3723, dated February 5, 1990). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on April 4, 1990; hearing scheduled for April 27, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on June 8, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on August 1, 1990; notice of its adoption was published by the State on June 27, 1990.

The State also submitted State standards comparable to: Occupational Exposure to Lead, Final Rule; 29 CFR 1910.1025, as published in the **Federal Register** (55 FR 4998, dated February 13, 1990). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on April 4, 1990; hearing scheduled for April 27, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on June 8, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on August 1, 1990; notice of its adoption was published by the State on June 27, 1990.

The State also submitted State standards comparable to: Excavations, 29 CFR 1926.650, .651, .652, as published in the **Federal Register** (55 FR 53055, dated December 27, 1989). This standard, was originally published as ARC 791A, and was republished as ARC 793A to reflect a date change. This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on April 4, 1990; hearing scheduled for April 27, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on June 8, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on August 1, 1990; notice of its adoption was published by the State on June 27, 1990.

The State also submitted State standards comparable to: Occupational Exposure to Hazardous Chemical in Laboratories, 29 CFR 1910.1450, as published in the **Federal Register** (55 FR 7967, dated March 6, 1990). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on June 27, 1990; hearing scheduled for July 19, 1990, (no comments were received); and resolution adopted by the Division of Labor Services on November 9, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective on January 2, 1991; notice of its adoption was published by the State on November 28, 1990.

The State also submitted State standards comparable to: Occupational Exposure to Hazardous Chemicals in Laboratories, correction; 29 CFR 1910.1450, as published in the **Federal Register** (55 FR 12110, dated March 30, 1990). This standard, which is contained in chapter 88 of the Code Of Iowa (1983), was promulgated after public comment requested on June 27, 1990; hearing scheduled for July 19, 1990 (no comments were received); and resolution adopted by the Division of Labor Services on November 9, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective January 2, 1991; notice of its adoption was published by the State on November 28, 1990.

The State also submitted State standards comparable to: Air Contaminants, 29 CFR 1910.1000, as published in the **Federal Register** (55 FR 12619, dated April 6, 1990). This standard, which is contained in Chapter 88 of the Code Of Iowa (1983), was promulgated after public comment requested on June 27, 1990; hearing scheduled for July 19, 1990 (no comments were received); and resolution adopted by the Division of Labor Services on November 9, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective January 2, 1991; notice of its adoption was published by the State on November 28, 1990.

The State also submitted State standards comparable to: Welding, Cutting, and Brazing, Final Rule; 29 CFR 1910.251 through 29 CFR 1910.257, inclusive, as published in the **Federal Register** (55 FR 13696, dated April 11, 1990). This standard, which is contained in chapter 88 of the Code Of Iowa (1983), was promulgated after public comment requested on June 27, 1990; hearing scheduled for July 19, 1990 (no comments were received); and resolution adopted by the Division of Labor Services on November 9, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective January 2, 1991; notice of its adoption was published by the State on November 28, 1990.

The State also submitted State standards comparable to: Air Contaminants, Final Rule, grant of petition for reconsideration and stays, 29 CFR 1910.1000, as published in the **Federal Register** (55 FR 19259, dated May 9, 1990). This standard, which is contained in chapter 88 of the Code Of Iowa (1983), was promulgated after public comment requested on June 27, 1990; hearing scheduled for July 19, 1990 (no comments were received); and resolution adopted by the Division of Labor Services on November 9, 1990, pursuant to chapter 17a, Iowa Code. The standard was effective January 2, 1991; notice of its adoption was published by the State on November 28, 1990.

The State also submitted State standards comparable to: Welding, Cutting, and Brazing, Final Rule, technical amendments; 29 CFR 1910.110 and 29 CFR 1910.272, as published in the **Federal Register** (55 FR 25094, dated June 20, 1990). This standard, which is contained in chapter 88 of the Code Of Iowa (1983), was promulgated after public comment requested on November 28, 1990; hearing scheduled for December 20, 1990 (no comments were received); and resolution adopted by the Division of Labor Services on February 15, 1991, pursuant to chapter 17a, Iowa Code. The standard was effective April 10, 1991; notice of its adoption was published by the State on March 6, 1991.

The State also submitted State standards comparable to: Access to Employees Exposure and Medical Records, Final Rule, clarification; 29 CFR 1910.20, as published in the **Federal Register** (55 FR 26431, dated June 28, 1990). This standard, which is contained in chapter 88 of the Code Of Iowa (1983), was promulgated after public comment requested on November 28, 1990; hearing scheduled for December 20, 1990 (no comments were received); and resolution adopted by the Division of Labor Services on February 15, 1991, pursuant to chapter 17a, Iowa Code. The standard was effective April 10, 1991; notice of its adoption was published by the State on March 6, 1991.

The State also submitted State standards comparable to: Electrical Safety-Related Work Practices, Final Rule; 29 CFR 1910.26, 67–68, 94, 103, 347–10.20(88), 106, 110, 178–181, 252, 261, 265–266, 304, 331–335, 399, as published in the **Federal Register** (55 FR 32014, dated August 6, 1990). This standard, which is contained in chapter 88 of the Code Of Iowa (1983), was promulgated after public comment requested on November 28, 1990; hearing scheduled for

December 20, 1990 (no comments were received); and resolution adopted by the Division of Labor Services on February 15, 1991, pursuant to chapter 17a, Iowa Code. The standard was effective April 10, 1991; notice of its adoption was published by the State on March 6, 1991.

The State also submitted State standards comparable to: Control of Hazardous Energy Sources (Lockout/Tagout), Final Rule, corrections and technical amendments; 29 CFR 1910.147, as published in the **Federal Register** (55 FR 38677, dated September 20, 1990). This standard, which is contained in chapter 88 of the Code Of Iowa (1983), was promulgated after public comment requested on November 28, 1990; hearing scheduled for December 20, 1990 (no comments were received); and resolution adopted by the Division of Labor Services on February 15, 1991, pursuant to chapter 17a, Iowa Code. The standard was effective April 10, 1991; notice of its adoption was published by the State on March 6, 1991.

The State also submitted State standards comparable to: Electrical Safety-Related Work Practices, Final Rule, correction; 29 CFR 1910.1450, as published in the **Federal Register** (55 FR 46053, dated November 1, 1990). This standard, which is contained in chapter 88 of the Code Of Iowa (1983), was promulgated after public comment requested on November 28, 1990; hearing scheduled for December 20, 1990 (no comments were received); and resolution adopted by the Division of Labor Services on February 15, 1991, pursuant to chapter 17a, Iowa Code. The standard was effective April 10, 1991; notice of its adoption was published by the State on March 6, 1991.

The State also submitted State standards comparable to: Concrete and Masonry Construction Safety Standards, Lift-Slab Construction Operations, Final Rule, correction; 29 CFR 1926.305, 700, 705, as published in the **Federal Register** (55 FR 42328, dated October 18, 1990). This standard, which is contained in chapter 88 of the Code Of Iowa (1983), was promulgated after public comment requested on November 28, 1990; hearing scheduled for December 20, 1990 (no comments were received); and resolution adopted by the Division of Labor Services on February 15, 1991, pursuant to chapter 17a, Iowa Code. The standard was effective April 10, 1991; notice of its adoption was published by the State on March 6, 1991.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the comparable Federal standards and should therefore be approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Directorate of Federal/State Operations, Office of State Programs, room N3700, 200 Constitution Avenue, NW., Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

4. *Public Participation.* Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State Plan as a proposed change and for making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the comparable Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective October 18, 1991. (Section 18, Public Law 91-596, 84 Stat. 1608 [29 U.S.C. 667]).

Signed at Kansas City, Missouri, this 8th day of August, 1991.

John T. Phillips,

Regional Administrator.

[FR Doc. 91-25184 Filed 10-17-91; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF LABOR

Iowa State Standards; Notice of Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667; hereinafter called the Act) by which the Regional Administrators for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 20, 1973, notice was published in the **Federal Register** (38 FR 19368) of the approval of the Iowa Plan and the adoption of subpart J of part 1952 containing the decision. Iowa was granted final approval under section 18(e) of the Act on July 2, 1985.

The Iowa Plan provides for the adoption of Federal standards (by reference after comments and public hearing). By letter dated May 23, 1991, from Walter H. Johnson, Deputy Labor Commissioner, to Alonzo L. Griffin, Area Director, and incorporated as part of the Plan, the State submitted State standards comparable to: Air Contaminants, Final Rule, grant of partial stay for nitroglycerin, 29 CFR 1910.1000, as published in the **Federal Register** (55 FR 46949), dated November 8, 1990). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on March 6, 1991; hearing scheduled for March 28, 1991 (no comments were received); and resolution adopted by the Division of Labor Services on April 23, 1991, pursuant to chapter 17a, Iowa Code. The standard was effective June 19, 1991; and notice of its adoption was published by the State on May 15, 1991.

The State also submitted State standards comparable to: Occupational Exposure to Asbestos, Tremolilte, Anthophyllite and Actinolite, extension of partial stay and amendment of final rule, 29 CFR 1910.1001 and 1101, as published in the **Federal Register** (55 FR 50686, dated December 10, 1990). This standard, which is contained in Chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on March 6, 1991; hearing scheduled for March 28, 1991 (no comments were received); and resolution adopted by the Division of Labor Services on April 23, 1991, pursuant to chapter 17a, Iowa Code. The standard was effective on June 19, 1991; and notice of its adoption was published by the State on May 15, 1991.

The State also submitted State standards comparable to: Safety Standards for Stairways and Ladders Used in the Construction Industry; Final Rule, 29 CFR 1926.450, 500, 1050, 1051, 1052, 1053, and 1060, as published in the **Federal Register** (55 FR 47637, dated November 14, 1991). This standard, which is contained a chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on

March 6, 1991; hearing scheduled for March 28, 1991 (no comments were received); and resolution adopted by the Division of Labor Services on April 23, 1991, pursuant to Chapter 17a, Iowa Code. The standard was effective on June 19, 1991; and notice of its adoption was published by the State on May 15, 1991.

The State also submitted State standards comparable to: Occupational Exposure to Asbestos, Tremolilte, Anthophyllite and Actinolite, extension of partial stay and amendment of final rule, 29 CFR 1926.58, as published in the **Federal Register** (55 FR 50687, dated December 10, 1990). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on March 6, 1991; hearing scheduled for March 28, 1991 (no comments were received); and resolution adopted by the Division of Labor Services on April 23, 1991, pursuant to chapter 17a, Iowa Code. The standard was effective on June 19, 1991; and notice of its adoption was published by the State on May 15, 1991.

The State also submitted State standards comparable to: Safety Standards for Stairways and Ladders Used in the Ladders Used in the Construction Industry, correction, Final Rule, 29 CFR 1926.1050, 1051, and 1053, as published in the **Federal Register** (56 FR 2585, dated January 23, 1991). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on March 6, 1991; hearing scheduled for March 28, 1991 (no comments were received); and resolution adopted by the Division of Labor Services on April 23, 1991, pursuant to chapter 17a, Iowa Code. The standard was effective on June 19, 1991; and notice of its adoption was published by the State on May 15, 1991.

The State also submitted State standards comparable to: Safety Standards for Stairways and Ladders Used in the Construction Industry, correction, Final Rule, 29 CFR 1926.1052, as published in the **Federal Register** (56 FR 5061, dated February 7, 1991). This standard, which is contained in chapter 88 of the Code of Iowa (1983), was promulgated after public comment requested on March 6, 1991; hearing scheduled for March 28, 1991 (no comments were received); and resolution adopted by the Division of Labor Services on April 23, 1991, pursuant to chapter 17a, Iowa Code. The standard was effective on June 19, 1991; and notice of its adoption was published by the State on May 15, 1991.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the comparable Federal standards and should therefore be approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Directorate of Federal/State Operations, Office of State Programs, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, 406 Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106; and Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

4. *Public Participation.* Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Iowa State Plan as a proposed change and for making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the comparable Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with the procedural requirements of State law and further public participation and notice would be unnecessary.

This decision is effective August 8, 1991. (Section 18, Public Law 91-596, 84 Stat. 1608 [29 U.S.C. 667]).

Signed at Kansas City, Missouri this 8th day of August, 1991.

John T. Phillips,

Regional Administrator.

[FR Doc. 91-25185 Filed 10-17-91; 8:45 am]

BILLING CODE 4510-26-M

Maryland State Standards; Notice of Approval

1. *Background*—Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17834) of the approval of the Maryland State plan and the adoption of Subpart 0 to part 1952 containing the decision.

The Maryland State Plan provides for the adoption of all Federal standards as State standards after comments and public hearing. Section 1952.210 of subpart 0 sets forth the State's schedule for the adoption of Federal standards. By letter dated June 20, 1991, from Commissioner Henry Koellein, Jr., Maryland Division of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to:

(1) 29 CFR 1910.252, 1910.331, 1910.333 and Table 5 of 1910.33, 1910.334, and 1910.399, pertaining to corrections to Electrical Safety—Related Work Practices, as published in the **Federal Register** of November 1, 1990 (55 FR 46052); (2) 29 CFR 1926.450 and 1926.452 of subpart L, 1926.500 and 1926.501 of subpart M, and 1926.1050 through 1926.1060 and appendix A of subpart X, pertaining amendments, additions and revisions to Safety Standards for Stairways and Ladders Used in the Construction Industry as published in the **Federal Register** of November 14, 1990 (55 FR 47687); (3) 29 CFR 1926.1050, 1926.1051, and 1926.1053, pertaining to corrections to Standards for Stairways and Ladders used in the Construction Industry as published in the **Federal Register** of January 23, 1991 (56 FR 2585); and (4) 29 CFR 1926.1052, pertaining to corrections to Safety Standards for Stairways and Ladders Used in the Construction Industry, as published in the **Federal Register** of February 7, 1991 (56 FR 5061). These standards are contained in COMAR 09.12.31. Maryland occupational safety and standards were promulgated after a public hearing on March 6, 1991. These standards became effective on June 24, 1991.

2. *Decision*—Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, are approved.

3. *Location of the Supplements for Inspection and Copying*—A copy of the standards supplements, along with the approved plan, may be inspected and copied at the following locations during

normal business hours: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; Office of the Commissioner of Labor and Industry, 501 St. Paul Place, Baltimore, Maryland 21202; and the OSHA Office of State Programs, room N-3700, Third Street and Constitution Avenue NW., Washington, DC 20210.

4. *Public Participation*—Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Maryland State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

a. The standard is identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

b. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective October 18, 1991.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, Pennsylvania, this 23rd day of July 1991.

Linda R. Anku,

Regional Administrator.

[FR Doc. 91-25186 Filed 10-17-91; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-92]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 49796, Notice Number 91-82, October 1, 1991.

PREVIOUSLY ANNOUNCED TIMES AND DATES OF MEETING: October 22, 1991, 8:30 a.m. to 5 p.m.; and October 23, 1991, 8:30 a.m. to 12:30 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2128).

CHANGES IN THE MEETING: The agenda for this meeting has been revised to read as follows:

Agenda

October 22, 1991

8:30 a.m.—Introduction and Chairman's Remarks.
8:45 a.m.—Life Sciences Status.
9:30 a.m.—Office of Space Science and Applications Status.
10:45 a.m.—Report on Other Advisory Committees.
11:15 a.m.—Aerospace Medicine Advisory Committee Executive Steering Committee Activities.
1:15 p.m.—Discussion of Meritorious Science and Categorization of Scientific Questions.
5:30 p.m.—Adjourn.

October 23, 1991

8:30 a.m.—Update on Gravitational Biology Enhancement.
8:45 a.m.—Discussion of Short Version of "A Rationale for the Life Sciences."
9 a.m.—Potential New Space Activities.
9:15 a.m.—Overview of Radiation Health Program.
10 a.m.—Subcommittee Strategy and Actions.
12:30 p.m.—Adjourn.

Dated: October 11, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-25182 Filed 10-17-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meetings/Public Hearings Announcement

Note: This is a corrected notice of meeting. The original notice was published on October 11, 1991 at 56 FR 51411.

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: October 21, 1991, Public Hearing, 9:30 a.m.-3 p.m. Full Commission Meeting, 4 p.m.-6 p.m.

ADDRESSES: Public Hearing: City Council Chambers; City Hall, 4th Floor, Philadelphia, PA; Full Commission Meeting, Philadelphia Airport Marriott.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., #7121, Washington, DC 20005 (202) 275-6933.

TYPE OF MEETING: Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by the Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 91-25140 Filed 10-17-91; 8:45 am]

BILLING CODE 6820-07-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Arts National Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 1, 1991, from 9 a.m.-5:30 p.m. and on November 2 from 9 a.m.-1 p.m. in room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include Chairman's Opening Remarks, Legislative Update, Report from Regional Representative, Reports on meetings of the Underserved Set-Aside Advisory Group and the Advisory Council on Arts Education, presentation by AFL-CIO representative, revision of appeals process, and Program Review and/or Guidelines and/or Application Review for the Arts in Education, Challenge/Advancement, Dance, Design Arts, Expansion Arts, Inter-Arts, International, Literature, Media Arts, Museum, Music, Policy, Planning and Research, and Opera-Musical Theater Programs.

If in the course of application review it becomes necessary for the Council to discuss non-public financial information about individuals, such as salary information, submitted with grant applications, the Council will go into closed session for that limited purpose only pursuant to subsection (c)(4) of section 552b of title 5, United States Code. Such closure would be in accordance with the determination of the Chairman of March 6, 1991.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100

Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: October 11, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91-25104 Filed 10-17-91; 8:45 am]

BILLING CODE 7537-01-M

Humanities National Council; Meeting

October 9, 1991.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on November 14-15, 1991.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on November 14-15, 1991, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated September 9, 1991.

The agenda for the sessions on November 14, 1991, will be as follows:

Committee Meetings

8:30-9 a.m.—Coffee for Council Members—Room 526

(Open to the Public)

9:00-10 a.m.—Committee Meetings—Policy Discussion
- Education Programs—Room M-14
- Fellowships Programs—Room 316-2
- Public Programs—Room 415
- Research Programs/Preservation and Access—Room 315
- State Programs—Room M-07

10 a.m. until Adjourned—(Closed to the Public for the reasons stated above)—Consideration of specific applications

2 p.m.—(Closed to the Public) Joint Meeting of State and Public Programs Committees to review Frankel Awards nominees—Room 415

3:30 p.m.—Recognition of Frankel Prize Recipients—Room M-09

The morning session on November 15, 1991, will convene at 8:30 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Council members from 8:15-8:30 a.m.)

Administration of Oath of Office for New Council Member

Minutes of the Previous Meeting

Reports
- A. Introductory Remarks
- B. Introduction of New Staff
- C. Contracts Awarded in the Previous Quarter
- D. Final Fiscal Year Reports: Applications; Matching; and Obligations
- E. Fiscal Year 1992 Appropriations
- F. Committee Reports on Policy and General Matters
  1. Education Programs
  2. Fellowships Programs
  3. Public Programs
  4. Research Programs
  5. Preservation and Access
  6. State Programs
  7. Challenge Grants

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322, TDD (202) 786-0282. Advance notice of any special needs or accommodations is appreciated.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 91-25617 Filed 10-17-91; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-482]

Wolf Creek Nuclear Operating Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Generating Station, Unit No. 1, located in Coffey County, Kansas.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Wolf Creek operating license by the addition of a footnote that acknowledges the transfer of the Kansas Gas and Electric Company (KG&E) possession-only interest in the operating license to a successor company which is a wholly-owned subsidiary of Kansas Power and Light Company (KPL).

The proposed action is in accordance with the licensee's application dated March 28, 1991, which requested a transfer, pursuant to 10 CFR 50.80, of the KG&E possession-only interest in the operating license to a successor company resulting from the merger of KG&E with KPL, and an April 23, 1991, application which requested an amendment to the operating license, pursuant to 10 CFR 50.90, to reflect the transfer and change of KG&E to a wholly-owned subsidiary of KPL.

The Need for the Proposed Action

The proposed action is required to reflect the pending merger of KG&E and KPL following the review and approval by various State and Federal agencies, including the NRC. The transfer of the KG&E possession-only interest in Facility Operating License No. NPF-42 to the successor company, also to be named Kansas Gas and Electric Company, and the amendment of the operating license to acknowledge the transfer will have minimal impact upon the operation of the facility by Wolf Creek Nuclear Operating Corporation (WCNOC), the present holder of the operating license. The transfer and amendment will not affect the facility's Technical Specifications, license conditions (including the anti-trust conditions applicable to KG&E), or the organization and practices of WCNOC.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed license transfer and associated license amendment and concludes that there will be no changes to the Wolf Creek Generating Station or the environment as a result of these actions. The transfer of the KG&E possession-only interest in the license and the associated license amendment will not affect the numbers, qualifications, or organizational affiliation of the personnel who operate the facility as WCNOC will remain the holder of the operating license and be responsible for the operation of Wolf Creek Generating Station. The successor company to KG&E has pledged to honor all commitments related to WCNOC and the operation and maintenance of Wolf Creek after the merger with KPL. Accordingly, the Commission concludes that this proposed action would result in no radiological or non-radiological environmental impact.

The Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing for Transfer of Ownership Interest and Opportunity for Public Comment on Antitrust Issues in connection with this action was published in the **Federal Register** on May 13, 1991 (56 FR 22026). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in the loss of the economic benefits gained by the proposed KG&E merger with KPL.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Wolf Creek Generating Station, dated June 1982 (NUREG–0878).

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons regarding this environmental assessment.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license transfer and associated license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applications for the license transfer dated March 28, 1991, and the license amendment dated April 23, 1991, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 8th day of October 1991.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Director; Project Directorate IV–2; Division of Reactor Projects III/IV/V; Office of Nuclear Reactor Regulation.

[FR Doc. 91–25151 Filed 10–17–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–461]

Illinois Power Co., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 60 to Facility Operating License No. NPF–62 issued to the Illinois Power Company (IP) and Soyland Power Cooperative, Inc. (the licenses) for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois. The amendment was effective as of the date of issuance.

The amendment changed the Technical Specifications by deleting section 3/4.3.8 "Turbine Overspeed Protection System."

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amendment (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with action was published in the **Federal Register** on February 18, 1988 (53 FR 4918). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to this action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated October 30, 1987; (2) Amendment No. 60 to License No. NPF–62; and (3) the Environmental Assessment and Finding of No Significant Impact dated October 12, 1990 (55 FR 42787). All of these items are available for public inspection at the Commission's Public Document Room, 3120 L Street NW., Washington, DC, and at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V.

Dated at Rockville, Maryland this 9th day of October 1991.

For the Nuclear Regulatory Commission.

Anthony T. Gody, Jr.,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV/V; Office of Nuclear Ractor Regulation.

[FR Doc. 91–25150 Filed 10–17–91; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Advisory Committee on Semiconductors; Meeting

The purpose of the National Advisory Committee on Semiconductors (NACS) is to devise and promulgate a national semiconductor strategy, including research and development. The implementation of this strategy will assure the continued leadership of the United States in semiconductor technology. The Committee will meet on Friday, November 1, 1991 at Science Applications International Corporation (SAIC), 1555 Wilson Boulevard, 7th Floor, Rosslyn, Virginia. The proposed agenda is:

1. Briefing of the Committee on its

organization and administration.

2. Presentations to the Committee by OSTP personnel and personnel of other agencies on proposed and ongoing studies regarding semiconductors.
3. Discussion of Working Group actions.

A portion of the November 1 meeting will be closed to the public.

The briefing on some of the current activities of OSTP and other agencies may involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on working group actions. As well, a portion of both of these briefings will require discussion of confidential commercial information related to the semiconductor industry and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b. (c) (1), (2), (4) and (9)(B)—.

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b. (c)(6).

Because of advance security arrangements, persons wishing to attend the open portion of the meeting should contact Ms. Kathleen Elim, at (703) 284–3334 prior to October 31, 1991. Ms. Elim is also available to provide specific information regarding time, place and agenda for the open session.

Dated: October 15, 1991.

Damar W. Hawkins,

Executive Assistant, Office of Science and Technology Policy.

[FR Doc. 91–25225 Filed 10–15–91; 8:45 am]

BILLING CODE 3170-02-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Public Hearing

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Board of Directors of the Overseas Private Investment Corporation (OPIC) on November 12, 1991. This hearing is required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATES: The hearing will be held on November 12, 1991, and will begin promptly at 2 p.m. Prospective participants must submit to OPIC before close of business November 4, 1991, notice of their intent to participate.

ADDRESSES: The location of the hearing will be: Overseas Private Investment Corporation, 1615 M Street NW., Fourth Floor, Washington, DC.

Notices and prepared statements should be sent to James R. Offutt, Office of General Counsel, Overseas Private Investment Corporation, 1615 M Street, NW., Washington, DC 20527.

Procedure

(a) Attendance; Participation. The hearing will be open to the public. However, a person wishing to present views at the hearing must provide OPIC with advance notice on or before November 4, 1991. The notice must include the name, address and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) Prepared Statements. Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5 p.m. on November 8, 1991. Prepared statements must be typewritten, double spaced and may not exceed twenty-five (25) pages.

(c) Duration of Presentations. Oral presentations will in no event exceed ten (10) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) Agenda. Upon receipt of the required notices, OPIC will draw up an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) Publication of Proceedings. A verbatim transcript of the hearing will be compiled and published. The transcript will be available to members of the public at the cost of reproduction.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for projects which confer positive developmental benefits upon the project country while avoiding negative effects on the U.S. economy and the environment of the project country. OPIC's Board of Directors is required by section 231A(b) of the Foreign Assistance Act of 1961, as amended ("the Act") to hold at least one public hearing each year.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be "taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country (including any designated zone in that country)."

Based on consultations with Congress, OPIC complies with annual determinations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences (GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs until such time as a favorable worker rights determination can be made.

For non-GSP countries in which OPIC operates its programs, OPIC has agreed to provide a worker rights report to the Congress for any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (Pub. L. 99–204) which reference to the Trade Act of 1974, as amended, and be supported by factual information.

FOR FURTHER INFORMATION ABOUT THE PUBLIC HEARING CONTACT: James R. Offutt, Office of General Counsel, Overseas Private Investment Corporation, 1615 M Street NW., Washington, DC 20527 (202) 457–7038.

Dated: October 11, 1991.

Dennis K. Dolan,

Corporate Secretary.

[FR Doc. 91–25098 Filed 10–17–91; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-29804; International Series No. 327; File No. SR-PHLX-91-30)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing of Long-Term Foreign Currency Options

Dated: October 10, 1991.

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 September 9, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" 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 PHLX, pursuant to Rule 19b-4, has submitted a proposal to amend PHLX rule 1012(a)(ii) to provide for the listing of longer term foreign currency options that expire up to 36 months after they are first listed for trading.[1]

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and the Commission.

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 statutory 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

Since 1982, the PHLX has been trading foreign currency options with expirations in the March, June, September and December expiration cycle, and since October , 1985, has been trading foreign currency options with six expirations of up to one year in length with two proposes to amend its rule 1012 (a)(ii) to provide for the listing of longer term foreign currency options which would be listed and traded on a cycle month expiration basis for up to thirty-six months from the date of issuance. The Exchange believes that this proposal is responsive to the continuing needs of market participants, particularly portfolio managers and other institutional currency market participants, by providing protection from longer-term market moves while offering an alternative to hedging currency portfolios with futures positions, forward contracts of off-exchange customized derivative instruments.

Foreign currency options provide a strategic investment tool for sophisticated retail options customers, multi-national corporations and proprietary traders who manage and hedge foreign currency exposures. Specifically, multi-national corporations utilize foreign currency options to hedge cash flows such as income streams of royalties and license payments denominated in foreign currencies as well as other cash flows. Additionally, banking institutions trade longer term foreign currency options to hedge the risk of trading in the foreign currency, forward and cash markets.

Responding to the demands of sophisticated foreign currency market participants, the PHLX recognizes that international financial markets are no longer focusing on shorter term (up to one year) foreign currency options products. The PHLX notes that longer term foreign currency options are not a new investment security, as an active over-the-counter ("OTC") market exists in this country and worldwide. In order to remain competitive, the PHLX seeks to extend the benefits of a listed currency market to longer term foreign currency options. These attributes include, but are not limited to, a regulated market center, a liquid auction market with posted market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the Options Clearing Corporation ("OCC") for all contracts traded by investors.

The exchange proposes that the longer term foreign currency options will trade simultaneously with, not independent of, currently listed and traded foreign currency options and the Exchange's proposed cross-rate currency options.[2] While this practice will differ from that adopted in the trading of LEAPS on stock and stock indexes, the PHLX recognizes that foreign currency options are a substantially different product, with a significantly larger percentage of market participation undertaken by institutional customers.

The proposed longer term foreign currency options, with some exceptions, will be subject to the same rules that presently govern the trading of existing foreign currency options contracts, including sales practice rules, margin requirements, and floor trading procedures. The PHLX notes however that the bid/ask differential (quotation parameters) and price continuity rules will not apply to such longer term foreign currency options series until the time to expiration is twelve months or less. This approach is being taken initially because of the lack of historical pricing data for listed longer term foreign currency options. The PHLX states that it will make a good faith attempt to observe price continuity and quotation parameter rules that presently govern trading in existing foreign currency options with expirations of one year or less for the longer term foreign currency options. The PHLX will also conduct a special one year market surveillance study of the markets made in listed longer term foreign currency options with expirations of over twelve months. This one year period will allow the gradual introduction of all of the longer term foreign currency options cycle month expirations while permitting the PHLX to observe trading in the longer term foreign currency options and build a historical pricing reference database. The one year historical pricing database should afford the PHLX a basis to analyze whether a position of existing price continuity and quotation parameter rules should be imposed on longer term foreign currency options trading.

With regard to position and exercise limits, the PHLX has determined that because positions in the existing foreign currency options as well as the proposed cross-rate currency options will be based upon the same underlying foreign currencies as these proposed

[1] On July 25, 1991, the Exchange originally filed with the Commission its proposal to trade long-term foreign currency options (SR-PHLX-91-30). The PHLX amended its filing on September 9, 1991.

[2] See Securities Exchange Act Release No. 28737 (January 3, 1991), 56 FR 1042 (January 10, 1991).

longer term foreign currency options, it is appropriate that these options contracts be aggregated. Additionally, the Exchange also proposes to retain flexibility in the listing of new strike prices for each longer term cycle month by slating an at-the-money strike price and one in and one out-of-the-money strike prices at double the intervals slated for foreign currency options with expirations of twelve months or less. The PHLX intends to list initial options series on the new longer term foreign currency options at eighteen, twenty-four and thirty-six month expirations. While the initial series listing would have less than all the cycle months expirations, new longer term series would be introduced at each cycle month expiration until the entire set of cycle month expiration series were available over the second and third year cycle month expirations.

The Exchange believes the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the Exchange as it is designed to provide investors with additional means to hedge foreign currency portfolios from longer term market risk, thereby facilitating transactions in foreign currency options and contributing to the protection of investors and the maintenance of fair and orderly markets. The Exchange further believes that the proposed longer term foreign currency options will provide market participants with an alternative to hedging their risks with off-exchange customized options or forward contracts. The PHLX notes that market participants trading longer term foreign currency options in the OTC market have experienced significant demand for their product.

Specifically, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX 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

No written comments were either solicited or 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, NW., Washington, DC 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, NW., Washington, DC. 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 the file number in the caption above and should be submitted by November 8, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-25087 Filed 10-17-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Interest Rate

AGENCY: Small Business Administration.

ACTION: Notice of interest rate.

SUMMARY: Pursuant to 13 CFR 108.503-8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503-4) shall be the greater of 6% over the New York prime rate or the limitation established by the constitution or laws of a given State. For a fixed rate loan, the initial rate shall be the legal rate for the term of the loan.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 91-25081 Filed 10-17-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7411]

New York (And Contiguous Counties in New Jersey), Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in order to assign an economic injury number for the State of New Jersey which was inadvertently omitted from the original declaration. The number assigned to this declaration for economic injury for the State of New Jersey is 741300.

All other information remains the same, i.e., the termination date for filing applications for economic injury is July 6, 1992.

(Catalog of Federal Domestic Assistance Program No. 59002).

Dated: October 4, 1991.

Michael E. Deegan,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-25078 Filed 10-17-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7414]

New York; Declaration of Disaster Loan Area

Suffolk County and the contiguous county of Nassau in the State of New York constitute an Economic Injury Disaster Loan Area due to damages caused by Hurricane Bob which occurred on August 19, 1991. Eligible businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on July 7, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Occidental Chemical Center, Niagara Falls, NY 14302, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The number assigned to this declaration for economic injury is 741400.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 7, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-25077 Filed 10-17-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Economic Injury Disaster Loan Area #7411]

New York (And Contiguous Counties in New Jersey); Declaration of Disaster Loan Area

Bronx County and the contiguous counties of New York, Queens, and Westchester in the State of New York and Bergen County in the State of New Jersey constitute an Economic Injury Disaster Loan Area due to damages caused by a fire which occurred on May 20, 1991 near the intersection of Bruckner Boulevard and East Tremont Avenue in The Bronx. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on July 6, 1992 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Occidental Chemical Center, Niagara Falls, NY 14302, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The number assigned to this declaration for economic injury is 741100.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: October 3, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-25079 Filed 10-17-91; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2528]

Utah; Declaration of Disaster Loan Area

Weber County and the contiguous counties of Box Elder, Cache, Davis, Morgan, and Rich in the State of Utah constitute a disaster area as a result of damages caused by heavy rain, high winds, flooding and mudslides which occurred September 7-8, 1991. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on December 2, 1991 and for economic injury until the close of business on July 2, 1992 at the address listed below: Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853-4795, 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	9.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 252806. For economic injury the number is 741200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 2, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91-25080 Filed 10-17-91; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Phoenix, will hold a public meeting at 8:30 a.m. on Friday, November 15, 1991, at Scottsdale Plaza Resort, 7200 N. Scottsdale Road, Scottsdale, AZ, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. James P. Guyer, District Director, U.S. Small Business Administration, 2005 N. Central Ave., Fifth Floor, Phoenix, Arizona 85004. After November 1, Mr. Guyer can be reached at U.S. Small Business Administration, Central and One Thomas, suite 800, 282 N. Central Avenue, Phoenix, AZ 85004-1025, (602) 379-3737.

Dr. Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91-25082 Filed 10-17-91; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford will hold a public meeting at 8:30 a.m. on Monday, November 18, 1991, at the Days Inn 900 E. Main Street, Meriden, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Carol White, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, (203) 240-4670.

Dr. Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91-25083 Filed 10-17-91; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Charlotte, will hold a public meeting from 10 a.m. to 3 p.m. on Wednesday, October 30, 1991, at the Charlotte Athletic Club, in Charlotte, North Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gary A. Keel, District Director, U.S. Small Business Administration, 222 South Church Street, suite 300, Charlotte, North Carolina 28202, (704) 271-6561.

Dr. Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91-25084 Filed 10-17-91; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Nashville, will hold a public meeting at 8 a.m. on Wednesday, November 6, 1991, at the Radisson Read Hotel, Chattanooga, Tennessee to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert M. Hartman, District Director,

U.S. Small Business Administration, 50 Vantage Way, suite 201, Nashville, Tennessee 37228–1500, (615) 736–5850.

Caroline J. Beeson,

Assistant Administrator for Advisory Councils.

[FR Doc. 91–25085 Filed 10–17–91; 8:45 am]

BILLING CODE 8025–01–M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Houston, will hold a public meeting at 8:30 a.m. on Thursday, October 31, 1991, at University of Houston Small Business Development Center, 601 Jefferson, suite 2330, Houston, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Milton Wilson, Jr., District Director, U.S. Small Business Administration, 2525 Murworth, suite 112, Houston, Texas 77054, (713) 660–4409.

Caroline J. Beeson,

Assistant Administrator Advisory Councils.

[FR Doc. 91 25086 Filed 10–17–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering, and Development (R, E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Research, Engineering, and Development Advisory Committee to be held Monday, November 4, at 10 a.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the MacCracken Room on the tenth floor.

The agenda for this meeting will include a report on the findings of the R&D Technical Subcommittee's Panel review of the FAA's R, E&D Plan. In addition, the committee will receive a report of the Noise Abatement Technology Subcommittee on the conclusions of its Working Group effort, and an update by the Security R&D Subcommittee on activities of its Scientific Advisory Panel.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should contact Ms. Jan Peters, Special Assistant to the Executive Director of the R, E&D Advisory Committee, ASD–6, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3096.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on October 10, 1991.

Martin T. Pozesky,

Executive Director, Research, Engineering, and Development Advisory Committee.

[FR Doc. 91–25112 Filed 10–17–91; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Montmorency and Otsego Counties, Michigan

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed improvement of M–32, from Turtle Lake Road to Atlanta, in Montmorency and Otsego Counties. The proposed improvements range from 21 to 26 miles in length.

FOR FURTHER INFORMATION CONTACT: Mr. Norman R. Stoner, District Engineer, Federal Highway Administration, 315 West Allegan St., room 211, Lansing, Michigan 48933, Telephone (FTS) 374–1838 or (Commercial) (517) 377–1838 or Mr. Jan Raad, Manager, Environmental Section, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, (517) 373–0146.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the Michigan Department of Transportation (MDOT), is preparing an Environmental Impact Statement (EIS) for the proposed improvement of M–32, from Turtle Lake Road easterly to Atlanta, in Montmorency and Otsego Counties. This project is proposed to make M–32 an all season truck route. The existing base between Turtle Lake Road and Atlanta is in poor condition. Seasonal load restrictions are required over 55% of the existing road within the project limits. Sight distances are also limited over 44% of the existing roadway. The proposed project will correct these deficiencies.

There are three improvement alternatives under consideration. Their locations are generally in the north, central, and south portions of the study area. They all propose to construct a new two lane roadway from Turtle Lake Road to Atlanta. The north alternative is on a new alignment for 15.6 miles and on the existing M–32 alignment for 5.4 miles for a total length of 21 miles. The central alternative is on a new alignment for 11.3 miles and on existing M–32 for 11.9 miles for a total length of 23.2 miles. The south alternative is near or on the existing M–32 alignment for its entire 26 mile length.

Early coordination with Federal, State, and local agencies, and field reviews conducted in 1980 has identified the more significant social, economic, and environmental issues associated with the proposed action. In addition, a pre-study meeting was held on July 17, 1986, to obtain input on the proposed project from the public and interested agencies.

The major issues associated with the construction alternates being evaluated for the project include potential state-threatened species impacts, residential and business relocation, filling of wetlands, possible changes in land use and community development patterns, maintaining traffic, impacts to cultural resources, and impacts to wildlife.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. A scoping document identifying the proposed action, alternatives, and issues involved has been prepared and is available to all interested agencies, organizations, and individuals. Comments or questions concerning this proposed action and the scoping document should be addressed to the above contact persons.

(Catalog of Federal Domestic Assistance Program Number 20205, Highway Research Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

A. George Ostensen,

Division Administrator, Lansing, Michigan.

[FR Doc. 91–25139 Filed 10–17–91; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 11, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0030.
Form Number: ATF F 4483–A (5300.1).
Type of Review: Extension.
Title: Annual Firearms Manufacturing and Exportation Report.
Description: ATF collects this data for the purposes of law enforcement, witness qualifications, congressional investigations in aid of legislation, disclosure to the public in accordance with a court order, furnishing information to other Federal agencies, compliance inspections of manufacturers, and insuring that the requirements of the National Firearms Act (26 U.S.C. 5801–5872) are met.
Respondents: Business or other for-profit.
Estimated Number of Responses: 1,016.
Estimated Burden Hours Per Respondent: 45 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 762 hours.

OMB Number: 1512–0079.
Form Number: ATF F 1534 (5000.8).
Type of Review: Extension.
Title: Power of Attorney.
Description: ATF F 1534 (5000.8) delegates the authority to a specific individual to sign documents on behalf of an applicant or principal. 26 U.S.C. 6061 authorizes that individuals signing returns, statements or other documents required to be filed by industry members, under the provisions of the Internal Revenue Code or the Federal Alcohol Administration Act are to have that authority on file with ATF.
Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations.
Estimated Number of Responses: 5,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1512–0116.
Form Number: ATF F 2145 (5200.11).
Type of Review: Extension.
Title: Notice of Release/Return of Tobacco Products, Cigarette Papers and Tubes.
Description: ATF F 2145 (5200.11) documents the removal of tax from U.S. Customs custody or return by a U.S. Government agency to bonded tobacco products factories and manufacturers of cigarette papers and tubes. The products released from Customs custody, products returned and the authorizing Government official.
Respondents: Business or other for-profit, Federal agencies or employees, small businesses or organizations.
Estimated Number of Responses: 153.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 306 hours.

OMB Number: 1512–0118.
Form Number: ATF F 2148 (5200.17).
Type of Review: Extension.
Title: Bond-Drawback of Tax on Tobacco Products, Cigarette Papers or Tubes.
Description: The bond is necessary to secure payment for tobacco articles on which a drawback (refund or tariff or other tax) has been claimed and paid. The bond will secure payment in the event that a claim was not lawfully refunded. The bond describes the particular conditions under which the surety company and drawback claimant adhere to a description of what the bond covers.
Respondents: Businesses or other for-profit, small businesses or organizations.
Estimated Number of Responses: 50.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0333.
Form Number: ATF REC 5130/1.
Type of Review: Extension.
Title: Usual and Customary Business Records Maintained by Brewers.
Description: ATF audits brewers' records to verify production of beer and cereal beverage and to verify the quantity of beer removed subject to tax and removed without payment of tax.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 250.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0492.
Form Number: ATF F 5000.24 and ATF REC 5000/24.
Type of Review: Extension.
Title: Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents.
Description: ATF F 5000.24 is completed by persons who owe tax on distilled spirits, wine, cigars, cigarettes, cigarette papers and tubes, snuff and smoking tobacco (pipe). The return is prescribed by law for the collection of these taxes. ATF uses the form to identify the taxpayer, the premises and period covered by the tax return, taxpayer's liability, and adjustments affecting amount paid.
Respondents: Individuals or households, State or local governments, businesses or other for-profit, small businesses or organizations.
Estimated Number of Recordkeepers: 506,189.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other.
Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 91–25143 Filed 10–17–91; 8:45 am]
BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

October 11, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance

Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

Bureau of the Public Debt

OMB Number: 1535–0087
Form Number: None
Type of Review: Extension
Title: Payments by Banks and Other Financial Institutions of United States Savings Bonds and Notes (Freedom Shares)
Description: Qualified banks and financial institutions can redeem eligible savings bonds and savings notes, and transmit and receive settlement for redeemed securities through EZ CLEAR, under which paid securities will be processed through the Federal Reserve check collection system, or through the Fiscal Agency Department of a Federal Reserve Bank.
Respondents: Businesses or other for-profit, Non-profit institutions
Estimated Number of Respondents/ Recordkeeping: 48,430
Estimated Burden Hours Per Response/ Recordkeeper: 7 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 80,883 hours
Clearance Officer: Rita DeNagy (202) 447–1315, Bureau of the Public Debt, Room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 91–25144 Filed 10–17–91; 8:45 am]
BILLING CODE 4810–40–M

Public Information Collection Requirements Submitted to OMB for Review

October 10, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8830.
Type of Review: New collection.
Title: Enhanced Oil Recovery Credit.
Description: The enhanced oil recovery (EOR) credit is 15 percent of qualified costs paid or incurred during the year. The purpose is to get more oil from the wells. The IRS uses the information on the form to ensure that the credit is correctly computed.
Respondents: Individuals or households, businesses or other for profit, small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 10,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hours, 1 minute.
Learning about the form or the law—47 minutes.
Preparing and sending the form to IRS—55 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 67,300 hours.

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: IRS Customer Satisfaction Survey—Phase I; Questionnaire Testing.
Description: To survey adult U.S. residents about their expectations and perceptions regarding the services and products provided by the IRS. This survey will test several (4) versions of the questionnaire to be used in the semi-annual survey. All adult U.S. residents will be subject to selection for the survey.
Respondents: Individuals or households.
Estimated Number of Respondents: 720.
Estimated Burden Hours Per Respondent: 20 minutes.
Frequency of Response: Other (one-time only (test)).
Estimated Total Reporting/ Recordkeeping Burden: 240 hours.

OMB Number: New.
Form Number: IRS Form 9325.
Type of Review: New collection.
Title: Small Business Tax Education Program (STEP) Information Form.
Description: The data collected will be used to evaluate the Small Business Tax Education Program (STEP), to identify possible areas of program improvement, and thereby improve the effectiveness of the program.
Respondents: Small businesses or organizations.
Estimated Number of Respondents: 1,800.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: Semi-annually.
Estimated Total Reporting Burden: 900 hours.

OMB Number: 1545–0233.
Form Number: IRS Form 7004.
Type of Review: Revision.
Title: Application for Automatic Extension of Time to File Corporation Income Tax Return.
Description: Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.
Respondents: Farms, businesses or other for-profit, non-profit institutions, small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 1,097,748.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hours, 30 minutes.
Learning about the law or the form—46 minutes.
Preparing the form—1 hour, 49 minutes.
Copying, assembling and sending the form to IRS—16 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 9,177,173 hours.

OMB Number: 1545–1098.
Form Number: None.
Type of Review: Extension.
Title: Arbitrage Restrictions on Tax-Exempt Bonds.
Description: This regulation requires State and local governmental issuers of tax-exempt bonds to rebate arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Such issuers are required to file a form and remit the rebate. The regulation provides several elections which involve recordkeeping.
Respondents: State and local governments.
Estimated Number of Respondents: 100.
Recordkeepers: 2,000.
Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.
Recordkeeper: 50 minutes.
Frequency of Response: Other (At most every 5 years).

Estimated Total Reporting/ Recordkeeping Burden: 1,800 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 91–25145 Filed 10–17–91; 8:45 am]
BILLING CODE 4830–01–M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 31–91]

Treasury Notes, Series H–1998

Washington, October 10, 1991.

The Secretary announced on October 9, 1991, that the interest rate on the notes designated Series H–1998, described in Department Circular—Public Debt Series—No. 31–91 dated October 3, 1991, will be 7⅛ percent. Interest on the notes will be payable at the rate of 7⅛ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 91–25103 Filed 10–17–91; 8:45 am]
BILLING CODE 4810–40–M

Fiscal Service

Surety Companies Acceptable on Federal Bonds Universal Underwriters Insurance Co.; Fraudulent Bonding

Federal bond-approving officers are advised that Universal Underwriters Insurance Company, Overland Park, Kansas, has informed the Treasury Department that fraudulent bonds have been issued under their name by the following parties:

Robert Rankin—Richardson, TX

Dennis Warnock—San Antonio, TX

At no time did these individuals have the authority to represent Universal Underwriters Insurance Company. Questions related to the authenticity of bonds should be directed to Mr. Melvin J. Thum of Universal Underwriters Insurance Company at (913) 339–1000. The authenticity on bonds currently in force, that were written during the past six months, should also be verified.

Dated: October 10, 1991.

Charles F. Schwan III,
Director, Funds Management Division, Financial Management Service.
[FR Doc. 91–25061 Filed 10–17–91; 8:45 am]
BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 202
Friday, October 18, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:05 a.m. on Thursday, October 10, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session jointly with the Board of Directors of the Resolution Trust Corporation to consider matters relating to certain financial institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, DC.

Dated: October 10, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-25267 Filed 10-16-91; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:07 p.m. on Tuesday, October 15, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Matters relating to the Corporation's corporate activities.

Matters relating to a certain financial institution.

Matters relating to an assistance agreement with an insured institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, N.W., Washington, DC.

Dated: October 16, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91-25268 Filed 10-16-91; 12:29 pm]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, October 23, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed interpretation of Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to require Board approval for state member banks to engage in commodity swaps and other commodity-linked transactions.

2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 16, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-25282 Filed 10-16-91; 12:31 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:30 a.m., Wednesday, October 23, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computer equipment within the Federal Reserve System.

2. Proposed purchase of check equipment within the Federal Reserve System.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. 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: October 16, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-25283 Filed 10-16-91; 12:31 pm]

BILLING CODE 6210-01-M

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: October 28, 1991, 6:00–9:30 p.m.

PLACE: 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the January 7, 1991, Board Meeting.
2. The Chairman's Report.
3. The President's Report.
4. Discussion of Proposal to Identify Permanent, Successful Development Institutions and Latin American and Caribbean Leaders Who Have Benefitted from IAF Support.

CONTACT PERSON FOR MORE INFORMATION: Charles M. Berk, Secretary to the Board of Directors, (703) 841–3812.

Dated: October 15, 1991.

Charles M. Berk,

Sunshine Act Officer.

[FR Doc. 91–25231 Filed 10–16–91; 8:48 am]

BILLING CODE 7025–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation and the Federal Deposit Insurance Corporation will meet jointly in open session at 9:00 a.m. on Thursday, October 17, 1991, to consider the following matter:

Memorandum re: Proposed Amendments to the Bylaws of the Resolution Trust Corporation and appointment of a President and Chief Executive Officer.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: October 16, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–25275 Filed 10–16–91; 12:30 pm]

BILLING CODE 6714–01–M

federal register

Friday
October 18, 1991

Part II

Environmental Protection Agency

40 CFR Part 80

Volatility Regulations for Gasoline and Alcohol Blends; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-3993-8]

Volatility Regulations for Gasoline and Alcohol Blends

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes revisions to the gasoline and alcohol blend volatility regulations promulgated on March 22, 1989 (54 FR 11868) and June 11, 1990 (55 FR 23658). The proposed revisions are based on the experience the Agency has gained enforcing these volatility regulations and from suggestions from the regulated industry and other interested parties. The proposed revisions include some changes to the liability provisions, including amendments to the defenses to liability, the addition of a test exemption section to allow the use of high volatility gasoline during the control period for qualifying parties, and changes to the appendix D sampling procedures and the appendix E tests for determining Reid Vapor Pressure. Changes to EPA's volatility regulations due to the Clean Air Act Amendments of 1990 (Pub. L. No. 101-549) are not addressed in this rulemaking, but will be addressed in a separate rulemaking.

DATES: Comments on this proposal must be received no later than November 18, 1991.

The Agency will hold a public hearing on these proposed amendments if one is requested on or before November 1, 1991.

If a public hearing is held, comments must be received 30 days after the hearing.

ADDRESSES: Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A-85-21. It is requested that a duplicate copy be submitted to James W. Caldwell at the address in the "**FOR FURTHER INFORMATION CONTACT**" section below. The docket is located at the Air Docket, room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12 noon and between 1:30 pm and 3:30 pm on weekdays. As provided by 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: Joseph R. Sopata, Chemist, Fuels Section, Field Operations and Support Division (EN-397F), EPA, 401 M Street SW., Washington, DC 20460. Telephone: (202) 260-2635.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice proposes revisions to the volatility regulations for gasoline and alcohol blends found at 40 CFR 80.27 and 80.28. The volatility regulations set forth maximum summertime commercial gasoline volatility levels which provide that gasoline Reid Vapor Pressure (RVP) starting in 1989,[1] may not exceed 10.5 pounds per square inch (psi), 9.5 psi, or 9.0 psi and beginning in 1992 [2] RVP may not exceed 9.0 psi or 7.8 psi, depending on the area of the country and the month.[3]

II. Description of Changes

A description of the proposed changes is set forth below:

(1) *Liability of More Than One Party:* 40 CFR 80.28 now lists presumptively liable parties in the singular form (e.g. distributor). The proposed revision to 40 CFR 80.27(c) makes it clear that more than one party of a particular type can be liable for a violation. This section is consistent with the Agency's interpretation of these and the unleaded fuels regulations.

(2) *Testing Exemption:* Subsequent to the promulgation of the final regulations on March 22, 1989, the Agency was informed that vehicle and engine manufacturers use high RVP fuel in their testing, certification and research programs. Because the volatility regulations prohibit the sale, supply, offering for sale or supply, transport and dispensing of gasoline that exceeds the applicable RVP standard during the volatility control season, fuel that exceeds such a standard cannot be lawfully used in such programs (or shipped for such use) during that portion of the year.

The Agency recognizes that such testing programs are beneficial. Because this matter was brought to the Agency's attention only after the regulations were promulgated, the regulations did not provide for such uses. In a May 18, 1989,[4] document, "Enforcement of the Volatility Regulations—Questions and Answers," EPA announced that it:

> may exercise its discretion to not enforce violations of the volatility standards in the case of high RVP gasoline blended for the purpose of conducting tests on vehicles, provided the party provides written notification to EPA in advance, which includes detailed information concerning the nature and purpose of the tests and the fuel (e.g., supplier, RVP level, amount). If the gasoline is to be used in an ozone non-attainment area, the party should justify why the test cannot be performed in an ozone attainment area. If EPA determines that the test program has a valid purpose and will have no significant adverse impact on the environment, EPA will, as a matter of enforcement policy, take no action.

Upon further consideration, the Agency believes that it would be more appropriate to handle exemption requests under specific regulatory criteria and procedures rather than by the exercise of enforcement discretion. Therefore, a new subsection (e) is proposed to be added to 40 CFR 80.27 for this purpose.

The proposed testing exemption regulation is similar to 40 CFR 85.1705, which provides detailed criteria for granting exemptions under section 203(b)(1) of the Act from the requirements of section 203(a) for the purpose of research, investigations, studies, demonstrations, or training. The proposed regulations require that an applicant demonstrate that a proposed test program meets four requirements:

(i) It has an appropriate purpose, that is, research on emissions standard certification;

(ii) An exemption is necessary to carry out the test program (i.e., it cannot be conducted without the use of high RVP fuel during the volatility control period);

(iii) It is reasonable in scope; and

(iv) It includes controls which allow the Agency to monitor the exemption and ensure that the test fuel will be only used in test vehicles.

The proposed revisions include a detailed list of the information that would be required to be submitted with a request for a testing exemption. The Agency requests comments on the proposed list of information to be submitted, including what information it is reasonable to expect an applicant to submit prior to the initiation of a test program.

A testing exemption would be granted to the applicant upon a demonstration

[1] 54 FR 11868 (March 22, 1989). A corrections notice concerning these regulations was published on June 27, 1989 (54 FR 27016). A revision of the New Mexico volatility standards was published on August 14, 1989 (54 FR 33218).

[2] A Notice of Final Rulemaking, Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1992 and Beyond, was published on June 11, 1990 (55 FR 23658).

[3] A direct final rule making final revisions to these regulations was published on June 25, 1990 (55 FR 25833). Finally a notice was published on September 25, 1990 (55 FR 39169) regarding a change in the RVP areas in Texas.

[4] A similar statement appears in the 1990 Question and Answer document dated April 16, 1990.

that all regulatory requirements have been met. It would be issued in the form of a memorandum of exemption signed by the applicant and the Administrator (or his delegate). Violation of a term or condition of exemption would void the exemption *ab initio*. The violating party would thus be liable for violations of § 80.27(a), which are enforceable under section 211(d) of the Act. This is similar to the manner in which section 203(b)(1) testing exemptions are granted and enforced.

(3) *Presumptively Liable Parties at Carrier Facilities:* Since distributors and resellers can be intermediaries between refiners/importers and carriers, the Agency is proposing that such parties be added to the list of presumptively liable parties for violations found at a carrier facility. A new 40 CFR 80.28(b)(4) is proposed to be added to accomplish this. In addition, this new proposed liability provision would be referenced in the defense provision in 40 CFR 80.28(g)(3).

(4) *Presumptively Liable Parties at Unbranded Facilities:* The Agency believes that refiners who actually produced gasoline found to exceed RVP standards at unbranded retail and wholesale purchaser-consumer facilities should be added as presumptively liable parties for such violations, as should importers who actually imported such gasoline. A new 40 CFR 80.28(f)(5) is proposed which is identical to current § 80.28(d)(3). This provision would parallel the treatment of such refiners and importers for violations found at unbranded distributor facilities and ethanol blending plants. In addition, this new proposed liability provision would be referenced in the defense provision at 40 CFR 80.28(g)(2).

(5) *Refiner/Importer Test Results Defense:* The volatility regulations currently provide that where a refiner or importer is presumed liable for a violation detected at a carrier's facility, an unbranded distributor facility, or an unbranded ethanol plant, the refiner or importer can establish a defense by presenting (among other things) test results which evidence that the gasoline in question was in compliance with the applicable standard when it was delivered to the next party in the distribution system (see 40 CFR 80.28(g)(2)(ii)). Similarly, when a refiner is presumed liable for a violation detected at a branded distributor facility, reseller facility, ethanol blending plant, retail outlet, or wholesale purchaser-consumer facility, an element of its defense is to demonstrate that the gasoline in question was in compliance when transported from the refinery (see 40 CFR 80.28(g)(4)(i)).

For the 1989 volatility control season the Agency established a policy that if a refiner or importer has a test result which is at least 0.5 psi below the standard, and the violation is not more than 0.5 psi above the standard, and if there is no reason to believe the party's test result is invalid, then the test result would be deemed to meet the applicable defense element described above. The Agency believes that this policy has been helpful in encouraging prudent industry compliance assurance measures and plans to continue the policy during subsequent volatility control seasons. If further developments or comments show the need to change the policy, the Agency will make appropriate changes.

The Agency is also proposing that refiners and importers may use for a defense test methods other than the method included in appendix E, if adequate correlation is demonstrated. This will allow additional flexibility without affecting the quality of the information needed to satisfy the defense.

(6) *Carrier, Distributor and Ethanol Blender Defenses to Presumptive Liability:* The regulations had provided that where a carrier, distributor or ethanol blender was presumed liable for a violation, the party could establish a defense by presenting (among other things) bills of lading or documents from the supplier of the gasoline which represented that the gasoline was in compliance with the applicable standard when delivered (see 40 CFR 80.28(g)(1)(i)(carrier); (g)(3)(ii)(distributor); and (g)(6)(ii) (ethanol blender). However, this element of defense as applied to carriers has been ruled invalid by the U.S. Court of Appeals for the District of Columbia Circuit because the Agency had not explained why carriers had to supply documents making a representation attesting to the lawfulness of the shipment when the Agency had not required shippers to provide such documentation. See *National Tank Truck Carriers* v. *EPA*, CA No. 89–1289 (D.C. Cir. June 26, 1990). The court invalidated this documentation requirement, and remanded the matter to the Agency. EPA could reinstate the documentation element of the defense if it provided further explanation adequately meeting the objections raised in that case, or if EPA added a requirement that such documentation be furnished to carriers by parties such as refiner-sellers.

The Agency is proposing at this time to revoke the documentation requirement which was stricken by the court in *National Truck*. The Agency is not seeking to reinstate this requirement, but instead will rely on the other elements of the affirmative defense required under the regulations, which were upheld by the court. The other elements of the defense are demonstration of an oversight program for monitoring gasoline volatility, and demonstration that the violation was not caused by the defendant, his employees, or agents.

The Agency points out that to prove another defense element, i.e., that the party did not cause the alleged violation (see 40 CFR 80.28(g)(1)(iii) (carrier),[5] (g)(3)(i) (distributor), and (g)(6)(i) (ethanol blender)), the parties often produce some documentation. In order to show that it did not cause a violation, a party may provide, among other things, information about the source of the gasoline in its possession or control, including the supplier, the date, place and mode of transfer and the volume and specifications of the gasoline when supplied. This information is often shown through documents such as bills of lading, invoices, delivery tickets, loading documents or reports of gasoline quantity and quality. To establish the defense, it is not necessary and EPA does not require that there be documents with a representation that the gasoline was in compliance when delivered, the type of documentation invalidated in the *National Tank* case. The Agency emphasizes that it makes its determination on a case-by-case basis, in light of all the facts. The Agency does not require that any documentation, or any particular documentation, be shown if the party can establish in other ways that the party did not cause the violation.

In a separate proceeding, the Agency has issued a final rulemaking governing diesel fuel desulfurization.[6] That rulemaking provides for defenses against liability identical to the defenses proposed in today's action. In the desulfurization rule, the Agency stated it was considering adding a new provision to the rule, in response to *National Tank*, which would have required suppliers and shippers to maintain and provide certification to downstream parties that the fuel meet the requirements of the regulation, 55 FR 34135, (August 21, 1990). However, given

[5] This cite is to the current regulation. The proposed revisions would redesignate this as (g)(1)(i).

[6] 55 FR 34120 (August 21, 1990)

the discussion above regarding volatility, the Agency has opted instead not to propose any requirement that the receiving party must produce such certification to EPA to establish a defense to liability.

The proposed amendments also provide for reorganizing the order of subsections (ii) and (iii) of § 80.28(g)(1) and for renumbering of the subsections within § 80.28(g)(3) and (6) to achieve parallel construction.

(7) *Container Closure Specifications:* The Agency believes that the specification for container closure in section 4.2 of appendix D is incomplete. The purpose of this provision was to prevent the loss of vapors through the cap and container. Testing data obtained on Teflon-lined caps on Boston Round Bottles have been placed in the docket which we believe show these caps to be satisfactory. We are proposing that testing, such as that described in the testing data submitted to the docket, be performed on caps to be used for container closure. The advantage in using a performance specification is the flexibility it allows. The Agency is able to evaluate and use better and less expensive materials as they are made available. We are proposing to revise section 4.2 in appendix D to require that a certain performance be shown through specified testing procedures before a new cap may be used under the sampling regulations.

(8) *Sampling when a tank has recently been loaded or unloaded:* The Agency believes part of the Note following section 6 of appendix D may be misleading. The Note currently states that metal or conductive objects should not be lowered into a tank or suspended in a compartment or tank which is being filled or immediately after cessation of pumping. A waiting period of one minute is recommended to allow for the relaxation of any electrostatic charge. The Agency is proposing to make two changes to the Note. First, it is being proposed that no object or material (not just metal or conductive) should be lowered into a tank which is being filled or which has just recently been filled. Second, the waiting period to be sure the electrostatic charge has relaxed enough to put objects safely into the tank is proposed to be increased from one to 5 minutes, to assure safety in extraordinary circumstances.

(9) *Size of sample containers:* The benefits of sample containers smaller than the quart containers currently required in the regulation are lower handling costs and safety. The potential disadvantage is that they may not be able to obtain and deliver equivalent test results. However, results of an early study comparing vapor pressure samples in pints versus quarts indicated there is no significant difference between the two sizes of sample containers. The analyses were performed on the digital Herzog semi-automatic vapor pressure analyzer.

A second analysis was performed comparing 4 ounce (oz) and one-quart containers and the testing was performed with the Setavap vapor pressure analyzer. The 4 oz samples were collected using a venturi sampler that extracts a portion of the flow from a modified nozzle extension used for service station vapor pressure samples. The quarts were sampled using a nozzle extension that was designed for a one-quart Boston Round bottle. The measured values for the quarts versus the 4 oz samples were equivalent.

A third evaluation was performed using the Herzog and Setavap test methods and sampling from a storage tank using the spot and all levels sampling techniques. This evaluation showed that one quart versus 4 oz spot samples gave equivalent results. However, all-levels samples for three terminal tanks indicate a difference between the quarts and 4 oz bottles. We believe the difference is due to fill rate variations encountered during the all-levels bottle sampling procedure. All of the above data have been put in the rulemaking docket. The Agency is proposing to change appendix D, section 12.2, to allow sample containers to be as small as 4 ounces.

The Agency is concerned that it may be necessary to limit sample container opening diameters in order to minimize vapor losses during sample collection and delivery to the laboratory. This concern arises from the proposal to allow smaller volume containers (less than 1 quart). As sample size decreases, vapor loss sensitivity increases. Limiting the size of the container openings may provide better control over vapor losses during sample collection and handling, thus assuring a representative sample of the storage tank contents. The Agency is interested in receiving comments on this issue.

(10) *Apparatus for beaker or bottle sampling:* Section 11.2.1 in appendix D recommends the opening of the bottle or beaker to be ¾ inch (19 mm). The Agency believes it may be necessary to limit the sample container opening diameter for the smaller sample bottles in order to obtain a sample which is 70–85 percent full. Therefore, the Agency is proposing to change section 11.2.1 in appendix D by listing recommended diameters of the opening or the restrictor size for particular container volumes.

(11) *Nozzle Extension Devices:* Since the Agency is proposing to use smaller sample bottles an additional nozzle extension device is needed. Therefore, the Agency is proposing to add Figure 7b to appendix D.

(12) *Spacer for Nozzle Sampling:* Due to safety concerns the Agency is proposing to change Figure 6 in appendix D. The change would be to recommend that non-ferrous (non-sparking) material be used instead of steel.

(13) *Nozzle sampling procedure:* Due to the additional bottle size and nozzle extension device which the Agency is proposing, EPA is also proposing to add an additional retail sampling procedure. With this additional procedure the old section 11.5.2 of appendix D would be changed to 11.5.2.1 and the new section would be 11.5.2.2. In both sections 11.5.2.1 and 11.5.2.2 the Agency is proposing to allow the sample container to be filled from 70 to 85 percent. This change will permit the maximum allowable fill level to be the same as it is in the bottle or beaker sampling.

(14) *Sampling Open Tanks:* Section 12.4, appendix D, is proposed to be revised by eliminating the requirement to pour off the sample to 70–80 percent full. The sample would have been taken by the method in section 11.2 which allows the container to be 70–85 percent full when withdrawn from the gasoline.

(15) *Sampling Closed Tanks:* Section 12.5, appendix D, is proposed to be revised to make it consistent with the changes made in the corrections notice on June 27, 1989 (54 FR 27016). In the corrections notice section 12.6 was eliminated and section 12.7 was renumbered 12.6. The sections referenced in section 12.5 became incorrect and this proposed change would correct them.

(16) *Test method to be used to determine compliance with the volatility regulations:* Throughout the 1989 and 1990 enforcement seasons the Agency used the digital version of Method 2—Herzog Semi-Automatic Method in appendix E to enforce the volatility regulations. At this time, the Agency is considering removing the current test methods contained in appendix E and requiring the use of a new testing methodology which appears to be more accurate than the methods that were available when the volatility regulations were promulgated. This new method has been written to allow the Setavap, Grabner field and Grabner laboratory, and possibly the Southwest Research Institute (SwRI) instruments to

be used for RVP testing. In this method, a known volume of air-saturated fuel at 32–40 °F is introduced into an evacuated, thermostatically controlled test chamber. The internal volume of the test chamber is or becomes five times that of the total test specimen introduced into the test chamber. After the injection, the test specimen is allowed to reach thermal equilibrium at the test temperature, 100 °F (37.8 °C). The resulting pressure increase is measured with an absolute pressure measuring device whose volume is included in the total of the test chamber volume. The measured pressure is the sum of the partial pressures of the sample and the dissolved air.

This test method comes directly from the American Society for Testing and Materials (ASTM) "Emergency Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method)", ES–15–90. However, the Agency has deviated from ES–15–90 in two significant areas. First, the Agency is publishing reference material pressures for five pure compounds. This is to address analysis credibility through the quantification of bias. The present EPA and all the ASTM vapor pressure methods make no attempt to do so. Present conformance is based primarily on the operator following the steps outlined in the procedure. Historically, this has disguised errors due to variations in the internal volume of the pressure gauge or transducer. Having no reference materials also eliminates a typical analytical tool for determining test quality.

The second area where the Agency differs from ASTM is to have a single method that would group the evacuated chamber instruments in ASTM ES–15–90 with the expansion type instruments such as the portable Grabner and the Southwest Research Institute Instrument. The portable Grabner is not in any present ASTM test method. It was, however, used by the Agency to screen vapor pressure samples in the field during the 1990 enforcement season. The Agency's experience is that it does produce results equivalent to the instruments covered in ES–15–90. The SwRI instrument's procedure is documented in ASTM's "Emergency Standard Test Method for the Vapor Pressure of Petroleum Products (Automatic Method)", ES–14–90. The SwRI device is very similar in operation and principal to the portable Grabner. However, the SwRI's method of calibration is different than the portable Grabner. The Agency believes that the SwRI instrument would conform to our method if calibrated as described in this method. The Agency is interested in receiving comments on whether the SwRI Instrument should be included in the proposed new test method.

The proposed test method is specific enough to increase lab to lab precision over the methods currently in appendix E of the volatility regulations. It would provide objective measures for quality control. The Agency prefers this method for volatility enforcement for those reasons.

In addition, an offset or difference in test results apparently exists between the test methods currently in appendix E of the volatility regulations, which the Agency believes should be addressed. The offset discussed below is a difference found in test results believed to be caused by equipment tolerances which may be too broad. A summary of offsets as measured by an ongoing EPA study and a 1987 ASTM program has been placed in the docket. The largest offset measured by EPA's correlation program is between the gauge model Herzog vapor pressure analyzer and the digital version of the Herzog analyzer (both currently allowed under Method 2 of appendix E). A similar but smaller offset exists between the digital Herzog and the manual tank and gauges method set forth in Method 1 of appendix E. Both offsets show the digital Herzog reading to be higher. Data obtained from the 1987 ASTM correlation of different vapor pressure test methods indicate equal offsets between the digital Herzog and both the manual equipment and the gauge Herzog. In addition, these data indicate a larger offset than what the EPA correlation program showed.

EPA believes that the major source of offsets and of the variability between the two types of Herzog equipment is the unspecified temperature and volume of the pressure measurement device. This was identified by EPA by evaluating the RVP of pure compounds with a gauge and transducer individually and in parallel, by increasing the volume of the air chamber volume alone, and by the careful measurement of the volume of the gauges and transducers used in the study. Variation in the pressure measurement device's volume causes an opposite and proportional effect on measured RVP. The Agency believes that the digital Herzog unit provides more accurate measurement of RVP than the other measurement methods currently in the regulations.

The following testing options are being considered by the Agency:

Option 1. The Agency is considering requiring the use of the new test method and removing Methods 1 and 2 from the regulations. Once promulgated, the Agency would use the new method for enforcement testing and would specifically be using the Grabner field unit. The Agency realizes that this may create a hardship for refiners who already have test equipment not specified in this new method. Therefore, we are considering allowing test methods that correlate with the new method in the regulation to be used for a defense. A correlation equation would be applied to the test results obtained by the new method to convert the value to Reid vapor pressure. EPA has empirically derived a correlation equation from numerous repeat measurements comparing the digital Herzog (Method 2) to the Setavap and portable Grabner devices (new method). ASTM has derived a similar empirical equation (giving virtually identical values) by comparing results from various devices of Methods 1 and 2 with several devices of the new method.

Table 1 below shows the data from which the EPA correlation equation was generated. In this table, Column 2 contains results from EPA's digital Herzog. Columns 3 and 6 contain the measured pressure from Setavap and the laboratory Grabner respectively. Columns 4 and 7 are the dry vapor pressure equivalent values derived from the pooled Method 1 and 2 analyses from all the labs in the study. Columns 5 and 8 are the Agency's derived dry vapor pressure equivalent vapor pressures for the two new instruments. The ASTM equation predicts slightly lower values for dry vapor pressure equivalent.

TABLE 1.—ASTM SUMMARY FROM 1988 ASTM CORRELATION PROGRAM

	ES 15 (psi)	D 4953 (CFR 40) (Method 1) (psi)	D 4953 (CFR 40) (Method 2) (psi)
Repeatability	±0.16	±0.26	±0.26
Reproducibility	±0.28	±1.00	±0.94

EPA DATA FROM 1988 ASTM CORRELATION PROGRAM

Sample ID	Herzog—Measured pressure (psi)	Setavap			Grabner		
		Measured pressure (psi)	ASTM DVPE (psi)	EPA DVPE (psi)	Measured pressure (psi)	ASTM DVPE (psi)	EPA DVPE (psi)
88-10A	9.23	10.03	9.13	9.24	10.09	9.19	9.30
88-10A	9.10	9.95	9.06	9.17	9.97	9.07	9.18
88-11A	13.85	15.00	13.93	13.99	14.90	13.83	13.90
88-11A	13.96	14.98	13.91	13.97	14.82	13.75	13.82
88-12A	11.13	11.98	11.02	11.11	11.92	10.95	11.05
88-12A	11.08	11.78	10.82	10.91	11.86	10.90	10.99
88-13A	7.10	7.83	7.00	7.14	7.86	7.04	7.17
88-13A	7.16	7.83	7.00	7.14	7.84	7.02	7.15
88-14A	12.19	13.06	12.05	12.14	13.06	12.05	12.14
88-14A	12.16	13.09	12.08	12.17	13.06	12.05	12.14
88-15	3.15	3.49	2.82	2.99	3.62	2.94	3.11
88-15	3.16	3.47	2.80	2.97	3.66	2.98	3.15
88-1A	6.32	6.98	6.19	6.32	7.01	6.22	6.35
88-1A	6.27	6.98	6.19	6.32	6.99	6.20	6.34
88-2A	8.91	9.60	8.71	8.83	9.61	8.72	8.84
88-2A	8.78	9.64	8.76	8.87	9.70	8.81	8.93
88-3A	10.00	10.81	9.89	9.99	10.74	9.82	9.92
88-3A	10.07	10.80	9.88	9.98	10.74	9.82	9.92
88-4A	10.10	10.81	9.89	9.99	10.80	9.87	9.98
88-4A	10.03	10.86	9.93	10.03	10.79	9.86	9.97
88-6A	11.33	12.22	11.24	11.34	12.16	11.19	11.28
88-6A	11.38	12.25	11.27	11.37	12.25	11.27	11.36
88-7A	7.88	8.83	7.97	8.09	9.02	8.16	8.28
88-7A	7.99	8.83	7.97	8.09	8.89	8.03	8.15
88-8A	9.85	10.60	9.68	9.78	10.73	9.81	9.91
88-8A	9.84	10.73	9.80	9.91	10.74	9.82	9.92
88-9A	15.36	16.39	15.26	15.32	16.49	15.36	15.42
88-9A	15.32	16.44	15.32	15.37	16.46	15.33	15.39
Average pressure	9.739	10.544	9.626	9.733	10.564	9.645	9.752
Repeatability	0.165	0.151			0.138		

EPA proposes to use the following correlation equation for the new test method (Setavap and Grabner):

RVP=0.956 X−0.347 (Where X is the total measured pressure in psi.)

The measured pressure number ("X") is measured directly by the instruments as total vapor pressure in psi.

Data supporting the correlation equation for the new test method has been placed in the docket. The Agency believes that the new method has been written to allow the use of the SwRI instrument. At this time, however, the Agency does not have data to support the use of the factor for this method to be used with the SwRI instrument. Therefore, the Agency will continue to evaluate the SwRI instrument and requests comments and data to be submitted in support of a correction factor to be used with the instrument. As stated previously the Agency will review all additional data and determine if the SwRI instrument should be included in the new method.

Option 1 is the most desirable option to the Agency, given the test procedure's increase in accuracy, increase in lab to lab precision, and objective measures for quality control.

Option 2. Continue to use the methods in appendix E for testing of samples for enforcement but allow the use of other test methods not in the regulations if adequate correlation is demonstrated for defense testing. Currently in the regulation, refiners and importers must use a method in the regulations for a defense (section 80.29 (g)(2)(ii)). This option would allow the flexibility for refiners and importers to use other methods for which adequate correlation has been demonstrated with the methods in appendix E.

Option 3. The regulations would continue to include Methods 1 and 2, and the new method would be added as Method 3. A correction factor would be applied to the test results of any appendix E test method used other than the digital Herzog method. Such a correction factor would be based upon the pressure measurement device volume being used and/or upon correlation testing with the EPA laboratory. A correlation equation would be used to convert the value found using Method 3 to Reid vapor pressure. The following are correction factors considered appropriate by the Agency:

Test method	Correction factor (psi)
Method 1	[1.0+(gauge vol. (ml))/625 ml]*X
Method 2 (Analog)	[1.0+(gauge vol. (ml))/625 ml]*X
Method 2 (Digital)	1*X
Method 3 (Includes Setavap Grabner).	0.956 X−0.347

Where X is the total measured pressure in psi.

Data supporting these factors have been placed in the docket. As in Options 1 and 2, this option would allow other test methods not in the regulations to be used for a defense if adequate correlation is demonstrated.

Option 4. The California Air Resources Board (CARB) has recently adopted an automated test method based upon ASTM ES–15–90. CARB conducted a joint government and industry comparative testing program to correlate the Setavap, laboratory Grabner, and portable Grabner instruments to CARB's ASTM D323–58, wet manual testing method. The results of this testing program are summarized in a CARB staff report entitled "Test Method For The Vapor Pressure Of Gasoline," dated September 27, 1990. It is available for inspection in the Air Docket. Option 4 is to adopt the CARB automated method and correlate all of the existing test methods to D323–58.

The Agency is interested in receiving comments on these options and will consider other options proposed by commenters.

(17) *Gauge Method Cleaning Procedure:* The Agency has found a possible source of error in the gauge method (Method 1) cleaning procedure. (Section 8.5 of appendix E, Method 1). EPA has received comments that measured vapor pressure declines for pure compounds due to condensed liquid in the gauge. In these cases the gauges were cleaned in accordance with the EPA and ASTM methodologies. The commenter applied a pulsed vacuum in addition to the regular cleaning procedure. This area may need further study. We are not proposing a change to the regulations at this time but are asking for comments on possible solutions. Based on these comments, changes to this provision may be made in the final revisions.

(18) *Sampling method preference:* In the Direct Final Rule published on June 25, 1990 at 55 FR 25833, the Agency discussed sampling method preference. At that time the preferred method of taking a sample from a storage tank was the "all-levels sample." Since the publication of those revisions the Agency has received comments indicating that a running sample should be used when tank sampling instead of the all levels sample. The Agency is interested in receiving comments on this issue.

III. Public Participation

EPA desires full public participation in arriving at final decisions in this rulemaking action. EPA solicits comments on all aspects of today's proposal from all interested parties. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspects of the proposal that they believe need to be modified or improved. All comments should be directed to the Air Docket, Docket No. A–85–21 (see **ADDRESSES**).

IV. Paperwork Reduction Act

The information collection requirements contained in the volatility rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0178. Public recordkeeping burden is estimated to be approximately 1 hour a year per facility. It is not anticipated that the revisions being proposed today will have any impact on the recordkeeping burden. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

V. Administrative Designation and Regulatory Analysis

Under Executive Order 12291, EPA must judge whether an action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed action is not major because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effects of this action are to revise the volatility regulations by clarifying some parts of the liability provisions, amending the defenses to liability, adding a test exemption section, and revising the sampling and testing procedures. These revisions do not add any burden to the regulated industry. Under these circumstances, this proposed rule is not likely to result in the conditions described in Executive Order 12291.

VI. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a Regulatory Impact Analysis. For all the reasons described in section IV and in the Volatility Rule (54 FR 11883) this proposed rule will not have a significant impact on small entities in the regulated industry. There are no additional reporting requirements in the proposed regulations. Therefore, there is no significant impact on small entities.

VII. Statutory Authority

Authority for the actions proposed in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: August 27, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, part 80 of title 40 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 is proposed to continue to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.27 is proposed to be amended by revising paragraph (c) and by adding a new paragraph (e) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

* * * * *

(c) *Liability.* Liability for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.28. Where the terms refiner, importer, distributor, reseller, carrier, ethanol blender, retailer, or wholesale purchaser-consumer are expressed in the singular in § 80.28, these terms shall include the plural.

* * * * *

(e) *Testing exemptions.* (1)(i) Any person may request a testing exemption by submitting an application that

includes all the information listed in paragraphs (e) (3), (4), (5) and (6) of this section to: Director (EN-397F), Field Operations and Support Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

(ii) For purposes of this section, "testing exemption" means an exemption from the requirements of § 80.27(a) that is granted by the Administrator for the purpose of research or emissions certification.

(2)(i) In order for a testing exemption to be granted, the applicant must demonstrate the following:

(A) The proposed test program has a purpose that constitutes an appropriate basis for exemption;

(B) The proposed test program necessitates the granting of an exemption;

(C) The proposed test program exhibits reasonableness in scope; and

(D) The proposed test program exhibits a degree of control consistent with the purpose of the program and the Environmental Protection Agency's (EPA's) monitoring requirements.

(ii) Paragraphs (e) (3), (4), (5) and (6) of this section describe what constitutes a sufficient demonstration for each of the four elements in paragraphs (e)(2)(i) (A) through (D) of this section.

(3) An appropriate purpose is limited to research or emissions certification. The testing exemption application must include a concise statement of the purpose(s) of the testing program.

(4) With respect to the necessity that an exemption be granted, the applicant must demonstrate an inability to achieve the stated purpose in a practicable manner, during a period of the year in which the volatility regulations do not apply, or without performing or causing to be performed one or more of the prohibited activities under § 80.27(a). If any site of the proposed test program is located in an area that has been classified by the Administrator as a nonattainment area for purposes of the ozone national ambient air quality standard, the application must also demonstrate an inability to perform the test program in an area that is not so classified.

(5) With respect to reasonableness, a test program must exhibit a duration of reasonable length, affect a reasonable number of vehicles or engines, and utilize a reasonable amount of high volatility fuel. In this regard, the testing exemption application must include:

(i) An estimate of the program's duration;

(ii) An estimate of the maximum number of vehicles or engines involved in the test program;

(iii) The time or mileage duration of the test program;

(iv) The range of volatility of the fuel (expressed in Reid Vapor Pressure (RVP)) expected to be used in the test program; and

(v) The quantity of fuel which exceeds the applicable standard that is expected to be used in the test program.

(6) With respect to control, a test program must be capable of affording EPA a monitoring capability. At a minimum, the testing exemption application must also include:

(i) The technical nature of the test program;

(ii) The site(s) of the test program (including the street address, city, county, state, and zip code);

(iii) The manner in which information on vehicles and engines used in the test program will be recorded and made available to the Administrator;

(iv) The manner in which results of the test program will be recorded and made available to the Administrator;

(v) The manner in which information on the fuel used in the test program (including RVP level(s), name, address, telephone number, and contact person of supplier, quantity, date received from the supplier) will be recorded and made available to the Administrator;

(vi) The manner in which the distribution pumps will be labeled to insure proper use of the test fuel;

(vii) The name, address, telephone number and title of the person(s) in the organization requesting a testing exemption from whom further information on the request may be obtained; and

(viii) The name, address, telephone number and title of the person(s) in the organization requesting a testing exemption who will be responsible for recording and making available to the Administrator the information specified in paragraphs (e)(6) (iii), (iv), and (v) of this section, and the location in which such information will be maintained.

(7) A testing exemption will be granted by the Administrator upon a demonstration that the requirements of paragraphs (e) (2), (3), (4), (5) and (6) of this section have been met. The testing exemption will be granted in the form of a memorandum of exemption signed by the applicant and the Administrator (or his delegate), which shall include such terms and conditions as the Administrator determines necessary to monitor the exemption and to carry out the purposes of this section. Any violation of such a term or condition shall cause the exemption to be void.

3. Section 80.28 is proposed to be amended as follows:

a. Paragraphs (b)(1), (b)(2) and (f)(3) are amended by removing the word "and" at the end of each paragraph;

b. Paragraphs (b)(3) and (f)(4) are amended by removing the period at the end of each paragraph and adding the words "; and";

c. Paragraphs (b)(4) and (f)(5) are added;

d. Paragraph (g)(1)(i) is removed, paragraph (g)(1)(iii) is redesignated as new paragraph (g)(1)(i) and revised, and paragraph (g)(1)(ii) is revised,

e. Paragraphs (g)(2) introductory text, (g)(2)(ii), and (g)(3) introductory text are revised;

f. Paragraph (g)(3)(ii) is removed, and paragraph (g)(3)(iii) is redesignated as new paragraph (g)(3)(ii) and revised;

g. Paragraph (g)(4)(i) is revised;

h. Paragraph (g)(6)(ii) is removed and paragraphs (g)(6)(iii) and (g)(6)(iv) are redesignated as new paragraphs (g)(6)(ii) and (g)(6)(iii), respectively, and revised; and

i. Paragraph (g)(7) is revised to read as follows:

§ 80.28 Liability for violations of gasoline volatility controls and prohibitions.

* * * * *

(b) * * *

(4) The distributor and/or reseller, except as provided in paragraph (g)(3) of this section.

* * * * *

(f) * * *

(5) The refiner (if he is not an ethanol blender) at whose refinery the gasoline was produced and/or the importer at whose import facility the gasoline was imported, except as provided in paragraph (g)(2) of this section.

(g) * * *

(1) * * *

(i) That the violation was not caused by him or his employee or agent; and

(ii) Evidence of an oversight program conducted by the carrier, such as periodic sampling and testing of incoming gasoline, for monitoring the volatility of gasoline stored or transported by that carrier.

(2) In any case in which a refiner or importer would be in violation under paragraphs (b)(2), (d)(3), or (f)(5) of this section, the refiner or importer shall not be deemed in violation if he can demonstrate:

(i) * * *

(ii) Test results, where adequate correlation with the sampling and testing methodologies set forth in appendices D and E to this part is demonstrated, which evidence that the gasoline determined to be in violation was in compliance with the applicable

standard when it was delivered to the next party in the distribution system.

(3) In any case in which a distributor or reseller would be in violation under paragraph (b)(4), (c)(1), (d)(1), (e)(2), or (f)(2) of this section, the distributor or reseller shall not be deemed in violation if he can demonstrate:

(i) * * *

(ii) Evidence of an oversight program conducted by the distributor or reseller, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the distributor or reseller sells, supplies, offers for sale or supply, or transports.

(4) * * *

(i) Test results, where adequate correlation with the sampling and testing methodologies set forth in Appendices D and E to this part is demonstrated, which evidence that the gasoline determined to be in violation was in compliance with the applicable standard when transported from the refinery; and

* * * * *

(6) * * *

(i) * * *

(ii) Evidence of an oversight program conducted by the ethanol blender, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the ethanol blender sells, supplies, offers for sale or supply or transports; and

(iii) That the gasoline determined to be in violation contained no more than 10% ethanol (by volume) when it was delivered to the next party in the distribution system.

(7) In paragraphs (g)(1)(i), (g)(2)(i), (g)(3)(i), (g)(4)(ii), (g)(5), and (g)(6)(i) of this section, the respective party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that it or its employee or agent did not cause the violation.

4. Appendix D to part 80 is proposed to be amended by revising sections 4.2, the note at the end of 6.3, 11.2.1, 11.5.1, 11.5.2, 12.2, 12.4, and 12.5 and Figure 6 and by adding sections 4.2.1, 11.5.2.1 and 11.5.2.2 and Figure 7b to read as follows:

Appendix D to Part 80—Sampling Procedures for Fuel Volatility

* * * * *

4. * * *

4.2 *Container closure.* Closure devices may be used as long as they meet the following test: The quality of closures and containers to be used must be determined by the particular laboratory or company doing the testing through the analysis of at least six sample pairs of gasoline and gasoline-oxygenate blends. The six sample pairs must include at least one pair of ethanol at 10 percent and one pair of MTBE at 15 percent. The second half of the pair must be analyzed in a period of no less than 90 days after the first. The data obtained must meet the following criteria and should be made available to the EPA upon request:

$$\Sigma d/n \pm (2)^{1/2} * t * ((\Sigma d^2 - (\Sigma d)^2/n)/(n-1))^{1/2} \leqq 0.38 \text{ psi}$$

where:

n = number of pairs,

d = duplicate bottles-initial bottles vapor pressure,

t = student t statistic; the double sided 95% confidence interval for n–1 degrees of freedom.

4.2.1 Screw caps must be protected by material that will not affect petroleum or petroleum products. A phenolic screw cap with a teflon coated liner may be used, since it has met the requirements of the above performance test upon EPA analysis.

* * * * *

6.3 * * *

Note: When taking samples from tanks suspected of containing flammable atmospheres, precautions should be taken to guard against ignitions due to static electricity. No object or material should be lowered into or suspended in a compartment of a tank which is being filled or immediately after cessation of pumping. A waiting period of approximately five minutes will generally permit a substantial relaxation of the electrostatic charge; under certain conditions a longer period may be deemed advisable.

* * * * *

11.2 * * *

11.2.1 *Apparatus.* A suitable sampling apparatus and bottle or beaker as shown in Figure 2 is required. Figure 2 is shown for illustration purposes. Actual detail of the apparatus may vary as long as the function of obtaining a representative sample is not changed. In order to control sample container filling rates for collection of all-levels and running samples, the sample container opening diameters, as measured from the inside neck of the container or its restrictor cap opening are recommended as outlined in the table below:

RECOMMENDED SAMPLE CONTAINER OPENING DIAMETERS

[for proper fill rates during all-levels and running sample collection]

Container volume	Inside diameter of opening or restriction
4 oz	0.28 inches (7 mm)
8 oz	0.39 inches (10 mm)
16 oz	0.55 inches (14 mm)
32 oz	0.75 inches (19 mm)

Note: If fill rate is too fast or too slow adjust the restrictor cap size to allow a manageable sample retrieval rate. These recommended opening diameters are smaller than the maximum allowable diameters of section 12 and are meant only as guidelines for restricted orifice bottle sampling.

* * * * *

11.5 * * *

11.5.1 *Apparatus.* Sample containers conforming with section 4.1 should be used. A spacer, if appropriate (figure 6), and a nozzle extension device similar to that shown in Figures 7, 7a, or 7b shall be used when nozzle sampling. The nozzle extension device does not need to be identical to that shown in Figures 7, 7a, or 7b but it should be a device that will bottom fill the container with a minimum amount of vapor loss.

11.5.2 *Retail sampling procedure.*

11.5.2.1 If a nozzle extension as found in Figure 7 or 7a is used, 3 gallons of gasoline should first be dispensed from the pump nozzle to purge the pump hose and nozzle. Then a small amount of product should be dispensed through the nozzle extension into the sample container to rinse the sample container. A pump nozzle spacer (Figure 6) may be used if the pump is a vapor recovery type. Rinse the sample container and discard the waste product into an appropriate container. Insert the nozzle extension (Figure 7 or 7a) into the sample container and insert the pump nozzle into the extension with slot over the air bleed hole (when using Figure 7). Fill the sample container slowly through the nozzle extension to 70–85 percent full (Figure 8). Remove the nozzle extension. Cap the sample container at once. Check for leaks. Discard the sample container and resample if leak occurs. If the sample container is leak tight, label the container and deliver it to the laboratory.

11.5.2.2 If a nozzle extension as found in Figure 7b is used, 3 gallons of gasoline should first be dispensed from the pump nozzle to purge the pump hose and nozzle. Then screw a dry and dirt free 4 oz sample bottle container onto the bottle filling fixture. Insert the nozzle into the nozzle extension. Insert the discharge end of the modified nozzle extension into a gasoline safety can or into the filler neck of a vehicle. Obtain the sample by pumping at least 0.2 gallon through the sampler. Remove the sample bottle from the fixture. The sample must be 70–85 percent full. Cap the sample container at once. Check for leaks. Discard the sample container and re-sample if leak occurs. If the sample container is leak tight, label the container and deliver it to the laboratory.

12. * * *

12.2 *Sample containers.* Use containers of not less than 4 ounces (118 ml) nor more than two gallons (7.6 liters) capacity, of sufficient strength to withstand the pressure to which they may be subjected, and of a type that will permit replacement of the cap or stopper with suitable connections for the transfer of the sample to the gasoline chamber of the vapor pressure testing apparatus. Open-type containers have a single opening which permits sampling by immersion. Closed-type containers have two openings, one in each end (or the equivalent thereof), fitted with valves suitable for sampling by purging.

12.3 * * *

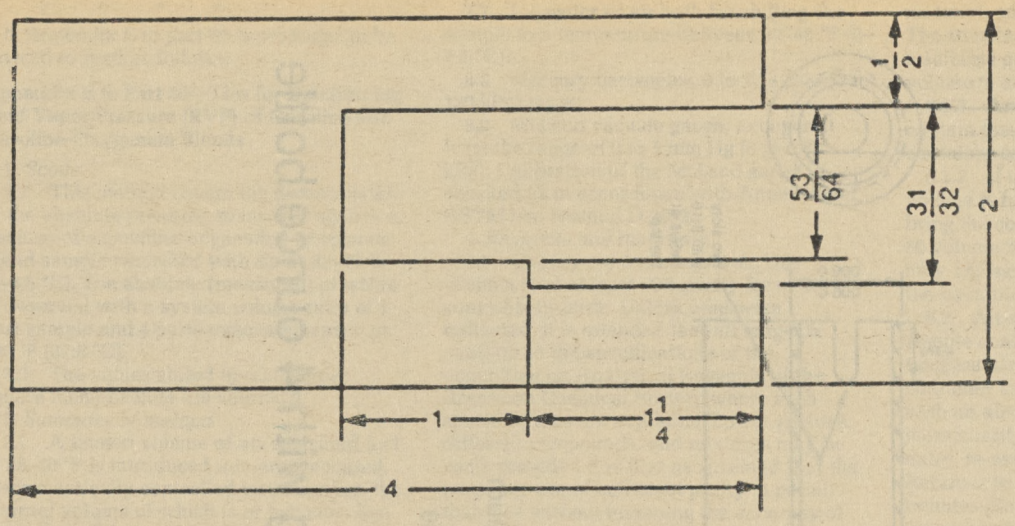
12.4 *Sampling open tanks.* Use clean containers of the open type when sampling open tanks and tank cars. An all-levels sample obtained by the bottle procedure is recommended. Before taking the sample, flush the container by immersing it in the

product to be sampled. Then obtain the sample immediately. The sample must be 70–85 percent full. Close the container promptly and confirm it is not leaking. Label the container and deliver it to the laboratory.

12.5. *Sampling closed tanks.* Containers of the closed type may be used to obtain samples from closed or pressure tanks. Obtain the sample using the purging procedure described in 12.6.

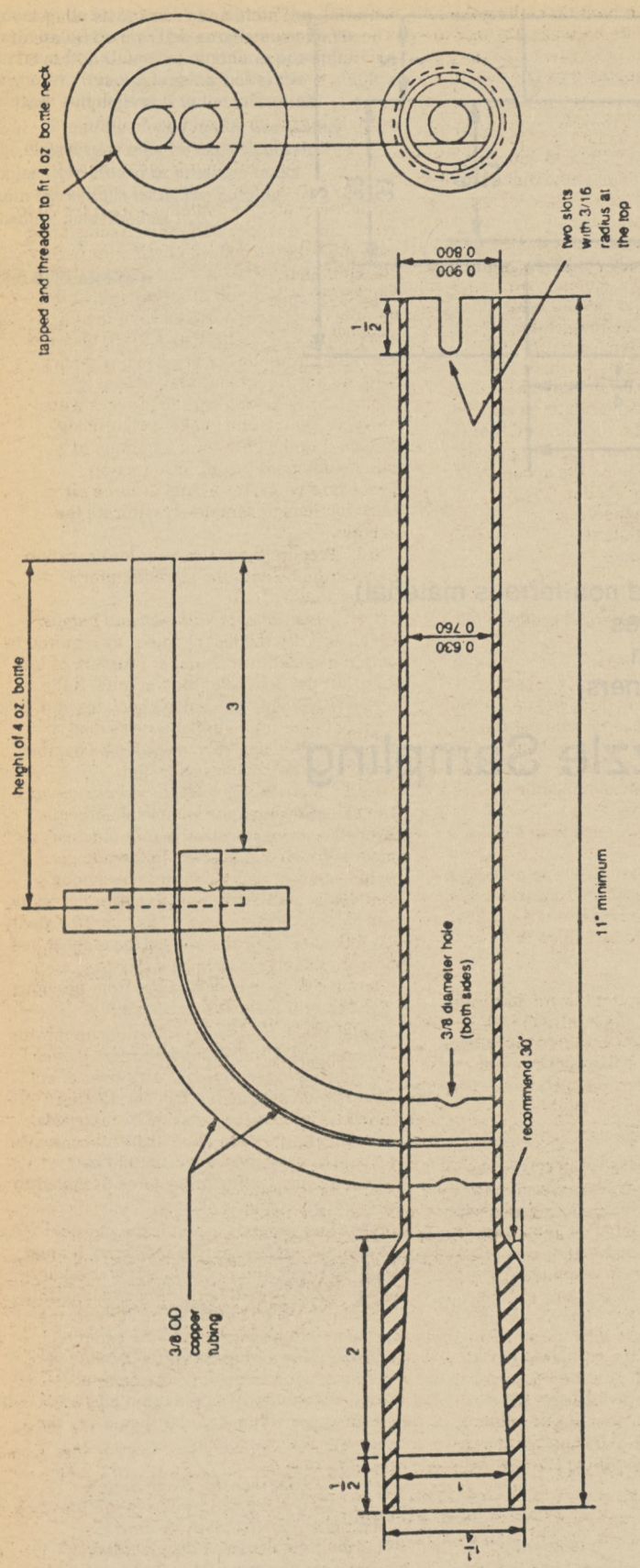
* * * * *

BILLING CODE 6560–50–M



Make from 1/4 Inch flat stock (recommend non-ferrous material)
All dimensions in inches
Scale: 1inch = 1 inch
Break all edges and corners

Figure 6. Spacer for Nozzle Sampling



All dimensions in inches
All decimal dimensions represent minimum and maximum
Tolerance for all other dimensions is ± 1/32"
Made of non-ferrous material, uneffected by gasoline
Scale: 0.700 inch = 1 inch

Figure 7b. Nozzle Extension for Nozzle Sampling with 4 ounce bottle

BILLING CODE 6560-50-C

* * * * *

5. Appendix E to part 80 is proposed to be revised to read as follows:

Appendix E to Part 80—Test for Determining Reid Vapor Pressure (RVP) of Gasoline and Gasoline-Oxygenate Blends

1. *Scope.*

1.1 This method covers the determination of the absolute pressure, measured against a vacuum of a gasoline or gasoline-oxygenate blend sample saturated with air at 32–40 °F (0–4.5 °C). The absolute (measured) pressure is observed with a system volume ratio of 1 part sample and 4 parts evacuated space at 100 °F (37.8 °C).

1.2 The values stated in pounds per square inch absolute are standard.

2. *Summary of method.*

2.1 A known volume of air-saturated fuel at 32–40 °F is introduced into an evacuated, thermostatically controlled test chamber, the internal volume of which is or becomes five times that of the total test specimen introduced into the test chamber. After the injection the test specimen is allowed to reach thermal equilibrium at the test temperature, 100 °F (37.8 °C). The resulting pressure increase is measured with an absolute pressure measuring device whose volume is included in the total of the test chamber volume. The measured pressure is the sum of the partial pressures of the sample and the dissolved air.

2.2 The total measured pressure is converted to Reid vapor pressure by use of a correlation equation (see section 9).

3. *Apparatus.*

3.1 The apparatus shall employ a thermostatically controlled test chamber which is capable of maintaining a vapor-to-liquid ratio between 3.95 and 4.05 to 1.00.

3.2 The pressure measurement device shall have a minimum operation range from 0 to 15 psia (0 to 103 kPa) with a minimum resolution of 0.05 psia (0.34 kPa). The pressure measurement device shall include any necessary electronic and readout devices to display the resulting reading.

3.3 The test chamber shall be maintained at 100 ±0.2 °F (37.8 ±0.1 °C) for the duration of the test except for the time period after sample injection when the sample is coming to equilibrium with test temperature of 100 ±0.2 °F (37.8 ±0.1 °C).

3.4 A thermometer that meets the specification ASTM 18 F (18 C) or a platinum resistance thermometer shall be used for measuring the temperature of the test chamber. The minimum resolution for the temperature measurement device is 0.2 °F (0.1 °C) and an accuracy of ±0.2 °F (±0.1 °C).

3.5 The vapor pressure apparatus shall have a provision for the introduction of the test specimen into the evacuated or to be evacuated test chamber and for the cleaning or purging of the chamber following the test.

3.6 If a vacuum pump is used, it must be capable of reducing the pressure in the test chamber to less than 0.001 psia (0.007 kPa). If the apparatus uses a piston to induce a vacuum in the sample chamber the residual pressure shall be no greater than 0.001 psia (0.007 kPa) upon full expansion of the test chamber devoid of any material at 100 ±0.2 °F (37.8 ±0.1 °C).

3.7 Ice water or air bath for chilling the sample to a temperature between 32–40 °F (0–4.5 °C).

3.8 Mercury barometer, 0 to 17.4 psia (0 to 120 kPa) range.

3.9 McLeod vacuum gauge, to cover at least the range of 0 to 5 mm Hg (0 to 0.67 kPa). Calibration of the McLeod gauge is checked as in accordance with Annex A6 of ASTM test Method D 2892.

4. *Reagents and materials.*

4.1 *Quality control standards.* Use chemicals of at least 99% purity for quality control standards. Unless otherwise indicated, it is intended that all reagents conform to the specifications of the committee on Analytical Reagents of the American Chemical Society where such specifications are available. Lower purities, different compounds, and mixtures may be used, provided it is first ascertained that the materials are of sufficient purity to permit their use without lessening the accuracy of the determination (see section 7.3).

4.1.1 2,2,4-trimethylpentane

4.1.2 2,2-dimethylbutane

4.1.3 3-methylpentane

4.1.4 n-pentane

4.1.5 acetone

4.2 n-pentane (commercial grade—95% pure)

5. *Handling of samples.*

5.1 The sensitivity of vapor pressure measurements to losses through evaporation and the resulting change in composition is such as to require the utmost precaution in the handling of samples. The provisions of this section apply to all samples for vapor pressure determinations.

5.2 Sample in accordance with 40 CFR Part 80, Appendix D.

5.3 Sample container size. The minimum size of the sample container from which the vapor pressure sample is taken is 4 ounces (118 ml). It will be 70 to 85% filled with sample.

5.4. *Precautions.*

5.4.1 Determine vapor pressure as the first test on a sample. Multiple analyses may be performed, but must be evaluated given the stated precision for the size of the sample container, and the order in which they were run in relation to the initial analysis.

5.4.2 Protect samples from excessive heat prior to testing.

5.4.3 Leaking samples should be replaced if possible. Analysis results from leaking sample containers must be marked as such.

5.4.4 Samples that have separated into two phases should be replaced if possible. Analysis results from samples that have phase separated must be marked as such.

5.4.5 *Sample handling temperature.* In all cases, cool the sample to a temperature of 32–40 °F (0–4.5 °C) before the container is opened. To ensure sufficient time to reach this temperature, directly measure the temperature of a similar liquid at a similar initial temperature in a like container placed in the cooling bath at the same time as the sample.

6. *Preparation for test.*

6.1 *Verification of sample container filling.* With the sample at a temperature of 32–40 °F (0–4.5 °C), take the container from the cooling bath, wipe dry with an absorbent material, unseal it, and examine its ullage. The sample content, as determined by use of a suitable gauge, should be equal to 70 to 80 volume % of the container capacity.

6.1.1 Analysis results from samples that contain less than 70 volume % of the container capacity must be marked as such.

6.1.2 If the container is more than 80 volume % full, pour out enough sample to bring the container contents within the 70 to 80 volume % range. Under no circumstance may any sample poured out be returned to the container.

6.2 Air saturation of the sample in the sample container. With the sample at a temperature of 32–40 °F (0–4.5 °C), take the container from the cooling bath, wipe dry with an absorbent material, unseal it momentarily, taking care to prevent water entry, re-seal it, and shake it vigorously. Return it to the bath for a minimum of 2 minutes. Repeat the air introduction procedure twice, for a total of three air introductions to completely saturate the sample.

6.3 Prepare the instrument for operation in accordance with the manufacturer's instructions.

6.3.1 *Instruments with vacuum pumps.* Clean and dry the test chamber as required to obtain a sealed test chamber pressure of less than 0.01 psi (0.07 kPa) for 1 minute. If the pressure exceeds this value check for and resolve in the following order; residual sample or cleaning solvent, sample chamber leaks, and transducer calibration.

6.3.2 *Instruments without vacuum pumps.* The sample purges the sample chamber through a series of rinses before the analysis occurs. Errors due to leaks in the plunger, piston seals, or carry-over from previous samples or standards may give erratic results (see Note of Section 6.3.2). The operator must run a quality control standard for at least one in twenty analyses or once a day to determine if there is carry over from previous analyses or if leaks are occurring.

Note: When using a self-cleaning apparatus some residual product may be carried over into subsequent analyses. Carry-over effect should be investigated when conducting sequential analyses of dissimilar materials, especially calibration standards. Inaccuracies caused by carry-over effect should be resolved using testing procedures designed to minimize such interferences.

6.4 If a syringe is used for the physical introduction of the sample specimen, it must be either clean and dry before it is used or it may be rinsed out at least three times with the sample. When cleaning the syringe, the rinse may not be returned to the sample container. The syringe must be capable of obtaining, upon filling with the sample charge, a quantity of sample that has an entrained gas volume of less than 3% of the necessary sample volume.

7. *Calibration.*

7.1 *Pressure measurement device.*

7.1.1 Check the calibration of the pressure measurement device daily or until the stability of the device is documented as having less than or equal to 0.03 psi (0.2 kPa) drift per unit of the appropriate calibration

period. When calibration is necessary, follow the procedures in sections 7.1.2 through 7.1.4.

7.1.2 Connect a properly calibrated McLeod gauge to the vacuum source line to the test chamber. Apply vacuum to the test chamber. When the McLeod gauge registers a pressure less than 0.8 mm Hg (0.1 kPa) adjust the pressure measurement device's zero control to match to within ± 0.01 psi (0.07 kPa) of the McLeod Gauge.

7.1.3 Open the test chamber to the atmosphere and observe the pressure measurement device's reading. Adjust the pressure measurement devices span control to within ± 0.01 psi (0.07 kPa) of a temperature and latitude adjusted mercury barometer.

7.1.4 Repeat steps 7.1.2 and 7.1.3 until the instrument zero and barometer readings read correctly without further adjustments.

7.2 *Thermometer.* Check the calibration of the ASTM 18 F (18 C) thermometer or the platinum resistance thermometer used to monitor the test chamber at least every six months. Check the reading of the thermometer against a National Institute of Standards and Technology traceable thermometer.

7.3 *Quality assurance.* The instrument's performance must be checked at least once per day using a quality control standard listed in section 4.1. In the case of the non-vacuum pump instruments the frequency is stated in section 6.3.2. The standards must be chilled to the same temperature, have the same ullage, and saturated with air in the same manner as the samples. Record total measured pressure and compare against the following reference volumes:

Compound	Lower control limit	Upper control limit
2,2,4-trimethylpentane.	2.39 psia (16.5 kpa).	3.03 psi (20.9 kpa)
3-methylpentane.	6.86 psia (47.3 kpa).	7.26 psi (50.1 kpa)
acetone	7.97 psia (55.0 kpa).	8.12 psi (56.0 kpa)
2,2-dimethylbutane.	10.64 psia (73.4 kpa).	10.93 psi (75.4 kpa)
n-pentane	16.20 psia (111.7 kpa).	16.40 psi (113.1 kpa)

If the observed pressure does not fall between the reference values, check the instrument for leaks and its calibration (Section 7).

7.3.1 Other compounds, gasolines, and gasoline blends may be used as control standards as long as these materials have been statistically evaluated for their mean total measured pressure using an instrument that conforms to this procedure.

7.3.2 The control limits can be calculated with the following formula:

Mean measured pressure—$x = x_i/n$

Standard Deviation—$s_x = [(\Sigma x^2 - (\Sigma x)^2/n)/(n-1)]^{1/2}$

Upper Control Limit—$UCL = x + (t_{n-1,0.975})^*(s_x)$

Lower Control Limit—$LCL = x + (t_{n-1,0.975})^*(s_x)$

where:

x_i is the individual analyses of the control standard, n is the number of analyses (for a new instrument or a new control standard this should be at least ten analyses)

$(t_{n-1,0.975})$ is the two-tailed student t statistic for n–1 degrees of freedom for 95% of the expected data from the analysis of the standard.

8. *Procedure.*

8.1 Remove the sample from the cooling bath or refrigerator, dry the exterior of the container with absorbent material, unseal, and insert the transfer tube, syringe, or transfer connection (see section 6). Draw an aliquot (minimize gas bubbles) of sample into a gas tight syringe or transfer the sample using tubing or transfer connection and deliver this test specimen to the test chamber as rapidly as possible. The total time between opening the chilled sample container and inserting/securing the syringe or transfer connection into the sealed test chamber shall not exceed one minute.

8.2 Follow the manufacturer's instructions for injection of the test specimen into the test chamber, and for the operation of the instrument to obtain a total measured vapor pressure result for the test specimen.

8.3 Set the instrument to read the test results in terms of total measured pressure. If the instrument is capable of calculating a Reid vapor pressure equivalent value ensure that only the parameters in section 9.2 are used.

9. *Calculation and record of result.*

9.1 Note the total measured vapor pressure reading for the instrument to the nearest 0.01 psi (0.07 kPa). For instruments which do not automatically display a stable pressure value, manually note the pressure indicator reading every minute to the nearest 0.01 psi (0.07 kPa). When three successive readings agree to within 0.01 psia (0.07 kPa) note the final result to the nearest 0.01 psia (0.07 kPa).

9.2 Using the following correlation equation, calculate the Reid vapor pressure (RVP) that is equivalent to the total measured vapor pressure obtained from the instrument, in order to compare the total measured vapor pressure result to the Reid vapor pressure standards set out at 40 CFR 80.27. Ensure that the instrument reading in this equation corresponds to the total measured pressure and has not been corrected by an automatically programmed correction factor.

RVP, psi (kPa) = (0.956 * X) − A

where:

X = total measured vapor pressure

A = 0.347 psi (2.39 kPa)

9.3 Record the RVP to the nearest 0.01 psi as the official test result.

[FR Doc. 91–24784 Filed 10–17–91; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
October 18, 1991

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 2 et al.

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 284, 375, and 380

[Docket No. RM90-1-000; Order No. 555]

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities

September 20, 1991.

AGENCY: Federal Energy Regulatory Commission

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule to revise its regulations governing authorizations to construct natural gas pipeline facilities and its environmental regulations. The final rule promulgates changes in the regulations necessary to reflect the competitive marketplace which has developed in the natural gas industry. The final rule expands the options available for pipeline construction authorization and the recovery of associated costs.

EFFECTIVE DATE: This final rule will become effective on November 19, 1991.

ADDRESSES: Appendices C, D, E, F, and G and the environmental assessment referenced in the preamble are not being printed in the **Federal Register**. These documents are available for review at the following address: Reference and Information, Federal Energy Regulatory Commission, room 3104, 941 North Capitol Street, NE., Washington, DC 20426, (202) 208-1371.

FOR FURTHER INFORMATION CONTACT:

John S. Leiss, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0066.

Connie Caldwell, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, all interested persons may inspect or copy the contents of this document during normal business hours in room 3308, 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 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this interim 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 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

Issued: September 20, 1991.

Table of Contents

I. Introduction
II. Reporting requirements
III. Background
IV. The Construction NOPR
A. NGPA Section 311 Construction
B. NGA Section 7 Construction Authorizations
1. Project Cost Limits for Part 157 Blanket Construction
2. Accelerated Part 157 Blanket Construction Authorization
C. Revisions in Response to Environmental Concerns
1. Replacement of Facilities
2. Local Publication
D. Delegation to the Director
E. Processing of Applications
1. Phasing
2. Mutually Exclusive Proposals
3. Deficient Applications
F. Codification of Current Practices
1. Optional Certificates
2. Environmental Procedures
V. The Final Rule
VI. Comments and Reply Comments
VII. Discussion—Construction Authorizations
A. Kansas Pipe Line Revisited
1. Traditional Standards
2. Evolution of Kansas Pipeline in Case Law
3. At Risk By Any Other Name is Still At Risk
4. Codification of the Revised "Kansas Pipe Line" Standards
B. The Ashbacker Principle
C. Menu of Construction Authorizations
1. Part 157, Subpart A—Case-Specific Authorization
2. Part 157, Subpart F—Automatic and Prior Notice
3. NGPA Section 311 Construction Authorization
4. Section 2.55(b)—Replacement of Facilities
5. Phasing and Incomplete Applications
6. Delegation to the Director
D. Discussion of Environmental Matters
1. Nonjurisdictional Facilities
a. Background
b. New Guidelines
c. Examples
2. Revisions to § 157.206(d), now § 157.103
a. Background
b. Revised Standards
c. Nonjurisdictional Facilities
d. Publication Requirement
e. Permit Requirements
f. Reconciliation Procedure
g. Compliance Report
h. Procedures for Compliance with the Endangered Species Act and National Historic Preservation Act
i. General Siting and Maintenance Requirements
3. Generic Procedures
4. Categorical Exclusions
5. Section 380.12
6. Applicant Prepared Environmental Assessment
7. Changes to § 157.14
VIII. Discussion—Rate Options
A. Procedures
1. Incremental Rates and the Transco Decision
2. Description of the Abbreviated Section 4 Procedure
B. Menu of Rate Options
1. Cost-Based Rates
2. New (Generally Applicable) At-Risk Terms and Conditions
a. Introduction
i. Placing Pipelines At Risk
ii. Lifting the At-Risk Terms and Condition
b. Overview of the New Regulations
i. Prohibition Against Cost Shifting
ii. Reservation Fees
iii. Minimum Throughput Conditions
iv. Prohibition Against Decreasing Design Throughput Volumes in Subsequent Rate Cases
v. Rate Design for Transportation Services
vi. Integrated Facilities: Looping and Compression
vii. Additional Terms and Conditions
viii. Capacity Brokering
c. The At-Risk Conditions Directed at Rate Design
i. Minimum Throughput Conditions
A. The New Regulation
B. Past Use of Minimum Throughput Conditions
1. Optional Certificate Proceedings
2. Project Financed Ventures
3. Offshore Louisiana Cases
4. Cases Setting Rates for Section 311 Transportation
C. Adoption of Minimum Throughput Conditions
ii. Prohibition Against Cost Shifting
iii. Reservation Fees
iv. Removal of the At-Risk Rate Conditions
d. Practical Application of the "Kansas Pipe Line" v. At-Risk Analysis
i. Transportation Services: Case-specific Authorizations under part 157, subpart A
A. Rates at the Time of Initial Authorization
B. Rates at the Time of Subsequent Section 4 Rate Proceedings
ii. Transportation Services: Non-case-specific Authorizations under part 157, subpart F, and part 284
A. Rates at the Time of Initial Authorization
B. Rates at the Time of Subsequent Section 4 Rate Proceedings
3. Negotiated Rates

i. Introduction
ii. The Competitive Negotiation Procedure
IX. Interplay Between the Two Menus
X. Environmental Analysis
XI. Regulatory Flexibility Certification
XII. Information Collection Requirements
XIII. Effective Date

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a final rule to revise its regulations governing authorizations to construct natural gas pipeline facilities and its environmental regulations. The final rule promulgates changes in the regulations necessary to reflect the competitive marketplace which has developed in the natural gas industry.

The final rule expands the options available for pipeline construction authorization and the recovery of associated costs. Two menus, one of construction authorizations and the other of rate, or cost recovery, options, are established. The options available in these menus may be coordinated in whatever manner would best accommodate the pipeline's proposal.

The final rule fulfills its major objective, to expedite pipeline construction authorizations, in several additional ways. First, it affirms the exemption from the certificate requirements of section 7 of the Natural Gas Act (NGA) for construction of facilities to be used solely for transactions under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Second, it reduces the number of construction projects that will require the filing of a part 157, subpart A application by removing the project cost limit for prior notice blanket construction and by increasing the project cost limit for automatic blanket construction to $10,000,000. Also, the definition of "eligible facility" for purposes of blanket construction is expanded to include mainline facilities and facilities which need to be replaced.

Third, the final rule creates a new "at-risk" framework to govern the recovery of costs associated with any pipeline construction project which does not meet the traditional criteria, as revised by the rule, generally governing the certification process. Each project placed "at risk" will proceed on its own authorization track. Therefore, the *Ashbacker* principle, as discussed more fully below, would not apply to these projects.

Fourth, the rule adopts a new abbreviated section 4 procedure which may be used to change a pipeline's existing rates in order to charge incremental cost-based or negotiated rates for new facilities. This procedure could be used in lieu of proceeding under the more lengthy procedures of a general section 4 rate filing.

Fifth, the final rule significantly revises the self-implementing environmental procedures previously set forth in § 157.206(d), and moves those requirements to § 157.103. The rule also sets forth the compliance procedures to be followed and the report to be filed with the Commission to verify compliance. Further, the rule eliminates four of the current environmental exhibit requirements and substitutes two new exhibits in their place.

Sixth, the rule codifies certain environmental review procedures. These procedures are not new, additional requirements, but merely represent a codification of well-established procedures which have previously been imposed on an informal basis. The codification of these requirements will eliminate any confusion applicants may have regarding the Commission's requirements and will, therefore, serve to expedite Commission review.

II. Reporting Requirements

The final rule consolidates the reporting requirements in FERC-577 (1902-0128) and FERC-577(A) (1902-0161), Gas Pipeline Certificates: Environmental Impact Statement, as contained in the Notice of Proposed Rulemaking issued August 2, 1990, in this proceeding, (FERC-577) and the related Interim Rule (Order No. 525) issued August 2, 1990, in Docket No. RM90-14-000 [FERC-577(A)]. This consolidation will result in a net increase (from 179,800 hours to 234,000 hours) in the total annual reporting burden under FERC-577. The estimated number of filings is expected to increase from approximately 1,110 at present [excluding the filings attributable to FERC-577(A)], to approximately 1,200 filings per year. Section 311 filings that were required under the Interim Rule (Order No. 525) are included in the 1,200 filings. The average burden per response under FERC-577 will increase from approximately 162 hours to 195 hours.

No change is expected in the total annual reporting burden or in the estimated hours per response with respect to FERC-537, Gas Pipeline Certificates: Construction, Acquisition, and Abandonment (1902-0060), or FERC-544, Gas Pipeline Rates: Rate Change (Non-formal) (1902-0154) because of offsetting decreases in hours required per response and increases in the number of responses and respondents.

The average estimated reporting burden per response includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these information collections, including suggestions for reducing this burden, to Mr. Mike Miller, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Energy Regulatory Commission, Washington, DC 20503.

III. Background

The Commission's long-standing goal has been to consider applications for construction of facilities throughout the country in a timely manner in order to enhance natural gas service to the public. Implicit in this goal is the obligation to facilitate gas service by considering construction proposals as expeditiously as possible, while still meeting the mandates of the Natural Gas Act (NGA),[1] the Natural Gas Policy Act of 1978 (NGPA),[2] and the various Federal environmental statutes.

Since fiscal year 1988 the Commission has issued certificates authorizing construction and operation of 170 major pipeline projects. These projects account for over 8,100 miles of new natural gas pipeline which provide approximately 23.2 Bcf per day of additional natural gas service. These facilities represent over $8.4 billion of new investment and are equivalent to approximately 4.2 MBbl of oil per day.

In processing these applications, the Commission has gained a great deal of experience in how best to fulfill one of its most important priorities: to expedite the consideration of construction proposals in order to get needed additional pipeline facilities built on a timely basis. The final rule being adopted here builds upon that experience and the realities of the market place as the Commission has come to see them. For example, as noted in our notice of proposed rulemaking,[3] last summer the Commission initiated a policy of phasing the processing of applications for section 7 certificates. Because it frequently takes a significant amount of time to complete the environmental reviews of certain

[1] 15 U.S.C. 717-717w.

[2] 15 U.S.C. 3301-3432.

[3] Revisions to Regulations Governing Certificates for Construction, FERC Stats. & Regs. ¶ 32,477, 55 FR 33,027 (Aug. 13, 1990) (Moler, dissenting).

projects, the Commission adopted the practice of issuing preliminary determinations on all non-environmental issues as soon as its analysis of such issues was completed.[4] The issuance of preliminary decisions has allowed the Commission to provide a greater degree of regulatory certainty to projects in a timely manner, pending completion of their environmental reviews. As will be discussed in greater detail below, the Commission has also taken significant steps toward revising its policies and procedures to reflect the fact that as the natural gas industry becomes increasingly competitive, it may be undesirable to continue holding pipelines to the traditional requirements for showing that a proposal is required by the public convenience and necessity. For example, in *Natural Gas Pipeline Company of America,*[5] the Commission states that "although specific reserve and customer data would be useful in our determination of whether the proposal is in the public convenience and necessity, the manner in which we apply the Commission's regulations depends upon the nature of the project." In that case, Natural's project was intended to provide additional capacity to alleviate a constraint on an existing line and to provide system-wide flexibility between Natural's mainlines and its gas supply fields, rather than to service a specific market or to transport source-specific reserves. Thus, the Commission found acceptable Natural's failure to submit specific gas supply data and precedent agreements or letters of intent to purchase gas from Natural. In *Northern Natural Gas Corporation* [6] and *ANR Pipeline Company,*[7] the Commission issued certificates for traditional pipeline construction projects, but required the pipelines to file fully executed contracts with shippers before any construction commenced. However, in a number of later cases, *eg., Transwestern Pipeline Company,*[8] *ANR Pipeline Company,*[9] and *Arkla Energy Resources, a Division of Arkla, Inc.,*[10] the Commission authorized the construction of facilities in the absence of executed firm contracts with shippers, but protected the interests of the public instead by placing the pipelines at risk for the costs associated with the new facilities in the event all of the newly constructed capacity were not subscribed under firm contracts at the time the pipelines filed to include the costs in their rates.

The Commission has also recently determined that, in the absence of a finding by the Commission that it would be unreasonable to do so, agreements between pipelines and their customers regarding rate design (specifically, agreements on straight fixed-variable or 100 percent demand charge rates as opposed to modified fixed-variable rates) should be approved.[11]

In early 1990, the Commission undertook the process of reviewing its procedures and regulations in an effort to determine additional ways to expedite authorization for the construction of new interstate natural gas pipelines in order to accommodate the rapid changes in the natural gas industry. This review focused both on the certificate provisions of section 7 of the NGA and the construction authority of section 311 of the NGPA, as well as the Commission's environmental review process.

During this period, the United States Court of Appeals for the D.C. Circuit issued a decision which remanded the Commission's interpretation of the section 311 "on behalf of" test.[12] The Commission recognized that its response to the *AGD-Hadson* decision should be coordinated with any action taken regarding section 311 construction as a result of the general review of construction authorizations. Specifically, since certain types of section 311 transportation services were held invalid in *AGD-Hadson,* the court's decision created uncertainty with regard to whether pipelines had sufficient authorization to construct certain facilities to render those services, or to continue operation of facilities for invalidated services. Therefore, the Commission decided to coordinate its consideration of the 311 regulations and the construction regulations.

Accordingly, on August 2, 1990, the Commission issued two interim rules and two notices of proposed rulemaking (NOPR). One NOPR and interim rule (the transportation rules. Docket Nos. RM90–7–000 [13] and RM90–13–000,[14] respectively) responded to the *AGD-Hadson* decision; the other NOPR and interim rule (the construction rules, Docket Nos. RM90–1–000 [15] and RM90–14–000,[16] respectively) were based on the Commission's review of its construction authorizations.

The transportation NOPR proposed to revise the regulations interpreting the "on behalf of" test to reflect the court's "safe harbor" suggestion set forth in the *AGD-Hadson* decision. This "safe harbor" interpretation would require an "on behalf of" entity to either (1) have physical custody of and transport the gas at some point, or (2) hold title to the gas at some point for a purpose related to its identity as a local distribution company or intrastate pipeline. The transportation interim rule adopted the "safe harbor" interpretation in order to provide regulatory guidance to interstate pipelines during the promulgation and adoption of a final transportation rule.

The construction NOPR, as described more fully below, proposed several significant changes to the regulations intended to expedite the pipeline construction process. It also proposed to amend the regulations to conform with the Commission's current practices and policies regarding the environmental review of proposed construction. The interim construction rule, issued simultaneously with the construction NOPR, required notification to the Commission 30 days prior to the commencement of any construction activity under section 311 or any replacement of facilities under § 2.55(b) of the regulations. The interim rule expires upon issuance of the final rule in this proceeding.

This order, adopting a final construction rule in Docket No. RM90–1–

[4] See, *e.g.,* Delta Pipeline Co., 52 FERC ¶ 61,004 (1990); El Paso Natural Gas Co., 55 FERC ¶ 61,180 (1991).

[5] 48 FERC ¶ 61,311 (1989).

[6] 51 FERC ¶ 61,316 (1990).

[7] 51 FERC ¶ 61,359 (1990).

[8] 54 FERC ¶ 61,031 (1991).

[9] 54 FERC ¶ 61,032 (1991).

[10] 54 FERC ¶ 61,033 (1991).

[11] See, *e.g.,* Texas Eastern Transmission Corp., 55 FERC ¶ 61,477 (1991); CNG Transmission Corp., 55 ¶ 61,479 (1991); Texas Eastern Transmission Corp., 55 FERC ¶ 61,482 (1991); Columbia Gas Transmission Corp., 55 FERC 61,478 (1991); Tennessee Gas Pipeline Co., 55 FERC ¶ 61,480 (1991); National Fuel Gas Supply Corp., 55 FERC ¶ 61,476 (1991); Tennessee Gas Pipeline Corp., 55 FERC ¶ 61,483 (1991); Tennessee Gas Pipeline Corp., 55 FERC ¶ 61,484 (1991); ANR Pipeline Co., 55 FERC ¶ 61,481 (1991).

[12] Associated Gas Distributors v. FERC, 899 F.2d 1250 (D.C. Cir. 1990), *reh'g denied.* No. 88–1856 (D.C. Cir. June 18, 1990) (*AGD-Hadson*).

[13] Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, FERC Stats. & Regs. ¶ 32,476, 55 FR 33,017 (Aug. 13, 1990).

[14] Order No. 526, Interim Rule on Transportation Under Section 311 of the Natural Gas Policy Act of 1978, FERC Stats. & Regs. ¶ 30,894, 55 FR 33,002 (Aug. 13, 1990), amended, Order No. 526–A, FERC Stats. & Regs. ¶ 31,899, 55 FR 40,828 (Oct. 5, 1990, effective Sept. 21, 1990), reh'g and stay denied, Order No. 526–B, 53 FERC ¶ 61,141 (1990).

[15] Revisions to Regulations Governing Certificates for Construction, FERC Stats. & Regs. ¶ 32,477 (1990), 55 FR 33,027 (Aug. 13, 1990) (Moler, dissenting).

[16] Order No. 525, Interim Revisions to Regulations Governing Construction of Facilities pursuant to NGPA Section 311 and Replacement of Facilities, FERC Stats. & Regs. ¶ 30,895 (1990), 55 FR 33,011 (Aug. 13, 1990) (Moler, dissenting), clarified, 52 FERC ¶61,252 (1990), reh'g denied, Order No. 525–A, 53 FERC ¶ 61,140 (1990), 55 FR 47, 457 (Nov. 14, 1990).

000, is intended as another step toward making the review and authorization of proposals for new pipeline construction as swift as possible. The final rule builds upon the extensive comments in the rulemaking proceeding and the experience gained by the Commission in its prior efforts to expedite its processes.

IV. The Construction NOPR

The construction NOPR addressed all the Commission's regulations which relate to pipeline construction. The following recounts the matters discussed in the NOPR.

A. NGPA Section 311 Construction

Section 311 construction authorization has historically been fully self-implementing, subject to compliance with certain environmental regulations. The NOPR questioned whether additional Commission oversight of these construction projects was necessary in light of the extensive construction being undertaken pursuant to this authorization. Rather than proposing a particular resolution, the construction NOPR requested comments on this matter. Specifically, the NOPR asked: Are the current regulations adequate? If not, why not? What, if any, changes are necessary?

The NOPR posed various options: (1) Rescind section 311 construction authority; (2) Require notification to the Commission prior to the commencement of any section 311 construction; or (3) Parallel the blanket construction authorization by setting project cost limits and/or limits on the types of construction which could be done under section 311. The NOPR emphasized that intrastate pipelines would not be affected by any changes to the regulations finally adopted in this proceeding.

B. NGA Section 7 Construction Authorizations

1. Project Cost Limits for Part 157 Blanket Construction

The construction NOPR also proposed to substantially decrease the number of projects which would require the filing of a case-specific application by increasing the project cost limits for blanket certificate authorizations. It was proposed to raise the project cost limit for automatic authorization from $5,800,000 to $10,000,000, and the project cost limit for prior notice authorization from $16,000,000 to $25,000,000.

However, the proposed rule would have precluded use of the automatic authorization for construction of facilities in urban areas or construction involving the removal of existing facilities which may be contaminated with toxic substances. The NOPR noted that there may be instances where a project would not be eligible for automatic authorization because of its proximity to existing residences, for example, but where the project cost would be less than the minimum cost amount for projects eligible to use the prior notice procedures. Therefore, the NOPR proposed to amend the prior notice regulations such that these types of projects could be authorized under the prior notice procedures despite the fact that their costs fell below the otherwise applicable range for those prior notice procedures.

2. Accelerated Part 157 Blanket Construction Authorization

The construction NOPR proposed an additional blanket certificate authorization, under subpart F of part 157, similar to the prior notice procedure. This authorization could be used for the construction of mainline or other extensive facilities which were prohibited under the existing blanket construction regulations. Under this procedure, a pipeline could construct facilities much more quickly than if its proposal were subjected to the longer processing time necessary for case-specific certificate applications filed under subpart A of part 157.

The NOPR proposed that any construction of facilities would be determined to be required by the public convenience and necessity if the following standards were met:

First, the pipeline facilities would have to be constructed by an interstate pipeline that holds both a blanket construction certificate under part 157 and a blanket transportation certificate under part 284.

Second, by meeting the first requirement, the pipeline would, by definition, have part 284 system rates in effect. The pipeline would be required to charge these existing rates for service on the new facilities. However, the pipeline could seek to include the cost of construction of the new facilities in its general rate base, or to establish incremental rates for the facilities, in a subsequent section 4 rate case. Further, the pipeline would be required to demonstrate that the new facilities would be operated as open-access facilities, and that the pipeline had conducted an open season to allocate the capacity on the proposed pipeline facilities.

Third, only uncontested proposals would be authorized under this procedure. Notice of the proposal would be published in the Federal Register with 45 days for interested parties to protest if the project would cost $25,000,000 or less. If the project would cost more than $25,000,000, but less than $50,000,000, the protest period would be 90 days. If no protest were filed by the Commission staff or others, or if a protest was filed and later withdrawn, the project could proceed under this procedure.

Last, the proposal could have no significant environmental impact. During the protest period, the Commission's staff would prepare an environmental assessment (EA). This condition for authorization would be met as long as the EA concluded with a Finding of No Significant Impact (FONSI). However, since mainline and other extensive facilities could be constructed under this procedure, the proposed rule would require submission of a complete environmental report, as is currently required for a case-specific Subpart A certificate. Submission of this information with the request for authorization would be necessary in order for the Commission staff to be reasonably expected to prepare an EA during the protest period.

Additionally, in order to avoid the delay associated with purportedly mutually exclusive proposals, the NOPR proposed requiring the filing of a notice of intent to file a competitive proposal within the protest period. Further, the NOPR proposed that the pertinent application would have to be filed within 30 days after the end of the protest period.

C. Revisions in Response to Environmental Concerns

1. Replacement of Facilities

The NOPR proposed elimination of the replacement of facilities from the definition of the exemptions set forth in § 2.55(b) of the Commission's regulations. The Commission believed this change was necessary in order to meet the mandates of various environmental statutes. The NOPR pointed out that replacement of these facilities could be pursued under other authorizations.

2. Local Publication

The NOPR proposed that the environmental compliance sections of the regulations for all construction authorizations require notice of the proposed construction by a one-time publication in a local newspaper. This requirement was intended to ensure that property owners and local governments had notice of the proposed construction in order to file timely motions to intervene or protests.

D. Delegation to the Director

The NOPR recognized that projects which may be authorized by the Director of the Office of Pipeline and Producer Regulation (OPPR) are generally certificated more quickly than those that must come before the Commission for review. Therefore, the NOPR proposed to increase the cost limits for proposals to construct, acquire or operate facilities subject to the authority of the Director from the current cost limit of $5,000,000 to $25,000,000. This figure would be adjusted each year to reflect inflation. For the same general reasons, the NOPR proposed to expand the Director's authority to include action on all uncontested pipeline and producer applications for abandonment of service of facilities.

E. Processing of Applications

1. Phasing

The NOPR also discussed the Commission's policy for phasing its review of the environmental and non-environmental aspects of applications. Due to the time required for completion of an environmental review, the certification process is often delayed. By phasing the environmental and non-environmental review processes, analysis and determination of non-environmental and environmental issues may be done on a more timely basis. This in turn provides regulatory certainty and stability to pending projects by facilitating matters dependent primarily upon the non-environmental findings of the Commission, *e.g.*, financing arrangements and contract negotiations. The NOPR explained that the issuance of preliminary findings is intended to increase competition by enhancing natural gas companies' ability to provide service to new or expanded markets, thereby affording natural gas companies greater opportunity to compete effectively in the marketplace.

2. Mutually Exclusive Proposals

Recognizing the delay associated with the filing of potentially mutually exclusive applications, the construction NOPR requested comments on methods to avoid this delay. In determining what is in the public interest, the Commission's emphasis has shifted in recent years to reliance upon competition and market forces to ensure deliveries of adequate supplies of natural gas to consumers at the lowest reasonable price. To that end, the Commission has adopted procedures. (*e.g.*, the open-season process[17]) to limit the applicability of the *Ashbacker* principle, which requires comparative consideration of mutually exclusive applications.[18] The NOPR requested comments on other ways the Commission could streamline review of purportedly competitive projects without violating the *Ashbacker* principle.[19]

3. Deficit Applications

The NOPR emphasized that, in order for the Commission to process a certificate application quickly, the application as submitted must be complete. Analysis of application deficiencies, and the resultant time needed to obtain the information required to complete the application, necessarily delays the issuance of a certificate. Therefore, the construction NOPR provided notice of the Commission's intention to reject any incomplete application.

F. Codification of Current Practices

Two areas of the Commission's regulations—those regarding optional certificates and the environment—did not reflect the current state of the Commission's policies and practices. Accordingly, the construction NOPR proposed to update the regulations by codifying the existing policies and practices. The NOPR did not propose to impose additional requirements or to expand filing requirements; rather, the NOPR proposed merely to codify established practices and policy so that applicants would have full knowledge of all requirements prior to filing for authorization.

1. Optional Certificates

The optional certificate procedures in effect when the NOPR was issued required that the applicant be willing to assume the risk of under-utilization of the proposed facilities. In exchange for assuming the risk of the project, there was a rebuttable presumption that a proposed project was required by the public convenience and necessity. Those procedures were upheld by the United States Court of Appeals for the D.C. Circuit in *AGD* v. *FERC*,[19] and *Public Utilities Commission of the State of California* v. *FERC*.[20] The NOPR proposed revising the optional procedures so that the regulations would reflect those decisions, as well as current Commission policy.

First, the NOPR precluded an applicant from seeking certificate authorization simultaneously for the same facilities under both the optional procedures and case-specific certificate procedures.

Second, the NOPR proposed codifying Commission precedent regarding reservation fees by requiring that (1) the fee result from arms-length negotiations between the pipeline and the customer, (2) the lowest negotiated fee be made available to all shippers, and (3) all remaining capacity be offered at the lowest negotiated reservation fee, once the facilities are operational.

Third, the application would be required to include a methodology for determining the initial allocation of firm transportation capacity. The applicant would also be required to provide procedures for the establishment of an open season. The NOPR stated that capacity could be allocated by (1) first-come, first-served, (2) the present value of the reservation charge per Mcf, or (3) any other nondiscriminatory method.

In addition, the NOPR revised the environmental compliance requirements for optional certificates by eliminating the provision which prohibits the granting of an optional certificate where the facilities would have a significant adverse impact on a sensitive environmental area. This proposed revision would not compromise the Commission's National Environmental Policy Act (NEPA)[21] responsibilities because the Commission would prepare an EA for the proposed project and would impose appropriate mitigation measures.

Finally, the NOPR invited comments on whether the Commission should eliminate optional certificate authority for sales service and, if not, whether the existing regulations should be revised with respect to optional certificates for sales service. The NOPR also invited comments on whether optional certificate holders should be required to allow capacity brokering, as a condition to certification.

2. Environmental Procedures

The NOPR proposed to update and codify the Commission's existing environmental review procedures, particularly with respect to the data to be provided by applicants. The environmental data requirements had been implemented in an informal

[17] See, *e.g.*, Northeast U.S. Pipeline Projects, 40 FERC ¶61,087 (1987), *reh'g granted*, 40 FERC ¶61,310 (1987).

[18] *Ashbacker Radio Corporation* v. *FCC*, 326 U.S. 327 (1945).

[19] *Associated Gas Distributors* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987).

[20] 90 F.2d 269 (D.C. Cir. 1990). (*California PUC*).

[21] 42 U.S.C. 4321 (1990).

fashion over a period of years, through a combination of regulatory requirements and routine staff data requests. The NOPR proposed codification of these various requirements in order to provide a central and comprehensive set of requirements for applicants to follow. Further, an applicant would then know, and could prepare to meet, these requirements prior to filing an application.

In addition, the NOPR proposed codification of the current procedures for erosion control and revegetation as well as for stream and wetland crossings. However, the NOPR allowed for variations on the theme. In other words, applicants could adopt the codified procedures or use different procedures upon a showing that their alternative plan would be as, or more, effective than the codified procedures. The NOPR asserted that using the codified procedures would result in an EA or environmental impact statement (EIS) being prepared more quickly and ensure a consistent level of environmental mitigation.

V. The Final Rule

The final rule contemplates providing maximum flexibility in the options available to pipelines planning the construction of new facilities. In this vein, the regulations provide two basic menus of authorizations from which a pipeline may choose: The construction authorization menu and the rate structure menu.

The specifics of each menu are described more fully below. However, the concept envisions giving pipelines several options which comport with the current state of the natural gas industry. The pipeline would choose which combination of options would best serve its goals. In addition to the combination of options chosen, the pipeline would also have control over the ultimate timing of the exercise of those options. In this way, pipelines may tailor authorization packages to best reflect the needs of their customers.

As noted above, in addition to offering the menus of options, the final rule fulfills its major objective of expediting pipeline construction in several other ways.

First, the rule affirms the exemption from section 7 certificate requirements of the construction of facilities to be used solely for section 311 transactions. The final rule does not restrict the type or size of facilities which may be constructed under this authorization. It does, however, require that notification of such construction be provided to the Commission at least thirty days prior to construction.

Second, it reduces the number of construction projects that will require the filing of a part 157, subpart A application by removing the project cost limit for construction under the part 157, subpart F prior notice regulations, and by increasing the project cost limit for projects which may be done under the subpart F automatic regulations to $10,000,000. Also, the definition of "eligible facility" is expanded to encompass, among other things, mainline facilities and facilities which need replacement.

Third, the final rule revises in part the traditional *Kansas Pipe Line* [22] criteria governing the certification process, particularly in the area of gas supply data, and creates a new at-risk framework to govern, generally, all pipelines not meeting those criteria. Specifically, the new at-risk framework will apply uniformly to all pipelines not meeting the *Kansas Pipe Line* criteria that are authorized either: (1) Pursuant to section 7 of the NGA, to construct new facilities and charge cost-based rates for sales or transportation service; or (2) pursuant to section 311 of the NGPA and charge cost-based rates for section 311 transportation service. All pipelines proposing cost-based rates but not meeting the *Kansas Pipe Line* criteria will be placed at risk for their projects (*i.e.*, denied the presumption of prudence implicit in a public convenience and necessity finding).

In the case of part 157, subpart A, case-specific authorizations, this *Kansas Pipe Line*/at-risk analysis will occur at the time of certification and, if the pipeline is placed at risk, again later in a section 4 proceeding if the pipeline seeks to have the risk condition removed. In the case of projects authorized under part 157, subpart F, self-implementing or prior notice procedures, the *Kansas Pipe Line*/at-risk analysis will occur during any subsequent abbreviated or full section 4 proceeding in which the pipeline seeks to change its existing Part 284 rates to charge an incremental rate for new facilities, or roll the costs of the new facilities into its existing systemwide rate base.

This new at-risk framework borrows heavily from the optional certificate regulations at part 157, subpart E, which we are rescinding here, and from their accompanying case law. To this extent, then, the new at-risk framework does not completely do away with the optional certificate procedures; it merely reformulates them and then merges them with the traditional section 7(c) procedures to create a single analytical structure applicable not only to initial case-specific certifications, but also to subsequent section 4 rate proceedings involving case-specific, self-implementing, and blanket construction authorizations.

Further, since all pipeline construction projects not meeting the *Kansas Pipe Line* criteria will be at risk, each project will proceed on its own authorization track. Therefore, the *Askbacker* principle, as discussed more fully below, will not apply to these applications.

Fourth, the rule establishes a new abbreviated NGA section 4 procedure. This procedure may be used to change a pipeline's existing rates to establish incremental cost-based or negotiated rates for new facilities. For example, suppose a pipeline plans to build new facilities pursuant to the self-implementing authority of section 311. Under current regulations, the pipeline would be required to charge its existing Part 284 transportation rates for service on the facilities. Further, it could only seek to recover the costs associated with the construction of the facilities by filing a full-blown rate case pursuant to § 154.63 of the regulations.[23] However, by utilizing the abbreviated procedures established in this rule, the pipeline could file to recover those costs through incremental rates without having to proceed under the more lengthy procedures in § 154.63. Whether and when such filing would be made would be up to the pipeline. Regarding the timing of filing, the pipeline has the option of filing early enough to have rates approved at the initiation of service on the new facilities or, alternatively, at any time after initiation of service.

Fifth, the final rule revises significantly § 157.206(d), now § 157.103, such that compliance with that section is the equivalent of a finding of no significant impact for NEPA purposes. Therefore, any pipeline project, including case-specific, blanket, or section 311 construction projects, may proceed and utilize these self-implementing environmental regulations, providing full compliance with the requirements of § 157.103 can be met. The rule also promulgates regulations setting forth the compliance procedures to be followed and the means for verifying that compliance to the Commission.

[22] Kansas Pipe Line & Gas Company, *et al.*, 2 FPC 29 (1939).

[23] Transcontinental Gas Pipe Line Corporation, 44 FERC ¶ 61,400 (1988), *reh'g denied*, 45 FERC ¶ 61,403 (1988); Transcontinental Gas Pipe Line Corporation, 44 FERC ¶ 61,174 (1988), *reh'g denied*, 44 FERC ¶ 61,403 (1988).

Sixth the final rule eliminates four of the current environmental exhibit requirements and substitutes two new exhibits in their place.

Seventh, the rule updates and codifies the Commission's environmental review procedures, particularly with respect to the data provided by applicants. It must be emphasized that we are not imposing additional environmental requirements through these regulations. Rather, we are codifying well-established Commission procedures which have heretofore been imposed on an informal basis. The codification of these various requirements provides a clear statement of what the Commission expects each applicant to file, thus eliminating confusion and expediting the processing of applications for construction authority.

VI. Comments and Reply Comments

The Commission received approximately seventy initial comments on the NOPR and twenty-two reply comments. Appendix A contains a list of those filing initial comments and appendix B contains a list of those filing reply comments. In addition, Interstate Natural Gas Association of America and Natural Gas Pipeline Company of America filed supplementary comments after their reply comments. Appendix I contains a summary of all of the comments we received.[24]

VII. Discussion—Construction Authorizations

As was discussed in the NOPR, the purpose of this rulemaking is to provide the Commission the opportunity to review and revise its regulations governing pipeline construction in order to expedite Commission consideration of pipeline projects as much as possible, given the limitations imposed by various statutes. The NOPR posed several suggested changes to the regulations which provided a sounding board for the public and a forum in which the Commission could benefit from the public's experience and expertise in the natural gas industry.

The comments and reply comments in this proceeding fully address the issues raised in the NOPR, as well as defining additional issues and concerns. The commenters also offered many innovative ideas for revising and improving the pipeline construction process. In addition to these comments, the final rule is based on the experience we have gained since issuance of the NOPR. After full review and consideration of these comments and reply comments, and keeping in mind that the varied interests and needs of the public must be balanced and weighed in the consideration of this rule, the Commission has determined that the revisions to the regulations discussed below will best serve the public interest.

A. Kansas Pipe Line Revisited

1. Traditional Standards

In reaching a determination of how the public interest will best be served, we must look first to the definition of "public convenience and necessity." In 1939, the Commission defined "public convenience and necessity" as:

> a public need or benefit without which the public is inconvenienced to the extent of being handicapped in the pursuit of business or comfort or both—without which the public generally in the area involved is denied to its detriment that which is enjoyed by the public of other areas similarly situated. (Citation omitted.)[25]

Kansas Pipe Line also set forth the minimum requirements the Commission found necessary to ensure protection of the public while encouraging expansion of service where needed. The *Kansas Pipe Line* criteria requires an adequate showing by the applicant that:

(1) The applicant possesses a supply of natural gas adequate to meet those demands which it is reasonable to assume will be made upon them;

(2) There exists in the territory proposed to be served customers who can reasonably be expected to use such natural-gas service;

(3) The facilities for which they seek a certificate are adequate to render a full and complete public service in the territory proposed to be served;

(4) The applicant possesses adequate financial resources with which to construct the facilities;

(5) The costs of construction of the facilities which they propose are both adequate and reasonable;

(6) The rates to be charged in the future should reflect cost, and that the original cost of construction must be reasonable; and

(7) The anticipated fixed costs or the amount of such fixed costs (such as operating and maintenance expenses, depreciation, taxes, and return) must be reasonable.[26]

The Commission's determination of public convenience and necessity in construction certificate proceedings has been based upon this standard for over fifty years.

2. Evolution of Kansas Pipe Line in Case Law

The natural gas industry in 1939 was dramatically different from the industry that exists today. In 1939, the development of a national natural gas pipeline grid was in its beginning stages. Furthermore, pipelines rendered gas service as merchants of natural gas—by purchasing gas from producers, transporting that gas to a delivery point, and ultimately selling the gas to local distribution companies or industrial end-users. The rate charged for this service was a bundled charge representing, generally, the cost of the gas added to certain costs associated with the construction and operation of the transporting facilities. Consumers to whom natural gas service was available usually had but one source from which to purchase natural gas. Comprehensive regulation was needed at that time because of the monopolistic nature of the pipeline industry. Over the decades, however, the industry has evolved into a more competitive, market-based form of commerce.

This transition was prompted by enactment of the Natural Gas Policy Act of 1978. Among other things, Congress intended for this statute to encourage market forces to play a "more significant role in determining the supply, the demand, and the price of natural gas." [27] Congress reemphasized its intention to inject an atmosphere of competitiveness into the natural gas industry by enacting the Natural Gas Wellhead Decontrol Act in 1989.[28]

In Order No. 436,[29] the Commission recognized that, in order to encourage competition in the marketplace, there should be a basis for determining that a project was required by the public convenience and necessity other than requiring an applicant to meet the requirements of a traditional *Kansas Pipe Line* analysis. The Commission determined that the public could,

---

[24] The full name of each commenter and reply commenter, as well as the abbreviation used for each, appear in appendices A and B, respectively.

[25] Kansas Pipe Line, supra note 22.

[26] *Id.*

[27] *Transcontinental Gas Pipe Line Corporation* v. *State Oil and Gas Board of Mississippi*, 474 U.S. 409, 422 (1986).

[28] Pub. L. No. 101–60, 103 Stat. 157 (1989).

[29] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42,408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,665 (1985), vacated and remanded, Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), readopted on an interim basis, Order No. 500, 52 FR 30,334 (Aug. 14, 1987), FERC Stats. & Regs. ¶ 30,761 (1987), remanded, American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989), readopted, Order No. 500–H, 54 FR 52,344 (Dec. 21, 1989), FERC Stats. & Regs. ¶ 30,867 (1989), reh'g granted in part and denied in part, Order No. 500–I, 55 FR 6605 (Feb. 26, 1990), FERC Stats. & Regs. ¶ 30,880 (1990), aff'd in part and remanded in part, American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990).

instead, be protected by allowing the builder to assume the economic risk of failure of a project; in other words, market forces could be relied upon to determine the ultimate need for the facilities as long as the consumer was protected. This determination was made in the context of adopting regulations implementing optional certificates as an alternative to traditional section 7(c) construction authorization.[30]

As the industry has continued to evolve since issuance of Order No. 436, it has become apparent that requiring a traditional *Kansas Pipe Line* analysis for construction of facilities to be used for open access transportation may be inefficient, unwieldy, and unnecessary. More and more frequently, applicants for construction authority cannot provide adequate information to issue a certificate under the traditional *Kansas Pipe Line* analysis and still compete for new business in the marketplace. For example, historically, source and firmness of supply have been important factors in section 7(c) certification. Generally, an applicant has had to demonstrate the existence of a long-term supply source prior to receiving Commission authorization to proceed with a project.[31] While in the recent past the Commission has shifted its emphasis from a showing of specific supply commitments to a more general demonstration of supply availability and access,[32] the underlying premise has remained the same in traditional section 7(c) cases—that the Commission should be sufficiently confident that available sources of supply will flow through the proposed facilities in adequate volumes to justify the expense of the new facilities. In cases involving proposed new facilities designed to receive imported gas, the Commission has in the past conditioned section 7(c) certificates to require the applicants to obtain long-term export authorization prior to commencement of construction.[33]

Today, since pipelines are operating on an open access basis, a discrete, pre-determined gas supply is not required; there is an abundance of gas available throughout the country that can be readily accessible. Nor is the upfront designation of a pre-determined gas supply necessarily desirable in today's competitive atmosphere. Instead, shippers who utilize pipeline facilities for transportation should be able to draw upon a myriad of gas supply sources. This is consistent with the deregulation of wellhead gas.[34]

Likewise, since these same shippers determine the market that will be served with the gas transported, a pipeline may be unable to provide the same type of evidence of demand which has previously been required under the traditional *Kansas Pipe Line* analysis. To this end, we note that, where a pipeline applicant has sought traditional 7(c) authority to construct pipeline facilities, historically our policy has been to require the applicant, prior to the time it commences construction, to have executed firm contracts and supporting market data volumes equivalent to the total capacity of its proposed facilities.[35]

As a result of the competitive transformation of the industry, the Commission has granted certificate authority for construction of facilities where the gas supply or market showing is not as strong as once required. However, as the preliminary impetus behind the NGA, and thus the mandate of this Commission, economic protection of the public must remain an overriding concern. Therefore, in these cases,[36] the Commission endeavored to promote a competitive market while simultaneously providing economic protection for the public by placing the pipeline "at risk" for the potential economic failure of a project. The Commission concluded that rigid adherence to the historical supply and market analysis approach may no longer serve the public interest because the imposition of such requirement could impede the availability of new sources of competitively priced and environmentally preferable energy.[37]

The Commission initially imposed conditions on these certificates on a case-by-case basis and tailored the conditions to the specific facts of the individual cases. For example, the Commission required execution of service agreements with all of the pertinent shippers prior to the commencement of any construction of facilities in instances where insufficient gas supply information was provided.[38] The Commission has also required submission of an "analysis of the incremental revenues and costs associated with these facilities and services" in any rate case where the applicants file to include the facilities in their rate base.[39] In an instance involving gas to be imported from Canada, the Commission issued a certificate subject to one of two conditions: (1) Construction would not begin until copies of final, long-term export licenses from the Canadian National Energy Board were filed, or (2) the applicants would bear the full responsibility for any deficiency in cost recovery due to the length of the export authorization.[40]

As these types of certificate applications became increasingly more common, the Commission issued several orders implementing a consistent policy in this regard.[41] In addressing the approach adopted in those orders, the Commission stated:

> (W)e do not intend to abandon our responsibility to ensure that present and future customers do not make inappropriate contribution to the costs associated with newly constructed facilities. This we intend to accomplish by placing the pipelines at risk for the costs associated with their new facilities in the event all of the newly constructed capacity is not subscribed under firm contracts at the time the pipelines file to include the costs in their rates.* This can be accomplished in various ways. For example, the Commission could limit a pipeline's cost

[30] Order No. 436, *supra*, at 31,569.

[31] Tennessee Gas Pipeline Company, 52 FERC ¶ 61,257 at 61,926 (1990) (Niagara import point projects (*NIPPS III*)).

[32] *Cf.* Optional Certificates, part 157, subpart E of the Commission's Regulations, 18 CFR 157.100, *et seq.*

[33] *See* Great Lakes Gas Transmission Co., *et al.*, Opinion No. 577, 43 FPC 635. See also, Pacific Gas Transmission Co., 56 FERC ¶ 61,192 (1991).

[34] See also, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation, IV FERC Stats. & Regs. ¶ 32,480 (1991). In that rulemaking, the Commission proposed making a finding that the market for natural gas sales is competitive on a national level. This finding would support elimination of the requirement that a showing of divertable supplies must be made to justify market-based sales rates.

[35] See, e.g., Tennessee Gas Pipeline Company, *et al.*, (Niagara import point projects (NIPPS) II), 51 FERC ¶ 61,113 (1990); Tennessee Gas Pipeline Company, *et al.*, (*NIPPS III*), 52 FERC ¶ 61,257 (1990); Iroquois Gas Transmission System, L.P., Opinion No. 357, 53 FERC ¶ 61,194 (1990).

[36] See, e.g., Natural Gas Pipeline Company of America, 48 FERC ¶ 61,311 (1989); Tennessee Gas Pipeline Company, 51 FERC ¶ 61,113 (1990) (NIPPS III); Transcontinental Gas Pipe Line Corporation, 51 FERC ¶ 61,173 (1990); East Tennessee Natural Gas Company, 51 FERC ¶ 61,247 (1990); Northern Natural Gas Corporation, 51 FERC ¶ 51316 (1991); ANR Pipeline Company, 51 FERC ¶ 61,359 (1990), reh'g granted, 52 FERC ¶ 61,052 (1990); Northern Border Pipeline Company, 52 FERC ¶ 61,272 (1990), reh'g granted, 53 FERC ¶ 61,138 (1990); Natural Gas Pipeline Company of America, 54 FERC ¶ 61,030 (1991); Transwestern Pipeline Company, 54 FERC ¶ 61,031 (1991); ANR Pipeline Company, *et al.*, 54 FERC ¶ 61,032 (1991); Arkla Energy Resources, 54 FERC ¶ 61,033 (1991); United Gas Pipe Line Company, 54 FERC ¶ 61,109 (1991); Colorado Interstate Gas Company, 54 FERC ¶ 61,196 (1991); Midwest Gas Storage, Inc., 55 FERC ¶ 61,140 (1991).

[37] See, Arkla Energy Resources, 54 FERC ¶ 61,033 at 61,136 (1991).

[38] See, *e.g.*, Transcontinental and ANR, *supra*.

[39] See, *e.g.*, ANR, *supra*.

[40] See, *e.g.*, Tennessee, NIPPS II and III, *supra*.

[41] Natural Gas Pipeline Company, 54 FERC ¶ 61,030 (1991); ANR Pipeline Company, *et al.*, 54 FERC ¶ 61,032 (1991); Transwestern Pipeline Company, 54 FERC ¶ 61,031 (1991); Arkla Energy Resources, 54 FERC ¶ 61,033 (1991); United Gas Pipe Line Company, 54 FERC ¶ 61,109 (1991); Colorado Interstate Gas Company, 54 FERC ¶ 61,196 (1991).

recovery to only the capacity for which it has firm contracts for service to satisfy the at risk condition. The Commission also could determine that it would set rates based on 100 percent of the new facilities' capacity irrespective of the volumes subscribed to. These and other approaches would allow the Commission to ensure that ratepayers do not pay for unused capacity. * * * But to provide certainty to these applicants, we will place [the applicants] at risk by allowing them to recover only the costs associated with the capacity for which they have executed firm contracts.[42]

* The duration of these contracts would have to be at least equal to the term required to meet the Commission's contract standard in traditional 7(c) certificates. We note that most construction is supported by contracts with terms of 10 years or more.

As a result of this analysis, these case-specific certificates were placed at risk for project failure, in a way similar but not identical to optional certificates.

The Commission recently explained that any initial rate authorized in a certificate proceeding, including a rate designed to place a pipeline at risk as described above, is subject to review in the pipeline's next general rate case in order to ensure that "all factors and circumstances that bear on whether a rate is just and reasonable are considered." [43] Further, it was explained that:

(t)he Commission has no authority under section 7 of the NGA to establish just and reasonable rates or to alter previously approved rates for the pipeline's services that are not before the Commission in the certificate proceeding. (Citation omitted.)

Thus, the Commission cannot give assurance that it will approve rolled-in treatment of costs of [a] project in a future rate proceeding. Even assuming there is evidence in the present record indicating that the proposed facilities would have system-wide benefits, it would not be appropriate to give [the applicant] advance approval for rolled-in treatment, since circumstances and factors affecting such a determination may well have changed by the time the facilities are in operation, assuming they are certificated.

However, the Commission offered guidance regarding the elements considered to determine whether an initial rate may subsequently be rolled-in to rate base or must remain an incremental rate.

The Commission's traditional policy is to permit pipelines to roll facility costs into existing system-wide rates when the pipeline demonstrates that the facilities benefit existing customers. The Commission's guiding principle is that "allocation of costs should reflect costs incurred and cost responsibility." In order to roll the cost of new facilities into existing system-wide rates, the pipeline must show that the "existing customers will not subsidize the customers that benefit from these new facilities." The application of those principles, of course, turns on the specific facts as determined on a particular record. It should be noted that when incremental facilities significantly increase the rates of existing customers, the pipeline must specifically address and justify rolled-in rates by showing system-wide benefits to existing customers commensurate with the increase in rates. Assuming net benefits to the existing customers, it may well be that rolled-in rate treatment will be appropriate for the (particular) project. However, such a determination will be saved for a future rate proceeding, in which opponents of the proposed rate treatment would have the opportunity to raise their objections. (Citations omitted.) [44]

3. At Risk By Any Other Name is Still At Risk

As we stated in the NOPR, the optional certificate authorization was introduced as part of a package of regulatory reforms designed to promote competition among pipelines by easing market entry and exit restrictions caused by potentially lengthy regulatory proceedings.[45] Through this final rule, we further refine the regulations in order to advance those same goals.

The NOPR proposed codifying Commission precedent and policy regarding optional certificates. However, in reviewing the comments to this proposal, and in the course of examining construction certificate authorizations generally, it has become clear that certain aspects of traditional and optional certificate authorizations have merged, and inevitably will continue to do so. This development has many public policy benefits. However, it is cumbersome to have two sets of regulations in effect which provide separate forums in which to address the allocation of risk for recovery of facility construction costs. Further, the present overlap in the regulations does not provide sufficient regulatory certainty and evidence to the public.

Therefore, the rule promulgated herein provides that risk allocation may be considered in all available forms of construction authorization. As a result of this development, there is no longer a practical need for the optional certificate authorization found in part 157, subpart E of the regulations. For the same reasons, and in conjunction with the changes to the prior notice regulations (discussed below) adoption of the "accelerated" prior notice procedure proposed in the NOPR is unwarranted. Instead, all projects will be treated consistently, *i.e.*, any project which does not satisfy the Kansas Pipe Line criteria, as revised below, will be placed at risk for the underutilization of any pipeline facilities.

4. Codification of the Revised Kansas Pipe Line Standards

As can be seen, the Kansas Pipe Line standards are a set of criteria that have evolved in the case law over the last 50 years. For the most part, the standards are reflected in the filing requirements set forth in § 157.14 of the regulations. For purposes of the at-risk regulations that we are adopting here (see discussion *infra*), we are codifying the seven Kansas Pipe Line standards at a new § 157.102(b) of the regulations.

These standards are the same as those described above, with two exceptions. First, we are continuing to relax the filing requirement related to gas supply. As a general matter, we find that there is sufficient natural gas available throughout North America to support most new construction.[46] Accordingly, in the future we will require only a statement by the applicant describing: (1) those production areas accessible to the proposed construction that contain sufficient existing or potential gas supplies for the proposed project; and (2) how those production areas are connected to the proposed construction. This relaxed standard appears at § 157.102(b)(1) of the new rules and in the filing requirement at § 157.14(a)(10).

Second, we are interpreting the market demand portion of the Kansas Pipe Line standards, set forth at § 157.102(b)(2) of the new regulations, as requiring a showing by the applicant that it has long-term [at least 10-year] contracts for 100 percent of the capacity of the proposed facilities. However, we will not look behind those contracts to ascertain whether there is an actual market. We believe that a contract is sufficient evidence that a market exists.

If a pipeline proposing cost-based rates for new construction meets all seven of the Kansas Pipe Line standards set forth at new § 157.102(b), it will be able to charge rates for service through the new facilities that ensure it full cost recovery of those facilities if it achieves its projected throughput. If the pipeline cannot or does not want to meet any of those seven standards, however, its proposal is not doomed: instead, it will

[42] *Id.*

[43] Northwest Pipeline Corporation, Preliminary Determination on Non-Environmental Issues, 56 FERC ¶ 61,006 (1991).

[44] *Id.*

[45] Revisions to Regulations Governing Certificates for Construction, FERC Stats. & Regs. ¶ 32,477 at 32,462.

[46] *See* also Pipeline Service Obligations, IV FERC Stats. & Regs. at 32,548.

be placed at risk for the success or failure of the project by operation of the new at-risk terms and conditions (which we discuss in detail later in this order). Pursuant to § 157.102(g) of the new regulations, the pipeline may subsequently seek removal of the at-risk terms and conditions imposed on the new facilities by satisfying, in a section 4 filing, either the Kansas Pipe Line standards still applicable to it,[47] or the new net benefits test. The net benefits test requires a showing by the pipeline that the incremental revenues received by it for services requiring the new facilities exceed the cost of service for those facilities.

B. The Ashbacker Principle

Under the *Ashbacker*[48] principle, authorization for one project which would preclude authorization for a similarly situated, mutually exclusive proposal may only occur after a comparative review of the two competitive proposals. In *California PUC*,[49] the court addressed the *Ashbacker* principle with regard to two purportedly competitive applications: one was filed under the traditional certificate authorization, the other was filed under the optional certificate (OC) authorization. In that case, it was argued that the Commission's "accelerated processing of (an OC) application in this case violated fundamental fairness and the spirit of *Ashbacker* * * *" It was further argued that the Commission's procedures "would thwart competition by giving an unfair advantage to (the OC applicant)." The court responded by finding "*Ashbacker* only marginally relevant to these facts and, while the pipeline's fairness principle may be sound, we believe that the evolution of the Commission's OC criteria here created no unfairness." Further,

> Ashbacker cannot intelligibly be understood to require that an agency consolidate into a single comparative hearing applications that are proceeding on legitimately established separate tracks. If an application under traditional section 7 procedures for a certificate that was economically inconsistent with an (OC) application triggered a comparative hearing under traditional section 7 principles, the (OC) procedures would be undone—at least in any case where a competitor chose to undo them. Indeed, such a principle would destroy *any* agency's decision to streamline adjudicatory procedures for a specially defined class of applicants: if the tortoises are entitled to engulf the hares in their proceedings, they can destroy the fact track's speed and thus its existence as a fast track. The Ashbacker principle takes this into account, requiring only that an agency "use the same set of procedures to process the applications of all similarly situated persons who come before it seeking the same license." Obviously applicants under the (OC) and traditional section 7 procedures are not similarly situated; the first have met generic threshold requirements that the second have been unwilling or unable to satisfy.[50]

As a result of the restructuring of the regulations here, all pipeline projects which do not meet the codified *Kansas Pipe Line* criteria will be considered "optional" projects and the project sponsors placed at risk for the failure of the projects. Only if a project sponsor supplies the information required by the *Kansas Pipe Line* criteria will the project sponsor not be placed at risk for underrecovery of its costs. Therefore, since the information provided will vary with each project, due to the various types of projects needed to meet a competitive marketplace, the *Ashbacker* principle will generally not apply because each application, in essence, will be pursued on a separate track.

Further, "(i)t is economic not legal mutual exclusivity that triggers *Ashbacker*."[51] Whether or not each individual project is economically feasible will be determined by the market and the project sponsor's exercise of good business judgment. To such end as a project is not, in actuality, profitable, the project sponsor will bear the risk of the underrecovery of its costs, not the public.

However, there still exists the potential for the filing of two applications which each meet the *Kansas Pipe Line* standards and are potentially mutually exclusive. In the construction NOPR, the Commission proposed to limit the time period within which a competitive filing could be made pursuant to the proposed "accelerated" prior notice procedure. The final rule does not adopt the "accelerated" procedure. However, the time limitation for competitive filings is included in the final rule for both subpart A case-specific applications and subpart F prior notice filings. That is, a notice of intent to file a competitive application must be filed, as appropriate, either within the intervention period for case-specific applications or the protest period for prior notice filings. A complete competitive case-specific application or prior notice filing must be filed within 30 days of the expiration of the intervention or protest period in order to receive contemporaneous review.

C. Menu of Construction Authorization[52]

As stated above, the optional certificate procedures currently found in subpart E are being rescinded; however, the assumption of risk philosophy underlying the promulgation of the optional certificate regulations is now embodied in all of the remaining authorizations for construction of facilities. The resultant construction authorizations options are as follows:

1. Part 157, Subpart A—Case-Specific Authorization

Under this authorization, an application pursuant to subpart A of part 157 would be filed as before. If the applicant is able to submit the information required to meet the *Kansas Pipe Line* standards, the application would be reviewed as such and, assuming all requisites are met, a case-specific construction certificate would be issued. However, if the applicant provides less than sufficient data to support the findings set forth in *Kansas Pipe Line*, the certificate would be conditioned such that the pipeline would bear any economic risk associated with the project through imposition of the at-risk provisions discussed above.[53]

2. Part 157, Subpart F—Automatic and Prior Notice

Subpart F encompasses the regulations governing blanket construction authorizations. This rule greatly expands projects for which the blanket construction authorizations may be employed. First, it eliminates the project cost limit for prior notice blanket construction authorization and decreases the protest period from 45 to 30 days after the date of publication of the prior notice request in the Federal Register. Second, it revised the definition of "eligible facility" in order to allow construction of practically any type of facility, including mainline facilities, but excluding delivery taps, storage facilities, and facilities constructed to effectuate the purchase of synthetic or gasified liquid natural gas. Therefore, any size facility could conceivably be constructed under

[47] For example, if the applicant has already constructed the facilities, the fourth standard, requiring that it demonstrate adequate financial resources to construct them, no longer would be applicable.

[48] Ashbacker, *supra*.

[49] *California PUC, supra*.

[50] *Id.*

[51] See *Delta Air Lines* v. *Civil Aeronautics Board*, 228, F.2d 17, 22 (D.C. Cir. 1955); Midwestern Gas Transmission Company v. FPC, 258 F.2d 660, 666 (D.C. Cir. 1958).

[52] See appendix C for a chart outlining these authorizations.

[53] A builder that is not an existing pipeline with rates on file would be required to pursue case-specific construction authorization.

blanket authorization. Third, it increases the project cost limit for automatic blanket construction authorization to $10,000,000. These changes are consistent with our goals to expand construction options and expedite construction projects.

Previous to this rulemaking, prior notice filings were limited by project cost, as well as by the type of facility which could be authorized under blanket construction. In Order No. 234,[54] which adopted the blanket construction regulations, the Commission explained that these limitations were intended to ensure that any project constructed under the blanket authorizations would not result in an adverse impact on ratepayers. The more stringent project cost limit for automatic authorization was intended to restrict use of that authorization to only the most minor and routine projects, since there was no mechanism for public notice or protest.

However, the concerns expressed in Order No. 234 are accommodated by the additional modifications in this final rule. First, since the recovery of the construction costs for these projects will be at risk, absent the *Kansas Pipe Line* showing described above, existing and future ratepayers are protected from any adverse rate impact due to the construction of these facilities, regardless of size or type of facility. Second, with the revisions to § 157.206(d) adopted here in section § 157.103, the environment will be protected from adverse impact from these, or any other, construction projects.

Further, the revisions to the self-implementing environmental regulations include a compliance report which must be filed by the project sponsor. It is anticipated that Commission review of these filings for compliance will be accomplished within a thirty day period. The reconciliation procedure will also serve to expedite Commission review of the environmental impact of pipeline projects. For these reasons, and based on our experience under the blanket regulations' prior notice procedures, the final rule shortens the deadline under § 157.205(e) for the filing of protests from 45 to 30 days after the date of publication of a prior notice request in the **Federal Register.**

The final rule also addresses the Commission's concern over frivolous or unsubstantiated protests. Section 157.205(g) allows 30 days to resolve and/or withdraw any protest to a prior notice filing. If the protest is not resolved or withdrawn, the project must proceed under the Subpart A case-specific authorization. However, this provision often results in prior notice projects being delayed by protests making inconsequential assertions. Therefore, we are amending § 157.205(g) such that the Director may dismiss any protest which does not make a *prima facie* showing of a material issue of fact or law. The regulation also is revised to state that any order by the Director to dismiss such a protest will issue within 90 days after issuance of the prior notice request.

For example, frequently a protest to a prior notice request is filed by a pipeline merely in order to prohibit or delay a project which would provide competition to that pipeline's existing services or markets. This type of protest often consists of a brief denouncement of the project without supporting information of any kind. Under the rule adopted here, the Director may promptly dismiss the protest so that the project could proceed as planned. Also, for example, the Director would act pursuant to this revised regulation to dismiss protests, such as LDCs' protests against interstate pipelines' prior notice requests to construct delivery taps or provide transportation services, which provide no evidence of anti-competitive or unduly discriminatory practices on the pipelines' parts.

Another example of a protest which would not satisfy the *prima facie* threshold would be where a landowner files a protest which states, without justification, that the pipeline should not be constructed on his property but, instead, should be constructed on someone else's land. However, if this same protester stated that an alternate route for the pipeline would be preferable due to the presence of an existing right-of-way or fenceline, for example, the *prima facie* standard would be met and the protest would not be dismissed. Nevertheless, with this type of protest, initiation of the reconciliation procedure would be appropriate. In that way, the routing problem could be addressed and potentially resolved, thereby making it possible for the project to proceed under the prior notice authorization.

We note here that the part 157 blanket certificates are only available to existing pipeline companies. A potential new market entrant would be required to proceed under the subpart A case-specific regulations. However, a new market entrant could file a subpart A case-specific certificate application and a subpart F blanket certificate application simultaneously in order to obtain a blanket certificate more quickly. Recognizing that the different procedural hurdles could serve to place potential new market entrants at a competitive disadvantage, we intend, as a general policy matter, to act on such applications within 90 days of filing, assuming the requirements of § 157.103 can be met.

Order No. 234 represented a major step in the evolution of the Commission's attempts to revise its regulations to accommodate the changes in the industry. Its stated purpose was to implement ways to make the certificate process more efficient. This final rule furthers that goal, based upon our years of experience with the blanket construction authorizations.

3. NGPA Section 311 Construction Authorizations

The NOPR requested comments on whether Commission oversight of section 311 construction is needed, especially in light of the potential for adverse environmental consequences resulting from construction of major pipeline facilities. We were concerned that the requirements of § 157.206(d), now § 157.103, were not sufficient for major projects. The NOPR explained that, if the requirements of § 157.206(d) were indeed sufficient, no changes to the regulations would be warranted. Based upon the comments and our experience, we have determined that, with the revisions to the self-implementing environmental requirements now found at § 157.103 which are set forth and discussed more fully below, the environment will be adequately protected and the requirements of NEPA will be met with regard to any pipeline construction project, regardless of size. Therefore, we will not eliminate section 311 construction authorization.

To impose additional regulatory requirements on section 311 construction unnecessarily would be contrary to our ultimate goal of encouraging expeditious pipeline construction needed to meet market demands. By revising § 157.206(d) in § 157.103 so that the potential for adverse environmental impact from construction under this authorization is removed, it is unnecessary to impose additional requirements to section 311 construction authority to meet environmental concerns. We are mindful in making this decision that Congress intended for section 311 transportation to occur without the encumbrances inherent in certification pursuant to section 7(c) of the NGA.

[54] FERC Stats. & Regs. ¶ 30,367 (1982).

Nevertheless, we do believe it is inadvisable for construction activities to proceed without some form of notification to the Commission. Therefore, we will require notification of these projects to the Commission. The notification will include a brief description of the facilities, a § 157.103 compliance report, and current U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities. This will enable the Commission to take appropriate action, if necessary, prior to the commencement of construction.

4. Section 2.55(b)—Replacement of Facilities

The NOPR also proposed eliminating replacement of facilities from the exemptions set forth in § 2.55 of the regulations. This proposal was based on the concern that such replacement activity, and the construction-like nature of those activities, might result in adverse environmental consequences not contemplated when § 2.55 was promulgated. However, the commenters have pointed out that replacement projects differ from initial construction in several significant ways.

First, facilities are usually replaced in very small increments—less than two miles in length. Second, replacement occurs in previously certified rights-of-way.

Third, often replacement must occur quickly in order to avoid potential safety hazards generally, or specifically, in order to comply with Department of Transportation (DOT) pipeline safety regulations.[55] Part 284, subpart I of the regulations exempts certain emergency transactions from certification requirements. Where there is a clear and present indication of safety-related deterioration or malfunction of facilities constituting an emergency, these regulations would apply and provide authorization for rapid response to the emergency. However, there also exist instances where a pipeline has deteriorated to the point of being potentially unsafe without rising to an emergency standard. In these instances, as defined by the DOT regulations, the public safety must be protected and it is in these instances that pipelines would rely on the replacement authorization in § 2.55(b) to correct the problem in order to continue providing service to its customers safely. As has been discussed in previous related orders,[56] the Commission does not intend that there be any conflict between the rule adopted here and the DOT's safety regulations. In order to clarify this issue and guard against any future misinterpretation or confusion, this rule amends § 2.55(b) to state that replacement may occur pursuant to that section only if the facilities "have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable to comply with Department of Transportation regulations: * * *."

Last, while constructing new pipeline may be highly desirable, replacement of facilities is generally essential due to the deterioration of facilities and the possible interruption in service which would occur if the pipeline were not replaced in a timely fashion—the time needed to gather data in conjunction with brief windows of construction time makes imposition of any additional regulatory-related delay untenable.

Therefore, upon further consideration, we have determined that removing the exemption for replacement of facilities in § 2.55(b) is inadvisable. However, we have continued concerns regarding disposal of toxic substances necessitated by the replacement of facilities. Therefore, the rule provides that replaced facilities must be abandoned in compliance with 40 CFR 761, or as specifically permitted by the Environmental Protection Agency (EPA), if the facilities to be replaced have been found by the EPA to have been exposed to PCB contamination greater than 50 ppm.

5. Phasing and Incomplete Applications

In the majority of instances, the revisions to the regulations adopted here will eliminate the problems which previously were resolved through phasing orders and dismissal of incomplete applications. Phasing orders have been issued in order to make preliminary findings regarding the nonenvironmental aspects of a project while the environmental review of that project proceeded.[57] However, since most projects should be able to proceed under the self-implementing requirements of § 157.103, as revised, the number of EAs which must be prepared by staff should be greatly reduced, thereby greatly decreasing the need for phasing orders. Further, the at-risk provisions of this final rule will negate the difficulties increasingly associated with certain incomplete applications. Nevertheless, we are convinced that, where appropriate, phasing orders and dismissal of incomplete applications serve to expedite pipeline construction. As was stated in the NOPR:

> Phasing * * * can provide for more efficient and effective decision making by presumably expediting construction as a result of providing greater regulatory certainty and stability to pending projects. Certificate applicants with non-environmental approval could, for example, arrange for financing and initiate contract negotiations at an earlier date. In this regard, the issuance of preliminary findings may serve our goal of increasing competition by enhancing pipelines' ability to gain access into new or expanded markets. More generally, it attests to the importance of timeliness in the decision making process. Phasing also can render Commission decision making with respect to certificate applications more effective by allowing the Commission to take expeditious and timely action on proposals where timeliness is an important ingredient for success.[58]

In its comments, INGAA states that the real benefit to phasing is that it assists pipeline companies in lining up financing and shippers. INGAA points out that its members must begin discussing customer and financing arrangements prior to facility construction regardless of environmental issues that may arise because of the high cost of construction. The phasing process, according to INGAA, provides regulatory certainty on relevant financial and economic issues.

ANR states in its comments that the phasing process expedites certification by advising the applicant early in the proceedings whether it needs to change its business plan and how to change, as well as providing additional time for the applicant to make these changes prior to issuance of a certificate. Kern River opposes phasing in its comments, but makes the point that phasing allows section 7(c) applicants the benefit of the optional certification process (*i.e.*, expedition) without imposing the corresponding economic risks inherent in an optional certificate.

Until recently, the Commission has issued preliminary phasing orders only with regard to non-environmental issues. However, the Commission recently issued a different type of phasing order. In *Northern Border Pipeline Company*[59] and in *Natural Gas PipeLine Company of America*,[60]

[55] 49 CFR parts 191 and 192.

[55] Order No. 525, *supra*, at note 7.

[57] See, *e.g.*, El Paso Natural Gas Company, 55 FERC ¶ 61,180 (1991); Colorado Interstate Gas Company, 56 FERC ¶ 61,015 (1991).

[58] Revisions to Regulations Governing Certificates for Construction, FERC Stats. & Regs. ¶ 32,477 at 32,484.

[59] 55 FERC ¶ 61,423 (1991).

[60] 55 FERC ¶ 61,424 (1991).

applications were filed, pursuant to part 157, subpart A, for authorization to construct and acquire certain facilities to be used to provide open access transportation service. With regard to each of these applications, the Commission found that the applicant had not made a sufficient showing of adequate downstream facilities, and provided the following:

> Thus, [the applicant's] application is incomplete and no determination of the public convenience and necessity can be made at this time. We will, however, allow [the applicant] to remedy the deficiencies in its application in the 30 days following the date of this order. If, in that time, [the applicant] presents a complete project [*i.e.*, an application to construct and operate downstream facilities is filed with the Commission] that identifies downstream facilities * * *, we will continue our environmental review. In the meantime, in the 30 days following the date of this order, we will continue to process [the applicant's] application. Alternatively, we will dismiss [the applicant's] request in this docket, without prejudice to [the applicant] filing a new application that fully satisfies the requirements of our regulations, if an application for downstream facilities is not filed within 30 days of the date of this order.

Therefore, even though the information in these applications was not sufficient to support granting certificates, issuance of these phasing orders ensured that the processing of the respective applications would not be delayed during the time provided for the applicants to supplement their filings.

6. Delegation to the Director

All comments received regarding the expansion of the Director's authority supported adoption of the proposed regulations. Therefore, and for the reasons set forth in the NOPR, the final rule promulgates these revisions at § 375.307, as well as other delegations discussed below.

D. Environmental Matters

1. Nonjurisdictional Facilities

a. *Background.* In the NOPR, the Commission proposed to include a requirement in its regulations that related nonjurisdictional facilities be identified in the application for a certificate, if there is one, or treated as part of the project in cases of automatic authorization. As stated in the NOPR:

> The requirements to identify related nonjurisdictional facilities are proposed here in order to expedite the environmental review for certification to construct facilities. These requirements are merely intended to give notification to the Commission of any facilities that *may* be subject to environmental review due to their relationship with proposed jurisdictional facilities. By providing this notification with a request or application for authorization, the delay which results from staff preparing and sending data requests relating to this type of information and, subsequently, awaiting a response could be eliminated.[61]

The Commission then invited comments on the advisability of adopting this approach.[62]

A great many commenters responded to this point, the vast majority of them opposing the proposed requirement as unduly burdensome. Many commenters felt the Commission would be overstepping the bounds of its authority by requesting such information.

As explained in the NOPR, the issue of what consideration is required of related nonjurisdictional facilities in the context of the Commission's environmental review had its genesis in the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Henry* v. *FPC*, 513 F.2d 395 (D.C. Cir. 1975). In that case, two projects were to be constructed to produce synthetic gas from coal for interstate transportation. The Transwestern Group applied to the Commission for a certificate authorizing the construction and operation of facilities to convert coal to synthetic gas. Transwestern Pipeline applied for authorization to construct and operate a pipeline to transport the synthetic gas from the plant to the pipeline's main system. El Paso Natural Gas sought authorization to construct and operate tap and valve facilities for the introduction of the synthetic gas into its mainline, where it would be commingled with natural gas from wells.

The Commission decided that it did not have jurisdiction over the production, sale, or transportation of synthetic gas prior to its mixture with natural gas from wells and dismissed the two Transwestern applications. It found that it did, however, have jurisdiction over El Paso's application for the tap and valve facilities. In reaching this conclusion, the Commission held that it was required to consider only those environmental consequences ascribable to jurisdictional activities, and that the need for an environmental impact statement turned on whether the tap and valve facilities were a major Federal action having a significant effect on the human environment, an issue which it deferred pending staff investigation.

On appeal, the D.C. Circuit considered the Commission's premise that its role under NEPA was limited to evaluating the incremental environmental impact of the jurisdictional tap and valve facilities, even if the coal gasification project of which that facility was an essential part constituted a major Federal action having a significant effect on the human environment.[63] The court concluded that the Commission's view of its responsibilities was too narrow, stating that:

> NEPA requires an integrated view of the environmental damage that may be caused by a situation, broadly considered, and its purpose is not to be frustrated by an approach that would defeat a comprehensive and integrated consideration by reason of the fact that particular officers and agencies have particular occasions for and limits on their exercise of jurisdiction.[64]

In deciding what must be done by the Commission to fulfill its environmental responsibilities, the court held that the Commission:

> [I]s not necessarily required to prepare a full environmental impact statement for the gasification project [but] can rely on the statement prepared by the lead agency. What is required is that the FPC, in deciding whether to grant, deny, or condition certificates of public convenience and necessity for admittedly jurisdictional facilities, take into account the environmental costs of the gasification projects as a whole. It may do this by accepting, rejecting, or modifying the analysis of the lead agency.[65]

Thus, the court required the Commission to consider the environmental impacts of related nonjurisdictional facilities when evaluating aspects of projects over which the Commission does have jurisdiction. On the basis of this holding, it has been the practice of the Commission to review certain aspects of related nonjurisdictional facilities in conducting its environmental review of facilities over which it properly has jurisdiction. As noted previously, this is the basis of the statement in the NOPR that there is authority for the proposition that an agency which undertakes a NEPA review of a project subject to its substantive jurisdiction must include in its review the nonjurisdictional facilities

[61] Construction NOPR, FERC Stats. & Regs. ¶ 32,477, *supra*, at p. 32,481 (emphasis in original).

[62] The provision that resulted from the consideration of this issue has been incorporated into the Commission's regulations as § 157.103(b). Section 157.103 formerly was § 157.206(d). Section 157.103(b) is discussed separately from that section because of the independent significance of this matter.

[63] Although the Court apparently did not independently evaluate this issue, the coal gasification projects were accepted as constituting a major Federal action inasmuch as the Bureau of Reclamation of the Department of the Interior had been designated as lead agency to prepare a draft environmental impact statement. See *Henry*, 513 F.2d at 406.

[64] *Id.*

[65] *Id.* at 407.

that can reasonably be expected to be constructed in conjunction with that project.[66]

The problem here is determining the appropriate scope of the Commission's environmental review. As the United States Court of Appeals for the Ninth Circuit observed in *Sylvester* v. *Corps of Engineers*, 884 F.2d 394, 400 (9th Cir. 1989):

> Environmental impacts are in some respects like ripples following the casting of a stone in a pool. The simile is beguiling but useless as a standard. So employed it suggests that the entire pool must be considered each time a substance heavier than a hair lands upon its surface. This is not a practical guide.

The difficulty in determining the extent of the Commission's responsibility to review nonjurisdictional facilities is exacerbated by the fact that "NEPA does not specify the scope of analysis that federal agencies must conduct in determining whether their actions, when combined with private actions, come within the mandate of § 4332(2)(C) [requiring agencies to prepare environmental impact statements for major Federal actions significantly affecting the quality of the human environment.] [67]

In practical terms, it is simply not feasible, nor is it required by NEPA, that the Commission evaluate each and every impact, no matter how remote, that flows from activities which fall within the jurisdiction of the Commission. Simply put, at some point the nexus between the activity approved by the Commission and activities that in some way relate to, or flow from, that activity becomes too tenuous to require their consideration by the Commission. If this were not so, the obligations of the Commission and other agencies charged with implementing NEPA would be unlimited and impossible to fulfill.

b. *New Guidelines.* While the requirement expressed in *Henry* that some consideration must be given nonjurisdictional facilities constructed in conjunction with jurisdictional facilities remains unchanged, experience has shown that further guidelines are needed to effect and implement this direction. Upon considering this matter in light of the comments that were received on the proposed rule and our experience in dealing with this issue, the Commission has decided to craft a comprehensive approach to determine what consideration of related nonjurisdictional facilities is required.

The consideration of what nonjurisdictional facilities should be reviewed is not unique to the Commission. Another agency that has experienced considerable difficulty in determining the scope of analysis that must be conducted in connection with the issuance of permits that authorize only a portion of a private, non-Federal project is the United States Army Corps of Engineers (COE or Corps).

The Corps typically issues permits under section 404 of the Clean Water Act (authorizing the discharge of dredged or fill material) and section 10 of the Rivers and Harbors Act (regulating work and structures in navigable waters of the United States). These regulated activities are often undertaken pursuant to the development of some larger project by a private, nongovernmental entity. As a result of difficulties it experienced in determining how far its review of nonjurisdictional facilities should extend based upon its issuance of a permit for a portion of a project, the COE undertook to examine and define the proper scope of analysis that should be conducted in such situations.

The COE explained this problem in a final rule adopting implementing procedures to deal with this matter as follows:

> The Corps of Engineers inquiry begins with a permit application which is evaluated, usually resulting in the issuance of a permit, often with special conditions that modify the project, or permit denial. The Corps evaluation of an eventual action on the permit application is, by definition, the "Federal action" for NEPA purposes (see 40 CFR 1508.18(b)(4)). The "scope of analysis" issue arises when the application for a Corps permit covers only a part of a larger project (e.g., the application for a Corps permit for a pier which is part of a larger, upland oil refinery project). In such a case, the Corps must determine the "scope of analysis" which will guide all of our inquiries under NEPA; that is, what portion of the total project will the Corps cover in its EA describing the work, the range of environmental effects of that work, alternatives to the proposed work, etc. Based on the scope of analysis adopted, the Corps determines whether the proposed work would constitute a "major Federal action significantly affecting the quality of the human environment," i.e. whether an EIS must be prepared. As explained in the regulation, the scope of analysis the Corps will use for permits cases normally will cover the regulated activity (e.g., the pier) plus whatever other portions of the project the Corps determines to be within Federal control and responsibility for the particular case in question.[68]

The problem the Corps was attempting to resolve is the same one the Commission faces in determining the proper scope of environmental reviews that are conducted for projects arising under its jurisdiction. *Henry* holds that review of nonjurisdictional facilities may be required, but provides no guidance as to how far that review must extend. In the Commission's judgment, some limitation is necessary and appropriate.

Subsequent to the decision in *Henry*, several courts have recognized the nature of this problem and have undertaken to examine in greater detail the proper scope of analysis that should be employed in such situations. In *Winnebago Tribe of Nebraska* v. *Ray*, 621 F.2d 269 (8th Cir.), *cert denied*, 499 U.S. 836 (1980), the United States Court of Appeals for the Eighth Circuit determined that an environmental assessment prepared by the Corps for a Section 10 permit under the Rivers and Harbors Act for a river-crossing portion of a proposed transmission line need not examine the impacts of the entire transmission line. In that case, the river-crossing portion of the line consisted of approximately 1.25 miles of a 67-mile long transmission line. Given the facts surrounding the construction of that project (*e.g.*, no direct or indirect Federal funding of the project), the court found that the Corps did not have sufficient control and responsibility over the entire project such that non-Federal segments had to be included in the environmental assessment.

Likewise, in *Save the Bay, Inc.* v. *Corps of Engineers*, 610 F.2d 322 (5th Cir), cert denied, 449 U.S. 900 (1980), the United States Court of Appeals for the Fifth Circuit upheld a decision of the Corps not to review the environmental effects of an entire chemical plant even though the outfall structure from the plant required a Corps permit. This was because the Corps deemed the outfall to be a minor feature of the overall project and insufficient to "Federalize" the entire project.

Taking this guidance into account, and drawing upon language used by the courts in analyzing and upholding its actions, the Corps determined that "(t)he circumstances under which the scope of analysis should be expanded beyond the limits of jurisdiction involve those cases where the Corps has sufficient control and responsibility for the activities undertaken by the non-Federal parties so that the environmental impacts are

[66] In implementing this directive, the Commission has used, as described in *East Tennessee Natural Gas Company*, 39 FERC ¶ 61,275 (1987), a test which provides that review of nonjurisdictional facilities is necessary where the nonjurisdictional facilities are "inextricably related to and completely dependent upon" certification of the related jurisdictional facilities such that they would not be built "but for" those facilities.

[67] Sylvester, 884 F.2d at 398.

[68] 53 FR 3120, 3121 (1988).

essentially a product of Federal action." [69]

In the implementing procedures which it adopted in consultation with the Council on Environmental Quality, the Corps developed a test to implement this standard and determine the limits of what related facilities must be examined:

(2) The [Corps] is considered to have control and responsibility for portions of the project beyond the limits of Corps jurisdiction where the Federal involvement is sufficient to turn an essentially private action into a Federal action. These are cases where the environmental consequences of the larger project are essentially products of the Corps permit action.

Typical factors to be considered in determining whether sufficient "control and responsibility" exists include:

(i) Whether or not the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project).

(ii) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity.

(iii) The extent to which the entire project will be within Corps jurisdiction.

(iv) The extent of cumulative Federal control and responsibility.

A. Federal control and responsibility will include the portions of the project beyond the limits of Corps jurisdiction where the cumulative Federal involvement of the Corps and other Federal agencies is sufficient to grant legal control over such additional portions of the project. These are cases where the environmental consequences of the additional portions of the projects are essentially products of Federal financing, assistance, direction, regulation, or approval (not including funding assistance solely in the form of general revenue sharing funds, with no Federal agency control over the subsequent use of such funds, and not including judicial or administrative civil or criminal enforcement actions).

B. In determining whether sufficient cumulative Federal involvement exists to expand the scope of Federal action the [Corps] should consider whether other Federal agencies are required to take Federal action under the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), Executive Order 11990, Protection of Wetlands (42 Fed. Reg. 91977), and other environmental review laws and executive orders.

As noted above, the problems and circumstances faced by the Commission in making a determination as to what treatment should be accorded related nonjurisdictional facilities are the same as those faced by the Corps. In considering the comments received on the proposal advanced in the NOPR, the Commission has decided that it would be beneficial to adopt a standard like that utilized by the Corps to guide its considerations with regard to this issue. This standard will apply to the consideration of applications on a case-by-case basis by the Commission and to the use of self-implementing environmental regulations by project sponsors. In either case, a determination will be made as to whether there is sufficient control and responsibility over aspects of a project, or related projects, beyond the limits of Commission jurisdiction to warrant the environmental review of those related, but nonjurisdictional portions. As with the test established by the Corps, the Commission will be considered to have control and responsibility for portions of the project beyond the limits of its jurisdiction where the Federal involvement is sufficient to turn an essentially private action into a Federal action. Those are cases where the environmental consequences of the larger project are essentially products of the Commission permit action.[70]

The typical factors to be considered in determining whether sufficient "control and responsibility" exists are essentially those utilized by the Corps, as modified slightly to reflect differing circumstances faced by the Commission. Those factors are: (i) whether or not the regulated activity comprises merely a link in a corridor type project (*i.e.*, a natural gas pipeline); (ii) whether there are aspects of the overall facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity; (iii) the extent to which the entire project will be within Commission jurisdiction; and (iv) the extent of cumulative Federal control and responsibility.

As noted previously, in *East Tennessee Natural Gas Company*, 39 FERC ¶ 61,275 (1987), the Commission set forth a test for determining what related nonjurisdictional facilities must be considered for environmental review purposes in evaluating the effect of facilities for which certification is sought. In that case, the Commission examined the environmental impact of related nonjurisdictional facilities because those facilities were "inextricably related to and completely dependent upon the issuance of a certificate to East Tennessee" and "[b]ut for the jurisdictional facilities * * *, the [nonjurisdictional] facilities would not be built." [71] This test will no longer apply given the new standard that the Commission is adopting here. To illustrate the workings of this standard, it is applied to the facts of that case.

In *East Tennessee*, the applicant, East Tennessee, sought a certificate to build approximately 25 miles of 16-inch pipeline, three new compressor stations, and to add an engine to an existing compressor station. Once East Tennessee received a certificate, Atlanta Gas planned to construct 72 miles of nonjurisdictional pipeline to connect East Tennessee's facilities with its existing system.

Under the test established in § 157.103(b), the critical inquiry is whether the Commission would have had sufficient control and responsibility over the nonjurisdictional facilities proposed by Atlanta Gas to convert the private action proposed by it into a Federal action. To determine this, the factors set forth in § 157.103(b) must be applied. The individual factors may or may not be relevant to any given situation and are to be accorded roughly equivalent importance, again given the situation.

The first factor is whether or not the regulated activity comprises merely a link in a corridor-type project. In *East Tennessee* the answer to this is yes, as it would be for most natural gas pipeline scenarios. Clearly, the East Tennessee facilities would connect with the Atlanta Gas pipeline in a link that would carry gas south to the existing Atlanta Gas facilities. The fact that the East Tennessee facilities are merely a link in a corridor-type project would militate against including other, nonjurisdictional facilities in the environmental review process.

The second factor is whether there are aspects of the nonjurisdictional facility in the immediate vicinity of the regulated activity. Although the *East Tennessee* order does not examine this point in any detail, it would appear that the only aspects of the project in the immediate vicinity of the nonjurisdictional facilities would be the point of connection between the two pipelines. Thus, the answer to this inquiry is basically no. Again, this would be the case with most pure pipeline projects.

The third factor is the extent to which the entire project would be within the jurisdiction of the Commission. This factor will often have a significant bearing upon whether environmental review will be required of related nonjurisdictional facilities. In *East Tennessee*, the nonjurisdictional portion of the project was substantially larger than the certificated portion in that it

[69] *Id.* at 3121–22.

[70] The discussion of nonjurisdictional facilities in this section relates only to domestic and not to foreign facilities.

[71] 39 FERC at p. 61,911.

covered a much greater distance and included construction along a new right-of-way, as opposed to substantial looping which would take place to construct the jurisdictional facilities. Therefore, the entire project could not be considered to be within the jurisdiction of the Commission.

The final factor is the overall extent of Federal control and responsibility. As with the third factor, this criterion will also often be very significant in evaluating whether related nonjurisdictional facilities must be reviewed by a project sponsor or the Commission. In making this determination, it is necessary to evaluate whether the environmental consequences of the additional portions of the project are essentially products of Federal financing, assistance, direction, regulation, or approval. It is also necessary to consider whether other Federal agencies are required to take actions under various environmental statutes and the extent of the action that is required to be taken.

In *East Tennessee*, there was no indication that the Atlanta Gas facilities were the product of Federal financing, assistance, direction, regulation, or approval. Obviously, if the Federal government had funded or directed the building of the Atlanta gas facilities then there would be a nexus to require environmental review. Similarly, there is no indication that other Federal agencies were required to take any significant action under the National Historic Preservation Act, the Endangered Species Act, or the Coastal Zone Management Act. On balance, there is nothing in the application of these factors that would require the Commission, under the test set forth in § 157.103(b), to exercise jurisdiction over the Atlanta Gas facilities for the purpose of including them in the environmental review of the East Tennessee proposal. Put differently, the Commission had insufficient control and responsibility over those nonjurisdictional facilities to treat the private action of building that pipeline as a Federal action.

c. *Examples.* To assist in the application of the factors set forth above, the Commission has also developed the following examples.

(i) A pipeline crosses an international boundary and the crossing alone requires a Commission authorization; neither the route to or from the boundary crossing is within the control or responsibility of the Commission. Those matters would not be included in the scope of the Commission's environmental analysis which, in this case, would address only the impacts of the specific boundary crossing.

(ii) A pipeline company seeks a certificate to construct and operate a segment of pipeline looping, two additional compressor stations, and other appurtenant facilities. The natural gas transported by the new jurisdictional facilities would be received into a new 70-mile long nonjurisdictional pipeline over which the Commission has no control. Matters relating to the nonjurisdictional pipeline would not be included in the scope of analysis.

(iii) Conversely, for those activities that require a Commission permit for a major portion of the pipeline project, so that the Commission permit bears upon the origin and destination as well as the route of the project outside the Commission's regulatory boundaries, the scope of analysis should include those additional portions of the project. For example, if 50 miles of a 70-mile pipeline were jurisdictional the scope of analysis should reflect impacts of the whole 70-mile transmission line.

2. Revisions to § 157.206(d), now § 157.103

a. *Background.* One of the most important, far-reaching changes made by the rule is that relating to the revision of § 157.206(d) and its incorporation into the Commission's regulations as § 157.103. As it existed prior to the adoption of this rule, § 157.206 provided for the use of a "self-implementing" environmental procedure for activities authorized under a blanket certificate and construction authorized under section 311 of the Natural Gas Policy Act. The rule substantially extends the availability of this procedure to all construction occurring under part 157, including project-specific applications as well as subpart F automatic and prior notice authorizations, and NGPA section 311. It also revises, strengthens, and clarifies the conditions a project sponsor must meet to avail itself of this mechanism for ensuring environmental compliance. The rule also includes a provision in § 157.104(b) emphasizing that the Commission intends to prohibit an interstate pipeline from constructing under subpart F of part 157 or under part 284 if it concludes that the pipeline's current or past activities support a finding that such prohibition is necessary to prevent violations by the pipeline of the Commission's self-implementing environmental procedure.

Conceptually, the basis for the self-implementing procedure contained in former § 157.206(d) remains unchanged in new § 157.103, although the requirements surrounding it have been altered. Essentially, this procedure works in the following manner. Based on its experience in reviewing projects, the Commission has established a number of standards that a project sponsor must meet. For example, it is provided that a project sponsor must conform its activities to various statutes and executive orders set forth in the regulation and must adopt various Commission requirements relating to, among other things, erosion control and stream and wetland protection measures.

Likewise, it was previously provided in § 157.206(d)(4) that to avail itself of the self-implementing mechanism, any transaction taking place under § 157.206(d) must not have a significant adverse impact on a sensitive environmental area. The term "sensitive environmental area" was defined in § 157.202(b)(11) to mean, among other things, the habitat of endangered or threatened species, national or state parks and forests, flood plains and wetlands, and designated or proposed wilderness areas. In order to clarify what constitutes a potentially significant adverse impact, the language in former § 157.206(d)(4) has been deleted, as has the definition in § 157.202(b)(11) of sensitive environmental area, and in its place, § 157.103 now lists categories of actions which must be satisfied to determine if projects may go forward under this section.

These requirements detail the environmental standards with which one must comply to utilize the Commission's self-implementing environmental procedure. If a transaction proceeding under this procedure can meet all of the conditions and requirements of § 157.103, and the project sponsor adopts the various guidelines and conforms its activities to the listed statutes and regulations, then by definition that activity will not have the potential for significant environmental impact. Projects meeting these requirements are categorically excluded from the need for an environmental assessment as provided in § 380.4.

If, on the other hand, a project cannot comply with the standards of this section, then the proposed action must be reviewed by the Commission in the context of a case-specific application.

Since its adoption, the self-implementing environmental procedure contained in previous § 157.206(d) has worked extremely well. Its primary benefit has been to allow projects to proceed expeditiously, while ensuring protection of the environment. Given the success of this procedure, the Commission has decided to expand its availability to all types of construction

authorization. In this manner, the benefits described above can be extended to a wider range of projects and should result in a shortening of time for pipeline construction, while fulfilling the Commission's mandate under NEPA and other environmental statutes to protect the environment.

In the past, violations of the self-implementing environmental procedure contained in § 157.206(d) have been infrequent. However, the rule significantly expands the scope of construction that may proceed without Commission monitoring pursuant to this procedure. In view of this consideration, the rule provides in a new § 157.104(b) that the Commission may prohibit an interstate pipeline from using its construction authorization under subpart F of part 157 or under part 284 if the Commission finds that the pipeline has committed previous violations of § 157.206(d) of § 157.103 and that the nature of those violations supports a finding that such prohibition of the use of the authorization is necessary to prevent further violations of § 157.103.

The Commission will implement the prohibition in § 157.104(b) after giving the pipeline an opportunity to show cause why the prohibition should not be imposed, unless the Commission determines that an immediately effective prohibition against construction is necessary. If the Commission finds that the prohibition must be made effective immediately, the Commission will promptly issue a show cause order and endeavor to act on the pipeline's response to that order within 15 days. The prohibition against using part 157, subpart F, or part 284 construction authorization shall remain in effect until the Commission finds that the pipeline has demonstrated that continuation of the prohibition is unnecessary.

b. *Revised standards.* In expanding the availability of the self-implementing environmental procedure, the Commission has deemed it necessary to clarify and, in some cases, revise the standards contained in former § 157.206(d) to ensure protection of the environment. First, the list of statutes and executive orders that a project sponsor must comply with that previously appeared in § 157.206(d)(2) has not been incorporated into § 157.103(c) and has been expanded to include the Toxic Substances Control Act. The Commission recognizes that there are other statutes not named in this section, such as the Mineral Lands Leasing Act, with which a project sponsor must comply before construction can take place. To this list has also been added other standards with which a project sponsor must comply and instructions for achieving compliance with those standards.

As noted previously, the prior requirement that a transaction shall not have a significant adverse impact on a sensitive environmental area has been replaced by a revised and expanded set of requirements. In addition to setting forth the statutes with which a project sponsor must comply, § 157.103(c) also delineates areas in which construction may not go forward unless certain conditions are met. For example, if construction of facilities will involve, *inter alia*, pipeline crossings of wilderness areas, wild and scenic rivers, ecologically critical or unique areas, remnant prairie, and old-growth forest, construction may not proceed under authority of § 157.103 unless the responsible Federal agency makes a case-specific finding of no significant impact, or the Federal action permitting the crossing is categorically excluded from the requirement for an environmental assessment by the responsible agency's regulations. Likewise, construction of facilities which involve, for example, pipeline crossings of surface mine properties, designated sole source aquifers extending to within pipeline excavation depth, upstream crossings of municipal water supply intakes, and others, may not occur without approval of the appropriate agency. If approval is obtained from that agency, then the project sponsor has satisfied the condition.

Similarly, § 157.103(c)(12) includes a category of actions under which the project may not go forward unless the project sponsor first obtains clearance from the Director. This category includes, for example, pipeline crossings of active geologic faults in populated areas, known hazardous waste sites, perennial waterbodies or Federally delineated wetlands where a COE nationwide permit cannot be used, and construction of aboveground facilities where more than five acres of prime agricultural land would be permanently disturbed.

The intent of these provisions is to ensure that the proposed action would not have the potential for a significant environmental impact on areas for which protection is required. In compiling this list of sensitive environmental areas, the Commission reviewed the Council on Environmental Quality (CEQ) criteria for significant impact and has drawn on its experience in evaluating thousands of projects to determine those resources for which protection may be needed. If other resources are identified that require evaluation or protection the Commission retains the authority to resolve the matter through the reconciliation provision discussed hereafter, or to state that the project must be converted to a case-specific authorization under NGA section 7(c) and independently evaluated pursuant to the requirements of that authorization.

If a project is unable to satisfy the provisions established in this section, by definition there cannot be an *a priori* finding of no significant environmental impact, and the project may proceed only after review by the Commission, either through the reconciliation procedure that has been established in § 157.103(e) or a case-specific part 157, subpart A certificate.

The fact that a project cannot satisfy the provisions of § 157.103 does not necessarily mean that the Commission must start from scratch and review every single aspect of the project. Rather, the Commission intends to examine only those portions of the project for which compliance with the requirements of § 157.103 has not been achieved. This would save duplication of efforts and provide the best method of complying with the goals underlying the expansion of the availability of the self-implementing environmental procedure.

A number of other changes proposed in the NOPR have also been incorporated into § 157.103. As mentioned briefly above, the Toxic Substances Control Act has been added to the list of statutes with which a project sponsor must comply. This has been done to ensure that PCB contamination from gas pipelines does not pose an environmental problem. Section 157.103(c)(9) provides that a project may involve the removal, replacement, or abandonment of facilities which have been found by the Environmental Protection Agency (EPA) to have been exposed to PCB contamination greater than 50 ppm only if the facilities have been declassified by the EPA, if the action complies with the EPA's regulations at 40 CFR part 761, or if an alternative disposal permit has been issued by EPA under 40 CFR 761.60(e).

Additionally, § 157.103(d)(1)(ix) provides that the compliance report which must be filed to demonstrate compliance with the requirements of § 157.103 shall contain a statement, supported by EPA correspondence, that the removal, replacement, or abandonment of facilities covered by § 157.103(c)(9) will conform to an alternative method of disposal under 40

CFR 761.60(e), or is on a part of a system declassified by EPA. For removal, replacement, or abandonment done in accordance with 40 CFR part 761, there must be provided a description identifying specific procedures for activities relating to, among other things, pre-removal inspections, removal of pipe from the trench, and disposal of the removed pipeline segments and related equipment.

Another change proposed in the NOPR that has been incorporated in § 157.103(c) relates to new construction rights-of-way that are located within 50 feet of a residence. Section 157.103(c)(11)(viii) provides that if the owner(s) of each residence grants an easement, the project may include construction of pipeline in a new right-of-way where the edge of the construction right-of-way is within 50 feet of the residence and is at least partially on the associated property. Put differently, if the edge of a construction right-of-way is within 50 feet of a residence and is at least partially on property associated with that residence, then the project may not go forward unless the owner of the residence grants an easement. This provision applies only to new rights-of-way and not to existing rights-of-way. Section 157.103(c)(11)(ix) applies to looping projects which would be partially within existing rights-of-way. This requires similar, but less restrictive, landowner acquiescence since a portion of the construction would be occurring in an existing, as opposed to a new, right-of-way.

If must be emphasized again that the inability to comply, in the first instance, with provisions such as these does not necessarily preclude construction of the desired facilities. If any condition of § 157.103 cannot be met, the project may go forward if the project sponsor obtains clearance from the Director pursuant to the reconciliation procedure set forth in § 157.103(e). Alternatively, the project sponsor may proceed under subpart A of part 157 if it chooses not to utilize the reconciliation procedure or cannot obtain the necessary approval under that provision.

c. *Nonjurisdictional facilities.* Another important revision to the Commission's self-implementing environmental procedure is that found in § 157.103(b), which sets forth the standards for determining what nonjurisdictional facilities must be considered for environmental review purposes. The concept, as discussed above, is that a project sponsor will use the standards set forth in § 157.103(b) to determine which nonjurisdictional facilities are sufficiently within the ambit of Federal control and responsibility such that they should be reviewed in conjunction with jurisdictional facilities.

d. *Publication requirement.* Another change to former § 157.206(d) is that contained in § 157.103(c)(15) requiring the project sponsor to prepare a notification of proposed construction for newspaper publication and filing with the governor and the attorney general for any state in which construction or abandonment with removal of facilities would occur. This notification must be filed with the governor and the attorney general by certified mail, return receipt requested, pursuant to the schedule for newspaper notification. With regard to newspaper publication, the project sponsor must publish notification of the proposed construction once in a daily or weekly newspaper of general circulation in each county in which construction would occur. The notification that is to be filed with the governor and the attorney general and published in the newspaper must include a description of the nature and extent of the project, identification of the Commission regulations authorizing the action and docket number, if any, a description of intervention, comment, and protest opportunities available under the Commission's regulations, and the identity of the project sponsor contact for requests or questions with respect to the project.

The propose of this provision is to provide notice and an opportunity to comment to concerned members of the public. This notification will allow the public to educate itself as to the nature of the project and to bring to the attention of the appropriate persons and the Commission any concerns it may have. Of course, as discussed elsewhere, under the prior notice procedure a protest may be filed against any or all aspects of the project that may cause it to be reviewed under traditional NGA section 7(c) certificate application procedures.

e. *Permit requirements.* Another significant change to former § 157.206(d) is the inclusion in § 157.103(c)(16) of a provision stating that for any project that is automatically authorized pursuant to § 157.203(b), no physical construction, installation, or abandonment shall begin for any physically discrete, independently usable portion of the project until all required permits for that portion have been obtained (except for those that must be obtained during construction, such as road crossing permits and permits for hydrostatic testing). This provision has been included to ensure that actions would not be taken that might foreclose options available to permitting authorities with regard to route and facility approval such that environmental impacts could not be avoided or minimized.

f. *Reconciliation procedure.* It is possible that in many instances, a project sponsor will be able to satisfy most, but not all, of the conditions of § 157.103. Strict application of this rule would mean that the project sponsor would not be able to avail itself of this option, but rather would be forced to utilize the traditional NGA section 7(c) case-specific approach, which would require the exercise of Commission review of the entire project, including those portions for which the requirements of § 157.103 would otherwise be met.

Such an approach would be counterproductive and contrary to the rationale underlying the self-implementing environmental procedure. Accordingly, the Commission has decided to adopt a reconciliation procedure that would allow certain issues to be resolved without the project sponsor being automatically forced into a situation where it could not avail itself of the self-implementing environmental process. A project sponsor will be allowed to initiate reconciliation in three instances. The first is upon filing the compliance report required by § 157.103(d). The second is in response to protests that have been filed by any other person, including the Director. The third occurs when the Director makes a finding, upon reviewing the compliance report, that the project sponsor is not in compliance with § 157.103. The Director would also be able to initiate the reconciliation process.

This procedure would be available to projects that are proceeding under the automatic authorization contained in § 157.203(b), the prior notice authorization contained in § 157.203(c), and the section 311 authorization arising under the Natural Gas Policy Act. The idea is to establish a procedure that could be used to resolve a limited number of issues for which compliance could not otherwise be achieved. It is not the intent to allow a project sponsor which could clearly not otherwise avail itself of § 157.103 to attempt to resolve a number of major issues. The reconciliation procedure is meant to be utilized to reconcile a limited number of relatively minor issues only.

It must also be stressed that the reconciliation procedure can only be used to achieve compliance with the requirements of § 157.103, and is not

available once compliance has been determined to exist. Thus, to the extent noncompliance is discovered after that time, such matters would be handled in accordance with the Director's authority contained in § 157.104(a) (a delegation of authority cross-referenced in § 375.307(10)) to remedy violations of § 157.103 that are discovered subsequent to the time construction is permitted to occur. This authority provides the Director with the power to take whatever steps are deemed necessary to correct noncompliance with the provisions of § 157.103, including the authority to order that construction be halted until compliance is achieved. If compliance with § 157.103 proves impossible to obtain for whatever reason, the project may only proceed under the case-specific authorization contained in part 157, subpart A of the Commission's regulations.

Mechanically, the reconciliation procedure would function in the following manner where full compliance with § 157.103 could not be achieved. If a project cannot be pursued on a self-implementing basis due to the inability to meet any of the requirements § 157.103 and a request for reconciliation is filed, the Director or the Commission may meet with the project sponsor or other parties consistent with the Commission's *ex parte* regulations, consult with other agencies, obtain agreement from the project sponsor to implement mitigation measures, convene a technical conference, or pursue any other actions deemed necessary.

Upon resolving the issue, the Director would issue a letter setting forth the mitigation measures, if any, and granting authority to proceed with the project. Alternatively, if the Director determines that compliance with § 157.103 is not possible, he would issue a letter disallowing construction of the project under the self-implementing environmental procedure. At that point, the project would have to be pursued under Subpart A case-specific authorization. It must be emphasized, as provided in § 157.103(e)(1), that a project sponsor may not engage in construction of the project during the time that the reconciliation process is being utilized.

It is also important to emphasize that the reconciliation procedure is intended to parallel, not replace or interfere with, the other procedures associated with a project sponsor obtaining authorization to construct pipeline facilities.[72] The reconciliation procedure is initiated by the project sponsor or the Director and is intended to facilitate the project sponsor's compliance with the environmental requirements in § 157.103. Other procedures associated with various authorizations (*e.g.*, the prior notice protest procedure) which may be intitiated by someone other than the project sponsor would still provide protestants the opportunity to comment on pipeline projects.

Since these procedures serve different purposes, they do not have to operate in tandem, but are crafted so that they can proceed simultaneously and not delay the process.

Under the prior notice procedures, as revised by the rule, a 60-day protest period is allowed: 30 days for the filing of protests, plus 30 days to pursue the resolution and withdrawal of protests. The reconciliation procedure allows 90 days, beginning on the date the request is filed, for reconciliation to be achieved or, alternatively, for a letter to be issued by the Director advising the company that it can only proceed under case-specific authorization. The reconciliation procedure also gives the Director authority to extend the 90-day reconciliation period for up to an additional 90 days. Several possible scenarios may occur:

(1) If no protest is filed and reconciliation is achieved during the 90-day period, or extension thereof, construction may begin immediately upon receipt of a letter from the Director indicating that reconciliation has been achieved.

(2) If a protest if filed and reconciliation is achieved, the project could not go forward under the prior notice procedure unless (1) the protest is withdrawn during the 30-day period provided for in § 157.205(g), or (2) the protest is dismissed by the Commission because a *prima facie* showing of a material issue of fact or law is not made.

(3) If a protest is filed and subsequently withdrawn or dismissed, but reconciliation cannot be achieved, the Director will issue a letter, within the 90-day period, advising the project sponsor that it can only proceed under the case-specific authorization, and not the prior notice authorization.

(4) If a protest is filed and subsequently withdrawn or dismissed, and reconciliation is achieved, the Director will issue a letter, within the 90-day period, stating that the project may proceed under the prior notice authorization. Accordingly, construction of the project could begin immediately.

The section 311 and automatic blanket construction authorizations do not provide a mechanism for filing a protest. However, the Commission's regulations do provide a mechanism whereby a person or company may file a complaint at any time. Therefore, a landowner, for example, could use the complaint procedures to bring contentious matters before the Commission for review. Upon receipt of a complaint concerning a project to be constructed under either the section 311 construction authorization or automatic blanket construction authorization, the Director will advise the Commission of the complaint, and if warranted, the Commission will immediately issue an order prohibiting construction of the project until further Commission action.

The reconciliation procedure, however, is a separate and distinct process from the complaint mechanism for the section 311 and automatic blanket construction authorizations. Under these authorizations, the project sponsor may file a request for reconciliation as set forth in § 157.103(e)(1)(i). Within 90 days of such filing, the Director will issue: (1) A letter stating that reconciliation has been achieved and the project may proceed; (2) a letter advising the project sponsor that it can only proceed under the case-specific authorization; or (3) a letter stating that the reconciliation period will be extended for an additional period up to 90 days.

g. *Compliance report.* Another important addition to the self-implementing environmental procedure is that set forth in subsection (d), which provides that a report must be filed demonstrating how compliance has been achieved with § 157.103. This report must include an explanation of how it was determined what facilities need to be included in the compliance process; the measures that have or will be undertaken for each requirement; a discussion of the consideration given to alternative routes or locations to avoid sensitive environmental areas; a description of the contacts made, reports provided, and results of consultations; a listing of projected completion dates for all required surveys and the projected starting date of construction for each discrete pipeline segment or aboveground facility; and the anticipated timeframe for start and completion of restoration.

This report must be filed with the Commission and must contain that information necessary to show that the project sponsor has fully complied with each and every aspect of the requirements embodied in § 157.103. The report must include a cover sheet (see appendix H to the preamble) verifying

[72] See Appendices E, F, and G for charts outlining how the reconciliation process interrelates with the various construction authorizations.

that the material submitted complies with the conditions which have been checked by the applicant. For prior notice authorizations under § 157.203(c), the report will be filed with the prior notice. For activities undertaken pursuant to section 311 of the Natural Gas Policy Act, the report must be filed at least 30 days prior to commencement of construction. For automatic authorizations under § 157.203(b), the report will be filed semi-annually as required in § 157.207(b). For case-specific applications, it will be filed with the application.

Upon receipt of the report, the Commission will review it to determine that compliance has been achieved. If the report demonstrates compliance with § 157.103, the Director will issue a letter notifying the project sponsor that he has received the report. If the report does not demonstrate compliance with § 157.103, the Director will issue a letter notifying the project sponsor that it is not in compliance and stating that the project sponsor may seek reconciliation, that the Director will initiate reconciliation on his own initiative, or that the project sponsor can only proceed pursuant to the case-specific authorization in part 157, subpart A. The issuance of a letter in either instance constitutes a purely ministerial act on the part of the Director to assist the project sponsor and does not constitute final agency action subject to rehearing within the meaning of § 385.1902 of the Commission's regulations. If full compliance is determined to exist, by definition, the project is categorically excluded from the need for an environmental assessment and may proceed with no further environmental review.

The importance of the compliance report cannot be overstated. Through the submission and review of this report, the Commission has the ability to verify compliance with the laws and standards that it has determined must be met to warrant a categorical exclusion. This subsection requires that detailed information be provided with regard to every requirement that a project sponsor is required to meet. The Commission staff will examine and evaluate this report, and may require the submission of further information if it is necessary to achieve a full and complete understanding of how a provision was satisfied. Of course, if compliance is not indicated by the report, and cannot be achieved through use of the reconciliation procedure, it will be necessary to review the project on a case-specific basis.

h. Procedures for compliance with the Endangered Species Act and National Historic Preservation Act. Prior to issuance of this rule, the Commission's procedures for achieving compliance with the Endangered Species Act of 1973 and the National Historic Preservation Act of 1966 were contained in appendices I and II, respectively, to part 157, subpart F. Those procedures applied to any certificate holder which undertook a project to be authorized pursuant to subparts E or F of part 157 and to any other service subject to § 157.206(d). It was proposed in the NOPR that these procedures be updated and codified as §§ 157.221 and 157.222.

Given the other changes that have been made to the regulations, it was decided to incorporate these requirements into § 157.103 as subsections (f) and (g). Thus, § 157.103(c)(3) provides (as did its predecessor § 157.206(d)(2)(vi)) that a project sponsor must comply with the Endangered Species Act, and that to achieve compliance, it must adhere to the procedures in § 157.103(f). If this is done, the Commission finds that endangered species and their critical habitat are protected in accordance with 16 U.S.C. 1536.

Likewise, § 157.103(c)(4) provides (as did its predecessor § 157.206(d)(2)(iii)) that a project sponsor must comply with the National Historic Preservation Act, and that to achieve compliance, it must adhere to the procedures in § 157.103(g). If this is done, the Commission finds that there is no effect on any property protected by 16 U.S.C. 470f.

In the NOPR, certain changes were proposed to the procedures for achieving compliance with the Endangered Species Act and the National Historic Preservation Act. With regard to the former, a problem was identified whereby companies had obtained "blanket" clearances from some offices of the Fish and Wildlife Service (FWS), but not project-specific clearances. The Commission noted its concern about the validity of this practice and proposed a modification that would require project-specific consultation. Further, it was noted that some blanket clearances were issued by the FWS in the early 1980s and that additional species could have been listed since that time. Therefore, in order to avoid any confusion or concern over certificate holders' ability to proceed under a blanket clearance, a modification was proposed to require that any certificate holder proceeding under a blanket clearance which is more than two years old must first consult with the FWS to determine whether any additional species have been listed and if the blanket clearance is still valid.

This proposal, as modified upon further consideration and in response to comments, has been incorporated into the Endangered Species Act compliance procedures at 157.103(f)(4). It now provides that in any case in which the blanket clearance is more than one year old, the project sponsor must consult to determine whether any additional species have been listed and whether the blanket clearance is still valid. Similarly, it now provides that if the blanket clearance is less than one year old and does not specify more frequent consultation, informal consultations are not required. The time period was reduced from two years in the proposed rule to one year in the rule to ensure greater control over the process. Likewise, it was felt that informal consultations were not needed if the blanket clearance was less than one year old. Finally, § 157.103(f)(4) now provides that if consultations are required, they must be initiated prior to the construction of project facilities. The purpose here is to prevent actions from being taken that might affect endangered or threatened species prior to consultation taking place.

With regard to the National Historic Preservation Act, several changes were proposed to appendix II of part 157, subpart F. One problem was that, despite the fact that appendix II did not allow effects on "eligible" cultural resources, some companies had constructed through portions of sites where there would be no effect to the aspects of the site which made it eligible. This was not the intent of that regulation. Accordingly, it was proposed to add a procedure to ensure that the Commission's regulations included measures for consultations between the staff, the company, the appropriate State Historic Preservation Officer(s), and the Advisory Council on Historic Preservation.

This procedure, which was proposed in the NOPR as § 157.222(c)(6)(i), is contained in the rule at § 157.103(g)(5)(xi). It now provides that if eligible properties are identified within the project area, the project sponsor, in consultation with the SHPO, must apply the Criteria of Effect found in 36 CFR 800.9 to determine whether the project will have an effect upon the significant historical, architectural, archaeological, or cultural characteristics of the property. The project sponsor is in compliance with § 157.103(c)(4) if it and the SHPO agree that the project will not affect the eligible property as long as, among other

things, no construction activities are allowed in any portion of a listed or eligible archaeological or historical site.

It was further proposed in the NOPR that purely visual or auditory effects which do not last beyond the actual construction phase would not constitute effects that eliminate a project's eligibility to be authorized under the blanket program. It was reasoned that construction that could be seen or heard from a cultural resource site for a limited time should not constitute an effect under the National Historic Preservation Act if no visual evidence or noise is detectable from the site after construction has ended. This change is incorporated into the final rule as § 157.103(g)(5)(xi)(C) and provides that visual and auditory impacts to the surroundings of an eligible property are not considered effects if they only occur during the construction or installation period.

As with the other requirements contained in § 157.103, the reconciliation procedure contained in § 157.103(e) is equally applicable to the procedures established in § 157.103 (f) and (g) for achieving compliance with the Endangered Species Act and the National Historic Preservation Act.

i. General siting and maintenance requirements. Included in the conditions that a project sponsor must adopt to avail itself of the self-implementing environmental procedure is § 157.103(c)(10), which provides that the project sponsor must adopt the requirements of § 157.103(h) for all activities that require compliance with that provision and issue the relevant portions of the requirements to design, survey, and construction personnel, with instructions to implement them.

Section 157.103(h) is former § 2.69. As § 2.69, this section provided guidelines to be followed by natural gas companies in the planning, locating, clearing, and maintenance of rights-of-way and the construction of aboveground facilities. Section 157.103(h) differs from former § 2.69 in that the guidelines that were contained in that section have been made into requirements, and matters that were redundant or duplicative of other requirements of the revised regulations have been eliminated.

Converting the former guidelines into requirements represents the best way in which to impose these conditions on project sponsors. The use of these provisions as guidelines engendered considerable confusion and variance between project sponsors as to what steps must be taken with regard to siting and maintenance issues. Issuing them as requirements should eliminate this confusion and produce a uniform, systematic way of ensuring protection of the environment. This modification is particularly appropriate given the expansion of the availability of the Commission's self-implementing environmental procedure.

3. Generic Procedures

As explained in the NOPR, two of the most significant environmental concerns with regard to pipeline construction projects involve soil erosion and stream and wetland crossings. Soil erosion is a serious national problem which results in the loss of productive lands and damage to the nation's waterways and wildlife, both aquatic and non-aquatic. Likewise, the construction of natural gas pipelines across stream and wetland ecosystems has the potential for adverse impact on, among others, fisheries, wildlife habitat, potable water supplies, and recreational uses if proper construction, erosion, and sediment control procedures are not implemented.

In response to this problem, the Commission has developed a set of procedures which it has formalized as §§ 380.13 and 380.14. These procedures should be of great use both to the Commission and the industry. As a result of their enactment as regulations, the industry will know what the Commission expects and will be able to plan projects and issue construction contracts which it can be confident will be acceptable to the Commission. Because the industry will be using uniform procedures, the Commission and other agencies which have permitting authority over stream and wetland construction should be able to accelerate the processing of applications. Currently, these issues take up significant staff and applicant time in the preparation and review of applications and data requests.

The main effort for applicants under the new regulations would be a one-time incorporation of these plans into their construction contracting procedures. From that time on, the amount of material required in applications to deal with these topics would be minimal and would concern specific resources on a site-specific basis. No information on generic construction procedures would be required and applicants and the staff could concentrate on site-specific concerns.

It was proposed in the NOPR that these procedures be used in conjunction with the automatic and prior notice authorizations. It was further provided that for traditional projects that are processed under part 157, subpart A, applicants would have to identify any concerns they have with the use of these procedures, and the staff would take those concerns into account in its review. In the rule, it is provided in § 157.103(c) that the project sponsor must adopt the requirements of §§ 380.13 and 380.14. Thus, these procedures apply to all projects. Of course, if any particular provision cannot be met, the reconciliation procedures of § 157.103(e) may be utilized. Likewise, project sponsors proceeding under the case-specific authorization procedures may seek modifications to the requirements of these sections.

4. Categorical Exclusions

As a result of having identified additional actions which would have little or no potential for significant environmental impact, the Commission proposed in the NOPR a number of actions to be added to the list in § 380.4 of those categorically excluded from the need for an environmental assessment. These actions include natural gas storage service where no facility construction is involved; abandonment of natural gas facilities by sale where natural gas service would be continued; Presidential Permits to operate facilities at the national borders of the United States that do not involve the construction of new facilities; complaints that do not raise environmental issues; declaratory orders disclaiming jurisdiction; abandonment of any natural gas service (such as transportation, sale, or storage) that does not involve abandonment of natural gas facilities; and acquisition of facilities.

In proposing these additions to the list of categorical exclusions, the Commission noted that it would continue to independently evaluate environmental information supplied in applications and comments by the public; and where circumstances indicated that an action may be a major Federal action significantly affecting the quality of the human environment, it would require an environmental report or other additional information, and prepare an environmental assessment or environmental impact statement as appropriate.

The categorical exclusions that were proposed in the NOPR have been adopted in the rule. To this list has been added an additional categorical exclusion pertaining to the Commission's self-implementing environmental procedure that is contained in § 157.103. This categorical exclusion provides that for projects which have been shown to fully comply with § 157.103, neither an environmental assessment or environmental impact

statement will be prepared. This categorical exclusion is not available for projects involving LNG facilities or new underground storage facilities.

As explained above, if a transaction proceeding under § 157.103 can meet all of the conditions and requirements of that section, then by definition that activity has no potential to have a significant environmental impact. Thus, a categorical exclusion for actions meeting this standard is both reasonable and appropriate.

5. Section 380.12

A number of other changes were proposed in the NOPR to update the Commission's environmental regulations. For the most part, these changes were suggested to summarize existing formal practices, subject them to public scrutiny, and codify them so that they would be applied in a predictable fashion.

One such proposal related to part 380, appendix A, which sets forth guidelines pertaining to the preparation of environmental reports for applications under the Natural Gas Act. In light of the Commissions' experience in implementing this provision over the years, it was determined that changes were needed. The problem was explained in the NOPR as follows:

> Because appendix A is currently identified as a "guideline," there is a lack of uniformity in the reports filed with the Commission, and data is frequently omitted or not provided in detail adequate to support the staff's analysis. The result is numerous, extensive, time consuming data requests by the Commission's staff. On the other hand, the industry is not given detailed enough guidance on what material is important or what information may be needed only for certain types of facility applications.
>
> To solve some of these problems in a specific area where expeditious processing was required, the Commission, on July 27, 1988, issued its "Order Establishing Guidelines for the Submission of Required Data" for the Northeast U.S. Pipeline Projects proceeding. Subsequently, the Commission included very similar requirements when it issued Order No. 493 on the electronic filing of material. For the electronic filing process the Commission indicated that this format was a preferred option to the format identified in appendix A of part 380, but was not mandatory.[73]

In light of this, the Commission proposed to revise part 380, appendix A, by replacing the text with a report format, by making it mandatory instead of advisory, and by codifying it as § 380.12. This has been done in the rule. Essentially, § 380.12 identifies the environmental data that is required for any certificate application that proposes the construction, operation, or abandonment of any facilities identified in § 380.3(c)(2)(i).

The backbone of this section is the requirement to file reports that describe specific environmental resource areas. The descriptions of the resource reports contained in the regulation have been prepared to cover a wide range of transactions. The detail of each resource report should be commensurate with the complexity of the transaction and its potential for environmental impact. Therefore, the required reports would not be extensive for minor projects. Additionally, individual reports might not be required at all under certain circumstances as set forth in the regulation.

It was proposed in the NOPR that new § 380.12 would contain 13 separate resource reports covering various topics for which information was needed by the Commission staff to evaluate proposed projects. The proposed resource report on PCB contamination was deleted from the rule. This report would have been required for applications involving the replacement, abandonment by removal, or abandonment in place, of pipeline facilities determined to have polychlorinated biphenyls (PCBs) in excess of 50 ppm in pipeline liquids.

Although the requirement for a resource report on PCB contamination has been removed from § 380.12, the Commission's self-implementing environmental procedure at § 157.103(c)(9) provides that a project sponsor must comply with the Toxic Substances Control Act. To avail itself of this procedure, the project may only involve the removal, replacement, or abandonment of facilities which have been found by EPA to have been exposed to PCB contamination greater than 50 ppm if the facilities have been declassified by the EPA, if the action complies with EPA's regulations at 40 CFR part 761, or if an alternative disposal permit is issued by EPA under 40 CFR 761.60(e).

Further, the compliance report required by § 157.103(d) must include a statement, supported by EPA correspondence, that the removal, replacement, or abandonment of facilities will conform to an alternative method of disposal under 40 CFR 761.60(e), or is on a system declassified by EPA. It is also provided that for removal, replacement, or abandonment which is done in accordance with 40 CFR part 761, but not under an alternative method of disposal, the project sponsor will provide a description identifying specific procedures for how certain activities were carried out. These activities detail procedures relating to removal and disposal of contaminated pipe. Thus, the requirements of the resource report that was originally proposed as part of § 380.12 are now largely contained in § 157.103 (c) and (d).

6. Applicant Prepared Environmental Assessment

Section 380.3(c)(2) of the Commission's regulations identifies the environmental information to be supplied in support of an application filed under the Natural Gas Act. To the existing regulation has been added a provision which provides that, in conjunction with such applications, the applicant may file a draft environmental assessment that conforms to the staff's guidelines for preparation of such documents. This provision also requires that any applicant planning to submit a draft environmental assessment must request and attend prefiling meetings with the Commission staff to discuss the project and environmental study plan that the applicant or its contractor proposes to follow in preparing the environmental assessment.

This provision has been included to expedite the processing of certificate applications that cannot, for whatever reason, take advantage of the self-implementing environmental procedure contained in § 157.103. Obviously, if compliance with this section could be achieved, no environmental assessment would be needed, since compliance with § 157.103 automatically results in a categorical exclusion. In those instances in which compliance with § 157.103 cannot be achieved, submission of a draft environmental assessment prepared by the applicant would assist the Commission in reviewing such projects. The Commission would remain responsible for confirming the information contained in the environmental assessment and independently reaching whatever conclusions are to be drawn from this information.

The draft environmental assessment will be based on the contents of the reports required to be filed by an applicant under 157.14(a) (6–a) and (6–b). The report required by § 157.14(a)(6–a) is that which must be filed if compliance with § 157.103 cannot be achieved. It is felt that by requiring the draft environmental assessment to be based on these reports, the information contained in it would be supported by hard data and thus would be more useful to the Commission.

[73] Construction NOPR, FERC Stats. & Regs. ¶ 32,477, *supra*, at p. 32,480 (footnotes omitted).

Concurrently with this order, the Commission is making available as a separate document "Proposed Interim Guidelines for Applicant Prepared Draft Environmental Assessments" for use by applicants. That document requests comments from the public. The staff will issue further updated guidelines in response to those comments and as experience is gained through use of the interim guidelines.

7. Changes to § 157.14

Certain changes have also been made to § 157.14 of the Commission's regulations. It was proposed in the NOPR to eliminate four of the exhibits required in § 157.14(a)(6), including Exhibit F–I (factors considered in use of joint rights-of-way); Exhibit F–II (factors considered in locating facilities in scenic, historic, recreational or wildlife areas); Exhibit F–III (statement on adoption of guidelines concerning right-of-way and construction activities); and Exhibit F–IV (statement by applicant concerning requirements of NEPA). The first three exhibits are being eliminated because they have become redundant and are no longer needed. Exhibit F–IV is being deleted because the Commission no longer accepts the type of application for which it was required.

Two new exhibits have been substituted in place of these exhibits. The first, which is contained in § 157.14(a)(6–a) as Exhibit F–I, is the compliance report specified in § 157.103(d) demonstrating project compliance with that section. The second, which is contained in § 157.14(6–b) as Exhibit F–II, is the environmental report that is required if Exhibit F–I does not demonstrate compliance with § 157.103, and is that report described in § 380.12.

VIII. Discussion—Rate Options

A. Procedures

Currently, a pipeline may recover the costs of constructing new facilities only in the context of a section 7 certificate proceeding or, in the case of facilities constructed pursuant to self-implementing authorizations, by filing for a full-blown rate review pursuant to § 154.63 of the regulations.[74] Both these procedures tend to be lengthy and complex. Therefore, we are establishing in this rule a new abbreviated section 4 procedure by which a pipeline may change its existing part 284 rates to recover the costs of construction of new facilities through an incremental rate. By filing under the abbreviated rate regulations, as discussed more fully below, the costs of constructing new facilities can be recovered more expeditiously.

1. Incremental Rates and the Transco Decision

We are aware that the Commission has previously disallowed incremental rates for facilities constructed under self-implementing section 311 authority. The principal decision on this issue is *Transcontinental Gas Pipe Line Corporation.*[75] Transco had filed tariff sheets which provided for an additional incremental rate schedule for service on its Mobile Bay facilities, which were constructed pursuant to section 311. The Commission rejected the request for incremental rates for section 311 facilities for the following reasons:

> It follows from Transco's proposal that a pipeline could construct individual extensions of its lines pursuant to section 311 and establish incremental rates for each line. A potential shipper would have to know all of the pipeline's Part 284 rates before deciding to have its gas transported. That is not the intent of Order No. 436 or section 311 since establishing incremental rates under Part 284 would frustrate efforts to create a transportation network and access to transportation facilities.
>
> Even if a pipeline's rates are designed on the basis of 100 percent of the pipeline's capacity, as Transco contends its rates are, the Commission would not have an opportunity to review the costs and the volumes underlying the rates until the pipeline's next rate case. While section 311 gives pipelines greater flexibility, it should not give them unlimited freedom to construct facilities and collect rates without Commission review for a period as long as three years.
>
> Although the Commission has permitted pipelines in section 7 proceedings to implement incremental rates, it has done so only after making a determination that the construction and operation of the proposed facilities are in the public convenience and necessity. As part of that process, the Commission has the opportunity to review the proposed initial rates to ensure that they are also in the public convenience and necessity, that incremental rates are appropriate for the facilities, and that only those customers being charged the incremental rate are benefitting from it. The Commission has not had such an opportunity in this case.[76]

Traditionally, as in the *Transco* case, the Commission's policy has been that incremental rates would not be approved if the facilities would be used to benefit the pipeline's system generally. The purpose behind this policy was to ensure that a discrete group of customers did not pay the costs of constructing facilities which were used to enhance the pipeline's service to existing customers without the existing customers contributing an appropriate amount toward the cost of the facilities.

The rule adopted here achieves the same policy objectives, only in a manner which better reflects the current natural gas industry, since the rate approved in an abbreviated section 4 proceeding for facilities constructed under section 311 would be an at-risk rate if the *Kansas Pipe Line* criteria is not shown. Imposition of the at-risk condition will ensure that existing and future pipeline customers are not charged inappropriately for the costs of unneeded facilities. By imposing the at-risk condition, both existing and future customers would be protected from paying for unused capacity on new facilities.

The abbreviated section 4 proceeding is intended primarily to provide pipelines who build under the self-implementing procedures, such as section 311 or part 157 blanket procedures, a forum in which they may establish rates to recover the costs of the facilities much as they would in a case-specific certificate proceeding. In the past, the constructing entity could not begin to recover its costs except through the more extensive § 154.63 procedures, since no certificate is issued for self-implementing construction. However, if a project complies with all the requirements for self-implementing construction, the public interest would not be served if the construction of that project were discouraged by the fact that the costs could not be recovered in a timely fashion. Instead, the abbreviated section 4 proceeding is intended to parallel the rate review inherent in the certificate proceeding. Therefore, the same policy considerations would apply to both types of proceeding.

The Commission expressed certain specific concerns in the *Transco* order which are rendered moot under the abbreviated section 4 rate filing procedures. First, Transco's filing would have resulted in the creation of an additional rate schedule; therefore, a shipper would be required to know a variety of rates and would, in essence, be required to pay a surcharge for service on the additional facilities. The Commission expressed its concern that different rate schedules could arguably apply to the same service. Further, the Commission reasoned that the intent of Order No. 436 and section 311 would be violated, since establishing incremental rates under part 284 would frustrate efforts to create a transportation network and access to transportation

[74] Transcontinental, *supra*.

[75] 44 FERC ¶ 61,400 (1988).

[76] *Id.* at 62, 289–290.

facilities. However, under the abbreviated rate filing, an additional rate schedule would not be added to the pipeline's tariff. Instead, the incremental rate would be separately stated [77] within the pipeline's applicable existing open-access rate schedules.[78] In this way, a potential shipper would need to become familiar with only the open-access rate schedules, and would have all related charges included within those rate schedules. Therefore, the incremental rate would not hinder access to facilities.

Also, the Commission in *Transco*, stated that an incremental rate could not be approved because Transco had not provided sufficient information to determine whether an incremental rate was appropriate. However, the filing requirements under the abbreviated section 4 procedure, combined with the at-risk nature of the rate, where appropriate, alleviate this concern.

2. Description of the Abbreviated Section 4 Procedure

The abbreviated section 4 procedure would only be available for changing existing cost-based rates to charge an incremental cost-based or negotiated rate for transportation service rendered on newly-constructed facilities. If the newly constructed facilities are completely integrated with the pipeline's existing facilities, the abbreviated section 4 procedure would only be available for changing existing part 284 rates to charge an incremental rate for firm transportation service on the newly constructed facilities. If interruptible transportation is provided on these new facilities, the pipeline would be restricted to its existing part 284 IT rate for the service.

However, if the new facility is discrete, the pipeline may be able to establish a separate IT rate for that facility.[79] Since a comprehensive review of the pipeline's tariff would not be involved, this procedure could not be used for any purpose other than establishing a new incremental rate for transportation service on newly constructed facilities. For example, the abbreviated section 4 procedure could not be used as a forum to determine whether facility-related construction costs should be rolled-in to a pipeline's general rate base.

The incremental rate approved under this procedure may be either cost-based or negotiated (as described below), at the discretion of the pipeline. For a cost-based, incremental rate, the regulations require the information traditionally required in section 4 general rate proceedings for new facilities. For a negotiated, incremental rate, the regulations require verification that the competitive negotiation procedure has been followed and completed.

The abbreviated section 4 rate filing could be made at whatever time the pipeline deems appropriate. For example, if a pipeline intends to construct facilities under one of the self-implementing authorizations (section 311, automatic, or prior notice), but also wants to charge an incremental rate at the initiation of service on the new pipeline, it could submit the abbreviated rate filing at a point during or prior to commencing construction which would allow for the statutory thirty day review period, as well as the possible suspension of up to five months, such that the rates, if accepted, would become effective at the initiation of service. This timing option would be available for all authorizations, except case-specific construction authorization. There, the filing could be made as part of the certificate application.

On the other hand, the pipeline may choose to submit this filing at some later time. In that case, if the facilities were constructed under a self-implementing authorization, for instance, the pipeline would charge its existing, system rates until such time as it elects to file for rate approval under the abbreviated rate filing regulations. The pipeline also has the option, if it so chooses, to include this information as an addendum to its section 4 filing to initiate a general rate proceeding. This procedure allows the pipeline to control the timing of its project, as opposed to having the timing controlled by the regulatory process, as well as providing a greater level of certainty to project plans. Further, since the abbreviated proceeding does not encompass a comprehensive review of the pipeline's existing tariff, as does a section 4 proceeding under § 154.63, the review of data can be accomplished and a rate approved more quickly.

B. Menu of Rate Options [80]

The final rule maintains cost-based rates as an option construction cost recovery. However, the rule also expands the rate options available to pipelines by establishing a procedure for approval of negotiated rates where the relevant market is shown to be sufficiently competitive.

1. Cost-Based Rates

Traditionally, the Commission has allowed only cost-based rates, which are also commonly referred to as cost-of-service rates. Under cost-of-service regulation, pipelines are allowed to collect all the prudent costs the pipeline has incurred in order to serve its customers, including a reasonable profit on its investment. In order to establish a cost-based rate, the Commission must first determine the pipeline's revenue requirement, primarily based upon a review of the depreciation on the facilities, the operating costs, the return on investment, and income taxes. Once the revenue requirement is determined, these costs are then allocated to various services.

The allocation of costs, and designing rates based upon this allocation of costs, translates the cost of service into the rates to be charged to the pipeline's customers for service. Utilizing this method ensures that customers pay no more for service than the pipeline's cost of providing such service, plus a reasonable return on the pipeline's investment.[81]

The regulations regarding cost-based rates as an option for recovery of costs are not altered by this rule. A pipeline may choose to pursue cost-based rates in a section 7 certificate proceeding, through an abbreviated section 4 filing, or through a general section 4 rate case. It should be noted that the at-risk provisions discussed above may be imposed on a cost-based rate in any of the three available forums.

2. New (Generally Applicable) At-Risk Terms and Conditions

a. *Introduction.* To place pipeline that propose cost-based rates, but that cannot or choose not to meet the *Kansas Pipe Line* criteria for finding the proposed facilities to be in the public convenience and necessity, at risk for the potential underutilization or economic failure of their projects, we are adopting the regulations at § 157.102. As described in § 157.102(a), this set of regulations will apply uniformly to the new facilities of all pipelines not satisfying the *Kansas Pipe Line* standards (now codified, as previously

[77] Rate schedules frequently include separately stated components or charges. For example, production or gathering related rates may be separately stated within a particular rate schedule. Another example of separately stated rates is where a pipeline separately lists rates for transportation which vary according to where the gas enters the pipeline's system and where it is finally delivered.

[78] Pipelines have two open-access rate schedules: One for firm service and another for interruptible service.

[79] See Transwestern Pipeline Co., 56 FERC ¶ 61,196 (1991).

[80] See appendix D for a chart outlining these options.

[81] For a more detailed description of rate design history and methodology, *see* Texas Eastern Transmission Corp., 30 FERC ¶ 61,144 (1985).

discussed, at § 157.102(b)), that are authorized: (1) Pursuant to subpart A or F of part 157 of the regulations,[82] to construct new facilities and charge cost-based rate for sales or transportation service; or (2) pursuant to part 284 of the regulations, to charge cost-based rates for transportation service under section 311 of the NGPA.

The purpose of the new regulations is to place the risks of a proposed project on the project's sponsors (and perhaps on the project's participants) and to prevent, should the project fail or be underutilized, the shifting of those risks to the pipeline's existing shippers and, ultimately, to consumers who do not benefit from the project. The intent is to encourage applicants contemplating new projects, either under section 7 or section 311, to carefully size and otherwise design an economic pipeline.

The new at-risk framework relies heavily on the risk assignment principles both codified at § 157.103 of the optional certificate regulations,[83] which we are rescinding here, and developed in the accompanying case law. For example, the prohibitions adopted here against cost shifting and decreasing througput volumes for rate design in subsequent rate cases,[84] which the case law recognizes as the core principles of risk assignment, are taken, in substance, from the former optional certificate regulations. Additionally, the minimum throughput condition for rate design regulations and the reservation fee regulations that we are adopting [85] are largely a codification of existing case law. To this extent, then, the new are-risk framework does not completely do away with the former optional certificate procedures but merely reformulates the optional certificate regulations and case law, and then merges the product with the traditional section 7(c) procedures to create a single analytical structure applicable not only to initial case-specific certifications but also to subsequent section 4 rate proceedings involving case-specific, self-implementing, and blanket authorizations.

The new at-risk framework applies both to transportation and sales services provided through new facilities not meeting the *Kansas Pipe Line* standards. However, our experience over the past few years has been that most companies constructing new stand-alone facilities have done so for transportation only. Similarly, most existing pipeline expansions also have been only for increased transportation.

In our notice of proposed rulemaking issued in *Pipeline Service Obligations* on July 31, 1991, we concluded that the present structure of the remaining pipeline merchant service, which is a bundled city gate sales service, may be anticompetitive and inhibits full realization of an efficiently operating national wellhead market. We therefore proposed to revise our regulations governing pipelines' remaining sales services by requiring that pipeline sales be separated (*i.e.*, unbundled) from transportation, generally at a place or places upstream in production areas. This would be subject to one exception under which a pipeline could continue bundled city gate firm sales service for certain, generally smaller, customers.[86] We requested comment on several aspects of our proposal (*e.g.*, on the place of unbundling). The adoption of this proposal as a final rule would significantly decrease bundled sales services. Nevertheless, we recognize that pipeline might, in the meantime, construct new facilities at least in part for bundled sales services,[87] so the new regulations reflect this possibility.

i. Placing pipelines at risk—Under the new regulations, there will be two approaches for establishing cost-based rates for new construction.[88] For pipelines meeting the *Kansas Pipe Line* criteria, rates will be designed as they are currently (*i.e.*, to recover the cost of service at the projected throughput). For pipelines not meeting the *Kansas Pipe Line* criteria, rates will be designed using minimum throughput levels. The minimum throughput levels for rate design are: (1) For firm transportation and sales service, 100 percent of daily capacity [89] for reservation fees (transportation) and demand charges (sales),[90] and 90 percent (for onshore facilities) and 60 percent (for offshore facilities) of annual capacity [91] for usage charges (transportation) and commodity charges (sales); and (2) for interruptible transportation and sales service, 90 percent (for onshore facilities) and 60 percent (for offshore facilities) of annual capacity for volumetric rates.

In addition to the minimum throughput conditions, other at-risk terms and conditions also will attach to all facilities not meeting the *Kansas Pipe Line* standards. These include rate design conditions such as the prohibitions against cost shifting and decreasing design throughput volumes in subsequent rate cases,[92] and non-rate design terms such as the requirement that the pipeline conduct an open season to allocate initially new capacity.[93] The purpose of the latter terms and conditions is to ensure that service through the new facilities is provided in accordance with open-access principles. We will discuss all of these terms and conditions in detail below.

ii. Lifting the at-risk terms and conditions—The at-risk terms and conditions of § 157.102 will attach to all new pipeline facilities not meeting the *Kansas Pipe Line* standards. They will remain in effect until the Commission determines, in a subsequent section 4 rate proceeding, that it is appropriate to remove them. Pursuant to § 157.102(g), this determination can be based on one of two alternative showings by the pipeline. Under § 157.102(g)(1), the pipeline can show that the new facilities now satisfy the remaining *Kansas Pipe Line* standards still applicable to them.[94] Or, under § 157.102(g)(2), the pipeline can show that the new facilities now provide a net benefit to the pipeline's existing customers. The second showing, called the net benefits test, will require, generally, a demonstration that the incremental revenues received by the pipeline for services requiring the new facilities exceed the cost of service for those facilities. If the pipeline makes either of the two alternative showings at § 157.102(g), the Commission will remove all of the at-risk terms and

[82] Subpart A involves case-specific construction authorizations. Subpart F involves automatic and prior notice blanket construction authorizations. All authorizations are pursuant to section 7 of the NGA.

[83] 18 CFR part 157, subpart E (1980)

[84] See § 157.102(d) (2) and (4)(i).

[85] See § 157.102(d) (3)(i) and (5)(i).

[86] *Pipeline Service Obligations*, IV FERC Stats. & Regs. at 32,540, 32,545–546.

[87] See, *e.g.*, Southern Natural Gas Co., 55 FERC ¶ 61,212 (1991).

[88] Later, we discuss another option: Negotiated rates agreed to by the pipeline and a shipper. The at-risk regulations we are adopting here will not apply to such negotiated rates.

[89] "Daily capacity" is defined at § 157.101(b) of the new regulations as: (1) for onshore facilities, the engineering design day capacity of the new facilities operating at MAOP; and (2) for offshore facilities, the gas phase engineering design day capacity of the new facilities operating at MAOP.

[90] In a few of the initial optional certificate proceedings, the pipeline's maximum reservation fee was calculated at a 95-percent load factor. The later cases, however, have consistently used a 100-percent load factor, for reasons which we discuss below.

[91] "Annual capacity" is defined at § 157.101(a) of the new regulations as the daily capacity of the new facilities multiplied by 365.

[92] See § 157.102(d)(2) and (4)(i).

[93] See § 157.102(e).

[94] For example, if the pipeline had already constructed the facilities, the fourth standard, requiring that it demonstrate adequate financial resources to construct them, no longer would be applicable.

conditions previously imposed on the facilities.

While the regulations do not mandate that facilities placed at risk remain under incremental rates, the Commission will consider whether they must remain incrementally priced by evaluating the extent to which they affect existing customers. Principally, the question is whether rolled-in rate treatment would increase or decrease the rates of existing customers. We are implementing this through the prohibition on cost shifting and the requirement that the pipeline show that there is an overall benefit before the costs of the at-risk facilities are rolled in to rate base. In performing the overall benefits test of § 157.102(d)(2)(iii) of the new regulations, the Commission will perform the same type of analysis that it currently does in deciding whether to roll the costs of incremental facilities into existing systemwide rates.[95]

It is important to stress at this point that, under the new at-risk framework, the Commission will examine, in section 4 proceedings, the benefits of new facilities to a pipeline's system for two different purposes. First, it will examine those benefits to determine whether a pipeline may or must roll the costs of the new facilities into its existing rate base. This is the overall benefits test. Second, the Commission will examine those benefits to determine whether to remove the at-risk terms and conditions previously imposed on the facilities. This is the net benefits test, and is available to pipelines as an alternative to the *Kansas Pipe Line* analysis. Generally, the net benefits test will be more difficult to satisfy than the overall benefits test, since the former requires a showing of specific dollar amounts while the latter allows a more generalized demonstration of benefits to existing customers.

b. *Overview of the New Regulations*—i. Prohibition Against Cost Shifting. As stated the regulations we are adopting at § 157.102 include several rules contained under the former optional certificate regulations at § 157.103. The new rules against cost shifting are contained in § 157.102(d)(2) and (4)(i). They encompass principles found at former § 157.103(d) (3), (4), (6), (7)(iii), and (8). As discussed more thoroughly below, these principles that prohibit cost shifting are as essential to the at-risk framework we are adopting here as they were to the risk assignment framework of the former optional certificate procedures. In short, the principles ensure that pipelines do not shift costs away from new services to existing services—and hence risks away from themselves to existing customers.

ii. Reservation fees—We are adopting here, at § 157.102(d)(5)(i), the proposal set forth in the NOPR concerning reservation fees and codifying current practice and policy in the optional certificate area. Reservation fees for firm transportation service, as well as demand charges for firm sales service, are the one form of risk allocation permitted under the new at-risk regulations, and they ensure the pipeline some recovery of its fixed costs from those entities that will benefit from the services rendered through the new facilities.

In this regard, we note that reservation fees may not guarantee a pipeline full recovery of all of its fixed costs. For example, if a pipeline designs its rates using the modified fixed-variable method of rate design (a method currently under reconsideration, as discussed *infra*), some of its fixed costs will be allocated to the usage charge component of its rates.[96] Thus, even if the pipeline books all of its capacity, its recovery of its fixed costs associated with the usage charge will depend on its achieving its projected throughput. And, even if that pipeline uses the straight fixed-variable methodology (which assigns all fixed costs to the reservation fee component of its rates), to the extent that the pipeline is not fully booked, it still will be at risk for the fixed costs associated with that unbooked capacity.[97]

The one limitation on the general rule allowing pipelines to negotiate and charge reservation fees is at § 157.102(d)(5)(i)(C): A pipeline may only charge a reservation fee to an affiliated pipeline shipper that is regulated by the Commission if that affiliated shipper establishes a separately stated rate for its services involving the costs associated with the newly constructed upstream facilities. We discuss reservation fees in greater detail below.

iii. Minimum throughput conditions—Another feature of the at-risk terms and conditions that we are adopting is the minimum throughput conditions at § 157.102(d)(3). The regulation requires that: (1) The volumes used to design the pipeline's usage and commodity charges (for firm transportation and sales service) and its volumetric rate (for interruptible transportation and sales service) equal, for onshore facilities, at least 90 percent, and for offshore facilities, at least 60 percent, of the annual capacity of the new facilities; and (2) the volumes used to design the pipeline's reservation fee and demand charge (for firm transportation and sales service) equal at least 100 percent [98] of the daily capacity of the new facilities. Again, the intent is to encourage pipelines to build economic pipelines. As discussed in greater detail below, the Commission has widely employed minimum throughput conditions in the past as a means of protecting consumers and assigning risk to pipelines.

We believe that subjecting a pipeline's new onshore facilities, which do not meet the *Kansas Pipe Line* standards, to a throughput of 90 percent of annual capacity is reasonable for several reasons. First, consistent with general past practice, this load factor will represent a percentage of the pipeline's *summer* capacity. Because gas turbine compressors operate more efficiently at lower ambient air temperatures during winter periods, a pipeline with compression has a higher winter period capacity than during the summer. As a result, application of a 90-percent load factor to summer capacity on pipelines with compression yields an 86- to 88-percent load factor on an annualized basis. Conversely, a 90-percent load factor applied to a pipeline without compression yields a 90-percent annualized load factor.

We believe that an 86- to 88-percent annual load factor represents a realistic operating scenario for a compressed pipeline that takes in account expected compressor downtime as well as unexpected downtime by others, such as production facilities and upstream and downstream pipelines. For operational purposes, a 90-percent annual load factor for pipelines without compression

[95] We recently addressed this subject in Northwest Pipeline Co., 56 FERC ¶ 61,006 (1991). We also have discussed it *supra* in our discussion of *Kansas Pipe Line*, and we will touch on it again *infra* in discussing the practical application of the new at-risk regulations.

[96] Specifically, the modified fixed-variable method of rate design recovers all fixed production and gathering costs, all variable costs, and return on equity and related taxes in the commodity component of a transportation rate. The remaining fixed costs (including the rate of return on debt (interest expense), depreciation expense, and administrative and general expense) are recovered in the demand component.

[97] For example, if a transportation only pipeline has firm contracts for 75 percent of the daily capacity of the new facilities, and it designs its rates using the straight fixed-variable methodology, it will collect 75 percent of the fixed costs associated with the new facilities through the reservation fees paid by its firm customers. The pipeline will be at risk for the remaining 25 percent of fixed costs, which it cannot shift to other customers. The only way that it can recover these costs is by shipping interruptible volumes through the new facilities.

[98] For rate design purposes, a pipeline's volumes can exceed 100 percent of daily capacity if they include imputed interruptible volumes.

seems equally realistic. The 10-percent downtime allowance should cover compression outages of upstream and downstream pipelines and outages of production facilities.

Second, the load factor that we are adopting here for onshore facilities is not inconsistent with past practice. As discussed *infra*, the Commission has applied various percentages of design capacity in different circumstances. In optional certificate proceedings, the Commission usually has applied a 95-percent load factor condition to reflect the applicant's high degree of risk. Many of the project financed ventures employed an 87-percent load factor. And load factors underlying rates for intrastate pipelines' section 311 rates have been in the 87- to 90-percent range. We believe that the 90-percent load factor adopted here for usage and commodity charges and volumetric rates establishes a high enough load factor to place pipelines at risk for constructing facilities that do not meet the *Kansas Pipe Line* criteria. At the same time, we do not believe that it will discourage pipelines from proceeding with projects that are economically viable.

Similiarly, for services through both onshore and offshore facilities, we believe that requiring maximum reservation fees and demand charges to be calculated at 100 percent of the pipeline's design capacity is reasonable. We expect most pipelines to contract for firm capacity up to their ability to provide firm service year-round.

Accordingly, an onshore pipeline with transportation rates designed under a modified fixed-variable rate methodology (a methodology currently under reconsideration, as discussed *infra*) will be able to recover all of its fixed costs allocated to the demand component by contracting for firm service for 100 percent of its daily capacity. That same pipeline will be able to recover its remaining fixed costs allocated to the commodity component by transporting 86 to 90 percent of its annual capacity on a firm basis, or by transporting gas at maximum interruptible rates at even lower annual throughputs. On the other hand, a pipeline with transportation rates designed under a straight fixed-variable methodology will be able to recover all of its fixed costs by contracting for firm service for 100 percent of its daily capacity.

We have opted to retain the 60-percent annual throughput condition for offshore facilities that § 2.65(a)(4) [99] of the existing regulations currently imposes on such facilities. We discuss the 60-percent annual throughput condition in greater detail below. We note here, however, that § 2.65 of the regulations applies on its face only to Louisiana offshore facilities. In the past, the Commission has expanded the application of the section to certain offshore Texas facilities as well, and we here are expanding its application to all offshore facilities in general. We believe that a 60-percent annual throughput condition for offshore facilities is warranted due to their special nature: The construction of offshore facilities not only is proportionately more expensive than the construction of onshore facilities, but it also poses potentially greater environmental risks.

Both offshore pipeline facilities satisfying the *Kansas Pipe Line* standards as well as those placed at risk thus will be subject to the same 60-percent minimum throughput condition, the former through operation of § 2.65(a)(4) of the regulations and the latter through operation of new § 157.102(d)(3)(ii). However, offshore facilities not satisfying the *Kansas Pipe Line* standards also will be subject to the other at-risk terms and conditions of § 157.102.

iv. Prohibition against decreasing design throughput volumes in subsequent rate cases—The rule against decreasing design throughput volumes in subsequent rate cases, which is part of the overall prohibition against cost shifting, is found at § 157.102(d)(4)(i). It carries over from § 157.103(d)(4) of the former optional certificate regulations. It is necessary to maintaining the integrity of minimum throughput conditions through subsequent rate cases because it prevents an erosion of the base against which those conditions are measured. For example, if a pipeline were allowed to decrease the design volumes of a facility placed at risk from 100,000 Mcf to 90,000 Mcf, this would be equivalent to reducing the minimum throughput condition to 81 percent.

v. Rate design for transportation services—The regulations at § 157.102(d)(5)(i)(B), (d)(5)(ii), and (d)(6) describe how new rates will be designed, both at the time of initial authorization and in subsequent section 4 rate proceedings, for firm and interruptible transportation services through facilities not meeting the *Kansas Pipe Line* standards. As will be discussed in greater detail below, existing pipelines will have the option of initially charging existing part 284 rates or an incremental rate for transportation service through the new facilities. New, first-time applicants will have to charge an incremental rate since they will not have any existing rates.

In general, a pipeline may propose to design its rates according to any accepted rate design methodology. The two most prevalent today are the modified fixed-variable and straight fixed-variable, but we are not expressing here a preference for one over the other. We note that we have proposed in *Pipeline Service Obligations* to require all pipelines to design their transportation rates under the straight fixed-variable methodology, unless the parties to a proceeding agree otherwise.[100] However, pending adoption of a final rule in that proceeding, pipelines are free to propose any rate design methodology.

For pipelines not charging existing rates, the maximum reservation fee, if any, will be calculated by dividing all costs associated with the reservation fee [101] by the design throughput volumes specified in § 157.102(d)(3)(i) of the regulations.[102] These design throughput volumes must equal at least 100 percent of the daily capacity of the new facilities (multiplied by 12 months). The maximum usage charge will be calculated by dividing all costs not associated with the reservation fee by the design throughput volumes specified in § 157.102(d)(3)(ii).[103] These design throughput volumes must equal, for onshore facilities, at least 90 percent, and for offshore facilities, at least 60 percent, of the annual capacity of the new facilities. Finally, the volumetric rates for interruptible service must be a one-part rate. The maximum rate will be calculated by dividing the cost of service for the new facilities by the design throughput volumes specified in § 157.102(d)(3)(ii).[104] These volumes also must be equal, for onshore facilities, at least 90 percent, and for offshore facilities, at least 60 percent, of the annual capacity of the facilities. Pipelines will be able to supplement the recovery of their cost of service by achieving a high level of interruptible throughput.[105] In our section below

[99] 18 CFR 2.65(a)(4) (1990).

[100] See *Pipeline Service Obligations*, IV FERC Stats. & Regs. at 32,557.

[101] As stated, a pipeline designing rates under the straight fixed-variable methodology would recover all of its fixed costs in the reservation fee. One designing rates under the modified fixed-variable methodology would assign some of those fixed costs to the usage charge.

[102] See § 157.102(d)(5)(i)(B).

[103] See § 157.102(d)(5)(ii).

[104] See 157.102(d)(6)(i).

[105] In fact, they also will be able to over recover their costs, but this is not unreasonable given the level of risk imposed under the new regulations.

describing the practical application of the at-risk conditions, we provide numerical examples of these concepts governing the design of transportation rates.

While the new regulations thus describe the design of transportation rates under the at-risk framework, they do not contain similar provisions for sales rates. The instances of pipelines providing bundled sales services through new facilities will likely be few, and in those instances, many existing pipelines likely will begin service by charging their existing, generally applicable sales rates. To begin charging an incremental sales rate upon the commencement of service through facilities constructed pursuant to part 157, subpart A, an existing pipeline will be able to establish the new rate in the section 7 proceeding. To establish later a new, generally applicable sales rates or to charge a new incremental sales rate, a pipeline will have to file a full section 4 proceeding. Because we believe these instances will be relatively few, we do not codify here a design framework for sales rates. We will examine them in the context of section 7 or 4 proceedings as they arise. We note, however, that the minimum throughput conditions used to design new sales rates will attach to facilities not meeting the *Kansas Pipe Line* criteria at the time of their authorization and will be used to design new rates when appropriate. In any event, as discussed above, if a final rule eventually is adopted in *Pipeline Service Obligations* as proposed, bundled sales services will be eliminated for all but a pipeline's smallest customers.

vi. Integrated facilities: Looping and compression—In the past, optional certificates were limited to laterals or new pipelines. Under the new rule, facilities that will be completely integrated with a pipeline's existing facilities (such as looping and compression) can be constructed subject to the conditions intended to place pipelines at risk. We are adopting two provisions, however, that will apply specifically to such completely integrated facilities.

First, in future rate cases the volumes used to design rates for services rendered through the existing facilities may not be lowered from historical levels.[106] "Historical levels" is defined as the highest annual throughput the pipeline has achieved during the last 5 calendar years.[107] Thus, to design new rates for services involving the existing facilities (*e.g.*, to establish new system rates by rolling the costs of the new facilities into general rate base), the Commission will impute throughput volumes to the existing facilities based on their historical levels, as defined. The throughput volumes attributable to the new facilities (*i.e.*, the looping or compression) will be those projected at the time of authorization under the at-risk rules.[108]

In addition, looking at the pipeline's historical throughput levels on existing facilities will serve another purpose. It will preclude the pipeline from attributing throughput volumes on the existing facilities to the new facilities, thus ensuring that the pipeline satisfies the minimum throughput conditions imposed on the new facilities.

The second provision that we are adopting involving completely integrated facilities is at § 157.102(d)(6)(ii). It states that a pipeline can only have one rate for interruptible transportation through completely integrated facilities. The reason is to prevent discrimination. For example, if a pipeline had two rates for interruptible transportation through looped facilities, it would be impossible to determine whether the interruptible service was being provided through the old or new facilities. On the other hand, a pipeline may establish an incremental rate for firm service involving newly looped or compressed facilities because the underlying assumption is that all firm capacity on the existing facilities was booked when the new facilities were built.

vii. Additional terms and conditions—In addition to the terms and conditions designed to place at risk pipelines proceeding under these alternative procedures to certification, we are adopting several other conditions that pipelines electing this alternative approach must accept. The purpose of these additional conditions (which also, generally, were found in the optional certificate area) is to ensure that service through the new facilities is provided in accordance with open-access principles. First, § 157.102(c) requires all pipelines to have a part 284, subpart G blanket transportation certificate before beginning transportation or sales service through the new facilities. Second, § 157.102(e) requires all pipelines to advertise and hold an open season to initially allocate capacity on the new facilities.

Finally, § 157.102(f) requires a new pipeline constructing stand-alone facilities pursuant to part 157, subpart A to make a rate filing, pursuant to section 4 of the NGA, within three years of the in-service date of the new facilities. This will enable the Commission to examine the actual operating costs of the facilities and to determine whether changes in rate design are required.

viii. Capacity brokering—We are not, at this time, codifying as part of the new at-risk framework the capacity brokering requirements that applied to interstate pipelines constructing stand-alone facilities under the former optional certificate procedures. The Commission is considering the issue of capacity brokering separately and more broadly in the context of the rulemaking proceeding in *Pipeline Service Obligations*.[109] If and when the Commission adopts a final rule governing capacity assignment, it will apply uniformly to all open-access interstate pipelines, including those operating in the meantime pursuant to the at-risk regulations adopted here.

c. *The At-Risk Conditions Directed at Rate Design.* Following is an in-depth discussion of the central features of § 157.102 that are designed to place pipelines at risk and which govern rate design. We begin with the minimum throughput conditions and proceed to the proscription against cost shifting (including the proscription against decreasing design throughput volumes in subsequent rate cases). We then discuss reservation fees.

i. *Minimum Throughput Conditions*—A. The New Regulation. As stated, an important feature of the at-risk terms and conditions we are adopting is the minimum throughput conditions. The new regulation at § 157.102(d)(3)(ii) requires that the volumes used to design the pipeline's usage charge for firm

[106] See § 157.102(d)(4)(ii).

[107] See 157.101(c).

[108] One could argue that, by imputing historical volumes to the existing facilities for purposes of designing new rates for services involving them, the Commission in a sense is placing the existing facilities at risk. This is not our intent. The historical level of throughput volumes that the Commission will use for this purpose will be the actual highest volumes achieved by the pipeline during one year of the latest 5-year period. These historical levels thus can change from one rate case to another as the relevant 5-year period changes.

[109] *See Pipeline Service Obligations*, IV FERC Stats. & Regs. at 32,551–553. There, the Commission proposed to replace its current capacity brokering program, which it has implemented on a case-by-case basis by issuing individual certificates, with a capacity releasing mechanism that would be required uniformly for all open-access interstate pipelines under Part 284 of the regulations. Under the proposed rule, all interstate open-access pipelines would have to provide a capacity releasing mechanism through which existing shippers could voluntarily reallocate, on a permanent or temporary basis, all or a part of their firm transportation capacity rights to any person who wanted to obtain that capacity by contracting with the pipeline.

transportation service, commodity charge for firm sales service, and volumetric rate for interruptible transportation and sales service equal, for onshore facilities, at least 90 percent, and for offshore facilities, at least 60 percent, of the annual capacity of the new facilities. And it requires that the volumes used to design the pipeline's reservation fee, if any, for firm transportation service and demand charge for firm sales service equal at least 100 percent of the daily capacity of the new facilities.[110] Essentially, the 90- and 100-percent minimum throughput conditions will remain in effect throughout the life of the project unless, pursuant to § 157.102(g), the pipeline demonstrates, in a section 4 rate proceeding, that the new facilities now: (1) Meet the standards of *Kansas Pipe Line*, to the extent still applicable; or (2) provide a net benefit to the pipeline's existing customers.[111]

B. Past Use of Minimum Throughput Conditions—The Commission traditionally has used minimum throughput conditions to impose risk on pipelines or, more accurately, the pipelines' shareholders. The purpose of these conditions, as applied both in section 7(c) cases involving new construction and in cases setting rates for section 311 transportation through facilities constructed outside the section 7(c) certification process, has generally been to protect consumers from the chance that the pipelines were overly optimistic in projecting volumes to be moved through the lines. The higher the minimum throughput level for rate design, the more the pipeline is placed at risk for underutilization of the facilities.

1. Optional Certificate Proceedings—In past optional certificate proceedings,[112] in addition to proscribing cost shifting and the decrease of throughput volumes for rate design in subsequent rate cases, the Commission usually has imposed a 95-percent load factor condition in designing usage charges, a high figure reflecting the higher degree of risk applicants were expected to bear under the optional procedures.[113] The 95-percent figure initially was based on the pipeline's expected downtime due to compressor unavailability, and subsequently on the objective of achieving a level playing field among all participants in the same market. The Commission allowed, however, some risk shifting to the pipelines' customers in the form of a reservation fee (usually subject to a 100-percent load factor condition) that was arrived at through arms-length negotiations between the pipeline and shipper and which was not greater than the modified fixed-variable demand charge would be for the pipeline's sales rates.[114]

2. Project financed ventures—In project financed cases,[115] the Commission has apportioned risk between applicants and consumers in projects that carried a significant risk of failing to cover the applicants' costs (including a fair return).[116] The theory underlying this risk apportionment was that regulated firms could turn to riskier technologies and projects in the hope of obtaining more and better production and lower costs, while the price that the public paid would include assurances of shared responsibility for losses directly through the amortization of abandoned projects.[117] For example, in the *Great Plains* case,[118] the risk was whether three gas producing processes could be integrated in a single plant to manufacture synthetic gas on a commercially viable scale. In *Ozark, Trailblazer,* and *Trans-Anadarko,* the risk was whether there were sufficient gas reserves to justify the project: the bulk of the gas that the shippers planned to ship through these pipelines would come from other than proven and probable reserves.[119]

The Commission apportioned risk between applicants and ratepayers in these cases through rate design, specifically through the imposition of two-part rates. Risk to the project sponsors was reflected in the commodity charge, subject to a minimum throughput condition, that generally included depreciation expense related to equity, return of and on equity, and income taxes.[120] Risk to the ratepayers was reflected in the demand charge, which generally included all operating and maintenance and expenses, taxes other than income, and all debt service costs.[121] Customers were responsible for the demand charge even if the project failed. This enabled the project sponsors to secure financing.

However, to place risk also on the pipeline applicants, the Commission subjected commodity charges to minimum throughput conditions. The theory again was that if it were prudent to build a certain size pipeline, any risk that the pipeline would not be fully utilized should be placed on the applicants and not the ratepayers.[122] For example, in *Ozark,* the Commission adopted a minimum throughput condition of 87 percent of design

---

[110] As previously noted, the terms "annual capacity" and "daily capacity" are defined at § 157.101 (a) and (b) of the new regulations.

[111] As discussed, the net benefits test requires, generally, a showing that the incremental revenues received by the pipeline for services requiring the new facilities exceed the cost of service for those facilities.

[112] See, *e.g.,* Mojave Pipeline Co., 47 FERC ¶ 61,200 (1989), reh'g granted in part and denied in part, 50 FERC ¶ 61,069 (1990) (*Mojave I*); Kern River Gas Transmission Co. and Mojave Pipeline Co., 50 FERC ¶ 61,069, reh'g denied, 51 FERC ¶ 61,195 (1990) (*Kern River I and Mojave II*); Wyoming-California Pipeline Co., order on non-environmental issues, 44 FERC ¶ 61,001 (1988), vacated in part, 44 FERC ¶ 61,210, reh'g granted in part and denied in part, 45 FERC ¶ 61,234, order issuing conditional certificate, 45 FERC ¶ 61,353, initial decision on environmental issues, 45 FERC ¶ 63,005 (1988), aff'g initial decision on environmental issues, 46 FERC ¶ 61,029 (1989), aff'd sub nom. Public Util. Comm'n of California v. FERC, 900 F.2d 269 (D.C. Cir. 1990); Wyoming-California Pipeline Co., 50 FERC ¶ 61,070, reh'g denied, 51 FERC ¶ 61,195 (1990) (*WyCal II*); Altamont Gas Transmission Co., 54 FERC ¶ 61,028 (1991); Delta Pipeline Co., 52 FERC ¶ 61,004 and 53 FERC ¶ 61,002 (1990); Gulf States Transmission Corp., 52 FERC ¶ 61,088 (1990); Oklahoma-Arkansas Pipeline Co., 53 FERC ¶ 61,019 (1990), reh'g granted in part and denied in part, 55 FERC ¶ 61,002 (1991) (*Ok-Ark*).

[113] See *Ok-Ark,* 53 FERC at 61,065.

[114] See 18 CFR 157.103(d)(3) (1990). The pipeline was required to make the lowest negotiated reservation fee offered to any customer available to all customers on a non-discriminatory basis. See, *e.g., WyCal II,* 50 FERC at 61,174.

[115] Project financing differs from conventional financing mainly in connection with loan security. Security generally takes one of two forms in conventional financing. First, the project sponsor, or borrower, has sufficient unencumbered assets that the lender feels secure in making a loan on the basis of the borrower's general credit. Second, if the borrower does not have unencumbered assets sufficient to secure the borrowing, the lender may require the pledge of specific assets to be funded by the borrowing as collateral for the loan. A common example of this kind of financing is the mortgage on a building.

Project financing is where the general credit-worthiness of the borrower is either insufficient or allegedly unavailable to secure the borrowing, and the underlying economic value of the assets to be financed is insufficient to assure the lender of being repaid. In this case, an optional financing vehicle is the stream of income to be generated by the project. However, that vehicle is only available in the event that the income stream can be assured whether or not the project fails. In these cases, such assurance has been fashioned in the form of a demand charge. See, *e.g.,* Ozark Gas Transmission System, 16 FERC ¶ 61,099, at 61,195 (1981).

[116] Trailblazer Pipeline Co., *et al.* 18 FERC ¶ 61,244, at 61,502 (Opinion No. 138), reh'g denied, 19 FERC ¶ 61,116 (1982) (Opinion No. 138–A) (*Trailblazer*).

[117] *Trailblazer,* 18 FERC at 61,502.

[118] Great Plains Gasification Associates, *et al.,* 9 FERC ¶ 61,221 (1979).

[119] Ozark Gas Transmission System, 12 FERC ¶ 63,048 (1980), 16 FERC ¶ 61,099, at 61,197 (Opinion No. 125), reh'g denied, 17 FERC ¶ 61,024 (1981) (Opinion No. 125–A), *aff'd per curiam sub nom.,* Public Service Comm'n of New York v. FERC, 680 F.2d 252 (D.C. Cir. 1982); *Trailblazer,* 15 FERC at 65,146, 65,151–152; Trans-Anadarko Pipeline System, 20 FERC ¶ 63,099, at 65,354–356 (1982).

[120] See *Trailblazer,* 18 FERC at 61,504; *Ozark,* 16 FERC at 61,194.

[121] See *Ozark,* 16 FERC at 61,194; *Trailblazer,* 18 FERC at 61,504.

[122] *Ozark,* 16 FERC at 61,199; *Trailblazer,* 18 FERC at 61,506.

capacity for the first two years.[123] In *Trailblazer*, the minimum throughput condition was set at 87 percent of free flow capacity and, after compression was added, 72 percent of powered capacity for the first two years.[124] In each case, the pipeline was required to file a section 4 rate proceeding after the first two years of operation.

Additionally, in the proceedings certificating the HIOS/UTOS offshore Texas and Louisiana systems, the Commission required that 100 percent of the annual volumes be used for computing the commodity (usage) component of rates.[125] And in the Iroquois/Tennessee project, the Commission imposed an overall load factor of 87 percent.[126]

3. Offshore Louisiana cases—In the offshore Louisiana area, § 2.65 of the Commission's regulations requires, absent a waiver, an initial showing by the pipelines that the proposed facilities will be utilized at a minimum annual load factor of 60 percent of the annual capacity available by the end of a 12-month period following installation of the facilities.[127] The Commission enforces this requirement by permitting the involved facilities to be included in the cost-of-service of the pipeline in future rate proceedings at an average unit cost predicated upon a load factor of not less than 60 percent of the annual capacity available.[128] While § 2.65 on its face applied only to offshore Louisiana facilities, in case law the Commission expanded the application of the section to certain offshore Texas facilities as well.[129]

The 60-percent load factor prerequisite is intended to encourage prompt development and attachment of offshore reserves proximate to the pipeline system, but also to protect jurisdictional ratepayers from the burden of costly, substantially underutilized facilities.[130] The offshore cases adhere almost uniformly to a 60-percent load factor and consistently interpret the regulation to require 60 percent utilization of the facilities in succeeding years.[131] The Fifth and D.C. Circuits have upheld the regulation as a reasonable exercise of the Commission's conditioning power under section 7(e) as well as the Commission's interpretation of it.[132]

As stated, the instant rulemaking proceeding does not alter the substance of the existing offshore regulations at § 2.65, but it expands their application to all offshore pipelines. The policies underlying the adoption of the § 2.65 regulations in the first instance, we conclude, apply equally to the construction of all offshore facilities.[133]

4. Cases setting rates for section 311 transportation—The construction of facilities under section 311 is not subject to prior Commission approval. However, the transportation rates that an intrastate pipeline charges an interstate pipeline for section 311 service must be "fair and equitable." [134] The regulations set forth those instances in which an intrastate pipeline must seek prior Commission approval of those rates.[135] To the extent that the costs of building and operating section 311 facilities are reflected in the transportation rate charged to an interstate pipeline, the interstate pipeline in turn can automatically pass through those costs to its customers.[136]

The Commission's concern has been that an intrastate pipeline's incentive to build sound, economic facilities under section 311 may be reduced since its costs will be reflected in its section 311 transportation rate and passed through to interstate customers. To thus discourage the construction of uneconomic transportation facilities under section 311, the Commission has required that the risk of underutilization be placed on the intrastate pipeline rather than on, ultimately, the customers of interstate pipelines. The Commission has accomplished this by imposing minimum throughput conditions when setting rates for section 311 transportation. Load factors have been set, generally, at 87 or 90 percent.[137]

The courts have affirmed not only the Commission's use of minimum throughput conditions to assign risk in these circumstances, but also the Commission's position that section 311 does not guarantee recovery of costs. Once a rate is designed to give the intrastate pipeline a profit from a properly designed system, the fact that the actual throughput is not enough to recover costs does not invalidate the rate.[138]

C. Adoption of minimum throughput conditions—There thus is substantial precedent behind our decision here to adopt the minimum throughput vehicle as a uniform mechanism to place at risk pipelines not satisfying the *Kansas Pipe Line* criteria that: (1) seek, pursuant to subpart A or F of part 157 of the regulations, to construct new facilities and charge cost-based rates for sales or transportation; or (2) seek approval of cost-based, section 311 transportation rates. The Commission frequently has used minimum throughput conditions in the past to assign risk, and the courts uniformly have approved the Commission's power to impose throughput conditions on certificates. For example, the United States Court of Appeals for the Tenth Circuit has stated that "we have no problem upholding the power of the Commission to impose

[123] *Ozark*, 16 FERC at 61,199.

[124] *Trailblazer*, 18 FERC at 61,506. Additionally, the Commission found that the justification for project financing was marginal and subjected the applicants to extra risk by conditioning approval of project financing on the applicants' waiver of their right to apply for the recovery of their equity investment should the project fail.

[125] High Island Offshore System, 55 FPC 2674, reh'g granted in part and denied in part, 56 FPC 725, 729–30 (1976); Texas Gas Transmission Corp., *et al.*, 57 FPC 199, 201 (1977), reh'g denied, 2 FERC ¶ 61,210 (1978); High Island Offshore System, *et al.*, 5 FERC ¶ 61,267, at 61,579 (1978).

[126] Iroquois Gas Transmission System, L.P., *et al.*, order making preliminary determinations and establishing procedures, 52 FERC ¶ 61,091, initial decision, 52 FERC ¶ 63,031, order issuing certificates, 53 FERC ¶ 61,194, at 61,710 (1990) (Opinion No. 357), reh'g granted in part and denied in part, 54 FERC ¶ 61,103 (1991) (Opinion No. 357–A); Iroquois Gas Transmission System, L.P., order amending certificate, 54 FERC ¶ 61,285, reh'g granted in part and denied in part, 55 FERC ¶ 61,276 (1991).

[127] See 18 CFR 2.65(a)(4) (1990).

[128] See 18 CFR 2.65(b) (1990); *see also* Tennessee Gas Pipeline Co., *et al.*, 12 FERC ¶ 61,307, at 61,707 (1980), reh'g granted in part and denied in part, 15 FERC ¶ 61,100, at 61,221 [ordering paragraph (M)] (1981) (*Tennessee*).

[129] See, *e.g.*, Transcontinental Gas Pipe Line Corp., 12 FERC ¶ 61,316, at 61,729 (1980).

[130] Chandeleur Pipeline Co., 45 FERC ¶ 63,023, at 65,243 (1988); Transcontinental Gas Pipe Line Corp., 12 FERC ¶ 61,316 (1980); *Tennessee*, 12 FERC at 61,707.

[131] Transcontinental Gas Pipe Line Corp. v. FERC, 589 F.2d 186, 188 (5th Cir. 1979). *But cf.* Green Canyon Pipe Line Co., 47 FERC ¶ 61,310 (1989) (authorizing, as proposed by the applicant, one-part firm and interruptible transportation rates based on 100-percent load factor throughput).

[132] See *Transcontinental Gas Pipe Line Corp.* v. *FERC*, 589 F.2d 186 (5th Cir. 1979); *Tennessee Gas Pipeline Co.* v. *FERC*, 689 F.2d 212 (D.C. Cir. 1982).

[133] As stated, both offshore pipeline facilities satisfying the *Kansas Pipe Line* standards as well as those placed at risk will be subject to the same 60-percent minimum throughput condition, the former through operation of § 2.65(a)(4) of the regulations and the latter through operation of new § 157.102(d)(3)(ii). However, offshore facilities not satisfying the *Kansas Pipe Line* standards also will be subject to the other at-risk terms and conditions of § 157.102.

[134] NGPA section 311(a)(2); 18 C.F.R. § 284.123(a) (1990).

[135] See 18 CFR 284.123(b) (1990).

[136] NGPA section 601(b)(2)(B).

[137] See Louisiana Intrastate Gas Corp., 50 FERC ¶ 61,011, reh'g granted in part and denied in part, 52 FERC ¶ 61,297 (1990); Delhi Gas Pipeline Corp., 43 FERC ¶ 61,015 (1988); Loan Petroleum Corp., 42 FERC ¶ 61,015 (1988).

[138] *See* Mustang Energy Corp. v. FERC, 859 F.2d 1447 (10th Cir. 1988).

throughput conditions on certificates under section 7(e) of the Natural Gas Act." [139]

All minimum throughput conditions imposed under this rule will be tracked through and, in general, maintained in subsequent rate proceedings until and unless the pipeline demonstrates, in a section 4 proceeding pursuant to one of the two alternative tests at § 157.102(g) of the new regulations, that removal of all of the at-risk terms and conditions is warranted.[140] Although, in the past, the Commission generally has rejected efforts by pipelines to eliminate or reduce previously imposed minimum throughput conditions,[141] we anticipate here removing such conditions upon the pipeline's satisfaction of either of the § 157.102(g) tests.

ii. Prohibition against cost shifting—To ensure that applicants assumed the economic responsibility for ventures authorized under the former optional certificate procedures, Order No. 436 established four rate principles that prohibited applicants from shifting costs.[142] Two of these principles ensured that the applicant in fact was assuming the risk of the project.[143] First, in addition to a reservation charge, the rate for new service was required to be a one-part rate [144] that recovered the costs allocated to the new service to the extent that the projected units of service were actually purchased.[145] Second, only properly allocated costs could be included in the rates.[146] As the Commission once stated, "[a]n applicant's compliance with these [two] rate conditions is critical to a determination that the applicant is actually assuming the risk of its proposal, and is not just alleging that it is assuming the risk." [147]

The other two rate principles originally codified under the optional certificate procedures prohibited applicants from reducing projected volumes and recovering past losses in future rate cases.[148] The risks thus created by the four rate principles "provide[d] a pipeline with a strong incentive not to include excess capacity in new facilities constructed under an expedited certificate." [149]

These principles adopted originally as part of the former optional certificate procedures that proscribe, in general, cost, and hence risk, shifting, are essential, we conclude, to placing pipelines at risk in the instant context. Accordingly, we are adopting them here as § 157.102(d) (2) and (4)(i). Paragraph (d)(2)(iii) provides that no costs associated with the new facilities may be allocated to any other services unless the pipeline files a section 4 rate proceeding and the Commission determines that the new facilities provide an overall benefit to the pipeline's existing customers. In effect, the regulation prohibits the risk of a project from being shifted or allocated to existing customers until the pipeline demonstrates in the future that new facilities have come to be used to the benefit of existing services.

To shift costs to existing customers, the pipeline will have to demonstrate that those customers will benefit significantly from the facilities (*e.g.*, through lower rates). Otherwise, the pipeline will have to keep the costs of the new facilities separate from the cost of its existing facilities. As stated, we have modified the former optional certificate procedures by permitting pipelines to use the at-risk procedures for mainline facilities such as looping and compression. However, the cost shifting safeguard at § 157.102(d)(2) also will apply to these facilities.

iii. Reservation fees—Consistent with the former optional certificate regulations at § 157.103(d)(3), the new regulations at § 157.102(d)(5)(i) permit, with the one limitation described below, limited risk shifting and allocation in the form of a reservation fee for firm transportation service. Additionally, as proposed in the NOPR, they codify several features of the case law [150] to ensure that service is provided consistent with open-access principles. First, a reservation fee must be the result of arms-length negotiations between the pipeline and customer, who are free to negotiate any level of risk sharing within the bounds of § 157.102(d)(5)(i). Second, the pipeline must offer to all shippers on a non-discriminatory basis the lowest reservation fee that is negotiated with any shipper. As stated in the NOPR, this requirement is a necessary corollary to the requirement that service be provided on a non-discriminatory basis. In the case of proposed construction under NGA section 7, the applicant will not be required to build the facilities if it determines that the aggregate reservation fees negotiated were insufficient to support the project's construction. In such a case, the applicant can then renegotiate the reservation fees with individual customers. Although the pipeline must offer to all customers the lowest reservation fee agreed to by any one customer, a shipper can always agree to pay a higher reservation fee, up to a maximum reservation fee described in § 157.102(d)(5)(i)(B), either to induce the applicant to go forward with the project or to secure a higher priority in the initial queue for service.

As previously noted, a pipeline must hold an open season to initially allocate capacity on the new facilities.[151] If the pipeline receives requests for firm service that exceed the facilities' capacity, it must determine the priority of service rankings in a non-discriminatory fashion. It can accomplish this (and thus establish an initial queue for service) in one of two ways: (1) According to the first-come, first-served principle; or (2) according to the present value of each reservation fee per unit.[152] If the pipeline chooses the

[139] Northwest Central Pipeline Corp. v. FERC, 797 F.2d 918, 919–20 (10th Cir. 1986) (involving a 90-percent throughput condition on a traditional section 7(c) authorization); see also Tennessee Gas Pipeline Co. v. FERC, 689 F.2d 212 (D.C. Cir. 1982) and Transcontinental Gas Pipe Line Corp. v. FERC, 589 F.2d 186, 188 (5th Cir. 1979) (upholding the Commission's imposition of 60-percent throughput conditions on offshore Louisiana certificates).

[140] As stated, a pipeline may satisfy either the remaining *Kansas Pipe Line* standards still applicable to the new facilities or the net benefits test.

[141] *See, e.g.*, Ozark Gas Transmission System, 32 FERC ¶ 63,019 (1985), reh'g granted in part and denied in part, 39 FERC ¶ 61,142 and 41 FERC ¶ 61,207 (1987), remanded on other grounds sub nom. Public Service Comm'n of New York, v. FERC, 866 F.2d 287 (D.C. Cir. 1989); Trailblazer Pipeline Co., 36 FERC ¶ 63,008 (1986), reh'g granted in part and denied in part, 50 FERC ¶ 61,188 (1990); Overthrust Pipeline Co., 38 FERC ¶ 63,039 (1987), reh'g granted in part and denied in part, 53 FERC ¶ 61,118 (1990); High Island Offshore System, 31 FERC ¶ 61,010, reh'g denied, 32 FERC ¶ 61,286 (1985).

[142] See Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Order No. 436), FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,665, at 31,576 (1985).

[143] *Id.*

[144] This is the terminology used in the former optional certificate regulations. Actually, the one-part volumetric rate and reservation charge were the equivalent of a two-part rate consisting of, in the terminology used here, a reservation fee and usage charge.

[145] 18 CFR 157.103(d)(3) (1990).

[146] 18 CFR 157.103(d)(6) (1990).

[147] Moraine Pipeline Co., et al., 42 FERC ¶ 61,144, reh'g granted in part and denied in part, 43 FERC ¶ 61,118 and 45 FERC ¶ 61,005, at 61,023 (1988), remanded on other grounds, 906 F.2d 5 (D.C. Cir. 1990).

[148] 18 CFR 157.103(d) (4) and (7) (1990).

[149] Order No. 436 at 31,578.

[150] See, *e.g.*, *WyCal I*, 45 FERC at 61,677; *WyCal II*, 50 FERC at 61,174; *Mojave I*, 47 FERC ¶ 61,200 (1989); *Kern River I and Mojave II*, 50 FERC ¶ 61,069 (1990).

[151] See § 157.102(e).

[152] In brief, the present value approach uses the standard formula for determining the present value of an ordinary annuity to calculate the present value of different reservation fees, in order to establish the priority of service rankings. See *WyCal II*, 51 FERC at 61, 542–543, for a fuller discussion of the present value approach, including the formula for calculating present value.

present value approach, and if a shipper accepts a lower reservation fee as a result of the requirement that the pipeline offer the lowest negotiated reservation fee to all shippers, the pipeline will have to redetermine its initial queue for service based on the lower reservation fee. Once the facilities are operational, the initial queue will become locked in, and a subsequent shipper will not be able to bump an existing shipper by agreeing to pay a higher reservation fee. Any subsequent shipper, then, will be placed at the end of the initial queue. The purpose of locking in the initial queue is to induce all potential shippers to come forward at the time reservation fees are being negotiated. As stated, these principles merely codify existing case law.

The one limitation on the general rule allowing pipelines to charge reservation fees is at § 157.102(d)(5)(i)(C), which permits a pipeline to charge a reservation fee to an affiliated pipeline shipper that is regulated by the Commission only if that affiliated shipper establishes a separately stated rate for its services involving the costs associated with the newly constructed upstream facilities. This will place the constructing pipeline's downstream affiliated pipeline shippers at risk for the recovery of the upstream costs associated with service through the newly constructed facilities. In other words, only to the extent a downstream affiliated pipeline has contracts with customers for the additional service made possible as a result of the newly constructed facilities will it be able to recover the costs paid to the constructing upstream pipeline in the form of reservation fees.[153] To establish a separately stated rate, the affiliated downstream pipeline will have to make a section 4 filing.

Allowing the constructing pipeline to charge an affiliated downstream pipeline a reservation fee only if the latter establishes a separately stated rate will be accomplished by automatically conditioning the constructing pipeline's authorization pursuant to § 157.102(d)(5)(i)(C). In this regard, we note that we are not requiring the downstream pipeline to establish a separately stated rate. We are only prohibiting the upstream pipeline from charging the affiliated downstream pipeline a reservation fee if the latter chooses not to. We believe this is a reasonable exercise of our conditioning powers under section 7(e) of the NGA, particularly since the constructing pipeline and its downstream affiliated pipelines are part of the same corporate family and thus under common control. Those ultimately in control of the pipelines will be able to decide what is best for each as part of the whole.

We will remove the requirement that the downstream affiliated pipeline establish a separately stated rate for service if it can satisfy, in a section 4 filing, one of the two alternative tests set forth at § 157.102(g) for removing at-risk terms and conditions.[154] The downstream pipeline may seek to satisfy one of these tests in its first section 4 proceeding or in a subsequent one. At that point, then, it will be able to establish other than a separately stated rate for service.

Our position on this issue here is thus contrary to the existing policy adopted in *Oklahoma-Arkansas Pipeline Company* (*Ok-Ark*),[155] and we specifically orverrule that case to this extent. In the first decision in *Ok-ark*, which was an optional certificate proceeding, the Commission authorized a transportation only pipeline system to move gas from reserves in the Arkoma Basin. Because shippers affiliated with the pipeline accounted for 85 percent of the pipeline's capacity, the Commission prohibited the pipeline from charging affiliated shippers a reservation fee. The Commission reasoned that there could be no arms-length negotiation with an affiliate and that the practical result of allowing a reservation fee for affiliates would be to shield the pipeline from virtually any economic risk of the venture in contravention of the risk bearing requirements of the optional certificate procedures.

On rehearing, however, the Commission reversed itself on this issue, permitting the pipeline to charge its affiliates reservation fees that were capped at the lowest reservation fee being paid by a non-affiliated shipper. The Commission concluded that this, along with capacity brokering and prudence review, ensured that the pipeline would assume sufficient risk.

As stated, on further consideration we believe that an appropriate level of risk will be borne by a constructing pipeline's corporate family as a whole by shifting the immediate risk from the constructing pipeline to that pipeline's downstream affiliated pipeline shippers. Accordingly, under the rule adopted at § 157.102(d)(5)(i)(C), a pipeline will be able to charge a regulated affiliate a reservation fee only if that affiliate establishes a separately stated rate for its services involving the costs associated with the newly constructed upstream facilities.[156]

iv. Removal of the at-risk rate conditions—As stated, we are adopting the regulation at § 157.102(g) to govern the removal of all at-risk terms and conditions previously imposed on a pipeline's facilities pursuant to section 7 of the NGA. Specifically, if a pipeline satisfies, in a section 4 proceeding, either the remaining *Kansas Pipe Line* criteria still applicable to the new facilities or the net benefits test, we will remove the conditions. This will ensure that we do not impose, under the new at-risk framework, the type of permanent rate conditions found unlawful in *Algonquin Gas Transmission Co.* v. *FERC* (*Algonquin*).[157]

There, the Commission had issued a section 7 certificate permitting synthetic natural gas sales, subject to the condition that all future section 4 rate increases be based on the full capacity of the gas plant, regardless of the capacity actually achieved. In a separate proceeding, the Commission also held that Algonquin was bound by this same condition in a section 4 rate increase proceeding. Because Algonquin could not file for a rate increase that was justified by its failure to produce at full capacity, its section 4 rights to change the condition were completely preempted. The court noted that "(t)he Commission should not be able to defeat (section 4) rights indefinitely by engrafting permanent rate conditions" through a section 7 certificate.[158]

In a subsequent case, however, the same court explained that it did not find that the Commission lacked the authority to condition the certificate under review in *Algonquin* as it did. Rather, the court stated that its holding in *Algonquin* was that the Commission could not automatically impose the condition at issue and could not unreasonably preclude its reconsideration through a rate revision in a section 4 proceeding.[159]

---

[153] In addition, under the regulation adopted at § 157.102(d)(5)(i)(C), before a downstream affiliated pipeline may include the costs associated with system supply in its rates, it must obtain prior Commission authorization.

[154] *I.e.*, either the *Kansas Pipe Line* test or the net benefits test.

[155] Oklahoma-Arkansas Pipeline Co., 53 FERC ¶ 61,019 (1990), reh'g granted in part and denied in part, 55 FERC ¶ 61,002 (1991).

[156] Under this new policy, the reservation fee charged to an affiliated shipper does not have to be capped at the lowest reservation fee being paid by a non-affiliated shipper, as was required under the second *Ok-Ark* decision.

[157] 534 F.2d 952 (D.C. Cir. 1976).

[158] *Algonquin*, 534 F.2d at 956.

[159] Tennessee Gas Pipeline Co. v. FERC, 689 F.2d 212, 215 (D.C. Cir. 1982).

Accordingly, we recognize the unlawfulness under *Algonquin* of imposing pursuant to section 7 a lifetime rate condition changeable only in a section 7 proceeding. We therefore want to make it very clear that pipelines subjected to the new at-risk conditions retain all of their rights to challenge the conditions in subsequent section 4 proceedings.

d. *Practical Application of the Kansas Pipe Line v. At-Risk Analysis.* To facilitate understanding the practical application of the new at-risk framework, we next walk through a series of examples applying the *Kansas Pipe Line*/at-risk analysis to various types of authorizations and subsequent rate cases. We begin by discussing rates for transportation services, first those authorized pursuant to case-specific applications under part 157, subpart A, and then those authorized pursuant to the non-case-specific procedures of part 157, subpart F (*i.e.*, the automatic and prior notice blanket construction authorizations) and part 284 (*i.e.*, the section 311 construction authorization). We discuss a pipeline's rate options both at the time of initial authorization and at the time of subsequent section 4 rate cases, and indicate whether and how a company can recover the costs of the new facilities in its transportation rates.

Because, as discussed, new bundled sales service authorizations are relatively few today, and because they may be significantly fewer yet upon adoption of a final rule in *Pipeline Service Obligations* unbundling most gas sales, we do not undertake a similar analysis for companies seeking to provide bundled sales services. We will deal with bundled sales rates as they arise. Suffice it to say that an existing pipeline will be able to charge its existing, generally applicable sales rates to commence service or it may establish an incremental sales rate. A newer company without existing rates will have to establish a new, initial rate. All companies desiring to establish new generally applicable sales rates or a subsequent incremental rate will have to do so in a section 4 proceeding.

i. Transportation Services: Case-specific Authorizations under part 157, subpart A—*A*. Rates at the Time of Initial Authorizations—When an applicant applies for authority under revised part 157, subpart A of the regulations, or when a protested prior notice filing under revised subpart F converts to the equivalent of a case-specific filing under subpart A, there are four possible scenarios: (1) The application is by an existing pipeline whose new facilities meet the *Kansas Pipe Line* criteria; (2) the application is by an existing pipeline whose new facilities do not meet the *Kansas Pipe Line* criteria; (3) the application is by a new (would-be) pipeline whose proposed facilities meet those criteria; or (4) the application is by a new pipeline whose proposed facilities do not meet them.

When an existing pipeline applies for case-specific authority under subpart A and meets the *Kansas Pipe Line* standards, it probably will want to establish an incremental, stand-along rate for transportation in order to begin recovering, as soon as possible, the costs of the facilities. However, it would have the option of performing service under its existing Part 284 rates.

Where an existing pipeline applies for case-specific authority but either does not seek to satisfy the *Kansas Pipe Line* criteria, or seeks to satisfy them but fails, it would have two rate choices. It could either charge its existing Part 284 rates or establish an incremental rate that was designed in accordance with the new at-risk regulations (for example, the usage charge component would be designed with either a 60-percent (offshore facilities) or 90-percent (onshore facilities) minimum throughput condition).

When a new, first-time pipeline applicant applied for case-specific authority and met the *Kansas Pipe Line* criteria, it would receive an initial rate guaranteeing cost recovery if service is provided at the projected throughput level. Since this first-time applicant would not have any existing rates, the rate it received would be its first and, at that time, only rate.

By contrast, if a first-time pipeline applicant applied for case-specific authority but could not meet the *Kansas Pipe Line* criteria, it would receive a rate designed in accordance with the at-risk regulations. This rate also would be its first and only rate.

In all cases where a pipeline does not charge existing Part 284 rates, new transportation rates will be designed as follows: The maximum reservation fee, if any, for firm service will be calculated by dividing all costs associated with the reservation fee [160] by the design throughput volumes specified in § 157.102(d)(3)(i) of the regulations.[161] These design throughput volumes must equal at least 100 percent [162] of the daily capacity of the new facilities (multiplied by 12 months). The maximum usage charge for firm service will be calculated by dividing all costs not associated with the reservation fee by the design throughput volumes specified in § 157.102(d)(3)(ii).[163] These design throughput volumes must equal, for onshore facilities, at least 90 percent, and for offshore facilities, at least 60 percent, of the annual capacity of the new facilities. Finally, the volumetric rate for interruptible service must be a one-part rate. The maximum rate will be calculated by dividing the cost of service for the new facilities by the design throughput volumes specified in § 157.102(d)(3)(ii).[164] These volumes also must equal, for onshore facilities, at least 90 percent, and for offshore facilities, at least 60 percent, of the annual capacity of the facilities.[165]

To illustrate numerically these concepts, assume the following: (1) the daily capacity of new onshore facilities is 100 Mcf; (2) their annual capacity is 36,500 Mcf (*i.e.*, 100 Mcf × 365); (3) the total annual costs of the new facilities are $2,200; (4) the annual costs associated with the reservation fee are $1,200; and (5) the annual costs associated with the usage charge are $1,000. The pipeline's maximum reservation fee would be calculated as follows:

$$\frac{\text{Annual Costs Associated with Reservation Fee}}{(\text{Daily Capacity} \times 12) \times \text{Minimum Throughput Condition}}$$

$$\frac{\$1{,}200}{(100 \times 12) \times 1} = \$1.00/\text{Mcf}$$

The pipeline's maximum usage charge would be calculated as follows:

[160] As stated, a pipeline designing rates under the straight fixed-variable methodology would recover all of its fixed costs in the reservation fee. One designing rates under the modified fixed-variable methodology would assign some of those fixed costs to the usage charge.

[161] See § 157.102(d)(5)(i)(B).

[162] As stated, for rate design purposes, a pipeline's volumes can exceed 100 percent of daily capacity if they include imputed interruptible volumes.

[163] See § 157.102(d)(5)(ii).

[164] See § 157.102(d)(6)(i).

[165] If the pipeline's new facilities are completely integrated with its existing facilities (such as looping or compression), the pipeline can only have one rate for interruptible transportation through the integrated facilities. See § 157.102(d)(6)(ii).

$$\frac{\text{Annual Costs Not Associated with Reservation Fee}}{\text{Annual Capacity} \times \text{Minimum Throughput Condition}}$$

$$\frac{\$1{,}000}{36{,}500 \times 0.90} = \$0.030/\text{Mcf}$$

The pipeline's volumetric rate would be calculated as follows:

$$\frac{\text{Total Annual Costs}}{\text{Annual Capacity} \times \text{Minimum Throughput Condition}}$$

$$\frac{\$2{,}200}{36{,}500 \times 0.90} = \$0.067/\text{Mcf}$$

B. Rates at the time of subsequent section 4 rate proceedings—When an existing pipeline met the *Kansas Pipe Line* standards at the time of certification, the *Kansas Pipe Line*/at-risk analysis would not have to be performed again in any subsequent section 4 rate proceeding. If that pipeline had chosen, at the time of certification, to charge its existing part 284 rates, then in its first subsequent section 4 rate case it probably would seek to establish a new part 284 rate where the costs of the new facilities were rolled in (*i.e.*, included) in the pipeline's existing rate base. Similarly, if the pipeline had chosen at the time of certification to charge a new stand-alone, incremental rate for service through the new facilities, it also might seek, in its first section 4 rate case, to establish a new rolled-in rate.[166] Alternatively, the pipeline might opt to keep a stand-alone incremental rate.

Where an existing pipeline did not satisfy the *Kansas Pipe Line* test at the time it originally received its case-specific authority and was performing service either under its existing Part 284 rates or under an incremental rate designed according to the at-risk principles, the pipeline would have several options at the time of its first section 4 rate case. First, if it knew that it still could not satisfy, pursuant to § 157.102(g), either the *Kansas Pipe Line* or net benefits test, it could continue performing service under its existing part 284 rates or incremental rate.

Second, the pipeline could seek to establish new Part 284 rates by rolling the costs of the new facilities into its general rate base. In this case, it would have to meet the overall benefits test of § 157.102(d)(2)(iii) of the new regulations, which generally states that no costs associated with the new facilities may be allocated to any other services of the pipeline without a determination by the Commission that the new facilities provide an overall benefit to the pipeline's existing customers.[167] Additionally, the volumes used to design rates for the services rendered through the new facilities would be based on the minimum throughput conditions of § 157.102(d)(3).[168]

Third, if the pipeline had been charging a Part 284 rate, it could seek to substitute an incremental rate designed in accordance with the at-risk principles, thus taking into account the minimum throughput conditions imposed by § 157.102(d)(3) of the regulations, and with the expectation, pursuant to § 157.102(d)(4)(i), that the design throughput volumes of the facilities could not be decreased in a subsequent rate filing. This type of at-risk, stand-alone, incremental rate would enable the pipeline to recover the costs of the new facilities if it could fully subscribe them on a daily basis or if it could achieve a usage level for them in excess of 90 percent (onshore facilities) or 60 percent (offshore facilities) of their annual capacity.[169]

On the other hand, if the pipeline believed it now could satisfy either the *Kansas Pipe Line* test or the net benefits test, it could seek, in the section 4 proceeding, either: (1) To roll the costs of the new facilities into its existing rate base and begin charging a net Part 284 rate that would recover the costs of both the new and existing facilities; or (2) to establish a new stand-alone, incremental rate. In either case, the at-risk principles of § 157.102 would not attach. That is, in the case of a rolled-in rate, which would be applicable to both new and old customers, the volumes used to design the rate would not be based on the minimum throughput conditions of § 157.102(d)(3). Nor would an incremental rate be designed on the basis of the at-risk principles.

We next move to the case of a pipeline that was a new entrant at the time of initial authorization and that met the *Kansas Pipe Line* criteria up front. That applicant, it will be recalled, was given an initial rate, its only rate at the time, based upon its projected throughput. Pursuant to § 157.102(f) of the new regulations, the pipeline must make a section 4 filing within three years of the in-service date of the new facilities in order for the Commission to examine the actual operating costs of the facilities and determine whether changes in rate design are required. Of course, the pipeline would retain its usual section 4 rights to seek an earlier change in its rates. Additionally, if the pipeline had constructed new facilities subsequent to its initial facilities and was performing services through the new facilities pursuant to new rates at the time it made its first section 4 filing, it would have its usual section 4 options such as, for example, seeking to roll the costs of all facilities into a single systemwide rate base.

The fourth and final scenario, then, is where a pipeline was a new entrant at the time of initial authorization, did not meet the *Kansas Pipe Line* criteria, and was given a rate based on at-risk principles (like many of the pipelines that in the past received optional certificates). This pipeline too must make a section 4 filing within three years pursuant to § 157.102(f). Of course, it can file sooner. Since the pipeline never satisfied the *Kansas Pipe Line* criteria, it can seek to do so in the section 4 filing. If the pipeline still cannot satisfy these criteria, however, it

[166] As previously discussed, the Commission's policy is to permit a pipeline to roll facility costs into existing systemwide rates when it demonstrates that the facilities benefit existing customers. The guiding principle is that the allocation of costs should reflect costs incurred and cost responsibility. To roll the cost of new facilities into existing systemwide rates, the pipeline must show that the existing customers will not subsidize the customers that benefit from the new facilities. Where rolling the costs of incremental facilities into rate base would significantly increase the rates of existing customers, the pipeline must justify rolled-in rates by showing systemwide benefits to existing customers commensurate with the increase in rates. *See* Northwest Pipeline Corp., 56 FERC ¶ 61,006 (1991). Conversely, under the rule adopted at § 157.102(d)(2)(iii), unless the new facilities are completely discrete from the pipeline's existing facilities, if rolling the costs of the new facilities into the pipeline's existing rate base would lower the pipeline's existing rates (and the customers for the new facilities would still be able to obtain the benefits of their contracts), the pipeline must do so unless otherwise directed by the Commission. The application of these principles turns on the specific facts of each record. *See* Southern Natural Gas Co., 51 FERC ¶ 61,296, at 61,949–953 (1990), for an application of these principles to a set of facts to achieve a partial roll-in of costs.

[167] Again, our analysis under the overall benefits test would be governed by existing principles of cost-of-service ratemaking, as discussed in the previous footnote.

[168] As stated, we have adopted the overall benefits test to analyze the rolled-in versus incremental rate issue. On the other hand, we have adopted the net benefits test as an alternative to the *Kansas Pipe Line* analysis for purposes of determining, in a section 4 proceeding, whether to remove the at-risk terms and conditions previously imposed on the facilities.

[169] This assumes that the pipeline's rates are designed using the straight fixed-variable methodology.

either will keep the at-risk rate originally given or get a new, revised at-risk rate.

ii. Transportation services: Non-case-specific authorizations under part 157, Subpart F, and part 284. Included in this category called non-case-specific authorizations under Part 157, Subpart F, and Part 284 are the automatic and prior notice blanket construction authorizations and the section 311 construction authorization. For purposes of the *Kansas Pipe Line*/at-risk analysis, each of the three types of authorizations is treated similarly.[170]

A. Rates at the time of initial authorization—Since these are basically self-implementing authorities, they are not subject to the same type of Commission review reserved for case-specific authorizations. Accordingly, the pipeline generally will charge existing Part 284 rates for services provided under these authorizations, and there will not be a *Kansas Pipe Line*/at-risk analysis at this point.

Alternatively, the pipeline can make an up-front, abbreviated section 4 filing to establish an incremental, stand-alone rate in time for the initiation of service. In effect, this will be the pipeline's first section 4 filing for these new facilities. If, in this abbreviated section 4 filing, the pipeline satisfies the *Kansas Pipe Line* criteria, its incremental rate will be designed to recover the facility's costs at the projected throughput. If the pipeline does not satisfy those criteria, the incremental rate will be designed in accordance with the principles putting at risk the pipeline's recovery of costs.

B. Rates at the time of subsequent section 4 rate proceedings—The pipeline will have several options when it files subsequent section 4 rate cases. The options are virtually identical to those discussed above in connection with existing pipelines that received case-specific authorizations under part 157, subpart A.

If the pipeline were performing service either under its existing Part 284 rates or under an incremental rate designed according to the at-risk principles, the pipeline would have the following options in a subsequent section 4 rate case. First, if it knew that it still could not satisfy the *Kansas Pipe Line* or net benefits test, it could continue performing service under the existing Part 284 or incremental rates. Second, it could seek to establish new Part 284 rates by rolling the costs of the new facilities into its general rate base. In this case, it would have to meet the overall benefits test of § 157.102(d)(2)(iii) of the new regulations, but the volumes imputed for the new facilities would be based on the minimum throughput conditions of § 157.102(d)(3). Third, if the pipeline had been charging a Part 284 rate, it could seek to substitute an incremental rate designed in accordance with the at-risk principles, thus taking into account the minimum throughput conditions imposed by § 157.102(d)(3), and with the knowledge that, pursuant to § 157.102(d)(4)(i), the design throughput volumes of the facilities could not be decreased in a subsequent rate filing.

On the other hand, if the pipeline believed it could satisfy either the *Kansas Pipe Line* or net benefits test, it could seek either: (1) to roll the costs of the new facilities into its general rate base and begin charging new Part 284 rates that would recover the costs of both the new and existing facilities; or (2) to establish a new stand-alone, incremental rate that would recover the costs of the new facilities but would not be designed on the basis of the at-risk principles. If the pipeline wanted to roll the costs of the new facilities into its general rate base, and if it already were charging an incremental rate designed in its initial abbreviated section 4 rate filing according to the at-risk principles, it would have to satisfy the overall benefits test of § 157.102(d)(2)(iii). If it now wanted rolled-in rate treatment but had been charging existing Part 284 rates, it also would have to satisfy the Commission's criteria for rolling costs into general rate base.

3. Negotiated Rates—a. *Introduction.* Natural gas pipelines have traditionally been seen as monopolistic entities, *i.e.*, once a pipeline is built, customers have few, if any, alternative means of procuring natural gas service. However, as the natural gas pipeline grid has developed nationwide, monopoly power in certain gas markets has been reduced by a more competitive market. Thus, shippers often have several alternative ways of delivering gas to a specific market.

This rule, however, deals with a different situation. This is where a pipeline wants to construct new facilities and seeks to negotiate rates with potential shippers. The rule's aim is to establish ground rules (see *infra*) to ensure that the pipeline that constructs the new facilities lacks market power during the critical part of the negotiation process. These regulations will create a framework for a competitive environment with respect to the construction of new facilities. Thus, if a new pipeline follows the milestones set forth in the Commission's regulations, it will have sufficiently mitigated its market power as to permit negotiated rates.

In recent years, the Commission's experience in the Northeast, California, and Mobile Bay has demonstrated that there are a plethora of companies which are able, willing, and eager to construct needed natural gas pipelines. For example, the Commission received 72 applications for certificates to construct facilities to serve the Northeast as a result of its announcement of the Northeast open season proceeding. To date, twenty-five projects have received construction certificate authorization, with two projects currently pending.[171]

In the Mobile Bay Pipeline proceeding, fourteen applications were filed for certificates authorizing construction of facilities to transport gas from the Mobile Bay area. The project sponsors for these applications ultimately consolidated their proposals into two settlement packages. These settlements proposed the construction of facilities which would operate to provide the same service as that proposed in the initial fourteen applications.

Further, the California market drew 13 applications for authorization to construct facilities to provide natural gas service. Of those applications, 12 resulted in the issuance of certificates to construct the proposed facilities or preliminary determinations, pending completion of environmental reviews, that certificates should be issued. These figures strongly suggest that competition to construct new facilities may exist in other markets and that such competition may be sufficient to support approval of negotiated rates for service on those facilities.

Certain commenters argued the benefits of allowing negotiated rates.[172] The underlying theme in these comments is that, where the market is sufficiently competitive, negotiated, market-based rates should be allowed and encouraged. We agree with this premise. If there is sufficient competition among industry participants to construct the new facilities, this competition should preclude the exercise of significant market power and thereby ensure that customers would

[170] As stated earlier, if a prior notice filing is protested, and the parties do not reach a settlement within the prescribed time period, the filing converts, in effect, to a Subpart A, case-specific filing and would be treated for purposes of the *Kansas Pipe Line*/at-risk analysis in the manner just described.

[171] The projects which have been approved represent both projects resulting from consolidations of the original applications, as well as projects considered discrete and approved as such.

[172] Exxon, Supply Association, and the DOE.

pay only the reasonable amount determined by the marketplace. However, since these rates are based on the workings of the market, rather than an analysis of the cost of service, the costs recovered through these rates could not subsequently be rolled-in to the pipeline's cost-of-service rate base.

In establishing this procedure, we are mindful that all rates and charges made, demanded, or received by any natural gas company for or in connection with the transportation or sale of natural gas must be "just and reasonable." However, the Commission believes that the statutory standard is met where it is demonstrated that a pipeline lacks significant market power in the relevant product market so that it is subject to effective competition when it negotiates its initial rates.[173] This is not deregulation. Rather, it is a light-handed approach that recognizes that cost of service regulation is not required where there is no potential exercise of market power. Here, as discussed below, the Commission is establishing a complaint procedure to ensure that this approach yields rates that are reasonable. The goal of ensuring just and reasonable rates is achieved through the workings of the competitive negotiation process (including the complaint procedure) used to establish negotiated rates.

Prior to construction, under the competitive negotiation procedure, several parties may offer to construct the same or similar facilities. Shippers would then have the opportunity to negotiate with several entities for rates and terms of service. In this way, the customer could use competitive forces to ensure that the service finally provided as a result of these negotiations will be at the most economical rate the market can afford.[174] Since the final negotiated rate would represent the lowest rate the market could bear, pre-construction competition would result in competitive rates and terms for customers which comport with the statutory requirement of "just and reasonable" rates. The workings of the market would then parallel the purpose behind the regulatory process—protection of ratepayers from unreasonable prices resulting from monopolistic market power.

b. *The Competitive Negotiation Procedure.* Competition prior to construction of a new pipeline may be sufficient to support approval of negotiated rates. The competitive negotiation procedure, involves a series of processes which would result in a determination of whether sufficient competition exists to justify negotiated rates.

This procedure, and consequently the option of charging negotiated rates, is available only for pipelines which are to be constructed in the future. It is not available for existing pipelines because competition would not constrain the market power of an existing pipeline. Further, it is important to note that the competitive negotiation procedure must be completed, in its entirety, prior to construction of the pipeline if negotiated rates are to be approved.

Additionally, any negotiated rate which is approved by the Commission will be a permanent, incremental rate. If a pipeline chooses the negotiated rate options, the costs of constructing the new facilities cannot subsequently be rolled-in to the pipeline's general rate base, nor can the negotiated rate be changed in any subsequent rate proceeding. In this way, the pipeline's existing and future customers will be protected from having the costs of the facilities shifted to those customers. This requirement also ensures that any loss suffered by the pipeline as a result of unwise negotiations will not be borne by existing or future customers.

A pipeline that wants to charge negotiated rates for service on facilities to be constructed must first announce its intention to construct facilities. The First Announcement must be delivered to the Commission for publication in the **Federal Register.** The First Announcement must provide certain descriptive information and assurances regarding how the pipeline will be operated.

First, the announcement must set forth a general description of the project, including location and maximum capacity. The general description provision of the announcement is required in order to notify the potential competitors and customers of the planned project.

Second, the announcement must state that the facilities will provide open access transportation under a Part 284 blanket certificate and will also be operated under an open tap policy. Open access transportation is required in order to be consistent with the Commission's well-established policy on this matter. To require open access to tap interconnections on the facilities is necessary to ensure that actual competition exists. If negotiated rates are to result from a truly open and competitive market, service on the facilities cannot be denied merely because the pipeline will not agree to allow construction of a tap to interconnect with another pipeline.

Third, the announcement must state that the pipeline will allow for capacity adjustment procedures, consistent with Commission policy, on the facilities.

Finally, the announcement must state that the rates charged for service on the facilities will be permanent, incremental rates and, accordingly, will not be subsequently rolled-in to the cost of another service. Hence, the pipeline's existing and future customers are protected through the requirement that the negotiated rate will be permanently incremental. In this way, the costs of the new facilities may not be shifted to customers not benefitting from service on those facilities.

If it is anticipated that an affiliate of the constructing pipeline will deliver gas to or receive gas from the proposed facilities, the First Announcement must include additional information. First, it must state that, if facilities are ultimately constructed by another, non-affiliated pipeline as a result of the competitive negotiation procedure, the affiliate will agree to allow construction of a tap to interconnect with those facilities. Second, it must state that the affiliate will provide the same amount of capacity, rates, terms and conditions to the non-affiliated pipeline and shippers on any project constructed by a non-affiliate pipeline as a result of the competitive negotiation procedure. Third, the First Announcement must state the amount of capacity the affiliate will provide on its facilities and the rates the affiliate will charge for its service. These provisions give competitors the same access, on the same terms, to affiliate facilities. This would then ameliorate any competitive advantage the constructing pipeline might have over competitors as a result of its corporate association with an affiliate.

After publication of the First Announcement in the **Federal Register,** the pipeline must conduct two open seasons—a builder open season and a shipper open season. The purpose of the builder open season is to allow other pipelines the opportunity to publish announcements to construct competing facilities. The builder open season must extend for 90 days from the date of publication in the **Federal Register** in order to allow potential competitors with a viable opportunity to prepare and

[173] Buckeye Pipe Line Co., L.P., 53 FERC ¶ 61,473 (1991)). While Buckeye dealt with existing facilities, the basic principle is the same. The pipeline's lack of significant market power will preclude it from demanding unreasonable rates.

[174] This process is similar to that of competitive bidding in the unregulated world where those desiring the business (*i.e.*, the pipelines) will bid their lowest possible estimate to obtain the project. The threat of being under bid is what keeps the estimates low.

publish a competing announcement. However, any announcement published during the builder open season must state that the announced project is offered in competition with the originally announced project.

During the shipper open season, shippers could negotiate with the pipelines for service and terms on the proposed facilities. The shipper open season must continue for 60 days in order to allow sufficient time for shippers to negotiate with the pipelines which have announced construction projects. The terms to which shippers and pipelines may agree upon during the open season would not be restricted. Therefore, the agreements reached would reflect precisely the specific needs and requirements of each entity. However, we emphasize that because the rates are negotiated, the Commission will consider the project sponsor strictly bound by the rates, terms, and conditions ultimately negotiated.

At the close of the open seasons, a Second Announcement must be published, in the same manner as the First Announcement, by any pipeline that intends to go forward with its proposed construction, *i.e.*, pipelines that have determined that enough shipper interest exists to justify construction of the facilities. The Second Announcement must state:

(1) The intention to proceed, the rates negotiated with each shipper, and that the pipeline will forward copies of its service agreements to any person upon request;

(2) Any change in the configuration of the project; and

(3) The procedure to be followed in order to complain to the pipeline or to request capacity on the facilities.

After the Second Announcement, some shippers may have no subscribed capacity on a pipeline intending to construct facilities. There may also be complaints regarding how the open seasons were conducted. New service requests and complaints about the competitive negotiation procedure, including whether the pipeline had significant market power in spite of this proceeding, would be resolved in two steps. First, the parties must attempt to resolve any dispute with the constructing pipeline within 30 days after publication of the Second Announcement, and may bring any dispute not resolved within that time period before the Commission.

The Commission will review all complaints brought before it that arise from the competitive negotiation procedure. In considering the merits of a complaint, the Commission will consider such factors as:

(1) The number and viability of competitors;

(2) The potential for cross-subsidy by an affiliate, either by cost shifting or withholding service;

(3) Who is complaining (competitors or customers, for instance);

(4) The nature of the negotiated contracts;

(5) Whether shippers have practical alternatives;

(6) The extent of barriers to entry such as environmental, siting, or other constraints;

(7) The dominance of the pipeline or affiliate in the market; and

(8) The size and market power of the shippers. The Commission would then issue an order addressing the compliant within 60 days after the complaint is filed with the Commission.

New § 154.406 sets forth the requirements and procedures for approval of negotiated rates. After completion of the competitive negotiation process, the pipeline must file four separate statements in order to have the negotiated rates approved. Essentially, these statements include copies of the announcements published and confirmation of compliance with the Commission's regulations. Filing these statements provides verification that the competitive negotiation process has been conducted properly and that the negotiated rates result from *bona fide* competition.

IX. Conclusion—Interplay Between the Two Menus

This rule results in two menus of construction authorization and rate options from which pipelines may choose and coordinate options which will best meet the needs of the pipeline and its customers. Walking through a couple of hypothetical situations will illustrate how the menus interrelate.

ABC Company, an existing interstate pipeline, wants to construct a pipeline, the Rosebud line, to be used primarily for open access transportation. Since the Rosebud line will be operated as an open access line, offering short and long term, firm and interruptible service, ABC cannot provide the solid market data, *i.e.*, long-term firm transportation agreements, necessary to meet the codified *Kansas Pipe Line* criteria. Therefore, to determine how to proceed in constructing its line, ABC reviews the rate and construction authorizations available for an at-risk project.

With respect to the rate options available to it, ABC may choose to charge either its existing system rates, or seek and incremental at-risk rate. ABC anticipates that the Rosebud line will benefit its system as a whole and expects to request, in a future general section 4 rate proceeding, that the costs of the Rosebud line be rolled-in to its general rate base. However, because ABC wishes to begin recovering the costs associated with the Rosebud line as soon as possible, it chooses to pursue an incremental rate, as opposed to its existing part 284 rates. Further, in order to have a rate approved and in effect quickly, ABC decides to make an abbreviated section 4 filing, so that rates designed to recover the costs of constructing the Rosebud line can be in effect when it begins to provide service on the Rosebud line.

ABC expects to have the Rosebud line built and ready for service on October 1. So on March 31, ABC submits an abbreviated section 4 filing to the Commission requesting incremental rates for service on the Rosebud line. The Commission suspends the rates filed by ABC. Nevertheless, ABC will have rates in effect, at the end of the 5 month suspension period, on September 30.

ABC then considers its construction authorization options. The estimated project cost for the Rosebud line is $30 million. Therefore, Subpart F automatic authorization, (which has a dollar limit of $10 million), is not an available option. However, ABC still has the option of proceeding either under Subpart F prior notice authorization or Subpart A case-specific authorization. ABC decides to proceed under the prior notice procedures. However, upon reviewing the environmental requirements of § 157.103, ABC realizes that all requirements can be met, except for certain river crossing requirements.

At first blush, it appears that the project must now be pursued under Subpart A. This would require submission of the information, set forth in § 380.12, needed by the Commission's staff to prepare an environmental assessment. However, the Commission's regulations now provide a reconciliation procedure in § 157.103(e) for potentially resolving this problem . Therefore, ABC files a request for reconciliation under that section, noting the river crossing problem and seeking resolution of that noncompliance issue. Pursuant to the regulations, the Director convenes a technical conference to discuss this matter. As a result of the technical conference, acceptable mitigation measures are devised and a letter order from the Director issues stating that ABC has environmental clearance to proceed with construction of the Rosebud.

With the environmental problem resolved, ABC files its prior notice

request to construct the Rosebud line. A protest is filed. The protest simply states that the project should not be allowed to proceed because constructing the facilities will be too costly and will cause the protester's gas bill to increase. The protest offers no supporting data. Therefore, pursuant to § 157.205(g), the Director finds that the protest does not make a *prima facie* showing of material fact or law. Therefore, a Director's order issues dismissing the protest. ABC may now proceed with construction of the Rosebud line.

Another hypothetical: ABC is going to build the Emma Zetta line on order to provide transportation service solely for section 311 transactions. The project can be built in full compliance with § 157.103. ABC reviews its rate procedure options: charge its existing part 284 rates or file an abbreviated section 4 proceeding seeking an incremental rate.

Since ABC wants to have a rate in effect when it begins service on the Emma Zetta line, it files an abbreviated section 4 proceeding six months prior to the expected in-service date on the Emma Zetta line. The Commission suspends the rates filed by ABC.

It turns out that the Emma Zetta line is constructed and ready for service well before the expected in-service date. Therefore, ABC immediately begins service on the Emma Zetta line, charging its Part 284 system rates. Upon expiration of the five month suspension period, ABC's incremental rates for service on the Emma Zetta line became effective.

These hypotheticals obviously do not contemplate all possible option combinations. However, they should serve to demonstrate ways in which the options could be utilized.

X. Environmental Analysis

Under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.* (NEPA), Federal agencies must prepare an environmental analysis of "major Federal actions significantly affecting the quality of the human environment." NEPA requires that such an analysis, known as an Environmental Impact Statement (EIS), be made part of any record of decision on such major Federal actions. In order to determine the need for an EIS, agencies normally first prepare an Environmental Assessment (EA). An EA is a general overview of the nature and probable effects of the action and provides the basis for a Finding of No Significant Impact (FONSI) when an EIS is not necessary, or facilitates the preparation of an EIS when it is required. In preparing an EA, the agency is also able to identify potential adverse impacts and to recommend or devise mitigating measures that will enable it to make a FONSI. In its NOPR, the Commission indicated that an EA was being prepared by its environmental staff to evaluate the significance of matters to be added to the Commission's regulations and to determine the need to prepare an EIS. Comments were requested from the public on the scope of the EA to help the staff in developing an environmental record in this rulemaking.

The EA that was prepared by the staff examines the various changes that have been adopted in the rule and concludes that many of them are procedural and thus will have no effect on the environment. A number of other changes have been identified for which it is felt the potential for environmental impact may exist, at least on the face of the revision. These issues are evaluated below.

The first of these is the change in project cost limits for automatic and prior notice authorizations under part 157, subpart F, and the expansion of the facility types for which the automatic authorization may be used. Under the rule, the automatic authorization would now be available for projects of up to $10 million, instead of the $6 million currently in place. With regard to the prior notice authorization, the prior cost limit of $16 million has been removed and such projects are no longer subject to any such limit. As to both authorizations, the definition of "eligible" facilities has been expanded to allow the construction of virtually all facilities, except delivery taps, storage facilities, and facilities constructed to effectuate the purchase of synthetic or gasified liquid natural gas.

In and of itself, the increase in the project cost limit for projects that are automatically authorized would have no appreciable environmental effect. Experience has shown that such projects are relatively small in nature and the expanded size that would result from the increased dollar limit would still be insufficient to result in an increase in environmental impacts. Even if this were not so, both the automatic and prior notice authorizations are subject to the provisions of § 157.103. Section 157.103 sets forth a list of sensitive environmental areas for which no significant environmental impact is allowed. The project sponsor must file a compliance report demonstrating its compliance with this section. Construction may not begin unless compliance is achieved, and if subsequent developments indicate that compliance does not exist, authority exists to halt construction. Thus, for both the automatic and prior notice authorizations, the standards that must be met before construction may occur have been expanded so as to ensure that no adverse environmental effect would occur.

As noted in the NOPR, NGPA section 311 has been increasingly used to construct larger and larger facilities. This has engendered concern in that it was originally assumed that this authorization would be used primarily for the construction of relatively minor facilities such as taps and minor interconnections. Any concern about the nature of construction occurring under section 311 has been ameliorated, as was done with the automatic and prior notice authorizations, by making such construction subject to the requirements of § 157.103. As noted above, the filing of the required compliance report by the project sponsor, and its review by the Commission, will ensure that no significant environmental impact will be incurred by the construction of projects under this authorization. As with the automatic and prior notice authorizations, if compliance cannot be achieved with the requirements of § 157.103, then the project must be done as a case-specific project, in which case it will receive more extensive review by the Commission staff.

In the NOPR, the Commission proposed to eliminate replacement of facilities from the definition of exemptions set forth in § 2.55(b) of the Commission's regulations. The concern was that the construction-like nature of replacement activities might result in unreviewed environmental impacts and the Commission believed this change was necessary to satisfy various environmental statutes, including NEPA. In the rule, the Commission has by and large eliminated this proposed change. It is retained only in those instances where, as defined by the regulations of the Department of Transportation (DOT), portions of a pipeline have deteriorated to the point of being unsafe and action is needed to protect the public safety. Part 284, subpart I, already exempts certain emergency transactions from certification requirements. The exemption that is being retained in § 2.55 would apply to circumstances where a pipeline has deteriorated to the point of being potentially unsafe without rising to an emergency standard. This exemption is required to be maintained to meet DOT safety regulations. It is felt that maintenance of this exemption will not have a significant environmental impact because such replacements are seldom

extensive and normally take place within existing rights-of-way. Therefore, the exposure of the environment to impact is minimal. Furthermore, such replacement activities must be performed in accordance with erosion control and restoration and stream and wetland construction and mitigation plans.

Based upon its review of the EA, the record in this proceeding, and the changes made in this rule, the Commission concludes that issuance of the rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an EIS is not required.

XI. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RA) [175] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[176] Pursuant to section 605(b) of the RA, the Commission hereby certifies that the final rule adopted herein will not have a significant economic impact on a substantial number of small entities, and that, even if the rule were to have a significant impact on a substantial number of small entities, it would be to their benefit. The Commission believes that most of the entities affected by the rule do not fall within RA's definition of "small entity." Even if the rule would have a significant effect on a substantial number of small entities, however, the requirements proposed are appropriate or necessary for the Commission to authorize natural gas pipeline construction. Pipelines may benefit substantially by obtaining the authorizations.

XII. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[177]

The information collection forms that would be affected by the final rule are: (1) FERC–537, Gas Pipeline Certificates: Construction, Acquisition, and Abandonment (1902–0060); (2) FERC–544, Gas Pipeline Rates: Rate Change (Formal) (1902–0153); (3) FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal) (1902–0154); (4) FERC–577, Gas Pipeline Certificates: Environmental Impact Statement (1902–0128); and (5) FERC–577(A), Gas Pipeline Certificates: Environmental Impact Statement (1902–0161). These information collections are required in order for the Commission to carry out its legislative mandate under the NGA, NGPA, and NEPA. The certificate and environmental information, as previously discussed herein, would be used to expedite the Commission's review of pipeline certificates.

The number of pipelines that opt to change their existing rates to incremental cost-based or negotiated rates for new facilities is unknown. However, to the extent that pipelines choose to recover their costs through the limited section 4 procedures, they will not have to proceed under the current procedure for initial rates in certificate proceedings. At the present time, it is estimated that there will be no change in burden under FERC–544 or FERC–545 as a result of this final rule. Adjustments to reporting burden will be made as necessary based on the number and type of filings received under the FERC–544 data collection.

Depending on the number of pipelines that choose the limited section 4 procedures, versus the conventional section 7(c) route, the data collection burden associated with FERC–544 and FERC–545, could be greater or lower than the current level. In addition, the number of pipelines that opt for the at-risk route will not be required to file conventional section 7 certificate applications. Thus, to the extent that more at-risk filings are made, there will be a related reduction in industry burden under the FERC–537/FERC–577 data collections.

An estimated 55 respondents would be affected by the final rule. The respondents would consist mostly of large intrastate pipeline companies (approximately 50), with few (approximately five) medium to large interstate pipeline companies. The estimated total annual public reporting burden for the FERC–537, FERC–544, and FERC–545 information collections is not expected to differ significantly from current levels under the final rule because of offsetting decreases in hours required per response and increases in the number of responses.

The estimated total annual burden for the FERC–577 information collection (including the consolidated FERC–577(A) data collection) will increase above current levels (from 179,800 hours to 234,000 hours) under the final rule. The number of filings is expected to increase from an estimated 1,110 at present to approximately 1,200 filings per year (including section 311 filings made under the Interim Rule). The average burden per response for FERC–577 will increase from approximately 162 hours to 195 hours.

XIII. Effective Date

This rule will become effective December 17, 1991. Any construction project authorized under rules in effect prior to the effective date of this rule will be subject to the prior rules.

Lists of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 380

Environment, National Environmental Policy Act, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 2, 154, 157, 284, 375, and 380 of chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission. Commissioners Trabandt and Terzic concurred with separate statements to be issued later. Commissioner Moler dissented in part with a separate statement attached.

Lois D. Cashell,

Secretary.

Appendix A

Advisory Council on Historic Preservation.	(Advisory Council)
Alabama, State of.....	(Alabama)

[175] 5 U.S.C. 601–612 (1988).

[176] Section 601(c) of the RA 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 reference 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) (1988).

[177] 5 CFR 1320.13 (1989).

Appendix A—Continued

Alabama-Tennessee Natural Gas Co.	(Alabama-Tennessee)
Algonquin Gas Transmission Co., Panhandle Eastern Pipe Line Co., Texas Eastern Transmission Corp., and Trunkline Gas Co., jointly.	(Algonquin)
Altamont Gas Transmission Co	(Altamont)
American Gas Association.	(AGA)
American Paper Institute.	(American Paper)
American Public Gas Assoc.	(APGA)
Amoco Production Co. and Amoco Energy Trading Corp., jointly.	(Amoco)
ANR Pipeline Co. and Colorado Interstate Gas Co., jointly.	(ANR)
Appalachian Energy Group.	(Appalachian Energy)
Arizona Electric Power Cooperative, Inc.	(Arizona Electric)
Arkla Pipeline Group.	(Arkla)
Associated Gas Distributors.	(AGD)
Association of Texas Intrastate Natural Gas Pipelines.	(Texas Intrastate)
Bussey, Stanley D., Ph.D.	(Bussey)
California PUC	(CPUC)
Cascade Natural Gas Corp.	(Cascade)
CNG Transmission Corp.	(CNG)
Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co., jointly.	(Columbia)
Columbia LNG Corp.	(Columbia LNG)
Council on Environmental Quality.	(CEQ)
Dayton-Montgomery County Park District.	(Dayton-Montgomery)
Distrigas of Massachusetts Corporation.	(DOMAC)
El Paso Natural Gas Co.	(El Paso)
Enron	(Enron)
Entrade Corp	(Entrade)
Exxon Corp	(Exxon)
Great Lakes Gas Transmission Co.	(Great Lakes)
Illinois Department of Agriculture.	(Illinois)

Appendix A—Continued

Independent Petroleum Association of America.	(IPAA)
Interstate Natural Gas Assoc. of America.	(INGAA)
Kern River Gas Transmission Co.	(Kern River)
KN Energy, Inc	(KN Energy)
Lawrence, Walter R	(Lawrence)
Llano, Inc	(Llano)
Lone Star Gas Co	(Lone Star)
Long Island Lighting Company and Virginia Natural Gas, Inc., jointly.	(Long Island)
Louisiana Mid-Continent Oil and Gas Association.	(Louisiana Mid-Con)
Louisiana, State of	(Louisiana)
Massachusetts Energy Facilities Siting Council.	(Siting Council)
Miami Valley Council for Native Americans.	(Miami Valley)
Michigan Consolidated Gas Co.	(MichCon)
Mid Continent Oil & Gas Assoc.	(MidCon)
Monterey Pipeline Company.	(Monterey)
Moreau, Judith B	(Moreau)
National Fuel Gas Supply Company.	(National Fuel)
National Trust for Historic Preservation.	(National Trust)
Natural Gas Pipeline Co. of America.	(Natural)
Natural Gas Supply Assoc.	(Supply Association)
Nebraska, State of	(Nebraska)
New York Task Force.	(NY Task Force)
Northern Illinois Gas Company.	(Northern Illinois)
Northwest Pipeline Corp.	(Northwest)
Pacific Gas Transmission Co.	(Pacific Gas)
Pacific Interstate Transmission.	(Pacific Interstate)
Pell, Claiborne, U.S. Senator for Rhode Island.	(Senator Pell)
Peoples Gas Light and Coke Co. and North Shore Gas Company, jointly.	(Peoples)
Process Gas Consumers Group, American Iron and Steel Institute, Georgia Industrial Group, and Chemical Manufacturers Assoc., jointly.	(Process Gas)

Appendix A—Continued

PSI Gas Systems, Inc.	(PSI)
Sasso, Senator, State of Rhode Island and Providence Plantations.	(Senator Sasso)
Southern California Gas Company.	(SoCal)
Southern Energy Co	(Southern Energy)
Southern Natural Gas Company.	(Southern)
Tennessee Gas Pipeline Co.	(Tennessee)
Texas Gas Transmission Corp.	(Texas Gas)
TEX/CON Gas Pipeline Company.	(TEX/CON)
Transcontinental Gas Pipe Line Corp.	(Transco)
Transok, Inc	(Transok)
Undersigned Shippers.	(Undersigned Shippers)
Union Texas Petroleum Corp.	(Union Texas)
United Gas Pipe Line Co.	(United)
U.S. Dept. of Energy	(DOE)
U.S. Dept. of the Interior, Fish and Wildlife Service.	(Fish and Wildlife)
U.S. Environmental Protection Agency.	(EPA)
Washington Gas Light Co.	(Washington Gas)
Williams Natural Gas Co.	(Williams)
Williston Basin Interstate Pipeline Co.	(Williston Basin)
Wisconsin Dept. of Agriculture, Trade & Consumer Protection.	(Wisconsin)
Wisconsin Public Service Commission.	(Wisconsin PSC)

Appendix B

Altamont Gas Transmission Company
American Gas Association
American Public Gas Association
ANR Pipeline Co. and Colorado Interstate Gas Co., jointly
ARKLA Pipeline Group
Associated Gas Distributors
Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co., jointly
Council on Environmental Quality
Enron
Illinois Department of Agriculture
Interstate Natural Gas Association of America
Kern River Gas Transmission Co.
Long Island Lighting Co. and Virginia Natural Gas, Inc., jointly
Miami Valley Council for Native Americans
Natural Gas Pipeline Co. of America
New York Task Force
Tennessee Gas Pipeline Co.
Transcontinental Gas Pipe Line Corp.

United Distribution Companies
United Gas Pipe Line Co.
U.S. Department of Energy
U.S. Department of the Interior, Fish and Wildlife Service

Appendix I—Discussion of Comments and Reply Comments

A. Updating of Optional Certificate Regulations

1. Duplicative Filings

The CPUC, Northern Illinois, El Paso, and APGA support the proposal to preclude an applicant from seeking certificate authorization under Subpart E, and, at the same time, seeking authorization under any other subpart, for substantially the same project. They state that duplicative filings not only drain Commission resources, but intervenors' resources as well by placing a heavier burden on opponents.

Altamont, Amoco, Tennessee, Arkla, Kern River and the Undersigned Shippers oppose the proposed modification. Amoco states that whether a facility will be constructed pursuant to an optional certificate or a traditional certificate may depend upon circumstances, including economics, that arise after the filing of the initial application. Further, states Amoco, it will lengthen the process if an applicant's optional certificate is not granted and the applicant subsequently files its proposal under the traditional procedures.

The commenters state that, in some instances, duel filings are warranted so that the pipeline can fall back on the traditional application if the Commission does not view the optional application favorably. Finally, the commenters argue that if the pipeline is willing to pay a filing fee for both applications, both applications should be processed concurrently.

As an alternative to dismissal, Amoco suggests that the Commission initially consolidate dual applications, and process the common elements of the applications, such as the environmental analysis. The applicant would then be required to choose which application it wanted the Commission to actively process, and the other application would be suspended, but not dismissed. If economic circumstances changed, the applicant would be allowed to pursue the suspended application, in which case the active application then would become suspended.

2. Risk Allocation and Reservation Fee

DOE, ANR, Kern River, United Altamont, Arkla, Peoples, Supply Association, and Enron oppose the requirement that the applicant offer the lowest negotiated reservation fee to all shippers. They contend that this renders the competitive negotiations between pipelines and individual shippers of dubious integrity because the pipeline is prevented from negotiating its best deal based upon the circumstances of any individual shipper. They state that this requirement unfairly places more risk on the pipeline, discourages the construction of new facilities, causes delays, and increases the likelihood that the pipeline will charge all shippers the ceiling price.

United opposes the requirement because it eliminates a market determined price for the capacity. In contrast, Northern Illinois, Pacific Gas, and APGA support the requirement. They state that it will enable parties without market power to gain the benefits of those shippers with significant market power thus mitigating any market foreclosure produced by the optional facilities. Supply Association contends that the rate should be negotiable, and that the Commission should condition certification to require that the pipeline permit firm transportation customers to retrade their rights on a firm or interruptible basis. It further states that if customers are allowed to trade their rights to a new shipper, the negotiated rate would be just and reasonable and there would be no need to require the pipeline to make the lowest reservation fee available to subsequent shippers.

Peoples contends that a lower fee may be reasonable for a high load factor, high volume customer, but not for a low load factor customer. It states that the Commission should consider the total throughput volumes associated with a particular customer, length of haul, and the customer's load factor because these factors may warrant some customers paying a lower reservation fee.

El Paso, Kern River, Tennessee, and DOE comment that the applicant should be allowed to negotiate for up to a 100% reservation fee. El Paso advocates allowing 100% reservation fees in order to minimize any potential risk to the existing customers. DOE states that the reservation fees, and the sharing of risks in general, should not be bound by any regulations, provided the Commission concludes that negotiations were at arm's length.

In its reply comments, UDC opposes DOE's position. UDC states that this approach is equivalent to setting rates on an economic efficiency basis which, it argues, provides no means for reasoned Commission consideration of the relative needs of consumers who are competing for capacity, especially residential consumers dependent upon natural gas to meet basic energy requirements. UDC contends that this theory undercuts the consumer protection mandate of the NGA. UDC further argues that it cannot be assumed that the natural gas market is competitive and that free market forces will inevitably protect consumer interests.

Northern Illinois, NY Task Force, APGA, Arizona Electric, and Peoples oppose any modification to the reservation fee ceiling. APGA states that the ceiling must be retained because a small, low load factor shipper, like a publicly-owned LDC, does not have equal bargaining power with a pipeline and would, in general, pay a higher rate for service than high load factor customers, in off-peak months and on average. Tennessee states that the modified fixed variable rate design cap in section 157.103(d)(3) for the reservation fee should be eliminated, with the exception of service for affiliated jurisdictional pipeline shippers.

Natural, in its supplementary comments, addressed only the "at risk" condition which the Commission has imposed in several preliminary determinations and certificate orders in which it has put pipelines at risk, in terms of their eventual inclusion of the costs of new facilities in rate base. Natural comments that the at risk condition should be imposed where a pipeline has not demonstrated use in the traditional manner before certification and that there should be no presumptive rate base treatment in the NGA section 4 case, as has been the norm historically with respect to certificated facilities. Rather, the pipeline would have the burden in the rate case of demonstrating that the new facility is providing sufficient benefit to the system to justify including all or part of its costs in rate base. However, contends Natural, the "used and useful" standard is far more inclusive than, for example, a showing of 10-year, firm contracts particularly in the open access era. Natural points out that long-term gas supply contracts supporting a growing merchant function are a thing of the past. Pipelines now provide for all manner of services which should be allowed to be shown to demonstrate use at the time rate base inclusion is sought.

3. Initial Allocation of Firm Transportation Capacity

United and Pacific Interstate support the proposed regulations regarding the initial allocation of capacity. Pacific Interstate favors the present value methodology, whereby customers would be allowed to pay a higher reservation fee in order to secure a higher priority in the initial queue for firm transportation service. Supply Association and Union Texas comment that the initial allocation of capacity should be negotiable. They oppose the iterative process for reservation fees because they contend that it adds nothing but delay and extra costs.

DOE opposes the requirement that the firm transportation service queue be locked in after operations begin. DOE contends that the decision should be a negotiable contractual term between the pipeline and the shippers.

APGA argues that an optional certificate application should not be approved unless it is conditioned upon the requirement that the applicant provide sufficient capacity to meet all valid requests for service received during the open season. Kern River opposes this position, stating that the pipeline should not be forced to build capacity unless the shippers are contractually bound to pay for such capacity.

APGA objects to the "present value of the reservation charge per Mcf" methodology because, it states, it penalizes low load factor customers and others who require firm capacity, but who lack the market power to secure it. APGA states that low load factor customers, including many smaller LDCs, often must secure the highest available priority in the transportation queue to serve their high-priority end-users thus having to pay a large reservation fee to secure queue position. APGA states that for low load factor customers, a large reservation fee translates into a higher cost per unit actually used, since the reservation fee must be paid whether or not the capacity is actually utilized. The price, states APGA, would be paid by those who can least afford it—residential consumers.

Amoco comments that under the present value methodology, successful bidders should be required to execute a transportation contract for a minimum term at least as long as the term used to compute the present value of the bid to prevent potential shippers from "sandbagging" their bids to gain unfair advantages. Amoco also comments that the applicant should be required to give advance notice to all potential bidders of the "economic life" of the proposed project, and that bids should be evaluated based upon a term no longer than the facilities' stated economic life.

Algonquin argues that the present value methodology should reflect the present value of all expected revenue over the contract term, since then the shipper would be required to disclose how it intends to use the capacity.

APGA requests clarification that under the first-come, first-served methodology, a written expression of interest alone, as opposed to a signed contract, would be sufficient for a potential shipper to secure an initial queue position. APGA states that potential shippers should not be required to submit a complete contractual offer during the open season, because the time required for such an effort may exceed the open season window.

4. Open Season for Firm Transportation Service

Pacific Interstate, SoCal, Northern Illinois, APGA, and Entrade support the proposed provision requiring an open season of no less than 30 days, with sufficient public notice of the starting and closing dates, to receive initial requests for firm transportation service. Those in favor of the provision state that it will promote competition and ensure that firm capacity is allocated in a nondiscriminatory manner. APGA states that the applicant should be required to publish notice of the open season in the **Federal Register** and in the trade press, and to serve notice of the open season on all existing customers, including customers of its corporate affiliates. Northern Illinois comments that the open season should extend at least 30 days after the proposal is noticed in the **Federal Register**.

Altamont, Tennessee, Arkla, Natural, Peoples, El Paso, and Kern River oppose a mandatory open season requirement. Natural, Peoples, and El Paso contend that priority should be given to those customers in the pipeline's existing queue for firm service that have been unable to receive firm service due to the unavailability of firm capacity. To the extent that a mandatory open season would allow other customers to receive capacity ahead of those in the existing queue, they object to a mandatory open season requirement. Natural opposes the requirement because it could preclude a pipeline from using the optional procedures to construct a new lateral line to serve those customers waiting in the queue for firm service. Arizona Electric requests clarification as to whether an open season requirement could, in fact, result in the circumvention of the existing queue for firm service.

Arkla and Kern River state that the pipeline should be able to honor service agreements that precede the filing of the application so that the pipeline can determine the economic viability of a project and the proper size of the facilities. They contend that an open season should be required only if potential shippers have been denied access. They suggest that in lieu of an open season, the applicant be required to make a reasonable effort to notify potential customers in the affected area of the proposed venture.

5. Environmental Compliance

The NOPR proposed to eliminate the requirement that the applicant comply with § 157.206(d) and consequently (d)(4). The Siting Council, Fish and Wildlife, CEQ, the CPUC, and Arkla oppose this proposal. APGA supports the proposal, provided that it would not exempt applicants from environmental review or compliance requirements.

The Siting Council opposes the deletion because the applicant would no longer be subject to the mitigation measures included in § 157.206(d). Fish and Wildlife objects to the proposal because it would delete the environmental compliance criteria in § 157.206(d), while the CEQ objects because it fears that the subsequent environmental review for optionals will be inadequate. Arkla recommends that as an alternative, the Commission revise the regulations to allow the applicant to coordinate its environmental compliance efforts with an environmental case officer.

APGA comments that the removal of § 157.103(i) appears to mean that optional certificate holders would no longer have an affirmative duty to comply with the eleven environmental statutes and executive orders listed at § 157.206(d)(2) or to adopt the construction guidelines set forth at § 2.69. APGA also fears that optional certificate holders will not be subject to the environmental compliance requirements of proposed new §§ 380.12 through 380.14 and Appendices I and II to Subpart F of Part 157.

6. Sales Service Requirements

United, Arkla, Natural, Arizona Electric, Peoples, AGD, APGA, and DOE oppose the elimination and/or the proposed revisions to the optional certificate regulations regarding sales. The commenters state that, contrary to the NOPR, some pipelines wish to continue to provide sales service.[1] The commenters state that pipelines are not utilizing the current regulations to provide sales service because the regulations preclude a pipeline from charging a reservation fee for sales service,[2] thus giving the pipeline no assurance of fixed cost recovery. AGD contends that the regulations unduly discriminate in favor of pipeline transportation over sales services. To remedy this, AGD suggests that the final rule provide that a pipeline and its customers may negotiate a reservation fee for sales service in the same manner and of the same magnitude as the regulations provide for transportation service.

The commenters also oppose the proposal that sales service must be unbundled and take place only at mainline receipt points. They state that these requirements would benefit no one and would unduly restrict the market alternatives which pipeline customers currently enjoy. They state that many small volume customers, particularly small LDCs, benefit from bundled sales and transportation service which relieves them from the time-consuming task of arranging the many administrative details incident to unbundled sales and transportation services.

APGA states that the proposal to remove sales service entirely from the optional certificate process would be detrimental to those gas market participants that desire bundled sales service as the most economical means for them of acquiring gas supplies. Further, requiring pipelines to proceed through traditional 7(c) certificate procedures to offer bundled sales services would weight a pipeline's business choices toward providing transportation service only.

The commenters also contend that eliminating or modifying the optional certificate sales provisions would be arbitrary, and would limit the range of competitive choices that currently exists in the market. In contrast, SoCal, Northern Illinois, and Pacific Interstate either support or do not oppose the proposed revisions or elimination of the sales regulations.

Pacific Gas requests that the Commission clarify that sales service over optional certificate facilities will be subject to the same regulations (PGAs, GICs, etc.) as sales service over conventional 7(c) facilities.

7. Capacity Assignment

SoCal, the CPUC, Pacific Gas, Peoples, and Pacific Interstate favor conditioning optional certificates upon the requirement that the applicant allow capacity assignment. They state that such a condition is a logical extension of the Order Nos. 436 and 500 transportation program and will reduce the risk of underutilization.

Northern Illinois, El Paso, Arkla, and Natural oppose the requirement. El Paso and Arkla argue that a capacity assignment program places extra risk on the pipeline, and, therefore, should be left to the discretion of the pipeline and the shippers. Northern Illinois states the pipeline should not be required to provide a capacity assignment program because such programs are relatively new and have not been fully tested.

Natural opposes mandatory capacity assignment programs because the pipeline may want to use the optional procedures for incremental new capacity on existing lines, or for the construction of new laterals. Under these circumstances, capacity assignment should not be mandatory if it is not available on the rest of the pipeline's system.

[1] United specifically states that it desires to continue to provide sales service. AGD states that a number of pipelines are retaining sales service, with the support of their traditional customers.

[2] Section 157.103(e) states that "no demand charge, reservation fee, minimum bill provision, minimum take provision, or any other provision that has the effect of guaranteeing revenue may be imposed for firm or interruptible sales service provided under [Subpart E]."

Finally, Kern River comments that it does not oppose a mandatory capacity assignment condition, provided that such a condition is applied consistently. Kern River cites *Oklahoma-Arkansas* [3] for the proposition that capacity assignment conditions have not been imposed consistently. Kern River states that in *Oklahoma-Arkansas* only shippers who elected to receive service under the FTS-1 Rate Schedule were eligible to participate in the program. Kern River argues that this approach implies that capacity assignment can be used as a bargaining chip in the negotiation of reservation fees.

B. Consolidation and Expansion of Generic Construction Authorization.

1. Replacement Facilities

a. *Section 2.55(b).* Many commenters [4] oppose the elimination of the existing exemption under § 2.55(b) for replacement facilities. INGAA, with the support of many of the other commenters, stated that the original reasons for the § 2.55(b) provisions, administrative efficiency, safe pipeline operations, and uninterrupted service, remain valid today. Generally, the opponents argue that a certificate or prior notice requirement would delay replacement, add expense, and unnecessarily complicate a pipeline's ability to maintain safe and reliable facilities. For safety reasons, they argue, a pipeline must be able, on short notice, to replace facilities where corrosion or other damage has occurred.

Furthermore, they state, the safety record of pipelines is good. They argue that the NOPR gives no justification for this proposal, cites no specific occurrences of serious environmental harm resulting from past replacement activities and fails to identify any environmental problems that justify prior notice for replacement activity. Finally, they argue that replacement activities under § 2.55(b) occur in existing rights-of-way where environmental factors already have been evaluated when the certificate for the facility was first issued.

Many commenters state that most replacement projects are minor. Therefore, they argue, rather than eliminating the exemption totally, the Commission should establish a realistic threshold that would trigger the requirement to construct such replacement under § 157.208. Commenters' suggestions for defining minor replacement projects generally include cost and length limits and range from $50,000 to $2,500,000 in cost and 1,000 feet to two miles in length. Other suggested alternatives to totally eliminating the exemption include maintaining the exemption for replacement projects that are: confined to existing, previously disturbed rights-of-way (United); replacement of less than 1,000 feet in length within the existing right-of-way (National Fuel); replacement of meters or regulators at an existing meter station (Northwest); routine compressor/driver replacements and emergency safety replacements (Pacific Gas); emergency repairs and any other activity which must be taken to comply with DOT regulations (Columbia). Southern suggests keeping the § 2.55 exemption but requiring compliance with § 157.206(d)(2) if replacement activity requires land to be disturbed. Southern also would exclude replacement of facilities within existing structures.

EPA and Interior support the proposal stating that the Commission has accurately assessed the potential for environmental impact to occur as a result of replacement projects on existing pipelines and associated facilities. Interior and EPA argue that pipelines built before NEPA probably did not consider issues such as habitat for endangered species, wetlands, unique environmental areas, or fishery spawning areas. EPA states that pre-1940 pipelines were built mostly by hand with limited heavy equipment and narrow construction rights-of-way. Thus, EPA argues, replacing these pipelines using modern methods invariably disturbs new ground, leading to the same concerns as with new construction.

The National Trust believes that the proposal does not go far enough, arguing that all replacement facilities should be subject to environmental assessment to determine whether they would have a significant impact on the environment. It states that there is nothing in the record indicating that replacement projects costing under $10,000,000 would not have a significant environmental impact. INGAA contends that the National Trust overlooks the fact that a "major federal action" triggers NEPA and a "federal undertaking" has already determined that replacement activities are purely private activities excluded from NGA jurisdiction because it is not within the definition of "facilities" under section 7 of the NGA.

b. *Toxic Substances.* National Fuel argues that the Commission should not exclude removal of facilities which may be contaminated with toxic substances from automatic authorization because the Toxic Substances Control Act provides sufficient protection. Enron and National Fuel contend that the proposal to exclude the removal of facilities that "may be" contaminated is vague. National Fuels suggests limiting the exclusion to removal of facilities known to be contaminated with toxic substances.

c. *Residential Right-of-Way.* Arkla contends that Commission's concern with replacement of facilities in residential areas in unnecessary because the safety of those located near a pipeline is the responsibility of the DOT, which has in place regulations concerning pipeline safety. Arkla argues that the Commission cites no reasons why DOT regulations are insufficient. Southern argues that the Commission should allow self-implementing replacement activity to proceed if all owners of proximate residences are right-of-way grantors, successors in title to right-of-way grantors, or otherwise consent. Further, states Southern, right-of-way grants already allow pipeline companies to maintain and replace their existing facilities. Landowners are aware of the likelihood of these activities occurring when negotiating rights-of-way with pipelines.

Enron argues that there is no support for the suggestion that it may be environmentally preferable to construct new facilities in a different right-of-way rather than replacing them in the original right-of-way. Enron states that this would cause delay in replacing deteriorating facilities while the pipeline negotiates a new right-of-way and prepares environmental analysis for the new route. Enron argues that, since the pipeline has compensated the landowner for the easement granted for the right to construct facilities plus ingress and egress, due process precludes the Commission from depriving the pipeline of its property rights.

Texas Gas and INGAA argue that replacement activities occur on existing rights-of-way for which the Commission already evaluated environmental factors when the certificate for facilities was first issued. Illinois contends that replacement on the existing easement would likely incur fewer adverse agricultural impacts than construction of another pipeline along a different route.

d. *Conflict with Department of Transportation Regulations.* Many commenters [5] expressed concern regarding an apparent conflict between the proposal to eliminate the exemption for replacement activity in § 2.55(b) and the DOT's safety regulations governing natural gas pipeline facilities. The Natural Gas Pipeline Safety Act of 1978 (NGPSA) [6] directs the Secretary of Transportation to establish minimum federal safety standards for the transportation of gas and pipeline facilities. The DOT's regulations require pipeline operators to take prompt action to correct a safety related condition.

INGAA, Arkla, Northwest, CNG, and Columbia argue that the interim rule requiring 30 day notice to the Commission before replacement of any pipeline facilities is in apparent conflict with the DOT's safety rules and the pipeline's obligation thereunder to act promptly to correct a hazardous condition. They contend that the operator who immediately repairs faulty pipe without giving the 30 day notice complies with DOT's regulations but not with the Commission's. The operator, they contend, cannot comply with both regulations.

Arkla argues that although the Commission points out that the 30 day notice requirement should not lead to a result contrary to that required by DOT regulations, the exemption in Subpart I of Part 284 from section 7 certificate requirements may not resolve the conflict between the Commission's proposed requirements and DOT regulations. Arkla, CNG, Tennessee, and Texas Gas argue that the Commission's reference to the emergency regulations in Subpart I is confusing, since those regulations are written to address short term emergency sales and transportation of gas and new facilities constructed to effectuate those deliveries rather than the replacement of existing facilities.

---

[3] 53 FERC ¶ 61,019 (1990).

[4] Algonquin, AGA, ANR, CNG, Columbia LNG, Enron, INGAA, Natural, Northwest, Pacific Interstate, Panhandle, SoCal, Southern, Tennessee, Texas Gas, Transco, and Williston Basin.

[5] INGAA, Northwest, Arkla, CNG Enron, Panhandle, AGA, ANR Tennessee, Texas Gas, KN Energy, UDC, United, and DOE.

[6] 49 U.S.C. § 1671 *et seq.* (1989).

Arkla states that the exemption for emergency construction must be retained in § 2.55(b) to ensure that there will be no delay in replacing facilities presenting a hazardous condition. National Fuel, Texas Gas, and United propose that the regulations make clear that emergency replacements can be performed without delay. Tennessee proposes that, absent restoration of § 2.55(b), the Commission provide that any pre-construction reporting, filing or environmental requirements relative to replacement activities will not apply when reasonable concerns for safety or the DOT safety regulations require immediate action to replace existing facilities.

Appalachian Energy requests the Commission to clarify that pipeline construction of taps to connect independent producer-owned wells or production and gathering facilities to pipelines remain exempt from certification and prior notice requirements under § 2.55(b).

2. Part 157

a. *Accelerated Construction Authorization*—i. *General Comments.* Most commenters generally support the proposed accelerated construction authorization but disagree with individual aspects of the proposal. For example, Columbia states that, although it generally supports the proposal, the pre-conditions, especially regarding protests, may present obstacles. Similarly, ANR states that, with certain modifications, the proposal would be beneficial but, because major projects usually are opposed, the proposal is not a substitute for other construction authority. The CEQ comments that, although the proposal would serve the goal of expediting the certificate process, its effect on environmental quality or existing review requirements is not treated. Northern Illinois supports the proposal but believes that the expedited procedures should also apply to projects prepared to meet the specific needs of a customer. INGAA, as discussed below, strongly supports accelerated construction authorization but would change some aspects of the proposal.

The CPUC opposes the proposed rule for accelerated construction certificates. It states that the presumption of public convenience and necessity for construction is irrational because the Commission would fail to make a particularized finding supported by evidence as required by section 7(e) of the NGA. Further, it contends, there is no determination of need or ability to perform merely because no protests are filed.

Enron proposes that the Commission, rather than implementing § 157.219, expand the definition of eligible facility in § 157.202(b)(2)(i) to include mainline facilities, facilities which would effectuate the expansion of mainline facilities, and facilities necessary to receive gas from synthetic natural gas or liquefied natural gas plants. Enron argues that this, accompanied by an increase in the dollar limitation for blanket certificate authorization as proposed in the NOPR, would permit many of the activities contemplated by § 157.219 to proceed under § 157.208, thereby streamlining the construction procedures and increasing competition in the market place.

INGAA would have the Commission delete from the definition of "eligible facility" in § 157.202(b)(2)(i) the limitation that the gas supply facility is a jurisdictional facility necessary to connect the system of the blanket certificate holder to natural gas supplies destined for the system supply of an interstate pipeline company. According to INGAA, this deletion would permit interstate pipelines to utilize the blanket certificate authorization more broadly and to increase their flexibility in connecting new sources of gas without the delay of obtaining Commission approval.

Arkla proposes a revision of § 157.211(a)(1)(i) to permit automatic authorization of sales taps installed to serve rural end-users not previously served by a distribution company, subject to the volumetric limitation of § 157.211(a)(1)(ii).

DOMAC argues that construction activities undertaken by LNG facilities costing less that $50,000,000 should be permitted if the terms of proposed § 157.219 are met. DOMAC requests that the proposed rule be modified to ensure that blanket certificates issued to LNG companies allow the same range of activities as certificates obtained by other regulated entities subject to the rule.

National Fuel, Tennessee, and Texas Gas propose that the new expedited procedure be applicable to the construction of facilities for sales service. National Fuel states that open season and rate requirements of § 157.219(b) seem applicable only to projects intended to serve new markets for transportation service. Therefore, it requests the Commission to clarify that the requirements of § 157.219(b)(5) and (6) apply only to the extent that new capacity would become available for transportation service under part 284.

ANR proposes that the Commission modify the requirement that the applicant must hold both a part 157 and a part 284 blanket certificate to allow companies like independent storage companies to become eligible for the expedited construction procedure. Northern Illinois disagrees with ANR's proposal.

ii. Protests—INGAA, Williams, ANR, Transco, Pacific Gas, Northwest, Columbia, Great Lakes, Southern, and the NY Task Force express concern that insubstantial or frivolous protests would automatically convert a prior notice filing to a section 7(c) proceeding. Pacific Gas states that the Commission should be as explicit as possible in describing what constitutes a valid protest. INGAA, with the support of many commenters, states that the Commission should institute a procedure for identifying and rejecting insubstantial protests and provide a procedure for summary disposition of protests which do not raise factual issues necessitating a hearing or that do not contain specific and legally sufficient grounds for blocking a project. INGAA further contends that protests raising specific legal or policy objections but which present no contested issues of material fact should only be converted to section 7(c) proceeding by a Commission order after a determination that the protest cannot be summarily dismissed on legal or policy grounds.

AGD states that the above commenters point to no specific instance of a meritless protest unduly delaying the Commission's review process. Furthermore, it states, the Commission's regulations already permit the filing of motions for summary disposition of a protest. The Commission itself, states AGD, has summarily dismissed protests and permitted interstate transportation service to commence under blanket transportation certificate notice and protest procedure.[7]

AGD further argues that there should be no distinction between issues of fact and issues of law and policy because NGA section 7 recognizes no such distinction in terms of the Commission's duty to investigate all factors in determining whether a given certificate application would serve the public convenience and necessity.

iii. Staff Protests—INGAA argues that the Commission should disallow staff protests that do not meet the requirements of specificity and legal sufficiency that should be required of outside protests. In addition, INGAA believes that the Commission should establish firm deadlines for completion of staff's environmental analysis.

INGAA and Southern recommend that the pipeline be free to commence construction at its own risk if the Commission does not act on a protest within 60 days after the period for withdrawing or otherwise resolving the protest. AGD and Tennessee disagree with this suggestion. AGD states that the purpose of the protest period is to provide a before-the-fact review of proposed pipeline construction projects. Tennessee argues that such a procedure is impractical and inefficient because, if the Commission subsequently determines that the protest was valid, the construction completed would have to be removed. Furthermore, states Tennessee, the procedure is inconsistent with the Commission's NEPA obligations because the Commission would be acting on a protest after environmental disturbance had occurred.

Arkla, the CEQ, El Paso and Enron contend that staff should be required to prepare an EA within the prescribed protest period. Several commenters believe that staff cannot complete the EA within the proposed protest period. Williams contends, therefore, that the Commission should not require the fee associated with a section 7(c) if staff files a protest because of lack of environmental data.

The CPUC and Texas Gas propose that the protest period be lengthened. Texas Gas contends that staff should be required to complete the EA within the lengthened time frame, with reasonable extensions for good cause, rather than allowing staff to protest the filing if it has not completed the EA. El Paso would require the Director's approval for any extension. INGAA and Enron, in their reply comments, oppose extending the protest period.

iv. Cost Limits—AGD, ANR, Arkla, El Paso and INGAA comment that the $50,000,000 limit on the cost of projects under § 157.219 should be removed or raised. ANR and El Paso reason that there should be no limit because any filed protest not withdrawn can

[7] Citing Northwest Pipeline Corp., 51 FERC ¶ 61,289 (1990).

elevate the application to a section 7(c). United suggests that there be a 120 day prior notice time limit for projects costing more than $50,000,000. Commenters also state that if the cost limits remain, the Commission should allow adjustments for inflation.

The NY Task Force opposes removing the cost limit under § 157.219 because it believes that, generally, the greater a project's cost, the greater its scope, which necessitates a longer time for review. Therefore, it argues, there is a greater likelihood that the project would be handled under section 7(c). Interior states that the cost ceilings seem arbitrary since no linear connection between cost and environmental effect has been demonstrated.

v. Rates—MichCon objects to the lack of a determination of need in the proposed accelerated procedure. It states that the pipeline should demonstrate that the facilities are the most cost effective means of serving the relevant market and are economically justified. Further, the Commission should require that the cost not be included in the rate base in any subsequent rate case unless the pipeline demonstrates that the average incremental cost of new facilities based on the expected throughput is at or below the market price for the service. Otherwise, argues MichCon the new facilities should be incrementally priced.

MichCon further states that the pipeline should be at risk for any part of the incremental price in excess of its existing Part 284 system rate. MichCon states that to lessen the chance for subsidization by existing customers, the cost of new facilities can be rolled into rate base if they can stand alone in the market place and if the pipeline can show that this benefits all of its customers.

INGAA opposes MichCon's proposal. It states that any new facilities will be constructed for either system supply or for certain customers who desire an incremental service. INGAA contends that, in the first case, cost will be rolled-in and cannot be incrementally priced and in the second case, they will be supported by precedent agreements or contracts. INGAA states that the specific evidence of need demonstrated by such agreements or contracts undercuts MichCon's premise. Further, INGAA argues, if a certificate is issued under section 7 the facilities have been found to be in the public convenience and necessity and therefore the costs are includable in the rates.

Peoples also comments that the project must be economically justified. This will occur, states Peoples, if the pipeline and/or the benefitting customer will bear the full risks and costs of the project. Peoples would condition all construction authorization, except automatic authorization under § 157.208 to require that the pipeline: (1) accept a limited term throughput condition to prevent subsidization by other customers and/or 2) apply incremental rates for a fixed term so that roll-in will not increase general system rates or until one half of the depreciable life of the property has passed.

Louisiana Mid-Con and MidCon oppose an at risk condition on pipelines because, they state, it would discourage new pipeline construction of supply area pipeline facilities. They believe that such a condition would cause unreasonable hardship to natural gas producers and pipeline companies. Further, they believe that this would further depress natural gas prices at the wellhead, reduce exploration, and, ultimately tend to further complicate a secure gas supply at reasonable prices.

Northern Illinois proposes that the new regulations be available only if a pipeline's proposal to expand service supports a finding that, using rolled-in rates, there will be no significant adverse economic impact on existing customers for seven years.

ANR opposes both Peoples' and Northern Illinois' proposals which, ANR states, assume that existing customers never benefit from the new construction. Natural argues that Peoples' and Northern Illinois' proposals would create steps at the construction phase unnecessary to protect customers. Further, they contend that the effects on customers will not come about until the pipeline's next rate case because new facilities can have no rate impact on existing customers until the pipeline proposes, and the Commission approves, that the costs be rolled-in to its rates.

The NY Task Force disagrees with the proposal to fix initial rates for services involving new construction at the existing rolled-in rates with the question of establishing incremental rates for the services due to higher costs being answered in the pipeline's general rate case. It contends that this procedure is likely to inhibit rather than expedite the certificate process and harm non-participating customers.

AGD and Long Island believe that the rate design condition is too restrictive. AGD contends that if the pipeline and its customers that are to receive service under the new project so agree, they should be permitted to derive initial rates on the basis of the incremental cost of the project. Further, states AGD, since the pipeline may reap a windfall if rates generated at the incremental cost of the project would be below the system average rates, the Commission should require the pipeline to charge the lesser of the system rate or the incremental rate.

Long Island argues that a pipeline's system-wide rates based on its cost of service as it exists before the expansion will generally be insufficient to recover the costs of the expansion thus nearly guaranteeing underrecovery of the pipeline's costs. This, contends Long Island, will discourage accelerated construction applications.

ANR, Enron, and Process Gas assert that the appropriate forum to address rate issues is in individual NGA § 4 rate proceedings rather than through the generic conditions proposed by some commenters.

Long Island comments that pipelines, rather than risking substantial underrecovery of their costs, may seek contribution in aid of construction from LDCs and end-users requesting incremental service thus increasing the cost to the ultimate consumer. Long Island proposes that the Commission permit LDCs and end-users to pay a negotiated monthly demand charge to guarantee to the pipeline the revenue necessary to enable the project to go forward. Long Island states that existing customers would be protected because only customers requesting the incremental service would pay the negotiated fixed charge.

vi. Open Season Requirement—Kern River, Natural, Pacific Gas and Tennessee oppose that open season requirement. Kern River and Tennessee argue that a mandatory open season would discourage pipelines from using the new procedure because the costs involved are too great for a pipeline to prepare a project without the security of advance contracted commitments. Furthermore, they state that the Commission has approved initial capacity allocation where, prior to the filing of the application, there were contractual commitments already made. The remaining capacity was then allocated during an open season.[8]

Natural objects to the open season requirement for the expansion of existing mainline capacity or the construction of new lateral lines where the facilities are to meet demand represented by existing requests for transportation. An open season, argues Natural, would disadvantage those with existing requests for service.

Pacific Gas opposes the open season requirement because it may be infeasible for the relatively small volumes in the smaller projects likely to be proposed under these regulations. As an alternative, Pacific Gas proposes that the open season not apply to projects proposing to serve the pipeline's own system supply or the identified needs of specific customers, or projects with volumes exceeding a certain threshold, for example, 100 MMcf per day.

Texas Gas states that in some instances the open season condition should be waived or certain exceptions should be codified. It gives, as an example, its recent filing to construct a loop along its mainline system to recover existing capacity lost through operating inefficiencies on that portion of its system. Texas Gas states that it could not have conducted an open season because the project recaptures capacity already committed to existing customers.

vii. Complete Application Requirement—APGA comments that the Commission should codify the proposal to reject § 157.219 applications with incomplete environmental information. Arkla states that the extensive environmental reports required under § 157.219 could delay rather than expedite the procedure. INGAA comments that the Commission should: (1) reject environmental reports only if they patently fail to comply with significant and explicit Commission requirements, (2) grant waiver of a particular environmental report requirement if it is inapposite to the proposed project, and (3) allow the applicant to promptly cure an incomplete application that contains only minor or inadvertent omissions.

viii. Competing Proposals—Tennessee recommends extending the time limits for filing competing proposals to 180 days because it feels it would be impossible to compile a competing application in the time proposed, especially considering the significant environmental requirements.

[8] See *e.g.*, Green Canyon Pipe Line Co., 47 FERC ¶ 61,310 (1989) and Kern River Gas Transmission Co., 50 FERC ¶ 61,099 (1990).

Pacific Gas urges the Commission to be explicit in the guidelines and policies it will use to determine whether a purportedly competing proposal constitutes a valid protest. Pacific Gas also urges the Commission to dismiss purportedly competing applications if they do not have the support of the customers they propose to serve, or of a pipeline they propose to utilize.

b. *Changes to Existing Construction Authorizations.*—i. Project Cost Limits for Blanket Construction Certificates. AGA, ANR, APGA, Arkla, and INGAA endorse raising the maximum cost limits for blanket construction certificates as a sound step toward accelerating pipeline construction. El Paso contends that the limits should be raised to $15,000,000 and $40,000,000 to be of maximum benefit to the public because, for example, replacement of a single small to medium sized compressor unit can easily exceed the $10,000,000 limit. Columbia supports the proposal but urges the Commission to treat cost limits for off-shore construction separately because construction costs are higher for off-shore projects. Columbia suggests cost limits of $15,000,000 and $30,000,000 for off-shore construction projects.

The Wisconsin PSC and the CPUC oppose increasing the cost limits for blanket construction certificates. The CPUC comments that the cost limits are already too high and permit construction of significant new facilities without adequate review.

ii. Identification of Affiliates. APGA and Arizona Electric support the proposal to identify affiliates. Texas Gas comments that the wording in the proposed regulation "use of the proposed facilities by an affiliate" is impractical for an open access pipeline because of all of its transportation facilities, by definition, could be "used" by any entity, including an affiliate. This, argues Texas Gas, would result in the pipeline's listing every one of its affiliates in all of its prior notice requests involving open access facilities. Therefore, Texas Gas urges the Commission to modify proposed § 157.205(b)(7) to either eliminate the term "use" or specifically define the type of affiliate involvement for which the Commission is interested in obtaining information.

Enron contends that this requirement should be rejected as unnecessary because Order Nos. 497 and 497–A [9] adopt standards of conduct and reporting requirements to govern the relationship between interstate pipelines and their marketing affiliates.

ii. *Protest Periods*—Proposed § 157.205(e)(2)(i) decreases the protest period for all prior notice filings under Subpart F, except filings under § 157.208(b) and proposed § 157.219, to 25 days. Arkla, Enron, INGAA and El Paso support this shortened protest period although El Paso disagrees with the exceptions for § 157.208(b) and proposed § 157.219 filings.

The CPUC and APGA oppose the 25 day protest period. The APGA contends that parties need at least the full 45 days currently required to receive notice and to collect information required to determine whether a protest is necessary. Otherwise, contends APGA, concerned parties would be forced to file a protest to gain time to evaluate the proposal fully which would lengthen rather than shorten the certification process.

c. Delegation to the Director—All who commented on the proposals supported the NOPR to increase the cost limits for proposals to construct, acquire, or operate facilities which are subject to the authority delegated to the Director and to expand the Director's delegation authority to act on uncontested abandonment of service or facilities.

d. Construction under NGPA section 311—The CEQ, NY Task Force, Miami Valley, Northern Illinois, the National Trust and APGA assert that the Commission's approach to environmental review of section 311 is flawed. The CEQ argues that the Commission's environmental approach under section 311 violates NEPA and is bad public policy. The CEQ and the National Trust contend that the Commission has impermissibly delegated to the pipelines its responsibility to ensure compliance with NEPA. The CEQ alleges the same Commission delegation regarding NHPA. The APGA believes that section 311 construction should be subject to the same prior environmental review as required for section 7 certificates. The National Trust proposes that the Commission conduct an environmental assessment with respect to each section 311 project. Miami Valley proposes full NEPA compliance for any major construction. This would include preconstruction preparation of an environmental assessment, preconstruction circulation of the assessment for public comment, and an agency decision addressing and mitigating environmental concerns, or requiring the preparation of a full environmental impact statement.

The CEQ, Fish and Wildlife, and the National Trust advocate rescinding the automatic construction authority under section 311. The CEQ, Fish and Wildlife, and the NY Task Force would require pipelines to use the procedures under Part 157 for construction authorization for section 311 facilities.

AGA states that the CEQ and Fish and Wildlife misunderstand the procedural nature of NEPA, the nonjurisdictional status of construction under section 311 and the substantial environmental compliance required of section 311 construction under § 157.206(d). AGA argues that the Commission has refrained, and should continue to refrain, from exercising environmental oversight under NEPA because it lacks jurisdictional authority to do otherwise.

DOE, AGA, ANR, INGAA, Lone Star, Southrn, and Williams share the view that the Commission's current automatic authorization procedures for facilities authorized by section 311 are working well and fully comport with all of the requirements of the NEPA. DOE strongly opposes the termination of automatic authorizations for section 311 projects, or any limitations on the types of facilities presently eligible for automatic authorization.

DOE supports Arkla's proposal to adopt, to the extent possible, existing section 311 procedures in processing section 7(c) applications because Commission policy pursuant to section 311 does not violate NEPA and has been proven to be sound public policy. DOE states that the procedural and mitigation requirements of § 157.206(d) represent the result of the Commission's application of NEPA to section 311 activities. Similarly, states DOE, the EA that the Commission is preparing with respect to the current proposed rulemaking will serve the same function.

United and Enron object to any move by the Commission which has the effect of attaching NGA section 7 certificate conditions to the authorization of construction under NGPA section 311. Enron states that to do so fails to recognize that Congress specifically intended that section 311 transportation flow unencumbered and without the delays inherent in section 7 transportation service.

Tennessee proposes that the Commission revoke § 284.3(c) [10] to end authorization for construction under section 311. Tennessee contends that the current regulations for section 311 construction are unnecessary, inefficient and legally deficient. Tennessee argues that they are unnecessary because NGA section 7 and the Commission's regulations thereunder provide ample authority for interstate pipeline construction. Furthermore, the liberalization and expedition of section 7 authorizations proposed in the NOPR further undercut any need for section 311 construction.

Tennessee states that the current regulations are inefficient because the facilities constructed under section 311 can be used only for transporting gas on behalf of certain other entities. This, argues Tennessee, creates a class of limited-purpose facilities which is contrary to congressional intent to integrate interstate and intrastate gas markets and to eliminate restrictions on the use of facilities.

Tennessee argues that § 284.3(c) is legally unsound for two reasons. First, it permits construction of facilities of any size or scope without section 7 certification so long as the facilities are used for section 311 transportation. This, contends Tennessee, is contrary to congressional intent as expressed in *Associated Gas Distributors v. FERC* [11] that section 311 would create only a "minor exception" to the certification requirements of NGA section 7 and the NGPA's silence regarding authority for, and jurisdictional consequences of, construction under section 311.

Second, Tennessee states that each time the Commission has addressed the issue of construction under section 311, in Order No 46, Order No. 436 and the current NOPR, it has recognized that its authorization of section 311 construction by rule is a major

[9] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, 53 Fed. Reg. 22,139 (June 14, 1988) III FERC Stats. & Regs., ¶ 30,820 (June 1, 1988); Order No. 497–A, 54 FR 52,781 (Dec. 22, 1989); III FERC Stats. & Regs. ¶ 30,868 (1989).

[10] 18 C.F.R. § 284.3(c) states that the NGA does not apply to facilities used solely for transportation authorized by NGPA section 311(a).

[11] 899 F.2d 1250 (D.C. Cir. 1990).

federal action for which it must prepare an environmental assessment. Tennessee argues that NEPA not only requires environmental review of proposed rules, but further requires that environmental implications be considered with respect to individual major projects undertaken pursuant to those rules.[12]

Tennessee notes that construction of facilities for section 311 transportation could be accomplished under blanket certificates by revising the definition of "eligible facility" in the Commission's blanket certificate regulations in § 157.202(b)(2)(i) to include any facility "that is necessary to provide services within existing certificated *or otherwise authorized* volumes, or any gas supply facility." [13]

INGAA and United strongly support maintaining section 311 as currently implemented by the Commission. In response to those commenters who assert that the Commission's approach to environmental review of section 311 is flawed, INGAA states that the Commission complied with NEPA in issuing the section 311 rules by imposing standard environmental conditions to section 311 construction, preparing an EA, and issuing a FONSI. By complying with the standard conditions, a pipeline proceeds without creating a significant adverse impact on the human environment.

INGAA states that construction under section 311 does not require individualized approval. Accordingly, the agency does not take any action that triggers NEPA's EIS requirement. Furthermore, § 157.206(d) requirements are adequate environmental protective measures for section 311 construction.

INGAA contends that even though section 311 procedures are self-implementing, they do not impermissibly delegate any Commission responsibilities under NEPA or NHPA. According to INGAA, the Commission fulfilled those responsibilities when it issued the section 311 rules. Furthermore, section 311 construction does not trigger additional NEPA responsibilities. INGAA states that construction under section 311 does not constitute a major federal action under NEPA and therefore no EIS is required.

INGAA further states that NHPA does not independently apply to section 311 construction. NHPA does apply, states INGAA, through § 157.206(d) which requires the pipeline to comply with applicable law, including the NHPA, to satisfy NEPA obligations. Columbia argues that the NHPA is narrowly worded and comes into play only if a federal agency has undertaken a project itself or has the authority to license a project or approve expenditures for it.[14] It states further that the federal agency's involvement must be substantial.[15] Columbia argues that, since the Commission's authority does not extend to exempt facilities, it is doubtful that the NHPA imposes obligations on the Commission with regard to construction of those facilities.

Columbia further argues that, if the Commission adopts the NOPR's treatment of non-jurisdictional facilities associated with section 311 transportation, it should specifically define which facilities are subject to the revised regulations and exclude production and gathering facilities as defined in NGA section 1(b) and auxiliary and tap facilities under §§ 2.55 (a) and (d) of the Commission's regulations.

AGD states that the customers of interstate pipelines may be substantially affected by the pipeline's construction of section 311 facilities since such construction can be major and can also involve the bypass of LDCs for direct service to their industrial end-user customers by interstate pipelines. Therefore, it urges the Commission, in furtherance of its consumer protection responsibilities, to maintain a 30 day prior notice requirement and to make such notice public.

Columbia and El Paso request that the proposal to require pipelines to file evidence of compliance with § 157.206(d) at least 45 days prior to construction or abandonment of facilities under section 311 be changed. Columbia argues that this requirement means that the pipeline must receive all applicable clearances before giving notice to the Commission thus creating delay before construction can commence. Columbia proposes that the NOPR clarify that a pipeline will comply with section 157.206(d) prior to construction. El Paso asks that if the Commission determines that it is necessary to require notice prior to construction, it exempt minor facilities.

C. Environmental Issues

1. Suggestions for Streamlining Process

Commenters made a wide range of suggestions to streamline the environmental review process. Many of these suggestions are already encompassed in our existing rules and we are adopting others at this time.

Alabama-Tennessee and APGA suggested that we codify or at least encourage the use of prefiling consultation, which allows applicants to consult with the environmental staff prior to filing an application. Great Lakes would substitute scoping as a method of defining the environmental data that is required to be submitted under § 380.12.

The Siting Council suggests, particularly for projects under the accelerated authorization procedure with limited protest periods, that § 2.69 be amended to require an applicant to notify any interested state agency of proposed construction 30 days prior to the publication of the landowner notice proposed in the NOPR.

KN Energy, INGAA, and El Paso noted that the environmental review process would be accelerated if the Commission established project-specific timetables for the preparation of environmental documents. They argue that such timetables would assist applicants in planning other phases of their projects.

INGAA suggests the use of programmatic environmental analyses and tiering to limit the extent of the analysis required for specific projects, arguing that by adopting a programmatic approach for reviewing minor facilities and similar environmental impacts, the Commission can reduce the delays and regulatory burdens of projects that fall within generic categories.

INGAA also suggests that environmental consultants can provide a resource-efficient tool for independent review of proposed actions, noting that CEQ regulations allow consultants, selected by the lead agency and paid by the applicant, to prepare an EIS or EA under certain circumstances. INGAA and the CEQ comment that they believe that applicant-prepared EAs or draft EISs could be submitted with the pipeline company's application, thereby reducing cost and delays.

INGAA, KN Energy, and Enron suggest that the Commission differentiate between an EA and EIS in terms of the information required by § 380.12 and limit the information required in both to issues raised in scoping. El Paso suggests that the Commission's staff be limited to no more than two separate and distinct data requests per application. Tennessee characterizes the § 380.12 information requirements as costly and burdensome.

AGPA, El Paso, Enron, and INGAA express concern about the criteria by which an environmental report would be judged inadequate. They argue that an application should not be rejected unless patently deficient, and note that some information required in the environmental reports, such as field survey based information, is difficult to obtain early in the planning phase.

2. Balancing NEPA Requirements

Commenters have significantly diverse views of the Commission's responsibilities in implementing NEPA. On one hand, CEQ objects to the Commission's method of accelerating the traditional 7(c) certification process by tailoring the level of environmental review based on non-environmental factors, such as cost or whether protests are filed. It argues that the level of environmental review should be based on the potential for environmental impact. It incorrectly states that traditional section 7(c) applications normally require an EIS. The CEQ also comments that environmental review under the optional certificate procedures relies only on the environmental compliance criteria of § 157.206(d).

INGAA argues that NEPA does not require the Commission to elevate environmental concerns above the public interest and that the Commission must consider environmental factors on an equal basis with other concerns. It argues that the Commission goes too far by imposing specific environmental standards during construction, enforcing compliance with environmental statutes that other agencies independently regulate, and by increasing environmental review for certain categories of construction including

[12] Citing *Scientists' Inst. for Public Information, Inc.* v. *AEC*, 481 F.2d 1079 (D.C. Cir. 1973) and *Port of Astoria, Oregon* v. *Hodel*, 595 F.2d 467 (9th Cir. 1979).

[13] Tennessee's reply comments at p 3.

[14] Citing *Vieux Carre Property Owners, Residents & Assocs., Inc.* v. *Brown*, 875 F.2d 453 (5th Cir., 1989) and *Lee* v. *Thornburgh*, 877 F.2d 1053 (D.C. Cir. 1989).

[15] Citing *Techworld Dev. Corp.* v. *D.C. Preservation League*, 648 F. Supp. 106 (D.D.C. 1986).

some types of abandonment, accelerated construction, and Section 311 construction.

In INGAA's supplemental comments it reviews what the Commission does in terms of its environmental review as compared to other agencies and the CEQ requirements. INGAA's report included three phases: (1) review and analysis of documentation and case law to discover how projects were determined to be major Federal actions with a significant environmental impact; (2) identification of problematic aspects of the NEPA review process; and (3) development of recommendations. According to INGAA's analysis, our process deviates significantly from that recommended by the CEQ and from the process used by most other agencies.

INGAA focused on how agencies define "major Federal action" and "significant environmental impact" and found that interpretation of the phrase "major Federal actions significantly affecting the environment" involves mixed questions of law and fact. In terms of defining significant, the mechanism for making a decision as to whether a significant impact has or will occur as a result of a proposed project and an EIS is required is called a threshold determination. This determination is accomplished through the EA.

In dealing with the question of what is significant, the agencies contacted admitted that the CEQ definitions were vague and not easily interpreted. Almost all agencies rely on a subjective approach with their personnel exercising professional judgment when determining what is significant. NEPA does not define either major Federal action or significant environmental impact. The CEQ regulations in section 1508.18 attempt to delineate what is a major Federal action by setting forth some general parameters. General parameters are also set out in section 1508.27 for the term significantly. As INGAA states, "even reading and fully comprehending these definitions can leave one with an empty feeling when trying to label the wide variety of projects subject to NEPA review." INGAA concludes that "there is no clear cut mechanism for making such determinations (as to what constitutes a major Federal action, etc.) since many of the conditions required for them change with each project in degree if not in texture."

INGAA states that there are several problems with the Commission's environmental review process. First, it does not follow CEQ regulations calling for the elimination of duplication of state and local regulatory oversight. According to INGAA, the Commission considers that its review of environmental impacts must be done on an independent basis and thus, it cannot delegate its review responsibilities to other agencies. INGAA cites CEQ guidelines which provide that there are no legal obstacles to delegation of collection of data as long as the agency specifies the information to be submitted and undertakes its own analysis to assure the adequacy and objectivity of the data. INGAA also states that the Commission does not have permitting authorization for environmental statutes, though the Commission often acts as if it does. Instead, the Commission should rely on those agencies with primary oversight of the environmental resource in question for impact determinations (i.e. significance).

Second, INGAA further states that the Commission second guesses or reevaluate an agency's impact determinations, often causing the applicant to retrace its steps because the Commission required substantial additional information after state agencies have given final approval to a project plan.

Third, INGAA states that there are a number of CEQ regulations which were not incorporated into the Commission's NEPA implementation and which are not being used according to the intent of the CEQ regulations. Following page 301 of INGAA's supplemental comments is a chart summarizing those CEQ regulations.

INGAA concludes that in terms of defining major Federal action and significant environmental impact, almost no one has any way of measuring or quantifying impacts, but relies on a professional judgement approach, which is a very subjective method of making threshold determinations. INGAA's response is to develop a Matrix of Objective (M of O) approach that includes an impact classification and quantification mechanism. INGAA feels that this would take the guesswork out of the determination of significance. Under the M of O approach a set of numerical weights is applied to specific categories of risk/impacts along with concrete definitions for such measurements. This approach would provide a uniform system that would take the guesswork out of risk/impact assessment, particularly in the pivotal EA phase. INGAA states that the M of O approach has been used intermittently by several agencies, most notably Fish and Wildlife. Starting at page 412 of INGAA's supplemental comments is a suggested M of O approach.

3. Nonjurisdictional Facilities

The Commission received extensive comments objecting to the proposed information requirements in §§ 157.211, 157.212, 157.221 (now § 157.219), 157.222 (now § 157.220), and 380.12, and the environmental compliance requirements of § 157.206(d). AGA, APGA, AGD, Columbia, KN Energy, Southern, Texas Gas, and United argue that the Commission does not have the authority under NEPA to review nonjurisdictional facilities and that the Commission's view of its responsibilities is too broad. They state that the specific intentions and goals of the review process should be clarified. Those commenters equate our information requirements with the intent to review each nonjurisdictional facility. Fish and Wildlife argues that the Commission should not limit its review to "inextricably related" facilities.

ANR, AGD, and Long Island argue that the Commission ignores or does not sufficiently rely on local, state, and other Federal reviews that may be required for nonjurisdictional facilities. Northwest, Southern, and Transco argue that it is unreasonable to require the jurisdictional applicant to act as a Commission designee in obtaining information about nonjurisdictional facilities. They also object to the requirement that they certify the actions of nonjurisdictional entities.

4. Endangered Species Act

CPUC, Natural, and Transco object to the Commission's proposed regulations governing compliance with the Endangered Species Act pursuant to § 157.221 (now § 157.219). Most industry commenters question the need for consultation with Fish and Wildlife when that service has given blanket clearances, while one commenter suggests that Fish and Wildlife be contacted regardless of the issuance of a blanket clearance. In general, the commenters argue that the Commission's regulations requiring the applicants to act as non-Federal representatives to contact the appropriate regional offices of Fish and Wildlife or the National Marine Fisheries Service (NMFS) to initiate informal consultation for each specific project defeats the purpose of a blanket clearance from those Federal agencies. Finally, Fish and Wildlife requests clarification on when the applicant could act as a non-Federal representative during the consultation process with Fish and Wildlife and NMFS.

5. Cultural Resource Procedures

Many comments object to the proposed cultural resource review procedures in §§ 157.222 (now § 157.220) and 380.12(c)(4). The Advisory Council and National Trust state that the proposed rules inadequately provide for compliance with Section 106 of the NHPA and that issuance of certificates, including blanket certificates, must await completion of Section 106 compliance. The National Trust and INGAA argue, albeit on opposing sides of the issue, that the Commission's view of its NHPA review and approval role is out of scope with the intent and case law interpretations of Section 106.

AGA, Bussey, and El Paso suggest that Commission's review and approval role is duplicative of the SHPO's and therefore unnecessary, and, because the Commission does not authorize expenditure of Federal funds, beyond the scope of Section 106. Columbia and Tennessee express concern that the NHPA procedures may prove burdensome to the SHPOs.

6. Proximity to Residences

Algonquin, Transco, AGD, Enron, and Williams object to precluding use of the automatic authorization procedures for construction of facilities regardless of size or cost that involves removal of existing facilities and construction of facilities in urban or residential areas. They argue that excluding automatic authorization of facilities that are located in residential areas where the existing or proposed right-of-way is within 50 feet of an existing permanent residence and defining that residence as a "sensitive environmental area," would effectively preclude speedy construction of minor facilities especially in the more developed Eastern United States.

ANR, National Fuel, Columbia, and Arkla, while not rejecting the notion that construction near residences could have significant effects, object to the 50-foot criterion as being arbitrary and suggested that it be clarified. They contend that one residence within 50 feet of the existing or proposed construction right-of way does not justify preclusion from automatic

authorization, and because right-of-way widths are variable, the distance criterion should be well-defined. They also comment that it should only apply to new construction, not replacement or rearrangement in previously existing rights-of-way. Finally, Arkla and Northwest argue that the 50-foot residential criterion would conflict with NGPSA safety requirements.

7. PCB Contamination

INGAA contends that the Commission should not include the Toxic Substance Control Act on the list of statutes to be complied with under § 157.206(d) because EPA has the statutory obligation to ensure compliance with that Act. Great Lakes, Transco, and Algonquin argue that the wording "may be contaminated" in proposed § 157.203(b)(2) would effectively eliminate processing of facilities under the automatic authorization procedures because of the difficulty in defining what may be contaminated. They also argue that the determination of contamination should be left to EPA.

8. Landowner Notification

Many commenters object to our proposal that notification of proposed construction be published once in a daily or weekly newspaper of general circulation in each county in which construction will be located at least six weeks prior to the beginning of any activity authorized under the automatic procedures of § 157.208(a). They also object to the proposal that the certificate holder certify such notification has been made within five days of filing a request or application under § 157.208(b) (previously proposed § 157.219) or Subpart A of Part 157 and by adding proposed §§ 157.206(d)(10) and 380.12(c)(1)(ix).

Arkla, Transco, United, and Williston Basin argue that these requirements would effectively eliminate the automatic authorization procedure; would be unnecessary because companies routinely notify landowners in the normal course of business and because review agencies are aware of projects through the permits and approvals that are required. Several of these commenters state that the notification requirement would encourage frivolous objections by those not directly affected. To the extent that they believe that the requirement would delay emergency replacement, Enron and Williston Basin state that it would be in conflict with safety requirements of the NGPSA. Some commenters also contend that preparing notices and publications would be too costly.

Fish and Wildlife and EPA argue that our notification requirements do not go far enough and should be extended to individual notification of landowners and environmental review and regulatory agencies.

9. Interaction With Other Agencies

INGAA and KN Energy argue that the environmental review process would be accelerated if the Commission did not duplicate the work of other Federal and state regulatory agencies which are mandated to enforce specific statutes. Great Lakes suggests that the Commission's role be limited to reviewing determinations of other agencies.

10. Section 2.69 Comments

ANR, Columbia, El Paso, Illinois, and Texas Gas object to the proposed change prohibiting the use of chemicals for weed control. The reasons they cite include existing Federal and state regulations which provide environmental protection, inaccessibility of some right-of-way locations to other means of weed control, and cost.

National Fuel, Texas Gas, and Transco suggest wording changes pertaining to avoidance of cultural resources, parks, and similar facilities, the use of screen plantings, and the harmonious setting of aboveground facilities. Others suggest maintaining the existing regulation. Illinois suggests wording changes to protect agricultural resources to the exclusion of other resources. Arkla, El Paso, National Fuel, Texas Gas, and Transco object to the preference stated in § 2.69(b)(3)(vi) to underground storage tanks. Finally, Northwest questions whether the provisions of § 2.69 are guidelines or binding regulations.

11. Miscellaneous Part 157 Comments

Algonquin objects to the information requirements of the proposed rule under §§ 157.211, 157.212, and 157.216, stating that the information required is too costly to prepare, unnecessary, and (in the case of nonjurisdictional facilities) burdensome. Arkla objects to the requirement that the resource reports described in § 380.12 be submitted for accelerated construction authorization under § 157.219.

Arkla and Tennessee object to having to provide an environmental report for prior notice projects, and, in addition, comply with the environmental conditions of § 157.206(d). They argue that by complying with the information requirements of § 380.12, project-specific mitigation measures could be identified that would obviate the need for the § 157.206(d) conditions.

Similarly, Tennessee argues that making compliance with the Commission's Erosion Control, Revegetation and Maintenance Plan and Stream and Wetland Construction and Mitigation Procedures contained in §§ 380.13 and 380.14 a mandatory part of § 157.206(d) is more restrictive than traditional 7(c) application requirements, where deviations are allowed.

National Fuel, Kern River, Northwest, Tennessee, and Transco argue that the definition of "sensitive environmental area" in § 157.202(b)(11)(i) should not be expanded to include "suitable" habitat for endangered or threatened species under the Endangered Species Act. They contended that "suitable" is too broad a term because it can include an area where an endangered species has never been known to exist.

The EPA comments that the automatic authorization procedures under §§ 157.203(b) and 157.208(a) do not provide for an adequate level of environmental review. It contends that construction of facilities under these procedures can proceed without further Commission review or independent analysis to determine potentially significant adverse impacts, and would have no analysis of alternatives.

Great Lakes questions § 157.206(d)(5) as to whether exceeding an Ldn of 55 dBA at any noise-sensitive area was applicable to existing compressor operations.

Great Lakes and ANR object to the requirement that all permits be obtained prior to construction, installation, or abandonment of any facility automatically authorized pursuant to § 157.203(b). They argue that flexibility should be allowed in authorizing construction of segments of the project for which all permits have been obtained to avoid unnecessary construction delays and to meet a mandated time window for construction at, for example, a sensitive river crossing. Further, some permits, such as those for road or stream crossings or testing of hydrostatic water, can only be obtained shortly before actual construction.

The NY Task Force would expand the provisions of § 157.203(b)(2) to include hazardous substances and endangered and threatened species, and expand § 157.208(a)(2) to include hazardous substances, endangered and threatened species, and any natural archaeological or historic resources that may be encountered.

12. Part 380 Comments

a. Resource Report 1. In general, most comments regarding information submittal for the general project description pertain to the level of detail available to the applicant at the time of application submittal. Tennessee and Great Lakes object to providing descriptions, location maps, and land requirement information for construction support areas (e.g., pipe storage yards, staging areas), stating that this information can only be obtained after preliminary engineering has been completed, access to the construction right-of-way and nearby lands has been obtained, and the construction contractor has been involved. They also object to the requirement to provide construction and mitigation plans prior to conducting detailed engineering studies using data obtained from on-site surveys.

The NY Task Force requests that landowner notification be required in conjunction with the application submittal, while Columbia argues that the requirement to certify within 5 days of filing an application that it has published notice of the proposed construction once in a daily or weekly newspaper in each county where construction would occur is overly burdensome. Columbia contends that many applicants already serve adequate notice to the landowners through contact with state and local agencies, during right-of-way acquisition negotiations, and during preconstruction meetings with local government officials and landowners.

Columbia, Great Lakes, Transco, and the NY Task Force suggest minor changes which include eliminating the need to identify noise-sensitive receptors owned by the applicant within a compressor station site, clarifying the requirement to describe only nonjurisdictional facilities *integrally related* to the proposed action, qualifying the meaning of "current" aerial photography, clarifying the requirement to describe where explosives are "likely" to be used, limiting

the definition of access roads to only "new" access road locations, and adding croplands to the description of areas where special construction and restoration procedures may be used. Finally, Tennessee objects to the proposal that non-linear facilities be shown on 1:3,600-scale maps, indicating that such maps are not readily available.

b. Resource Report 2. Comments on the resource report on water use and quality pertain primarily to the unavailability of required information. For example, Great Lakes, Tennessee, and the NY Task Force argue that wetland information is not always readily available, particularly from National Wetland Inventory (NWI) maps and state-issued wetland maps.

Another comment relevant to the availability of site-specific information concerns the quality of hydrostatic test water and water quality treatments that would be required of such test water. One commenter argues that availability of this information is highly dependent on environmental conditions at the time of testing.

Great Lakes, Algonquin, and the NY Task Force reason that specific procedures for handling and disposing of contaminated soils or groundwater, identifying locations for storage of fuels and lubricants, and disposing of all construction waste materials cannot be provided at the time of application submittal since these procedures must be developed in coordination with other Federal, state, and local agencies.

The NY Task Force expresses concern regarding implementation of further restrictions of the site designated for the storage of fuels and lubricants and for the refueling, lubrication, and washing of construction equipment.

Finally, Columbia, Texas Gas, and Algonquin suggest that since the Commission has standardized stream and wetland construction procedures, the applicant should not be required to provide a description of the crossing methodology for each proposed individual surface water or wetland crossing.

c. Resource Report 3. Comments on this section pertain to the schedule of the development of mitigation plans and the interaction and coordination of other agencies in the review and approval of these plans. Tennessee and Great Lakes argue that it is not realistic to expect applicants to identify specific mitigation procedures and provide agency comments on those procedures in their application. They would prefer to remain flexible in identifying time constraints (i.e., construction windows) to allow adequate review and comment by state and local agencies.

Other arguments against development of mitigation plans prior to filing an application raise the problem of obtaining access to private properties.

d. Resource Report 4. Bussey, Columbia, and El Paso describe the proposed reporting requirements of the resource report on cultural resources for both NEPA and NHPA as being duplicative, too costly, overly specific, and onerous, regarding sensitivity ranking and mapping. Columbia and Bussey suggest that these requirements would burden Commission review of projects.

e. Resource Reports 5, 6, 7, 8, 9, and 10. The Commission received only minor comments on these resource reports. CPUC suggests that the resource report on socioeconomics be revised to require assessment of the expenditures required to maintain public services at the preconstruction level. Transco suggests that the resource report on geology be revised to avoid overstating the potential damage of controlled blasting on water wells, springs, wetlands, and structures. Other commenters address the soil information requirements, suggesting the use of certain erosion control procedures as alternatives to the required erosion control and revegetation methods outlined in § 380.13 of the new rule.

Illinois, the NY Task Force, and Columbia suggest the use of soil mapping units rather than soil associations to assess the impact of pipeline construction on local soils. Another commenter argue that the request for soil association information was extraneous, since detailed information is already required for hazardous areas (e.g., landslide or soil liquefaction potential) and for areas with highly erodible soils. The NY Task Force argues that the Commission should identify soils of statewide importance when considering prime or unique soils, and that these soils should be identified for all proposed facilities, not just for above ground facility locations.

With regard to the resource report on land use, recreation, and aesthetics, the NY Task Force suggests additions to the classifications and types of land uses to be identified to include argicultural uses, sugar maple stands, and old-growth timber.

Arkla, Enron, and Columbia are concerned that the information required in the resource report on air and noise quality would limit noise levels of existing compressor facilities to a day-night sound level (Ldn) of 55 dBA. Conversely, the NY Task Force wants the resource report changed to clearly limit the noise level to 55 dBA for any expanded compressor station. Tennessee and Columbia argue that noise-sensitive areas within the fenceline of a facility owned by an applicant should not be shown on the required plot plans or be considered as noise-sensitive areas. They also contend that it would be burdensome to provide level surveys while compressors are at full load since some stations may never be operated at full load or may be operated at full load very infrequently. Tennessee argues that specific details regarding equipment and specific mitigation measures cannot be provided until particular types and sizes of equipment have been selected and detailed design completed.

Texas Gas objects to the information required in the resource report pertaining to alternatives that would use other pipeline systems, contending that the Commission should rely on industry to have already considered all alternative pipeline systems and chosen the most economical and efficient way to serve an applicant's needs.

f. Resource Reports 11, 12 and 13. Transco suggests that the resource report on reliability and safety unnecessary since all projects must comply with the Federal safety regulations administered by DOT.

Columbia LNG and Southern Energy oppose the requirement in the resource report on engineering and design material that recommissioned LNG facilities meet the engineering and design standards applicable to new facilities. Columbia LNG also questions the quantity of information that must be provided to meet the level of detail required by this report.

g. Section 380.13 Erosion Control, Revegetation, and Maintenance Plan and Section 380.14 Stream and Wetland Construction Procedures. A great many commenters addressed proposed § 380.13, the Erosion Control, Revegetation, and Maintenance Plan (ECR&MP) and § 380.14, the Stream and Wetland Construction and Mitigation Procedures (SWC&MP). EPA and the NY Task Force express complete support for the ECR&MP and the SWC&MP. These commenters also provided wording changes. United, on the other hand, states that the Commission has no statutory authority to impose such requirements.

Algonquin, National Fuel, and Texas Gas are concerned that portions of the ECR&MP might hamper their ability to comply with the requirements of DOT's pipeline safety regulations particularly the right-of-way maintenance requirements in the ECR&MP.

AGA, Algonquin, Columbia, El Paso, Enron, INGAA, Kern River, Natural, Northwest, Pacific Gas, and Tennessee express concerns over the inflexible structure of the ECR&MP and/or the SWC&MP. Northwest and Williams state that the ECR&MP should defer to private landowner requirements while Enron states that the SWC&MP should do likewise.

EPA and the NY Task Force express complete support for the SWC&MP and suggested certain wording changes. Algonquin, Natural, Pacific Gas, Tennessee, Texas Gas, and Transco comment on the scheduling of construction windows.

Algonquin, INGAA, Natural, Pacific Gas, and Transco argue that a greater role should be played by the various Federal departments, state agencies and private organizations that are consulted during the review of an application. The industry is generally opposed to instream construction restrictions. Algonquin, Columbia, National Fuel, Texas Gas, and Transco comment on the right-of-way maintenance restrictions, primarily with respect to perceived conflicts with DOT regulations.

Three commenters contend that in light of the restrictions on stump removal and/or the installation of riprap for construction in wetlands could make it difficult to provide a safe working environment for company personnel.

Algonquin, Columbia, Natural, Tennessee, Texas Gas, and Transco oppose the requirement to hydrostatically test all pipelines prior to their installation across streams and wetlands.

D. Commission Policy on Phasing of the Certificate Process, Incomplete Applications, and Competitive Proposals

1. Phasing

Many commenters support the concept of phasing to expedite processing of certificate applications but believe that the proposed phasing needs to be altered to accomplish that goal. For example, El Paso contends that phasing will be no more expeditious than the

optional certificate process because each preliminary order, as well as the final order, would be subject to rehearing. It suggests that the Commission address the phase one rehearing requests shortly after they have been filed. ANR comments that phasing would be more beneficial if the determinations made in each phase were not subject to challenge in the final phasing order unless the final order has a substantial impact on the earlier determinations. INGAA suggests that the Commission treat preliminary findings on non-environmental issues as binding unless clearly erroneous or unless the Commission decision on environmental issues requires wholesale reconsideration of a project. This, according to INGAA, would further the Commission's goals in phased orders—to aid the pipeline in making contractual and financial arrangements.

Enron proposes that the Commission issue a 7(c) certificate on non-environmental issues conditioned only on the order addressing environmental issues, within 60 days of the application's filing. Then the Commission would issue a certificate order on the environmental issues within 6 months of the application's filing with no rehearing of the non-environmental issues.

KN Energy comments that the proposed phasing will not expedite the processing of certificate applications without the following alterations: (1) phase only clearly complex applications that raise significant environmental impact issues; (2) phase only those projects whose applicants request phasing; and (3) set deadlines of 2 months for issuance of the initial order and 6 months after the initial order for issuance of the final order.

Several commenters note that the environmental review process causes delays. To enable the environmental review to proceed more rapidly, Enron suggests that, if requested by applicants, the Commission hire an environmental consulting firm to work under staff's direction to coordinate the analysis and prepare the necessary environmental reports. Exxon urges the Commission to adhere to an efficient environmental review procedure so that, to the extent feasible, the environmental review is completed within approximately the same time frame as the rest of the certificate process. INGAA requests clarification that the environmental review can proceed at the same time as the Commission considers the non-environmental issues in phase one consistent with CEQ's requirement that consideration of environmental impacts begin as early as possible in an agency's decisionmaking process.

The CEQ, Fish and Wildlife, the National Trust, and the NY Task Force express concern that the preliminary findings on non-environmental issues in phase one will predetermine the final outcome of the environmental review. The CEQ opposes the phasing proposal and states that it transforms the Commission's obligations under NEPA into little more than a mitigation measure.

The NY Task Force suggests that when the Commission finds that a project would have a substantial environmental impact, the final determination of the non-environmental phase of the proceeding should await the required evaluation of alternatives.

The National Trust opposes the proposed phasing procedures because it believes that it is a violation of NEPA and NHPA to issue the phase I certificate, which it refers to as a final certificate, resolving all regulatory issues other than environmental impacts, prior to completion of the NEPA and the NHPA process. According to the National Trust, allowing applicants to arrange financing and initiate contract negotiations after the phase one certification would prejudice the consideration of impacts and alternatives in violation of NEPA. It states that CEQ regulations [16] and case law [17] expressly require agencies to begin the NEPA process early enough to be an important contribution in the decisionmaking process and not used to justify decisions already made.

ANR, INGAA, Transco, and Arkla contend that the preliminary order does not determine the outcome, irretrievably commit agency resources to a particular project, or eliminate consideration of alternatives. ANR points out that the Commission, in the NOPR, emphasizes that any preliminary order would be "transitory and would not translate into certificate authorization until a final order is issued based upon the complete record." [18]

INGAA, in its reply comments, also cites the NOPR [19] and the Commission's experience with prior certificate applications [20] to support the above contention. Moreover, INGAA points out that the Commission can, at any time after preliminary findings, disapprove an entire project (the no-action alternative), set mitigation conditions for that project, or approve the project. Transco contends that phasing will expedite identification of environmental problems early in the process and thus will avoid delays attributable to environmental impact avoidance after a certificate is issued.

Arkla disagrees with the CEQ's and the National Trust's argument that the phasing of the certificate process violates NEPA. Arkla contends that, contrary to National Trust's claim, the initial order in the phasing process is not a final certificate and any order with respect to a construction project will become final only after the completion of the environmental review phase.

INGAA also argues that comments opposing phasing not only misunderstand the process but also overlook the real benefit of phasing—to assist pipeline companies in lining up financing and shippers.[21] INGAA states that because construction costs are so high, its members must begin discussing customer and financing arrangements prior to facility construction regardless of environmental issues that may arise. This, states INGAA, gives pipelines more regulatory certainty on relevant financial and economic issues. Furthermore, states ANR, although an applicant may choose to rely on the preliminary order to arrange financing or alter contracts, it bears the risk that the Commission will endorse some alternative to the project in the final order which may invalidate the action the applicant has taken in the interim. ANR contends that phasing can expedite certification without adverse environmental consequences because the preliminary order will tell the applicant whether it needs to change its business plan, how to change it, and provide additional time to make these changes prior to issuance of a final order.

The IPAA states that phasing will tend to delay the ultimate completion of the Commission's work especially since the environmental phase must include consideration of the "no-action" alternative which could duplicate some of the work involved in the non-environmental stage. Kern River contends that phasing allows section 7(c) applicants the benefit of the optional certification process (expedition) without assuming the corresponding economic risks.

APGA, supported by Illinois, opposes the phasing proposal. They believe that codifying the Commission's intention to reject incomplete applications, encouraging applicants to participate in prefiling conferences with staff and codifying environmental reporting and compliance requirements would accomplish the goal of expediting the application process.

In its reply comments, the CEQ states that its regulations will greatly assist in expediting the environmental process for gas pipeline construction. First, CEQ states that approximately 95 percent of pipeline construction applications do not constitute "major federal actions" [22] with the potential to affect significantly the quality of the human environment so that environmental impact statements normally are not prepared. Further, many of these applications qualify for categorical exclusion from the NEPA process.[23] The CEQ suggests that the

[16] 40 CFR 1500.2(c), 1506.1(c), 1506.1(c)(3), 1506.1, and 1506.2(f).

[17] Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission, 481 F.2d 1079 (D.C. Cir. 1973).

[18] 55 FR 33027 (Aug. 13, 1990).

[19] The NOPR states that the Commission analyzes environmental impacts fully before authorizing construction "[b]y subjecting preliminary findings on non-environmental issues to a final certificate order based upon a complete evaluation of *all* relevant factors." 55 FR 33027, 33043 (Aug. 13, 1990).

[20] *Citing* Delta Pipeline Co., 52 FERC ¶ 61.004 (1990) ("Our preliminary determinations concerning . . . [this] project and other applications are not in lieu of a final certificate order, however, and in no way diminish the importance of environmental factors. Any decision based on nonenvironmental issues does not translate into certificate authorization until evaluation of the environmental issues is completed and a final decision is reached *based on the complete record*. Issuance of final certificate authority based on a determination of the public interest must rest on a complete evaluation of all relevant factors, including the environment.

[21] See Delta Pipeline Co., 52 FERC ¶ 61,004 at 61,042–43 (1990).

[22] See 40 CFR 1508.18 (1990).

[23] See 40 CFR 1508.4 (1990).

Commission review the list of categorically excluded pipeline construction activities to update, consolidate and, if warranted, expand it.

Second, contends the CEQ, for those applications requiring an environmental assessment, the Commission should permit the prospective applicant, with Commission consultation, to prepare the necessary documentation during the prefiling planning phase and submit it with the application.

Third, for those applications requiring an EIS, the CEQ states that its third-party contracting option provides a means of expediting preparation of those statements so that, in most cases, the application and a final impact statement could be prepared and processed within six months of application filing.

The CEQ also suggests that federal agencies execute a programmatic memorandum of agreement [24] to establish consolidated review procedures where applicant-sponsored proposals are subject to the permitting requirements of more than one federal agency.

ANR states that it is unclear when the right to an appeal arises in the phasing process and requests that the Commission clarify whether it will entertain rehearing or reconsideration following issuance of the phase one order and whether the Commission considers that the order on rehearing is appealable, if at all, as an interlocutory or final order.

2. Incomplete Applications

The CPUC applauds the rejection of incomplete applications. APGA proposes that the Commission codify the proposal. Columbia and INGAA express concern regarding the arbitrary rejection of an application for insignificant omissions. They state that the Commission should reject an application only if it fails to comply with significant and explicit requirements. In addition, applicants should be allowed to seek waiver of these requirements and to make an additional filing to complete their applications or respond to a denial of waiver.

3. Ashbacker Considerations

Several commenters suggest standards for determining which applications are "mutually exclusive" under the *Ashbacker* doctrine. AGD suggests that the Commission consider the relative presence of customer support for projects in promulgating threshold standards for determining whether the projects are competitive. El Paso proposes that traditional section 7(c) construction projects would be mutually exclusive if both seek to deliver the same gas supply or to service the same market.

Exxon states that applications are mutually exclusive only when the competing pipelines are physically incompatible because they would be occupying the same right-of-way. The NY Task Force contends that projects are mutually exclusive when the party requesting comparative considerations can demonstrate that economic or environmental considerations preclude a grant of both applications. Northern Illinois states that if the competing applicant's assumption of the risk, which the applicant proposes, protects consumers from bearing the cost of underutilized projects, *Ashbacker* procedures should not be required.

Enron suggests that projects are mutually exclusive if the following elements are met: (1) the competing applicant must file a notice within 30 days of the filing date of the initial application of its intent to file a competing application; the competing application must be filed within 60 days of the initial section 7(c) application's filing date; (2) the origin of the supply for each proposal is from the same geographic area and total capacity of all proposals exceeds supplies available in the subject area; and (3) the market to be served is identical.

Enron and Pacific Gas urge the Commission to codify in the regulations that an optional certificate project is not similarly situated as to a conventional section 7(c) project and therefore is not a candidate for comparative proceedings. The IPAA disagrees, stating that the *Ashbacker* doctrine should particularly apply to optional certificate applications because, after the *Wyoming-California Pipeline Company* order,[25] optional certificate pipelines are not truly at risk for underutilization.

Pacific Gas also urges the Commission to modify its regulations to prevent the use of *Ashbacker* attacks on transportation only projects that are fully subscribed. Pacific Gas contends that markets are better suited than the Commission to make the determination of which projects best suit them.

Altamont, Kern River and Tennessee oppose Pacific Gas' proposal. Altamont argues that the Commission's requirement of market and supply data to support projects proposed under the traditional procedures remains essential because the sponsors do not agree to assume the risk of capacity underutilization. Kern River contends that the Commission must address the competitive environment of such proposals to assure that the decisions made in the market place are the result of fair competition. Tennessee argues that under Pacific Gas' proposal the Commission would not know whether a particular proposal represents the market's true choice among competing alternatives, or whether the applicant obtained the advance subscriptions for the proposal through the exercise of monopoly power or other anti-competitive conduct.

Tennessee proposes a procedure for consideration of competitive proposals which it contends will allow markets to make informed decisions, while at the same time ensuring that the Commission complies with its obligations under the NGA and *Ashbacker*. In Tennessee's proposal, the Commission would phase the review of all competing proposals simultaneously. The Commission would issue a single, initial order addressing the non-environmental aspects of competing proposals and prescribe a time period for the market to respond to the competing proposals. The Commission then would award a certificate to the project chosen by the market.

[24] See, *e.g.*, 36 CFR 800.13 (1990) (relating to the section 106 National Historic Preservation Act process).

[25] 44 FERC ¶61.001 (1988).

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 is revised to read as follows:

Authority: 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR, 1978 Comp., p. 142; 16 U.S.C. 792–825r; 15 U.S.C. 717–717w; 16 U.S.C. 2601–2645; and 42 U.S.C. 4321–4361.

2. In § 2.55, paragraph (b) is revised to read as follows:

§ 2.55 Definition of term used in section 7(c).

* * * * *

(b) *Replacement of facilities.* Facilities which constitute the replacement of existing facilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable to comply with Department of Transportation regulations: *Provided,* That such replacement is excluded from the definition of "facilities" only if:

(1) Replacement will not result in a reduction or abandonment of service rendered by means of such facilities;

(2) Replacement facilities must have substantially equivalent designed delivery capacity as the particular facilities being replaced;

(3) The pipeline facilities will be replaced within the existing right-of-way, and other facilities and related construction operations for any facilities will be restricted to the existing right-of-way (originally disturbed construction area); and

(4) The replaced facilities are abandoned in compliance with 40 CFR part 761 or as specifically permitted by the Environmental Protection Agency (EPA) if the facilities to be replaced have been found by the EPA to have been exposed to polychlorinated biphenyl (PCB) contamination greater than 50 ppm.

* * * * *

3. In § 2.65, the heading and first sentence in paragraph (a) are revised to read as follows:

§ 2.65 Applications for certificates of public convenience and necessity for offshore gas transmission facilities.

(a) It will be the general policy of the Commission to require that applications for certificates of public convenience and necessity, filed pursuant to section 7(c) of the Natural Gas Act, for the construction and operation of offshore pipeline facilities, be filed on or before September 1st of the year immediately preceding the proposed installation. * * *

* * * * *

§ 2.69 [Removed]

4. Section 2.69 is removed.

PART 154—RATE SCHEDULES AND TARIFFS

5. The authority citation for part 154 is revised to read as follows:

Authority: 15 U.S.C. 717–717w; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR, 1978 Comp., p. 142; 31 U.S.C. 9701.

6. New §§ 154.401 through 154.406 and a center heading preceding them are added to Part 154 to read as follows:

Abbreviated Rate Schedules

§ 154.401 Applicability.

Sections 154.401 through 154.406 establish procedures which may be used by a natural gas company to amend its currently effective part 284 blanket transportation rates to reflect the costs of new facilities constructed pursuant to the authorizations set forth in part 157 or part 284 of this chapter. These procedures may be used to establish incremental rates only. The procedures provide for the establishment of rates based on the cost of service or the competitiveness of the relevant market, *Provided, however,* That any rate established pursuant to these procedures is subject to the conditions set forth in § 157.102 of this chapter.

§ 154.402 Election.

(a) *General rule.* A pipeline may elect to recover the costs of facilities constructed, pursuant to part 157 or part 284 of this chapter either by:

(1) Requesting approval of initial rates as part of a certificate application filed pursuant to Subpart A of Part 157 of this chapter;

(2) Filing a request for a change in its rate level under § 154.63; or

(3) Filing a request to amend its currently effective part 284 rates pursuant to §§ 154.401 through 154.406.

(b) *Effect of election.* These procedures are restricted to filings for approval of incremental rates which are:

(1) Cost-based rates and will be maintained as permanent, incremental rates;

(2) Cost-based and the costs associated with the newly constructed facilities that may be rolled-in to the natural gas company's rate base through filings made under § 154.63; or

(3) Market-based and will be permanent, incremental rates which may not be included in a natural gas company's rate base through filings made under § 154.63.

(c) *Timing of filings.* Filings under these procedures may be made at any time the pipeline deems appropriate. If the pipeline intends to have rates effective at the time service is initiated on the newly constructed facilities, filings must be made at least six months in advance of the projected service date for the facilities in order to allow for the potential suspension of the filed rates, pursuant to section 4 of the Natural Gas Act and § 154.22. Alternatively, the pipeline may, in its discretion, make the appropriate filings at such other time as it deems appropriate, including after initiation or service on the newly constructed facilities.

§ 154.403 Material to be submitted for all filings.

All filings made pursuant to §§ 154.401 through 154.406 must be made in the manner prescribed in § 385.2011 of this chapter. In addition to this requirement, all filings must include:

(a) A letter of transmittal containing a list of the material enclosed, the date on which such filing is proposed to become effective, and a list of the parties and State Commissions to whom it has been mailed;

(b) A statement of the nature, the reasons, and the basis for the proposed change;

(c) Revised tariff sheets to the part 284 rate schedules containing the proposed rates and changes to the pipeline's part 284 terms and conditions, if any;

(d) A fee in the amount prescribed in part 381 of this chapter, unless a petition for waiver is submitted in lieu thereof under § 381.106 of this chapter; and

(e) The representation of the chief accounting officer when the filing is submitted on electronic media in the manner prescribed in § 385.2011 of this chapter.

§ 154.404 Submission and rejection.

(a) *Submission of material by reference.* If all or any portion of the information required by this section has already been submitted to the Commission or is included among the data filed pursuant to this section, specific reference thereto may be made in lieu of resubmission in response to these requirements. Copies of material submitted by reference must be on electronic media in the manner prescribed in § 385.2011 of this chapter.

(b) *Additional data.* In addition to the material required to be submitted pursuant to § 154.405, the pipeline must submit the following:

(1) The pipeline's last FERC Form No. 2 on file with the Commission,

(2) The pipeline or its parent's last Annual Report to the Stockholders; and

(3) A balance sheet and income statement representing the pipeline's most recent 12 month period.

(c) *Rejection for noncompliance.* All data supporting the proposed cost-based or market-based rates, including any data submitted in addition to the requirements identified in these sections, must be filed simultaneously. If the data submitted in the filing do not comply with the requirements set forth in this section, the filing is subject to rejection.

§ 154.405 Cost-based rate filings.

(a) *Materials to be submitted.* The statements described below identify the information required for approval of cost-based rates which would become effective either at the time service is initiated or subsequent to the initiation of service. The detail of each statement must be commensurate with the information reasonably available at the time of filing. Statements or specific information may be deleted, where appropriate. However, any omission must be justified and all available data required in these schedules must be submitted.

(b) *Form and content of statements for cost-based rates.*—(1) *Annual data.* The filing for approval of cost-based rates, pursuant to § 154.406, must reflect the latest actual available data. If 12 months of actual data are not available, the pipeline must use actual data available and state the period which that data represents. For the remainder of the 12-month period, the pipeline must use projected data and provide detailed support for the projections.

(2) *Form of statements.* Amounts purporting to represent book data included in statements to be submitted as part of the filing must be reported in a separate column or columns. All adjustments to book amounts must also be reported in a separate column or columns so that book amounts, adjustments thereto, and adjusted amounts will be clearly disclosed.

(3) *Limitations of costs.* The costs reflected in this filing must be limited to those costs associated with the new facilities. They must not include any costs directly associated with the pipeline's existing facilities.

(c) *Description of statements.* Statements Q–1 through Q–13 and supporting schedules must be filed for approval of cost-based rates pursuant to this section.

(1) *Statement Q–1—Cost of service.* This statement must summarize the cost of service (operation and maintenance expenses; depreciation, taxes, credits to cost of service and return) developed from the supporting statements described below applicable to the new facilities.

(2) *Statement Q-2—Rate base and return.* This statement must summarize the rate base associated with the new facilities from the figures contained in Statements Q-3, Q-4 and Q-5. The statement must also specify the rate of return and must show the application of the rate of return to the rate base.

(3) *Statement Q-3(a)—Cost of new facilities.* This statement must include a detailed estimate or actual summary, if applicable, of the total cost of the new facilities, showing cost of construction by operating units (such as compressor stations, main pipelines, laterals, and measuring and regulating stations) and must separately state the cost of right-of-way, damages, surveys, materials, labor, engineering and inspection, administrative overhead, fees for legal and other services, allowance for funds used during construction, and contingencies. The statement must include a complete explanation of the methods and procedures followed in capitalizing interest during construction and other construction overheads.

(4) *Statement Q-3(b)—Functional classification of new facilities.* This statement must show the amounts of new facilities classified by Accounts 101, 102, 104, 105, 106, and 107, as prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies (parts 201 and 204 of this chapter), with subtotals thereof by functional classifications, *i.e.*, intangible plant, transmission plant, and general plant; *Provided*, That to the extent plant costs are not available by detailed plant accounts they may be shown by functional classifications.

(5) *Statement Q-4—Accumulated provisions for depreciation, depletion, and amortization.* This statement must show, as prescribed by the Commission's Uniform System of Accounts for Natural Gas Companies, the accumulated provisions for depreciation, depletion, and amortization for the 12-month period. This statement also must show depreciation reserve associated with transmission plant.

(6) *Statement Q-5—Working capital.* This statement must show the components of working capital, that are directly attributable to these facilities not currently reflected in the pipeline's existing rates, including cash working capital, an allowance for materials and supplies, and prepayments. The statement must show in detail how the amount of each component was computed. This statement must also show the computation of cash working capital claimed as an adjustment to the pipeline's rate base. Any adjustment requested must be based on a fully-developed and reliable lead-lag study and may not exceed one-eighth of the annual operating expenses, as adjusted, net of purchased gas costs and non-cash items. Any net revenue receipt lag or net expense payment lag will be treated in the same manner as is set forth in § 154.63b.

(7) *Statement Q-6—Rate of return and capitalization.* This statement must show the percentage rate of return claimed and the general reasons therefore. This statement must also show, based upon the pipeline's capitalization, the cost of debt capital and preferred stock capital and the return on the stockholder's equity resulting from the overall rate of return claimed. Any deviation from the rate of return, cost of debt, or capital structure used in disposing of the pipeline's last previous rate filing or determination by the Commission must be explained, showing the rate of return, cost of debt and capital structure previously used together with supporting data for the new rate or rates used for this filing.

(8) *Statement Q-7(a)—Transportation Revenues.* This statement must show the revenues from the transportation of gas for others through the subject new facilities by month, by customer, and by firm and interruptible rate schedule for the 12-month period, as defined in § 154.405(a). It must clearly indicate the volumes associated with the maximum rate, the volumes associated with each discounted rate, and the rates used to develop the revenues. If discounted rates are used to develop revenues, it must also provide the maximum rate. The total revenues must be broken down to show demand revenues and commodity revenues. The revenue and other data must be grouped and totaled by month, by customer, and by rate schedule.

(9) *Statement Q-7(b)—Credits to cost of service.* This statement must identify credits to cost of service separately identifying the principal components of the various items (*i.e.*, revenues from the sale of liquids or revenues from the lease of new facilities, etc.) which are reflected as credits to cost of service in Statement Q-1. The derivations of the credits must be clearly set forth.

(10) *Statement Q-8(a)—Operation and maintenance and administrative and general expenses.* This statement must show the total operation and maintenance expenses and administrative and general expenses, that are directly attributable to these facilities not currently reflected in the pipeline's existing rates, according to each account of the Uniform System of Accounts for Natural Gas Companies. The statement must identify costs for each account as labor, material, or other. The statement must provide details as to the bases used in determining the amounts of the charges (credits).

(11) *Statement Q-8(b)—Depreciation, depletion, and amortization.* This statement must show separately the gas plant depreciation, depletion, and amortization expenses by functional classifications. The transmission function must be further classified as onshore and offshore. The bases, methods, and derivation of unit rates for the calculation of depreciation, depletion, and amortization expense must be fully and clearly explained. Any deviation from the rates used in disposing of the pipeline's last previous rate filing or determination by the Commission must be explained, showing the rate or rates previously used together with supporting data for the new rate or rates used for this filing.

(12) *Statement Q-8(c)—Income taxes.* This statement must show the computation of allowances for Federal and State income taxes based on the return applied to the rate base associated with the subject new facilities. To indicate the accounting classification applicable to the amount claimed, the computation of the Federal income tax allowance must show separately the amounts designated as current tax and deferred tax.

(13) *Statement Q-8(d)—Accumulated deferred income taxes.* This statement must show monthly book balances of accumulated deferred income taxes for the 12 month period.

(14) *Statement Q-8(e)—Other taxes.* This statement must show for the 12-month period the taxes applicable to the subject new facilities, other than Federal or State income taxes. It must include a schedule showing computations of other taxes claimed and provide the details of the kind and amount of taxes paid under protest or in connection with taxes under litigation.

(15) *Statement Q-8(f)—Working papers.* The following statements, if applicable, must be submitted as working papers:

(i) In support of federal income taxes the pipeline must submit a complete reconciliation of the book net income with taxable net income as reported to the Federal Internal Revenue Service for the most recent year for which a tax return was filed. A complete explanation of all items in the reconciliations must be submitted. In the event the tax allowances claimed give effect to omission of items appearing in the reconciliation for the most recent tax return or inclusion of items not

appearing therein, the reasons for the omissions or inclusions shall be submitted.

(ii) Where tax depreciation differs from book depreciation, the pipeline must file a schedule showing the computation of the tax depreciation which will indicate:

(A) Differences between book and tax depreciation on a straight-line basis; and

(B) The excess of liberalized depreciation and amortization of the new facilities over straight-line depreciation for tax purposes for the taxable year or years.

(iii) If the pipeline claims an allowance for current tax in its cost of service which would be greater than the Federal income tax which would actually be payable on the basis of the return allowed in cost of service, full disclosure thereof must be made, including the allocation among utility and nonutility departments of the tax payable.

(iv) If a company's depreciation for cost of service purposes differs from that claimed for Federal or State income tax purposes, provide a schedule showing the reconciliation between book depreciable plant and tax depreciable plant and accumulated provision for deferred income taxes, Account No. 282. State separately the part of the book depreciable plant attributable to Equity AFUDC.

(16) *Statement Q–9(a)—Classification of cost of service.* This statement must show the cost of service contained in Statement Q–1. In addition, the statement must show the cost of service classified into the categories of fixed and variable and of demand and commodity.

(17) *Statement Q–9(b)—Additional Statements.* The following statements, must be submitted:

(i) Sufficient detailed breakdown of operation and maintenance expense accounts and taxes to disclose how component items (*e.g.*, compressor station fuel, taxes other than income taxes) have been classified; and

(ii) Details of costs of compression and transportation of gas by others identifying for each service the name of the transporter, the rate schedule or other designation, volumes for the 12 month period, as defined in § 154.405(a), and the rates utilized to develop the cost.

(18) *Statement Q–10—Allocation of cost of service.* This statement must show a detailed description of the methods and procedures used to allocate costs by season and by distance.

(19) *Statement Q–11—Derivation of rates.* This statement must show the derivation of each of the proposed rates. The throughput levels used to develop rates shall be at least the minimum throughput levels specified in § 157.102 of this chapter. All calculations involved in derivation of the rates must be shown.

(20) *Statement Q–12(a)—Description of pipeline operations.* This statement must include a narrative description of the pipeline's area and diversity of operations.

(21) *Statement Q–12(b)—System map.* This statement must include a detailed system map indicating the location of the new facilities.

(22) *Statement Q–12(c)—Three day peak deliveries.* This statement must show, if available, deliveries to customers on the most recent three continuous days of maximum deliveries using the new facilities.

(23) *Statement Q–12(d)—Design day data.* This statement must include the average day design capacity and the peak day design capacity for the new facilities.

(24) *Statement Q–12(f)—Daily design flow diagram.* This statement must include a flow diagram showing daily design capacity and reflecting operating conditions with only existing facilities in operation. In addition, this statement must include a second flow diagram showing daily design capacity and reflecting operating conditions with both existing and new facilities in operation. Both flow diagrams must include the following for the portion of the system affected:

(i) Diameter, wall thickness, and length of each pipe segment and the diameter and wall thickness of the connecting pipe;

(ii) For each new compressor station and existing station, the size, type, and number of compressor units, horsepower required, horsepower installed and proposed to be installed, volume of gas to be used as fuel, suction and discharge pressures, station piping pressure losses, compression ratio, and elevation/deration factor;

(iii) Pressures, volumes, and temperature of gas at the main line inlet and outlet connections at each compressor station;

(iv) Pressures and volumes of gas at each intake and take-off point and at the beginning and terminus of the existing and new facilities and at each intake and take-off point of the existing facilities to which the new facilities are connected; and

(v) Elevation at the beginning, terminus, and each compressor station on the existing and new facilities.

(25) *Statement Q–12(g)—Maximum capability flow diagram.* If Statement Q–12(f) does not reflect the maximum deliveries which the pipeline's existing and new facilities would be capable of achieving under most favorable operating conditions with utilization of all facilities, include an additional diagram or diagrams to depict such maximum capabilities. If the horsepower, pipelines, or other facilities on the segment of pipeline's system under consideration are not being fully utilized due, *e.g.*, to capacity limitation of connecting facilities or because of the need for standby or spare equipment, the reason for the nonutilization must be stated.

(26) *Statement Q–12(h)—Flow diagram data statement.* The filing must include a statement of engineering design data in explanation and support of the diagrams and the proposed project, identifying:

(i) Assumptions, bases, formulae, and methods used in the development and preparation of such diagrams and accompanying data;

(ii) A description of the pipe and fittings, specifying the diameter, wall thickness, internal roughness, yield point, ultimate tensile strength, method of fabrication, and methods of testing;

(iii) When lines are looped, the length and size of the pipe in each loop;

(iv) Type, capacity, and location of each natural gas storage field or facility, and of each dehydration, desulphurization, natural gas liquefaction, hydrocarbon extraction, or other similar plant or facility directly attached to the pipeline's system, indicating which of the plants are owned or operated by pipeline, and which by others, giving their names and addresses;

(v) If the daily design capacity shown in Statement Q–12(f) is predicated upon an ability to meet each customer's maximum contract quantity on the same day, explain the reason for the coincidental peak-day design;

(vi) If the design day capacity shown in Statement Q–12(f) is predicated upon an assumed diversity factor, state that factor and explain its derivation;

(vii) The maximum allowable operating pressure of each new facility, as permitted by the Department of Transportation's safety standards;

(viii) Certification that the pipeline will design, install, inspect, test, construct, operate, replace, and maintain the facilities in accordance with Federal safety standards and plans for maintenance and inspection, or that the pipeline has been granted a waiver of the requirements of the safety standards by the Department of Transportation in accordance with the

provisions of section 3(e) of the Natural Gas Pipeline Safety Act of 1968, including pertinent details concerning the waiver;

(ix) Gas gravity, composition, and ratio of specific heats (Cp/Cv); and

(x) All additional workpapers supporting the capacity of the new facilities.

(27) *Statement Q–13—Prepared testimony.* This statement must contain copies of proposed testimony indicating the line of proof which the pipeline would offer for its case-in-chief in the event the proposed rates should be suspended and the matter set for hearing. The testimony must explain the pipeline's cost classification, cost allocation, crediting, and rate design procedures. In addition, the testimony must explain how the proposed rates in Statement Q–11 and the proposed classification and allocation of costs in Statements Q–9 and Q–10 conform to Part 284 of this chapter. It must also explain any deviations from the pipeline's last previous rate filing or determination by the Commission.

§ 154.406 Negotiated rate filings.

(a) *Material to be submitted.* The statements described below identify the information required for approval of rates which will become effective either at the time service is initiated or subsequent to the initiation of service. The detail of each statement must be commensurate with the information reasonably available at the time of filing. Statements or specific information may be deleted, where appropriate. However, any omission must be justified and all available data required in these schedules must be submitted. Further, completion of the competitive negotiation process described below must be completed prior to the commencement of any construction related activity.

(b) *Description of statements.* Statements R–1 through R–4 must be filed for approval of negotiated rates pursuant to this section.

(1) *Statement R–1—Certification.* This statement must provide confirmation that:

(i) The competitive negotiation process provided in Statements R–2, R–3, and R–4 was completed prior to the commencement of any construction related activity;

(ii) Neither right-of-way nor services integral to the usefulness of the new facilities, such as capacity on pipelines upstream or downstream of the new facilities, has been reserved for the new facilities prior to the completion of the competitive negotiation procedure;

(iii) The new facilities do not involve compression or looping of existing facilities; and

(iv) The new facilities will not be used to provide system supply to an affiliate of the pipeline constructing the new facilities.

(2) *Statement R–2—Notice of announcements.* This statement must include confirmation that each announcement of the intention to construct the new facilities was:

(i) Published in the trade press; and

(ii) Forwarded to the Commission for publication in the **Federal Register.**

(3) *Statement R–3—Initial announcement.* This statement must include a verified copy of the pipeline's initial announcement of the intention to construct new facilities. At a minimum, this announcement must contain:

(i) A detailed description of all of the services expected to be rendered by the pipeline (*e.g.,* storage, product extraction, etc.) and a detailed map indicating the intended location of the new facilities;

(ii) A statement that the rates for service on the new facilities will be negotiated rates;

(iii) A guarantee that the new facilities will be utilized to provide open access transportation under Part 284 of this chapter;

(iv) A guarantee that taps with any other facility will be constructed upon request;

(v) A statement that the rates for these facilities will be permanently incremental and will not be rolled-in to the cost of any other service;

(vi) A guarantee that the pipeline will allow for capacity adjustment procedures, consistent with Commission policy, on the facilities;

(vii) A statement explaining that publication of the announcement in the **Federal Register** constitutes the beginning of a 90-day "Builders Open Season" during which other pipelines may announce, in the same format described in this section, the intention to construct comparable facilities and provide similar service;

(viii) A statement identifying any alternative project(s) announced through the competitive negotiation process, if any;

(ix) A statement explaining that the end of the "Builders Open Season" marks the beginning of a 60-day "Shipper Open Season" during which time interested shippers may negotiate with any pipeline which has announced the intention to construct facilities;

(x) If the facilities will connect with the pipeline's existing facilities or the facilities of a pipeline affiliate, the announcement must also include:

(A) A guarantee that the relevant affiliate(s) will allow taps of any new facilities announced for construction by any other pipeline(s) through the competitive rate negotiation procedure;

(B) A guarantee that the relevant affiliate(s) will provide the same service (capacity, rates, terms, and conditions) for any other pipeline built as a result of the competitive negotiation procedure as it would have for its affiliate; and

(C) A description of each relevant affiliate's capacity and effective rates.

(4) *Statement R–4—Final announcement.* This statement must include a verified copy of the final announcement of the intention to construct new facilities. In addition to the announcement content requirements identified in Statement R–3, the final announcement must also contain:

(i) A statement confirming the pipeline's intention to proceed with construction of the facilities;

(ii) A description of any change(s) in the construction plans for the new facilities;

(iii) All rates, terms, and conditions to be applied toward service on the new facilities and a statement that the pipeline will forward copies of all service agreements to any person upon request;

(iv) A statement describing the allocation of capacity on the new facilities as well as a statement that the pipeline will continue to entertain additional requests for capacity; and

(v) A statement explaining the procedure for registering a complaint with the pipeline, including:

(A) A statement that any complaint (including, but not limited to, complaints regarding the competitive negotiation process, or discriminatory treatment by the pipeline with regard to rates or access to capacity) must be registered with the company within thirty days of publication of the second announcement in the **Federal Register;**

(B) A statement explaining that any unresolved complaint may be referred to the Commission and that the Commission will address any complaint referred to it within 60 days of being informed of the dispute; and

(C) A statement that construction of the pipeline will not begin until all complaints have been resolved.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

7. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; and 15 U.S.C. 3301–3432.

8. In § 157.5, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to read as follows:

§ 157.5 Purpose and intent of rules.

* * * * *

(b) Unless otherwise ordered, rates for service on any new facilities will be designed based on the provisions identified in § 157.102. The purpose of this requirement is to ensure that present and future customers do not make inappropriate contribution to the costs associated with newly constructed facilities. This condition may be imposed, as determined appropriate by the Commission, on rates established pursuant to section 7 and/or section 4 of the Natural Gas Act. *Provided That,* the applicant may, in its discretion, submit sufficient information, identified in § 157.14(a)(11), to support a finding that placing the applicant's project at risk, pursuant to § 157.102, in order to protect the public interest is unnecessary.

* * * * *

§ 157.6 [Amended]

9. In § 157.6, paragraph (a)(1) is amended in the first sentence by removing the words "until October 31, 1989," and "thereafter," and paragraph (a)(4) is amended by inserting after the words "157.14" the words ", and 157.101(a)".

§ 157.8 [Amended]

10. Section 157.8 is amended by adding at the end of that section the words ("Approved by the Office of Management and Budget under control number 1902–0060)".

§ 157.9 [Amended]

11. Section 157.9 is amended by adding at the end of that section the words "(Approved by the Office of Management and Budget under control number 1902–0060)".

12. Section 157.10 is amended by revising the section heading, designating the existing text as paragraph (a), adding a heading for newly designated paragraph (a), adding the OMB control number at the end of the section, and by adding a paragraph (b) to read as follows:

§ 157.10 Interventions, protests, and notices of intent.

(a) *Interventions and protests.* * * *

(b) *Notices of intent to file a competing application or prior notice request.* In order to receive contemporaneous consideration, a notice of intent to file a competing application or prior notice request must be filed in the appropriate docket within the time allowed for filing of petitions to intervene. The competing application or prior notice request must be filed within 30 days after the expiration of the intervention period. (Approved by the Office of Management and Budget under control number 1902–0060)

§ 157.11 [Amended]

13. Section 157.11 is amended by adding at the end of that section the words "(Approved by the Office of Management and Budget under control number 1902–0060)".

§ 157.12 [Amended]

14. Section 157.12 is amended by adding at the end of that section the words "(Approved by the Office of Management and Budget under control number 1902–0060)".

15. Section 157.14 is amended by revising the first sentence of the introductory text of paragraph (a); adding a new sentence after the first sentence in the introductory text of paragraph (a); adding in the first sentence of the introductory text of paragraph (a)(6) the words "(1:24,000 or greater)" after the word "scale"; adding paragraph (a)(6)(iv); removing paragraphs (a)(6–c) and (a)(6–d); revising paragraphs (a)(6–a) (a)(6–b) and (a)(10) to read as follows:

§ 157.14 Exhibits.

(a) *To be attached to each application.* All exhibits specified, except Exhibit I, must accompany each application when tendered for filing. The information set forth in Exhibit I may be submitted at the applicant's discretion. * * *

* * * * *

(6) * * *

(iv) The applicant is required to submit revisions to Exhibits F and F–1 if requested by the Commission or if the location of any proposed facilities is changed. The revisions only need to cover the facilities to be relocated. * * *

(6–a) *Exhibit F–I—Compliance report.* The standard compliance report specified in § 157.103 demonstrating the extent to which the project will comply with the standard environmental conditions of § 157.103.

(6–b) *Exhibit F–II—Environmental report.* This report is required if Exhibit F–I does not demonstrate complete compliance with § 157.103, and is described in § 380.12 of this chapter.

* * * * *

(10) *Exhibit H—Total gas supply data.* A statement by applicant describing:

(i) Those production areas accessible to the proposed construction that contain sufficient existing or potential gas supplies for the proposed project; and

(ii) How those production areas are connected to the proposed construction.

* * * * *

16. Subpart E is revised to read as follows:

Subpart E—Provisions Governing Rate Design and Environmental Compliance for All Pipeline Construction Projects

Sec.
157.100 *General.*
157.101 *Definitions.*
157.102 *At-risk terms and conditions.*
157.103 *Environment.*
157.104 *Special rules regarding violations.*

§ 157.100 General.

This subpart establishes provisions governing rate design and environmental compliance for pipeline construction projects pursued under the authorizations in subpart A of Part 284 of this chapter, subparts A or F of this part.

§ 157.101 Definitions.

(a) *Annual capacity* means the daily capacity of the new facilities multiplied by 365.

(b) *Daily capacity* means, for onshore facilities, the engineering design day capacity of the new facilities operating at MAOP, and, for offshore facilities, the gas phase engineering design day capacity of the new facilities operating at MAOP.

(c) *Historical levels* means, for rate design purposes, the highest annual throughput that the pipeline has achieved during the last 5 calendar years. The demand billing determinants should be equivalent to the level of contract demand plus imputed billing determinants for that year.

(d) *Construction right-of-way* means the land area in which the project sponsor has the right to place the pipeline and where the ground surface will be disturbed by construction equipment or covered by excavated material during pipeline construction.

(e) *Project sponsor* means any person who is constructing a project which is subject to the requirements of § 157.103.

§ 157.102 At-risk terms and conditions.

(a) *Scope.* The following terms and conditions apply to the new facilities of all natural gas pipelines not satisfying the "Kansas Pipe Line" standards in paragraph (b) of this section that:

(1) Pursuant to subparts A or F of this part, are authorized to construct new facilities and charge cost-based rates for sales or transportation service; or

(2) Pursuant to part 284 of this chapter, are authorized to charge cost-based rates for transportation service under section 311 of the Natural Gas Policy Act of 1978.

(b) *The "Kansas Pipe Line" standards.* To avoid application of the at-risk terms and conditions of this section, the applicant must show that:

(1) There exist sufficient existing or potential supplies of natural gas in production areas accessible to the proposed construction to meet demand;

(2) It has long-term (at least 10-year) contracts for 100 percent of the daily capacity of the proposed facilities;

(3) The proposed facilities are adequate to provide a full and complete service in the proposed service territory;

(4) It has adequate financial resources to construct the facilities;

(5) The costs of constructing the facilities are adequate and reasonable;

(6) The rates to be charged reflect those costs; and

(7) The anticipated fixed costs or the amount of the fixed costs are reasonable.

(c) *Blanket certificate requirement.* To begin service, the pipeline must hold a blanket transportation certificate under Part 284, Subpart G of this chapter.

(d) *Rate requirements*—(1) *General.* Any rate for service filed under this section must comply with § 284.7 of this chapter and the following terms and conditions.

(2) *Cost basis for rates.* (i) Any maximum transportation and any sales rate filed must be designed to recover, on a unit basis, solely those costs which are properly allocated to that service and may not recover any costs associated with other services.

(ii) Any minimum transportation rate filed must be based on the average variable costs which are properly allocated to that service.

(iii) No costs associated with the new facilities may be allocated to any other services provided by the pipeline without a rate filing under § 154.63 of this chapter and a determination by the Commission that the new facilities provide an overall benefit to the pipeline's existing customers. The overall benefit (such as lower unit transmission or fuel costs, for example) must be commensurate with the costs allocated to the service. Unless the pipline's new facilities are completely discrete from its existing facilities, if rolling the costs of the new facilities into general rate base would lower the pipeline's existing rates (and the customers for the new facilities still would be able to obtain the benefits of their contracts), the pipeline must do so unless otherwise directed by the Commission.

(3) *Minimum throughput conditions.* For purposes of designing sales and maximum transportation rates for services rendered through the new facilities, the following minimum throughput conditions apply.

(i) *Reservation fee and demand charge.* The volumes used to design the reservation fee for firm transportation service, and the non-gas demand charge for firm sales service, must equal at least 100 percent of the daily capacity of the new facilities (multiplied by 12 months).

(ii) *Usage charge, commodity charge, and volumetric rate.* The volumes used to design the usage charge for firm transportation service, the non-gas commodity charge for firm sales service, and the volumetric rate for interruptible transportation and sales service must equal, for onshore facilities, at least 90 percent, and for offshore facilities, at least 60 percent, of the annual capacity of the new facilities.

(4) *Design volumes.* —(i) *No decrease in design volumes.* The design throughput volumes for rates filed under this section may be increased in a subsequent rate filing but not decreased.

(ii) *Integrated facilities.* If the new facilities are completely integrated with the pipeline's existing facilities (such as looping or compression), in future rate cases the volumes used for designing rates for services rendered through the pipeline's existing facilities may not be lowered from historical levels (as defined in § 157.101 of this chapter).

(5) *Rate for firm transportation service.* The rate for firm transportation service may be a two-part rate consisting of a reservation fee and a usage charge, or it may be a one-part rate consisting only of a usage charge.

(i) *Reservation fee.* (A) *Negotiating the fee.* As a condition of providing firm transportation service, the pipeline may negotiate with a customer, at arms-length, a reservation fee, up to the maximum reservation fee described below. Before commencing service, the pipeline must offer to renegotiate the fee with all shippers. During renegotiations, the pipeline must make the lowest reservation fee negotiated with any shipper available to all shippers. Once the facilities are operational, the pipeline must make all remaining firm transportation capacity available at the lowest negotiated reservation fee.

(B) *Maximum reservation fee.* The maximum reservation fee must be calculated by dividing all costs associated with the reservation fee by the design throughput volumes specified in paragraph (d)(3)(i) of this section. If the pipeline charges less than the maximum reservation fee, it may negotiate the reassignment of the costs associated with the lower reservation fee to the usage charge. However, the total unit rate for that customer, which includes the reservation fee and usage charge, may not exceed the pipeline's maximum volumetric rate for interruptible service.

(C) *Affiliated pipeline shippers.* The pipeline may not charge a reservation fee to an affiliated pipeline shipper that is regulated by the Commission unless that affiliated shipper establishes a separately stated rate for its services involving the costs associated with the newly constructed facilities. In addition, to include the costs associated with system supply in its rates, a downstream affiliated pipeline must first obtain prior Commission authorization.

(ii) *Usage charge.* The maximum usage charge for firm transportation service must be calculated by dividing all costs not associated with the reservation fee by the design throughput volumes specified in paragraph (d)(3)(ii) of this section.

(6) *Rate for interruptible transportation service.* The rate for interruptible transportation must be a one-part volumetric rate.

(i) *Maximum rate.* The maximum rate must be calculated by dividing the cost of service for the new facilities by the design throughput volumes specified in paragraph (d)(3)(ii) of this section.

(ii) *Integrated facilities.* If the new facilities are completely integrated with the pipeline's existing facilities (such as looping or compression), the pipeline must have one rate only for interruptible transportation through the integrated facilities.

(e) *Open season requirement.* The pipeline must conduct an open season, for a period of no less than 30 days, to initially allocate capacity. The pipeline must give adequate public notice of the starting and closing dates of the open season.

(f) *Three-year filing requirement.* A new company constructing stand-alone facilities under Subpart A of this part

must make a filing, pursuant to section 4 of the Natural Gas Act, within three years of the in-service date of the new facilities in order for the Commission to examine the actual operating costs of the facilities and determine whether changes in rate design are required.

(g) *Removal of the at-risk terms and conditions.* The Commission will remove the at-risk terms and conditions imposed under this section if the pipeline demonstrates in a rate proceeding filed under § 154.63 of this chapter that the new facilities:

(1) Meet the standards set forth in paragraph (b) of this section, to the extent still applicable; or

(2) Meet the net benefits test.

§ 157.103 Environment.

(a) *General.* (1) The project sponsor must comply with the provisions set forth in this section. The project sponsor is in compliance with the requirements of this section if the project may be constructed in full compliance with the requirements therein, or if the Director, Office of Producer and Pipeline Regulation, issues a letter authorizing construction to proceed pursuant to the procedures identified in paragraph (e) of this section. Paragraph (b) of this section defines the facilities which must be included in the environmental compliance process.

(2) *Automatic, prior notice, and section 311 construction.* (i) Any project undertaken pursuant to § 157.203(b), § 157.203(c), or § 284.3 of this chapter which is constructed in compliance with the requirements set forth in this section does not have the potential for significant environmental impact.

(ii) Any project that cannot be constructed in compliance with this section has the potential for significant environmental impact and may only proceed pursuant to the construction authorization found in subpart A of this part.

(3) *Part 157, subpart A construction.* (i) If the project may be constructed in compliance with the requirements of this section, it will not have the potential for a significant environmental impact.

(ii) For projects that are proposed under Subpart A of this part, the project sponsor must comply with paragraphs (c)(3), (c)(4), (c)(5), and (c)(15) of this section and may select other procedures in paragraph (c) of this section with which it wishes to voluntarily comply. The project sponsor also must:

(A) Identify in Exhibit F-I of § 157.14(a)(6) the portions of paragraph (c) of this section with which it does not comply; and

(B) Identify in Exhibit F–II of § 157.14(a)(6) the reasons for noncompliance and proposed measures to mitigate any environmental impact.

(b) *Scope of environmental compliance.* (1) Any environmental review undertaken by the Commission or a project sponsor must include those facilities subject to the Natural Gas Act and Natural Gas Policy Act of 1978, but will not include any related nonjurisdictional facilities unless the Commission's control and responsibility over those facilities is sufficient to cause the private action to become a Federal action.

(2) To determine whether sufficient control and responsibility by the Commission exists, the following factors must be considered:

(1) Whether the regulated activity comprises merely a link in a corridor-type project;

(ii) The extent of the nonjurisdictional facilities in the immediate vicinity of the regulated activity;

(iii) The extent to which the entire project will be within the jurisdiction of the Commission; and

(iv) The extent of cumulative Federal control and responsibility, as determined below:

(A) Federal control and responsibility will include the portions of the project beyond the limits of Commission jurisdiction where the cumulative Federal involvement of the Commission and other Federal agencies is sufficient to grant legal control over such additional portions of the project. These are cases where the environmental consequences of the additional portions of the projects are essentially products of Federal financing, assistance, direction, regulation, or approval.

(B) In determining whether sufficient cumulative Federal involvement exists to expand the scope of Federal action consideration should be given to the extent to which other Federal agencies are required to take action under the National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531, *et seq.*), or the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, *et seq.*).

(c) *Standard environmental conditions.* The following must be satisfied to comply with this section:

(1) *Clean Water Act, as amended,* 33 U.S.C. 1251, *et seq.* and the National Pollution Discharge Elimination System Program, 40 CFR part 122, *et seq.* The project sponsor must adopt the requirements of the "Erosion Control, Revegetation and Maintenance Plan," and "Stream and Wetland Construction and Mitigation Procedures" identified in §§ 380.13 and 380.14 of this chapter. *Provided,* That:

(i) Construction in wetlands shall not involve the use of more than two layers of timber riprap to support construction-related equipment; and

(ii) The project sponsor must utilize a spill prevention, containment, and control plan which describes the preventive and mitigative measures to be employed to minimize impacts associated with spills at fuel, lubricant, or hazardous materials storage areas during normal upland refueling procedures, or during special refueling activities which are within any municipal watershed area or which are within 100 feet of perennial stream banks or wetlands boundaries. These measures must include requiring all fueling and lubricating to be done in areas designated for such purposes (with such areas to be located away from all water bodies), requiring each construction crew to have on-hand sufficient supplies of absorbent and barrier materials to allow the rapid containment and recovery of any spills, and developing procedures regarding excavation and off-site disposal of any soil materials contaminated by spillage.

(2) *Clean Air Act, as amended,* 42 U.S.C. 1801, *et seq.*, air quality regulations, and state implementation plans adopted pursuant to 40 CFR parts 50–99. The project sponsor must secure the applicable air quality construction permits and comply with Prevention of Significant Deterioration (PSD) regulations for new or modified major sources.

(3) *Endangered Species Act of 1973, as amended,* 16 U.S.C. 1531, *et seq.* The project sponsor is the Commission's non-Federal representative for purposes of complying with the Endangered Species Act, and must adhere to the procedures in paragraph (f) of this section, in which case the Commission finds that endangered species and their critical habitat are protected in accordance with 16 U.S.C. 1536.

(4) *National Historic Preservation Act of 1966, as amended,* 16 U.S.C. 470, *et seq.*, and the Archeological and Historic Preservation Act of 1974, Public Law 93–291. The project sponsor is the Commission's non-Federal representative for purposes of complying with the National Historic Preservation Act, and must adhere to the procedures set forth in paragraph (g) of this section, in which case the Commission finds that there is no effect on any property protected by 16 U.S.C. 470f.

(5) *Coastal Zone Management Act of 1972, as amended,* 16 U.S.C. 1451, *et seq.* The project sponsor must obtain a determination from the appropriate state

agency that the project complies with that state's coastal zone management plan, unless the state agency waives its right of review.

(6) *Executive Order No. 11988*, 3 CFR, 1977 Comp., p. 117, requiring Federal agencies to evaluate the potential effects of actions that may be taken on a floodplain. A project may involve construction of aboveground facilities located in a 100-year floodplain, as delineated on Flood Insurance Rate Maps or the Flood Hazard Boundary Maps prepared by the Federal Insurance Administration, only after all reasonable alternatives have been evaluated and been found to be impracticable.

(7) *Executive Order No. 11990*, 3 CFR, 1977 Comp., p. 121, requiring an evaluation of the potential effects of construction on wetlands. The project sponsor must adopt the requirements of the "Stream and Wetland Construction and Mitigation Procedures" identified in § 380.14 of this chapter. Aboveground facilities may not be constructed in wetlands unless compliance with regulations adopted by the Department of Transportation (DOT) cannot otherwise be accomplished.

(8) *Wild and Scenic Rivers Act*, 16 U.S.C. 1274, *et seq.*; *Wilderness Act*, 16 U.S.C. 1133, *et seq.*; and *National Parks and Recreation Act of 1978* 16 U.S.C. 1 and 230, *et seq.* The project sponsor must comply with these statutes, including the pertinent conditions identified in paragraph (c)(11)(i) of this section.

(9) *Toxic Substances Control Act*, 16 U.S.C. 2601, *et seq.* The project may involve the removal, replacement, or abandonment of facilities which have been found by the Environmental Protection Agency (EPA) to have been exposed to polychlorinated biphenyl (PCB) contamination greater than 50 ppm only if the facilities have been declassified by the EPA, if the removal, replacement or abandonment comply with the EPA's regulations at 40 CFR part 761, or if an alternative disposal permit is issued by EPA under 40 CFR 761.60(e).

(10) *General siting and maintenance requirements.* The project sponsor must implement the requirements of paragraph (h) of this section.

(11) *Conditions subject to other agency or landowner approval, or specific installation methods.* Facilities which involve pipeline construction in the following areas may go forward as specified.

(i) If the Federal action is categorically excluded or is the subject of a finding of no significant impact by the responsible agency, the project may cross the following Federally designated areas: national forests, units of the National Parks System, wilderness areas, trails, wild and scenic rivers, wildlife refuges, management areas and sanctuaries, or ecologically critical or unique areas (such as spawning or rearing areas for naturally reproducing cold water fisheries), remnant prairie, and old-growth forest.

(ii) If approval is given by the appropriate state agency, the project may cross state designated areas similar to those listed in paragraph (c)(11)(i) of this section, and known habitat of state-listed threatened or endangered species.

(iii) If approval is given by the appropriate agency, the project may cross active or reclaimed surface mines where the potential for acidic runoff exists.

(iv) If the pipeline is installed by directional drilling, horizontal boring or jacking, or is installed on an existing bridge or aerial crossing structure, the project may cross water bodies more than 100 feet wide. This restriction on water body crossings does not apply to offshore pipeline construction.

(v) If approval is given by the appropriate agency, the project may cross wellhead protection areas and designated sole source aquifers extending to within excavation depth of the pipeline trench.

(vi) If approval is given by the appropriate water authority, the pipeline may cross any water body within three miles upstream of the intake for a municipal water supply.

(vii) If approval is given by the appropriate water authority, the pipeline may pass within 150 feet of the wellhead of public groundwater supply wells.

(viii) If the owner(s) of each residence grants an easement the project may include construction of pipeline in a new right-of-way where the edge of the construction right-of-way is within 50 feet of the residence and is at least partially on the associated property.

(ix) If the owners of the residences whose properties are crossed convey an additional easement, or have no objection to the use of the existing right-of-way for an additional pipeline, the project may include construction of pipeline loop where the edge of any portion of the construction right-of-way which is 500 feet in length, or less, is within 50 feet of four or more residences.

(12) *Conditions for projects which require reconciliation.* Construction of facilities involving the following may go forward only if the project is authorized pursuant to Subpart A of this part, or if the Director issues a letter authorizing the construction pursuant to the procedures identified in paragraph (e) of this section:

(i) Pipeline crossings within DOT class 2, 3, or 4 locations of active geologic faults (surface rupture within the last 10,000 years), landslide areas, areas subject to collapse subsidence, or areas subject to seismic soil liquefaction in Uniform Building Code Zones 2, 3, or 4.

(ii) Pipeline crossings of known hazardous waste sites or areas contaminated by hazardous waste.

(iii) Pipeline crossings of perennial waterbodies or Federally delineated wetlands where the U.S. Army Corps of Engineers determines that a section 10 permit or an individual Section 404 permit is required.

(iv) Condemnation of any dwelling or permanent aboveground structure not owned by the company.

(v) Aboveground facilities where more than five acres of prime agricultural land would be permanently disturbed or fenced.

(vi) New industrial facilities such as gas conditioning facilities at new sites, or new or modified LNG facilities.

(vii) New or expanded gas storage fields.

(13) *Noise abatement.* The noise attributable to any new or additional compressor facility must not exceed a day-night sound level (Ldn) of 55 DBA at any noise-sensitive area (such as schools, hospitals, or residences), unless the noise-sensitive area is established after facility construction.

(14) *Nuclear facilities.* (i) Any activity subject to this section is not authorized if it is located within 0.5 miles of a nuclear power plant which is either operating or under construction, or for which a construction permit application has been filed with the Nuclear Regulatory Commission.

(ii) Any activity under § 157.215 is not authorized if the activity is located within two miles of a nuclear power plant which is either operating or under construction, or for which a construction permit application has been filed with the Nuclear Regulatory Commission.

(15) *Notifications.* The project sponsor must prepare a notification of proposed construction for newspaper publication and filing with the Governor and the Attorney General for any state in which the construction or abandonment with removal of facilities will occur. The project sponsor must file the notification with the Governor and the Attorney General, by certified mail, return receipt requested, pursuant to the schedule for newspaper publication. The project sponsor must publish the notification once in a daily or weekly newspaper of

general circulation in each county in which construction would occur. The notification must be published at least six weeks prior to the beginning of any construction activity under § 157.203(b), or at least twenty-eight days before filing the compliance report required by paragraph (d) of this section for facilities authorized under § 284.3 of this chapter, § 157.203(c) or subpart A of this part. The notification shall be in the form of a display advertisement and must include the following:

(i) A general description of the nature and extent of the project, including a map and written description of project route. Each project should be designated by a unique project number (such as "XYZ Pipeline Company Project No. 123"). This information should also identify any related construction areas and specify the width of permanent and temporary rights-of-way.

(ii) Identification of the construction authorization (*i.e.*, Part 157, Subpart A case-specific certificate authorization; part 157, subpart F automatic blanket certificate authorization; part 157, subpart F prior notice blanket certificate authorization; or NGPA section 311 authorization), the project docket number, if any, and a description of Commission procedures relating to the authorization, including an outline of the sequence of events that will culminate in the authorization for construction.

(iii) A description of the applicable intervention, comment, and protest procedures, including applicable time periods and the Commission Secretary's mailing address.

(iv) Identification of person(s) who are authorized to respond to requests or questions on behalf of the project sponsor.

(16) *Permits.* No construction, installation, or abandonment shall begin with respect to physically discrete, independently usable portions of a project (*e.g.*, a complete loop or lateral) automatically authorized under § 157.203(b) until all required permits for that portion have been obtained (except those permits that must be obtained during construction, such as road crossing and hydrostatic testing permits) and all preconstruction requirements of paragraph (c) of this section have been met.

(d) *Report on Compliance.* The project sponsor must file a report demonstrating compliance with this section. For prior notice authorizations under § 157.203(c), the report will be filed with the prior notice. For automatic authorizations under § 157.203(b), the report will be filed semi-annually as required by § 157.207(b). For activities undertaken pursuant to section 311 of the NGPA, the report must be filed at least 30 days prior to commencement of construction. For case-specific applications under part 157, subpart A, the report must be filed with the application required in § 157.6. The report must include a checklist on the cover identifying the conditions contained in paragraph (c) of this section for which compliance is demonstrated. The checklist must be signed by an official representing the project sponsor verifying that the material demonstrating compliance with each of the checked conditions has been provided. The report must also include, as applicable:

(1) A concise explanation of the measures undertaken to satisfy paragraph (b) of this section and each requirement specified in paragraphs (c)(1) through (16) of this section, including:

(i) A discussion of how the project sponsor determined what facilities are required to be considered pursuant to paragraph (b) of this section, including: identification of all facilities, both jurisdictional and nonjurisdictional, contacts made to determine what nonjurisdictional facilities would be considered for environmental review purposes, an explanation of how paragraph (b) of this section was applied; and the basis for any conclusion that a related nonjurisdictional facility shall not be considered.

(ii) A verified statement that the provisions of §§ 380.13 and 380.14 of this chapter have been adopted;

(iii) Calculations supporting conclusions as to whether the facilities constitute a major source or major modification as defined by EPA, and citation to the date, issuing authority, and PSD permit number;

(iv) Documentation that the project sponsor has obtained from the appropriate office of the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) a list of Federal endangered, threatened, proposed, and candidate species, and their designated critical habitat, they may occur in the vicinity of the proposed project as required in paragraph (f) of this section. Copies of correspondence with those agencies, survey reports, and the biological analysis, if one is necessary, must be filed with the Secretary. The biological analysis and comments on the biological analysis should be marked "*PRIVILEGED INFORMATION—DO NOT RELEASE*". A copy of this information must also be provided directly to the appropriate environmental branch of the Commission.

(v) A discussion of findings of effects on cultural resources, which must include:

(A) Dates of consultation with SHPOs, Federal land-managing agencies, and other interested persons, including Native American representatives;

(B) A summary of the input from consulted agencies and persons that is not otherwise provided pursuant to paragraph (d)(1)(v)(D) of this section;

(C) A discussion of measures taken to avoid eligible properties; and

(D) All reports and correspondence produced under paragraph (g) of this section, including, as appropriate, the NEPA Report, the reports required by paragraph (g)(5)(iv) of this section, and the SHPOs' determinations described in paragraphs (g)(5)(iii), (iv), and (x) through (xiii) of this section.

(vi) Documentation of any state determination that the project conforms to its Coastal Zone Management Plan;

(vii) Identification of the maps consulted, alternative locations considered, and reasons for locating aboveground facilities in a floodplain or wetland;

(viii) Identification of how compliance with paragraph (c)(11)(i) of this section was determined;

(ix) A statement, supported by EPA correspondence, that the removal, replacement, or abandonment of facilities will conform to paragraph (c)(9) of this section. For removal, replacement, or abandonment performed in accordance with 40 C.F.R. Part 761, but not under an alternative method of disposal, a description identifying specific procedures for the following activities:

(A) Pre-removal inspections, x-raying, testing, and monitoring of liquids.

(B) Pre-removal pipeline pigging, cleaning, drying, blowdown, purging, and removal of liquid accumulations.

(C) Measures for exclusion and removal of water seepage into excavations.

(D) Sealing or capping of cut surfaces and measures to contain leaks and spills.

(E) Removal of pipe from trench.

(F) Spill prevention, control, containment, and cleanup pursuant to 40 CFR part 761, subpart G.

(G) Transportation of removed pipe segments to a storage yard.

(H) Location(s) of, and construction, containment, and monitoring methods of storage yards for removed pipeline segments, pursuant to 40 CFR 761.65(b).

(I) Valve draining, removal, capping, transportation, storage, and disposal.

(J) Disposal of the removed pipeline segments and related equipment.

(K) Identity of the companies, and specific personnel and their titles, who are responsible for the collection, transportation, cleanup, and disposal of PCB-contaminated materials.

(x) Verification that the project sponsor has complied with paragraph (c)(10) of this section, and a description of how routing within existing rights-of-way was maximized;

(xi) Identification of contacts made and references consulted to achieve compliance with paragraphs (c)(11) and (12) of this section;

(xii) Commitment to file postconstruction noise surveys of new or additional compressor facilities no later than 30 days after placing the facility in service or, in case of automatically authorized construction, with the next semi-annual report. Noise surveys shall include a plot plan identifying the noise measurement locations and shall identify the time of day, duration of measurements, weather conditions, windspeed and direction, engine load, and other noise sources present for each measurement. If the noise attributable to the operation of the new or additional compressor facility at full load exceeds a day-night sound level (Ldn) of 55 dBA at any nearby noise-sensitive areas, additional noise controls must be added to meet that level within one year;

(xiii) Identification of contacts made to ensure compliance with paragraph (c)(14) of this section;

(xiv) Certification that the newspaper publication and notification to the Governor and the Attorney General required pursuant to paragraph (c)(15) of this section have been done; and

(xv) For automatically authorized projects, verification that paragraph (c)(16) of this section will be or has been complied with.

(2) A discussion of the consideration given to alternative routes or locations to avoid sensitive environmental areas as identified in paragraphs (c)(11) and (12) of this section prior to obtaining approvals required by paragraph (c)(11) and prior to filing a request for reconciliation pursuant to paragraph (e) of this section.

(3) Any listing of contacts required in this section must include the name, title, affiliation, and telephone number of the person(s) contacted.

(4) A listing of the projected completion date for all required surveys, the projected start date of construction for each discrete pipeline segment or aboveground facility, and the anticipated timeframe for start and completion of restoration activities.

(5) If the report required by this subsection demonstrates compliance with the requirements of this section, the Director will issue a letter notifying the project sponsor that he has reviewed the report. This letter shall not constitute final agency action subject to rehearing within the meaning of § 385.1902 of the Commission's regulations.

(6) If the report required by this subsection does not demonstrate compliance with the requirements of this section, the Director will issue a letter stating:

(i) That the compliance report is inadequate and that the project sponsor may seek reconciliation, or that the project sponsor can only proceed pursuant to the case-specific authorization in subpart A of this part, or

(ii) That the Director will initiate reconciliation on his own initiative.

(e) *Reconciliation Procedures.* (1) If it is believed that a project would be in compliance with the requirements of this section if minor issues are resolved, a request for reconciliation may be filed with the Director. The project sponsor must not proceed with construction until the Director issues a letter authorizing the project sponsor to proceed with construction pursuant to the following procedures. The reconciliation procedure shall not be used unless, at the discretion of the Director, matters for which reconciliation are sought are appropriate.

(i) A project sponsor may initiate reconciliation:

(A) Upon filing the compliance report required by paragraph (d) of this section;

(B) In response to the filing of a protest by any person; or

(C) Upon a finding of noncompliance by the Director, after a review of the compliance report. The Director may also initiate reconciliation.

(ii) The reconciliation period will begin on the date that a request for reconciliation is filed and end 90 days thereafter, unless the Director issues a letter extending the reconciliation period for an additional period of up to 90 days.

(iii) If the Director believes that reconciliation can be achieved within the reconciliation period, he may pursue resolution. The Director may, in his discretion:

(A) Consult with relevant agencies to ensure that the environmental impact will not be significant.

(B) Obtain agreement from the project sponsor to implement any mitigation measures the Director finds necessary.

(C) Convene a technical conference.

(D) Pursue any other actions deemed necessary.

(iv) Consistent with the Commission's *ex parte* regulations, the Commission and staff may meet with the project sponsor or other parties to address the environmental matters at issue in the reconciliation procedure.

(v) If the Director concludes that the project can comply with this section, either with or without additional mitigation measures, he will issue a letter, including a brief Environmental Assessment, under which the project may proceed.

(vi) If the Director concludes that the project cannot comply with this section, the project may only proceed under Subpart A of this part.

(2) If the Director has not issued a letter by the end of the reconciliation period, or any extension thereof, the project may not proceed under authority of this section.

(f) *Procedures for compliance with the Endangered Species Act of 1973*—(1) *Applicability.* The procedures in this section apply to any project sponsor as defined in § 157.101, including a company undertaking a project authorized under a blanket certificate issued pursuant to subpart F of this part, and any applicant or project sponsor undertaking any other activity subject to the conditions in paragraph (c) of this section.

(2) *Consultation with other Federal agencies.* Pursuant to paragraph (c)(3) of this section, the project sponsor is designated as the Commission's non-Federal representative for purposes of informal consultations with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS). As specified in paragraph (f)(4)(iv)(D) of this section, a project requiring formal consultation may only proceed under Subpart A of this part, unless the project has been cleared by the Director pursuant to paragraph (e) of this section.

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

(i) *Listed species* and *critical habitat* have the same meaning as provided in 50 CFR 402.02.

(ii) *Project area* means any area subject to construction activities (including material storage sites and access roads) required to install the facilities.

(4) *Procedures*—(i) *Consultation requirement.* Prior to construction of project facilities, the project sponsor must contact the appropriate regional or field office of the FWS or the NMFS, or both if appropriate, to initiate informal consultations, unless it is proceeding pursuant to a blanket clearance issued by the FWS which is less than one year old and the clearance does not specify more frequent consultation. If the

blanket clearance is more than one year old, the project sponsor must consult with the FWS to determine whether any additional species have been listed in the area, and whether the blanket clearance is still valid.

(ii) *Finding of no impact.* The project sponsor is in compliance with paragraph (c)(3) of this section if, pursuant to informal consultations, the consulted agency initially determines that no listed or proposed species, or its listed or proposed critical habitat, occurs in the project area.

(iii) *Potential impact to proposed species.* (A) If the consulted agency, pursuant to infomal consultations, initially determines that any species proposed to be listed, or its proposed to be listed critical habitat, occurs in the project area, the project sponsor must confer with the consulted agency on how to avoid or reduce the potential impact.

(B) The project sponsor is in compliance with paragraph (c)(3) of this section when it implements any mitigating measures recommended through the consultation process, and complies with paragraph (f)(4)(iv) of this section, if applicable.

(iv) *Continued informal consultations for listed species.*

(A) If the consulted agency initially determines, pursuant to the informal consultations, that a listed species or its critical habitat may occur in the project area, the project sponsor must continue informal consultations to determine if the proposed project may affect the species or habitat. These consultations may include discussions with experts (including experts provided by the consulted agency), field surveys, biological analyses, and the formulation of mitigation measures.

(B) A biological analysis must be prepared unless the FWS and/or NMFS indicates that the proposed project would not affect a specific listed or proposed species. The biological analysis must contain the following information for each species:

(*1*) Life history and habitat requirements;

(*2*) Results of detailed surveys to determine if individuals, populations, or suitable, unoccupied habitat exists along the proposed route;

(*3*) Potential impacts, both beneficial and negative, that could result from construction of the proposed project; and

(*4*) Proposed mitigation which would eliminate or minimize these potential impacts.

All surveys must be conducted by qualified biologists and must utilize FWS and/or NMFS approved survey methodology. The biological analysis must include the name(s) and qualifications of person(s) conducting the survey; survey methodology; date of survey(s); and detailed identification of size and location of all areas surveyed. The biological analysis should be submitted to the FWS and/or NMFS for their review and comment.

(C) If the consulted agency agrees with the determination that the proposed project will not affect any listed species or its critical habitat, the project sponsor is in compliance with paragraph (c)(3) of this section.

(D) The project sponsor may not proceed with the proposed project if it concludes that the proposed project may affect listed species or the species' critical habitat, or if the consulted agency does not agree with the project sponsor's determination of no effect, except as authorized under Subpart A of this part, or unless the project has been authorized by the Director pursuant to paragraph (e) of this section.

(g) Procedures for Compliance with the Cultural Resources Aspects of the National Environmental Policy Act (NEPA) and the National Historic Preservation Act of 1966 (NHPA). (1) *Applicability.* The procedures in this section apply to public and private lands, including Federal lands for which there are no Federal procedures.

(i) If Federally administered land will be directly affected by a proposed project, the procedures used by the appropriate Federal land-managing agency to comply with section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f, will take precedence over these procedures for that land, unless that agency's procedures require it to comply with section 106 for the non-Federal lands.

(ii) Unless the procedures of a Federal land-managing agency apply to all project areas where eligible properties will be affected, no project requiring formal consultation may proceed unless it is the subject of an application under Subpart A of this part, or is cleared by the Director pursuant to paragraph (e) of this section.

(iii) If there is no SHPO, or if the SHPO declines to consult with the project sponsor, the project sponsor must inform the Director and shall not proceed with these procedures or the project until an alternative consultant is designated by the Director.

(2) *Consultation with other agencies.* Pursuant to paragraph (c)(4) of this section, a project sponsor will consult with the SHPOs.

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

(i) *Eligible property* means any district, site, building, structure, or object that is listed on or meets the criteria for listing on the National Register of Historic Places. The criteria for evaluation (found at 36 CFR 60.4) must be used to determine eligibility.

(ii) *SHPO* means the State Historic Preservation Officer or any alternative person duly designated by the state, or pursuant to paragraph (g)(1)(iii) of this section, to advise on cultural resource matters.

(iii) *Project area* refers to the project's area of potential environmental effect (including construction, visual, and other anticipated effects), and means any area subject to construction activities (including storage sites and access roads) required to install the facilities.

(4) *NEPA report.* Prior to any construction of project facilities, the project sponsor must assess the impact of the proposed project on cultural resources and identify how these impacts have been or will be minimized or eliminated. This report must include:

(i) A description of the project area;

(ii) A description of the cultural resource (historic, archeological, architectural, landscape) contexts for the proposed project areas;

(iii) A description of consultations that took place with the SHPO, Native Americans and tribal leaders, and other interested persons who may be concerned with the effects of the project on cultural resources, to determine whether significant cultural or historical resources such as cemeteries or churches that may not satisfy the National Register Criteria, but are important for their local or state values, may be affected;

(iv) A description of how the project sponsor would protect the resources identified pursuant to paragraph (g)(4)(iii) of this section; and

(v) Clearly described locations of all identified cultural resources by milepost in the text and on topographic maps (scale 1:6,000 or greater).

(5) *NHPA procedures.* (i) Prior to construction of project facilities, the project sponsor must identify or cause to be identified, eligible properties (36 CFR 60.4), that are located within the project area and that may be affected by the undertaking.

(ii) Prior to filing the compliance report required in paragraph (d) of this section, the project sponsor must:

(A) Check the National Register of Historic Places and consult with the SHPO to identify all known eligible properties within the project area;

(B) Consult with the SHPO, and to the extent deemed appropriate by the SHPO, check the public records and consult with other individuals and organizations with historical, architectural, or archeological expertise, as well as potentially affected Native Americans or Indian tribes, to determine whether eligible properties are likely to occur within the project area; and

(C) Consult with the SHPO to determine the need for surveys to identify previously unidentified eligible properties. The project sponsor must consult with the SHPO regarding eligibility and application of the criteria for evaluation to any previously unidentified eligible properties.

(iii) The project sponsor is in compliance with paragraph (c)(4) of this section if the SHPO determines that extant documentation is sufficient to demonstrate that no eligible properties are likely to exist in the project area.

(iv) If the SHPO determines that surveys are required to determine the presence or absence of eligible properties, the project sponsor must perform surveys that meet the Commission's requirements and are deemed by the SHPO to be of sufficient scope and intensity to identify and evaluate the properties. The reports of these surveys and the SHPO's comments must be provided as part of the report required to be filed under paragraph (d) of this section. If an application is made under subpart A of this part, the reports may be provided in phases as specified in § 380.12(c)(4) of this chapter. The project sponsor must submit the results of the surveys in Phase 1 and Phase 2 reports, as applicable. Upon submission, the project sponsor must request the SHPO's written comments on the results of identification efforts, including surveys. The request should ask the SHPO to make specific reference to the report (title, author and date), name of the applicant, project name and docket number, as applicable, and the mileposts or facilities covered. Specifically, the SHPO must be requested to comment on:

(A) The adequacy of identification efforts (including surveys);

(B) The eligibility of all identified cultural resources;

(C) The need for additional studies in order to assess eligibility; and

(D) The effect the project would have on any eligible property.

(v) Each NHPA report must meet the requirements of the Advisory Council on Historic preservation (ACHP) set forth at 36 CFR part 800, including documentation of consultations with the appropriate SHPO, involved Federal land-managing agencies, and interested Native American tribes. Within one year of completion of the final report, one copy must be sent to the Anthropological Archives, Smithsonian Institution. These reports should also be disseminated to research institutions such as state colleges and universities. The Commission also encourages that the reports, or summaries of them prepared for the public, be distributed to state and local libraries, and other learning centers, and the publication of results in professional journals.

(vi) The Phase 1 report documents the Phase 1 survey. The Phase 1 survey is designed to determine the presence or absence and point location of cultural resources within the area of potential impact. The Phase 1 report must include the following information:

(A) A summary of the SHPO's determination as to the need for survey(s);

(B) Description of the study area, including an environmental synthesis with reference mileposts (and docket number if multiple docket numbers are involved) for significant features;

(C) An overview of the prehistoric and historic settlement history within the immediate vicinity of the project area;

(D) Recommendations for additional actions to be taken, including Phase 2 evaluation studies, site avoidance by project redesign, or flagging of adjacent resources;

(vii) The Phase 2 report documents the Phase 2 survey. The Phase 2 survey is designed to thoroughly describe the location, distribution, and condition of cultural resources identified during the Phase 1 study as requiring Phase 2 study. The Phase 2 report must provide sufficient detail on each site, building, or structure to permit evaluation against the National Register criteria of significance found at 36 CFR 60.4. The Phase 2 survey report shall document:

(A) The types of cultural values sought and the probable research questions or data needs they may answer;

(B) A description of the area surveyed, including the precise location and horizontal and vertical boundaries of all resources investigated;

(C) The method of survey, including the extent of survey coverage;

(D) Information on integrity (condition and horizontal and vertical stability);

(E) Assessments of each resources' probable eligibility for listing in the National Register of Historic Places; and

(F) Recommendations for additional actions to be taken, including Phase 3 data recovery (mitigation) studies, site avoidance by project redesign, or flagging of adjacent resources.

(viii) Phase 1 and Phase 2 reports must include (to the extent not included in the other report):

(A) A detailed report (with complete bibliographic references) of the historical and background documentation consulted;

(B) A description and justification of the research design and field strategies, including modifications that were made during the course of the planning and field study;

(C) A description of field and analytical studies actually implemented, with precise reference to milepost designations and specific facility names; a brief explanation of any sampling or statistical assumptions and the techniques used (including discussion of consistency of surface collection, augering, and test excavation programs; and any deviation from the research design and the reason for the deviation;

(D) A large-scale base map (s) of the study area (at a scale of no less than 1:2,400), depicting those areas subject to surface survey and subsurface testing; large scale feature plans and profiles; excavation unit summaries, profiles and plan views; stratigraphic summaries of auger and core tests; photographic coverage of all features, excavation units, and selected site views (with photo logs); and a field log;

(E) Standardized descriptions of all field operations and observations, including excavation and recording techniques, and stratigraphic, intra-site, and inter-site relationships;

(F) A complete description, with specific reference to mileposts, of analytical techniques employed (*e.g.*, remote sensing, deep coring) and the results. This description must be illustrated, as appropriate, with tables, charts, and graphs, including a frequency distribution table for all specimens from the site. The frequency distribution table should provide a count of all artifacts, faunal, and floral specimens, organized by class and provenance; percentages within each stratum and within each class of artifact/specimen. Tables and/or graphs of artifact distribution by feature and stratum within feature shall also be provided;

(G) All classes of information recorded in a format compatible with basic statistical manipulation (*e.g.*, actual counts and percentages per artifact class and stratum/feature). If the data base is large enough and such action is appropriate, statistical analysis may be conducted to address specific research questions. Also, comparisons with similar resources may be made if this approach appears to be necessary

in analysis and discussion of appropriate treatments;

(H) A discussion of the results of analyses, focusing on the research problems identified in the research design and other relevant questions;

(I) An evaluation of the survey in terms of the goals and objectives of the investigation, including discussion of how well the needs of the project planning process were served;

(J) Recommendations for updating relevant data bases, cultural resources file (including SHPO files), other information sources, new studies and identification of information needs (*e.g.*, comparative studies);

(K) Information on the location of the original data in the form of field notes, photographs, research materials, and curated documentary and archaeological collections; and

(L) The curricula vitae of all supervisory personnel involved in the study, including the principal investigator, field supervisors, crew chiefs, laboratory supervisors, analytical specialists, and all consultants. The individuals must meet the standards published in "Archaeology and Historic Preservation; the Secretary of the Interior's Standards and Guidelines." This document is available from the Commission's Public Information Office, room 3104, 941 N. Capitol St., NE., Washington, DC 20426.

(ix) Because certain individual property information, such as specific locations, may be sensitive to disclosure, information on the location of archaeological resources and resources of religious or sacred value must be labelled "PRIVILEGED, DO NOT RELEASE" and must not be included in published reports. This data will, however, be provided for SHPO and professional staff review; reports for public distribution and peer review must contain summary information on these resources.

(x) The project sponsor is in compliance with paragraph (c)(4) of this section if, upon conclusion of the surveys, the SHPO agrees that no eligible properties occur in the project area.

(xi) If eligible properties are identified within the project area, the project sponsor, in consultation with the SHPO, must apply the Criteria of Effect in 36 CFR 800.9 to determine whether the project will have an effect upon the significant historical, architectural, archaeological, or cultural characteristics of the property. The project sponsor is in compliance with paragraph (c)(4) of this section if the SHPO agrees that the project will not affect the eligible property, as long as:

(A) No construction activities are allowed in any portion of a listed or eligible site;

(B) Avoidance of effect cannot be achieved by boring or directional drilling beneath an eligible property; and

(C) Visual and auditory impact to the surroundings of an eligible property are not considered effects if they only occur during the construction or installation period.

(xii) Upon application of the Criteria of Effect in 36 CFR 800.9, if the project sponsor or the SHPO finds that the proposed project may affect an eligible property, even if the effect is not considered adverse, the project sponsor may not proceed except under part 157, subpart A of this chapter, unless the project has been cleared by the Director pursuant to the reconciliation procedure contained in paragraph (e) of this chapter. Exception: The project sponsor is in compliance with paragraph (c)(4) of this section only if the property can be avoided by relocation of the project to an area where the SHPO agrees that no eligible properties exist.

(xiii) If the project sponsor and SHPO are unable to agree on the need for a survey, the adequacy of a survey, the eligibility of identified properties (results of application of the Criteria for Evaluation), or the effects of the proposed project, the project will not be authorized except under part 157, subpart A of this chapter, unless it has been authorized by the Director pursuant to paragraph (e) of this section.

(h) *General siting and maintenance requirements*—(1) *General statement.* In the interest of preserving scenic, historic, wildlife, and recreational values, the construction and maintenance of facilities should be undertaken in a manner that will minimize effects on these values to the maximum extent practicable. Accordingly, the planning, locating, clearing, and maintenance of rights-of-way and the construction of aboveground facilities should, to the maximum extent possible, conform to the performance requirements provided in paragraph (h)(2) of this section.

(i) There is increasing need to fit the construction of pipeline facilities into an overall plan for land development and use in Federal, state, and regional land use planning and development. The advance planning required to meet these performance requirements should minimize and delay caused by considering location as part of an overall plan for land development and use.

(ii) To the extent landowners may have special interests concerning the planning, locating, clearing, and maintenance of rights-of-way and the construction of aboveground facilities on their property, those desires should be taken into account by project sponsors, so long as the result is consistent with laws relating to land use and any requirements imposed by the Commission.

(2) *Performance requirements.* The following requirements shall not affect a project sponsor's obligation to comply with the applicable safety regulations of the Department of Transportation, pursuant to the Natural Gas Pipeline Safety Act of 1968.

(i) *Pipeline construction.* (A) In locating proposed facilities, consideration shall be given to the utilization, enlargement, or extension of existing rights-of-way belonging to either the project sponsor or others.

(B) Rights-of-way shall, to the extent possible, avoid places listed on, or eligible for listing on, the National Register of Historic Places and natural landmarks listed on the National Register of Natural Landmarks maintained by the Secretary of the Interior, and officially designated parks, scenic, wildlife, recreational lands, and wetlands. If rights-of-way must be routed near historic places, natural landmarks, parks, scenic, wildlife, and recreational lands, or wetland areas, they should be placed in such a manner as to minimize visibility from areas of public view and designed so far as possible to preserve the character and existing environment of the area.

(C) Where practical, rights-of-way should avoid forested areas and steep slopes.

(D) Rights-of-way clearings should be kept to the minimum width necessary.

(E) The method of clearing rights-of-way should take into account soil stability, and protection of natural vegetation and adjacent resources.

(F) Trees and other vegetation cleared from rights-of-way in areas of public view should be disposed of without undue delay. Tree stumps adjacent to roads and other areas of public view should be cut close to the ground or removed.

(G) Trees and shrubs that are not cleared should not be unnecessarily damaged.

(H) Long views of cleared rights-of-way through wooded areas that are visible from highways and other areas of public view should be avoided. In such locations, the right-of-way alignment should be deflected before entering and leaving highways and areas of public view, so long as the deflection is consistent with safe and sound engineering practice.

(I) Where practical, rights-of-way should not cross hills and other high points at their crests, particularly where the crossing is in forested areas and the resulting notch is clearly visible from highways and other areas of public view. Where they must do so, the alignment should be deflected near the crests where the deflection is consistent with safe and sound engineering practice and accomplishes the desired result of eliminating the view of the notch in the tree line.

(J) Where rights-of-way enter forested areas from a meadow or other clearing and where the clearing created for the right-of-way is visible from major highways and other areas of public view, screen plantings should be employed.

(K) Temporary roads used for construction should be designed for proper drainage and built to minimize soil erosion. Upon abandonment, the road area should be restored and stabilized without undue delay.

(ii) *Right-of-way maintenance.* (A) Vegetation covers established on a right-of-way should be properly maintained.

(B) Access and service roads should be maintained with proper cover, water bars, and the proper slope to minimize soil erosion. They should be jointly used with other utilities and land management agencies where practical.

(C) Chemical weed control should not be used unless authorized by the landowner or land-managing agency. When chemicals are used for weed control, they should be EPA approved for such use and used in conformance with all applicable regulations.

(iii) *Construction of aboveground facilities.* (A) Where practical, unobtrusive sites should be selected for the location of aboveground facilities. Special effort shall be made to locate such facilities involving more than five acres away from prime farmland.

(B) Noise potential should be considered when the location for compressor stations is being determined. Noise levels attributable to new or additional compressor operations must not exceed an L(dn) of 55 dBA at any noise-sensitive area.

(C) The size and extent of aboveground facilities should be kept to the minimum feasible.

(D) The exterior of compressor stations and other aboveground facilities should be harmonious with the surroundings and other buildings in the area.

(E) In areas adjacent to aboveground facilities, appropriate landscaping should be utilized to enhance the appearance of facilities, consistent with operating needs.

(F) Yards and surrounding areas should be kept clean and free of unused or discarded materials.

(G) The design and operation of aboveground facilities should conform to applicable air, noise and water quality standards.

§ 157.104 Special rules regarding violations.

(a)(1) For any project subject to § 157.103, the Director may issue a letter ordering a project sponsor to halt construction to remedy any violation of the requirements of that section.

(2) Upon issuance of such a letter, the project sponsor may not proceed with construction unless:

(i) the Director subsequently issues a letter authorizing the project sponsor to proceed with construction; or

(ii) a certificate is issued authorizing construction pursuant to subpart A of this part.

(b)(1) The Commission may prohibit an interstate pipeline from using its construction authorization under Subpart F of this part or under part 284 of this chapter if the Commission finds that the pipeline has committed violations of § 157.103, or previously effective § 157.206(d), and the nature of the violations supports a finding that such prohibition of authorization is necessary to prevent further violations of § 157.103.

(2) The Commission will implement the prohibition in paragraph (b)(1) of this section after giving the pipeline an opportunity to show cause why the prohibition should not be imposed, unless the Commission determines that an immediately effective prohibition against construction is necessary. If the Commission finds that the prohibition must be made effective immediately, the Commission will promptly issue a show cause order and endeavor to respond to the pipeline's response to that order within 15 days after receipt of the response.

(3) The prohibition in paragraph (b)(1) of this section shall remain in effect as specified until the Commission finds that the pipeline has demonstrated that continuation of the prohibition is unnecessary or that a shorter prohibition period is adequate to ensure that further violations of § 157.103 will not occur.

17. In § 157.202, paragraphs (b)(3), (b)(4), (b)(6), (b)(10) and (b)(11) are removed; paragraph (b)(2) is redesignated as paragraph (b)(3) and revised; a new paragraph (b)(2) is added; paragraph (b)(5) is redesignated as (b)(4), paragraphs (b)(7), (b)(8) and (b)(9) are redesignated as paragraphs (b)(5), (b)(6) and (b)(7), respectively; paragraphs (b)(12), (b)(13) and (b)(14) are redesignated as paragraphs (b)(8), (b)(9) and (b)(10), to read as follows:

§ 157.202 Definitions.

* * * * *

(b) Subpart F definitions. * * *

(2) *Delivery tap* means metering and appurtenant facilities necessary to enable the certificate holder to deliver gas to a customer.

(3)(i) *Eligible facility* means, except as provided in paragraph (b)(3)(ii) of this section, any facility subject to the Natural Gas Act jurisdiction of the Commission. Eligible facility includes:

(A) Any facility needed by the certificate holder to receive gas from a supplier and interconnecting points between transporters that transport natural gas under § 284.221 of this chapter, and

(B) A main line of a transmission system, an extension of a main line of a transmission system, or a facility (including compression and looping) that alters the capacity of a main line, *Provided,* the certificate holder holds a blanket transportation certificate issued under § 284.221 of this chapter in addition to a blanket certificate issued under this part.

(ii) *Exclusions. Eligible facility* does not include:

(A) A facility required to test, develop or utilize and underground storage field or to store gas above ground in either a gaseous or liquefied state;

(B) A facility constructed to effect the purchase of gas from plants manufacturing synthetic gas or from plants gasifying liquefied natural gas; or

(C) Delivery taps.

* * * * *

§ 157.203 [Amended]

18. In § 157.203, in paragraph (b), the word "157.211(a)" is removed and the word "157.212(a)" is inserted in its place; in paragraph (c), the word "required" is removed and the word "authorization" is inserted in its place in the heading, the words "157.211," and "157.211(b)," are removed and the word "157.212" is revised to read "157.212(b)".

§ 157.204 [Amended]

19. In § 157.204, in paragraph (a), the words "and a blanket certificate pursuant to Part 284, Subpart B of this chapter," are inserted after the words "Natural Gas Act" and the words "for those certificates" are inserted after the word "rates"; and in paragraph (d)(1), the words "citation to the certificate proceeding in which the applicant was

issued a blanket certificate pursuant to part 284, subpart G of this chapter;" are inserted after the words "found to be a natural gas company;".

20. In § 157.205, in paragraph (a) introductory text, the word "157.211(a)(2)," is removed; in paragraph (a)(2), the words "paragraph (e)" and "paragraph (g)" are removed and the words "paragraph (f)" and "paragraph (h)" are inserted respectively; in paragraph (b)(5) the word "and" is removed; in paragraph (b)(6) the period is removed and the word "; and" is added; paragraph (b)(7) is added; paragraph (e) is revised; in paragraph (f)(1), two sentences are added at the end of paragraph (f)(1); in paragraph (g), the words "paragraph (g)" are removed everywhere they appear and the words "paragraph (h)" are inserted in their place, the words "paragraph (e)" are removed and the words "paragraph (f)" are inserted in their place, and the words "paragraph (d)" are removed and the words "paragraph (e)" are inserted in their place and inserting a new sentence at the end of the first sentence; in paragraph (h), the words "paragraph (d)" are removed and the words "paragraph (e)" are inserted in their place; and in paragraph (i)(2), the words "paragraph (g)" are removed and the words "paragraph (h)" are inserted in their place, to read as follows:

§ 157.205 Notice procedure.

* * * * *

(b) *Contents.* * * *

(7) Identities of any affiliate(s) that will be involved in the construction, operation, or use of the proposed facilities, and a description of each affiliate's contemplated involvement in the activities.

* * * * *

(e) *Publication of notice of request.* (1) Unless the request is rejected pursuant to paragraph (d) of this section, the Secretary of the Commission will publish a notice of the request in the **Federal Register** as soon as it is practicable. The notice will designate a deadline for filing protests, interventions, or notices of intent.

(2) The deadline for filing protests, motions to intervene, or notices of intent for requests filed pursuant subpart B of this part will be 30 days after the date of issuance of the notice of the request.

(f) *Protests* (1) * * * *Provided,* That the protest must include a notice of intent to file a competing request in order to receive contemporaneous consideration. The competing request must be filed within 30 days after expiration of the protest period.

* * * * *

(g) *Effect of protest.* * * * Within 90 days after issuance of notice of the request, the Director, OPPR, may dismiss any protest which does not make a *prima facie* showing of a material issue of fact or law. * * *

* * * * *

§ 157.206 [Amended]

21. In § 157.206, paragraph (d) is removed, and paragraphs (e), (f), (g), and (h) are redesignated as paragraphs (d), (e), (f), and (g), respectively.

22. In § 157.207, paragraph (a) is redesignated as paragraph (a)(1); the introductory text of the section is designated as paragraph (a) introductory text; paragraph (b) is removed; paragraphs (c) through (h) are redesignated as paragraphs (a)(2) through (a)(7), respectively; and a new paragraph (b) is added to read as follows:

§ 157.207 General reporting requirements.

* * * * *

(b) For any construction or replacement of facilities undertaken pursuant to §§ 157.208(a), 157.212(a), or 157.215(a), the certificate holder must file the environmental compliance report identified in § 157.103, demonstrating compliance with § 157.103 for each project, in the manner prescribed in §§ 157.6(a) and 385.2011 of this chapter and signed under oath by a senior official of the company. The filing must be made on or before November 1 of each year for projects undertaken during January through June of that calendar year, and on or before May 1 of each year for projects undertaken during July through December of the previous year.

23. In § 157.208, paragraphs (a) and (b) are revised; paragraph (c)(6) is removed; paragraphs (c)(7) through (c)(9) are redesignated as paragraphs (c)(6) through (c)(8); new paragraph (c)(9) is added; paragraph (c)(11) is removed; paragraph (d), Table I is amended by removing the word "6,000,000" and inserting the word "10,000,000" in its place and by removing the word "16,700,000" and inserting the word "_____" in its place; paragraph (e)(8) is removed; and paragraph (e)(9) is redesignated as (e)(8) to read as follows:

§ 157.208 Construction, acquisition, operation, and miscellaneous rearrangement of facilities.

(a) *Automatic authorization.* If the project cost does not exceed the cost limitation identified in column 1 of Table I, under paragraph (d) of this section, the certificate holder is authorized to acquire, construct, or operate any eligible facility.

(b) *Prior Notice.* The certificate holder is authorized to acquire, construct, or operate any eligible facility.

(c) *Contents of request.* * * *

(9) The standard compliance report specified in § 157.103 demonstrating that the project will comply with the standard environmental conditions of § 157.103.

* * * * *

§ 157.211 [Removed]

24. Section 157.211 is removed and reserved.

25. Section 157.212 is revised to read as follows:

§ 157.212 Delivery taps.

(a) *Automatic authorization.* The certificate holder may construct and operate taps for the delivery of gas to an end-user; if:

(1) The natural gas is ultimately delivered to, and consumed by, a right-of-way grantor; and

(2) Not more than 200 MMBtu equivalent of natural gas per day are to be delivered to the right-of-way grantor.

(b) *Prior notice.* Subject to the notice requirements of § 157.205, the certificate holder is authorized to add new delivery taps or to reassign volumes of gas to be delivered from one delivery tap to another, and to construct and operate any appurtenant facilities, if:

(1) The total volumes to be delivered after the request do not exceed the total volumes authorized prior to the request;

(2) The change is not prohibited by an existing tariff of the certificate holder's; and

(3) The certificate holder has sufficient capacity to accomplish the deliveries without detriment or disadvantage to the certificate holder's other customers.

(c) *Contents of request.* In addition to the requirements of § 157.205(b), requests filed for activities described under paragraph (b) of this section must contain:

(1) The name of the customer;

(2) The location of the delivery tap(s);

(3) The present and proposed quantities of natural gas to be delivered at each of the affected delivery taps and the end-use of the gas;

(4) The description, with supporting data, of the impact of the proposed changes in delivery taps on the certificate holder's peak day and annual deliveries; and

(5) Where the volume of gas to be delivered is more than 3,000 Mcf equivalent of natural gas per day or the cost of the associated facilities is more than $100,000, the request must also contain:

(i) U.S.G.S. 7½-minute series topographic map(s) showing the location of the proposed delivery tap(s) and appurtenant facilities;

(ii) A brief description of the appurtenant facilities (including, as appropriate, pipeline length, size, and method of construction) and the proposed end use; and

(iii) The standard report specified in § 157.103 demonstrating compliance with § 157.103 of this chapter.

§ 157.215 [Amended]

26. Section 157.215 is amended by removing paragraph (b)(1)(vi).

27. In § 157.216, the period is removed and the word "or" is added at the end of paragraph (a)(2); a new paragraph (a)(3) is added; the word "and" is removed at the end of paragraph (c)(3); the period is removed and the words "; and" are added at the end of paragraph (c)(4); a new paragraph (c)(5) is added; the word "and" is removed at the end of paragraph (d)(3); the period is removed and the words "; and" are added at the end of paragraph (d)(4); and a new paragraph (d)(5) is added, to read as follows:

§ 157.216 Abandonment.

(a) * * *

(3) The producer has filed a report with the Department of the Interior Minerals Management Service or a state commission which shows that the affected well has been plugged, provided that the producer is given 15 days notice of the certificate holder's intention to remove the wellhead facilities.

* * * * *

(c) * * *

(5) If any lateral lines are to be abandoned, the request must contain:

(i) U.S.G.S. 7½-minute series topographic map(s) showing the location of the facilities proposed to be abandoned; and

(ii) The standard report specified in § 157.103 demonstrating compliance with § 157.103.

(d) * * *

(5) A copy of the plugging report for each facility abandoned pursuant to paragraph (a)(3) of this section.

28. In subpart F, appendices I and II are removed.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

29. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 15 U.S.C. 3301–3432; 43 U.S.C. 1331–1356; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

30. In § 284.3, paragraph (c) is revised to read as follows:

§ 284.3 Jurisdiction under the Natural Gas Act.

* * * * *

(c) The Natural Gas Act shall not apply to construction of operation of facilities utilized solely for transportation authorized by section 311(a) of the NGPA; *Provided*, That at such time as a request is made to include the costs of facilities constructed under this section into an interstate pipeline's rate base, the conditions set forth in § 157.102 of this chapter shall apply.

31. In § 284.11, paragraph (a) is amended by removing the words "§ 157.206(d)" and adding in lieu thereof the words "§ 157.103"; and paragraph (b) is revised to read as follows:

§ 284.11 Environmental compliance.

* * * * *

(b) At least 30 days prior to commencement of any construction or abandonment with removal of facilities, as authorized under Subparts B and C of this part and described in paragraph (a) of this section, which begins after November 19, 1991, the company must file notification of such activity with the Commission, in the manner prescribed in § 385.2011 of this chapter. The notification must include the following information:

(1) A brief description of the facilities to be constructed or abandoned with removal of facilities (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) The standard report specified in § 157.103 of this chapter demonstrating compliance with § 157.103 of this chapter; and

(3) Current U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities.

PART 375—THE COMMISSION

32. The authority citation for part 375 is revised to read as follows:

Authority: 42 U.S.C. 7178; 16 U.S.C. 791a note; 42 U.S.C. 7101–7532; E.O. 12009, 3 CFR, 1978 Comp., p. 142; 5 U.S.C. 551–557; 16 U.S.C. 791–828c; 15 U.S.C. 717–717w; 15 U.S.C. 3301–3432; 16 U.S.C. 2601 *et seq.*

33. In § 375.307, the section heading is revised and paragraph (a)(1) is amended by removing the word "$5,000,000" and adding in lieu thereof the word "$25,000,000"; paragraph (a)(4) is amended by removing the words "(other than budget applications) involving a specific customer or customers, if such customer or customers have agreed to the abandonment"; paragraph (a)(5) is amended by removing the word "$5,000,000" and adding in lieu thereof the word "$25,000,000", and removing the words "as provided in § 375.307(a)(3) of this chapter"; paragraph (e)(1) is revised; paragraph (e)(6) is amended by removing the word "and"; and new paragraphs (e)(8), (e)(9), (e)(10), and (e)(11) are added to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline and Producer Regulation.

* * * * *

(e) * * *

(1) Adjust the project limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) of this chapter and the dollar amounts in §§ 375.307 (a)(1) and (a)(5), including adjustments for inflation, each calendar year, to reflect the "GNP implicit price deflator" published by the Department of Commerce for the previous calendar year, and publish such limits and dollar amounts in the **Federal Register**;

* * * * *

(8) Issue and sign letters initiating the reconciliation process contained in § 157.103(e) of this chapter and letters extending the reconciliation period for up to 90 days;

(9) Issue and sign letters authorizing a project sponsor to proceed with construction following successful completion of the reconciliation procedure contained in § 157.103(e) of this chapter, or denying authority to a project sponsor to proceed with construction if reconciliation is not achieved; and

(10) Issue and sign letters halting construction pursuant to § 157.104(a) to remedy violations of § 157.103 of this chapter and letters authorizing a project sponsor to proceed with construction.

(11) Issue and sign letters dismissing any protest filed pursuant to § 157.205(g) of this chapter which does not make a *prima facie* showing of a material issue of fact or law.

* * * * *

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

34. The authority citation for part 380 is revised to read as follows:

Authority: 42 U.S.C. 4321–4370a; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR, 1978 Comp., p. 142.

35. In § 380.3, paragraph (c)(2) is revised to read as follows:

§ 380.3 Environmental information to be supplied by an applicant.

* * * * *

(c) *Content of an applicant's environmental report for specific proposals.* * * *

(2) *Natural gas projects.* (i) For any application filed under the Natural Gas Act for any proposed action identified in §§ 380.5 or 380.6, except prior notice filings under §§ 157.208 through 157.218 of this chapter, the reports identified in § 157.14(a)(6–a) of this chapter and, if necessary, § 157.14(a)(6–b) of this chapter.

(ii) For prior notice filings under §§ 157.208 or 157.216 of this chapter, the report described by §§ 157.208(c)(9) or 157.216(c)(5)(ii) of this chapter, respectively.

(iii) For any application subject to § 380.3(c)(2)(i), the applicant may file a draft environmental assessment based § 157.14 (a)(6–a) and (a)(6–b) of this chapter, in conformance with the staff's guidelines for preparation of such a document. An applicant may submit a draft environmental assessment only if it has previously attended prefiling meetings at which it has discussed with the Commission staff the environmental study plan to be used by the applicant or its contractor to prepare the draft environmental assessment.

36. In § 380.4, paragraphs (a)(21) and (a)(27) are revised, and new paragraphs (a)(31) through (a)(37) are added, to read as follows:

§ 380.4 Projects or actions categorically excluded.

(a) *General rule.* * * *

(21) Approvals of blanket certificate applications and prior notice filings under § 157.204 and §§ 157.208 through 157.218 of this chapter;

* * * * *

(27) Sale, exchange, storage, or transportation of natural gas under sections 4, 5, and 7 of the Natural Gas Act that requires no construction of facilities;

* * * * *

(31) Abandonment of natural gas facilities by sale where natural gas service would be continued;

(32) Presidential Permits to operate facilities at the national border of the United States that do not involve the construction of new facilities;

(33) Complaints that do not raise environmental issues;

(34) Declaratory orders disclaiming jurisdiction;

(35) Abandonment of any natural gas service (such as transportation, sale or storage) that does not involve abandonment of natural gas facilities;

(36) Acquisition of facilities;

(37) Except for projects involving LNG facilities and new underground storage facilities; projects which have been shown to fully comply with the requirements of § 157.103 of this chapter.

* * * * *

37. In § 380.5, paragraph (b)(2) is removed, paragraphs (b)(3) through (b)(13) are redesignated as paragraphs (b)(2) through (b)(12), and newly redesignated paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 380.5 Actions that require an environmental assessment.

* * * * *

(b) * * *

(2) Abandonment or reduction of natural gas service under section 7 of the Natural Gas Act unless categorically excluded under § 380.4 (a)(21), (a)(28), (a)(29), (a)(35) or (a)(37);

(3) Except as identified in §§ 380.4(a)(37) or 380.6, conversion of existing depleted oil or natural gas fields to underground storage fields under section 7 of the Natural Gas Act;

* * * * *

§ 380.6 [Amended]

38. In § 380.6, paragraph (a)(3) is amended by removing the word "Major" and inserting in lieu thereof the words "Except as noted in § 380.4, major".

§ 380.9 [Amended]

39. In § 380.9, paragraph (b) is amended by removing the words "Public Reference Room at 825 North Capitol Street NW., room 1000" and inserting in lieu thereof the words "Public Information Office, room 3104, 941 North Capitol Street N.E."

40. New §§ 380.12, 380.13, and 380.14 are added to Part 380 to read as follows:

§ 380.12 Requirements for preparing environmental reports for certificate applications under the Natural Gas Act.

(a)(1) This section identifies the environmental data required for an application that proposes the construction, operation, or abandonment of any facilities identified in § 380.3(c)(2)(i). The environmental report required to be submitted in support of a certificate application consists of twelve resource reports which describe specific environmental resource areas and topics that must be addressed.

To the extent the requirements of § 157.103 of this chapter have been met, as required by § 157.103(d) of this chapter and as described in the applicant's standard compliance filing of Exhibit F–I (see § 157.14(a)(6–a) of this chapter), the contents of certain specified resource reports need not be provided, unless the project is listed in § 380.6 as normally requiring an EIS.

(2) The resource report descriptions have been prepared to cover a wide range of transactions. The detail of each report should be commensurate with the complexity of the transaction and its potential for environmental impact. Applicants should check the description of each resource report to determine which reports or what information may be deleted. However, all topics specified in the reports must be addressed or their omission justified unless the report description states that the data is not required for that project. If material required for one report is provided in another report or in another exhibit, it may be incorporated by reference.

(3) Paragraph (c)(1) of this section requires information on related nonjurisdictional facilities. These facilities will be included in the environmental analysis if they meet the standards set forth in § 157.103(b) of this chapter.

(b) The resource reports must:

(1) Address existing conditions or resources which might be directly or indirectly affected by the proposed project. Direct and indirect effects are those effects which can be discerned as occurring primarily as a result of the proposed action. Examples include, but are not limited to:

(i) The impact of pipeline construction (direct impact) or use of a pipe storage yard would be evaluated to the extent it would be developed or expanded as a result of the proposed project, but the manufacture of pipe (indirect impact) would not;

(ii) The impact of construction workers moving into the project area (indirect impact) would be evaluated, but not the impact of their leaving present homes. The impact of their subsequently departure from the construction area would be considered;

(2) Identify all significant short-term and long-term environmental effects expected to occur if the project is approved;

(3) Identify the effects of construction, operation (including maintenance and malfunctions), and termination of the proposed project, as well as cumulative effects resulting from existing or reasonably foreseeable projects;

(4) Identify all measures proposed to enhance the environment or to avoid, mitigate, or compensate for adverse effects of the project, including engineering and design, contract specifications, construction techniques, monitoring, and restoration; and

(5) Show consultations with Federal land managing agencies with jurisdiction over land that might be affected by the project.

(c) The twelve resource reports are:

(1) *General project description.* This report describes facilities, special construction and operation procedures, construction timetables, future plans, compliance with regulations and codes, and permits that must be obtained. To the extent not covered in the body of the application or in other exhibits, this report must contain:

(i) A complete description and location maps of all facilities (including auxiliary facilities) to be constructed, modified, abandoned, replaced, or removed, including, to the extent they are known, related construction and operational support activities and areas such as maintenance bases (field/district offices), staging areas, communications towers, powerlines, and new access roads. This description must include the length and size of all pipeline(s) and, for aboveground facility sites, the land requirements and type(s) of facilities that would be installed. In addition to the single copy required by § 157.6(a)(2) of this chapter, two original sets of USGS topographic maps and aerial photographs should be sent directly to OPPR. OPPR should be consulted for the appropriate format for aerial photography.

(ii) Rights-of-way, new access roads, other linear construction areas, and pipe storage areas must be located on current, original USGS 7.5-minute-series topographic maps or other maps of equivalent detail. Nonlinear construction areas must be shown on maps at a scale of 1:3,600 or larger keyed graphically and by milepost to the right-of-way maps. Original aerial photographs not more than one year old, with a scale of 1:6,000 or larger, showing the proposed pipeline routes and major aboveground facility locations must also be provided. All maps and aerial photographs must identify pipeline mileposts. Similar information should be supplied for any alternatives that were considered to the proposed locations;

(iii) When new or additional compression is proposed, large scale (1:3,600 or greater) plot plans of each compressor station, referenced to a readily identifiable point on the USGS maps required above must be included. The topographic map and plot plan must identify the location of noise-sensitive areas (schools, hospitals, or residences) near the compressor station. Noise-sensitive areas, existing and proposed compressor and auxiliary buildings, access roads, and the limits of the areas to be permanently disturbed within the plot plan area must be shown.

(iv) When aboveground facilities are proposed to be abandoned, all such facilities, how they would be abandoned, and how the site would be restored must be identified.

(v) A description of proposed construction methods (including restoration) to be used in special areas, such as rugged topography, residential areas, active croplands, areas where the pipeline would be located longitudinally under roads, and areas where explosives are likely to be used, as well as an identification by milepost of each type of construction to be used;

(vi) Where feasible, the report should note the excavation depth(s) for pipelines and foundations of significant aboveground facilities such as compressor, meter, and regulator stations;

(vii) Unless provided in resource report 5, a description of estimated project workforce requirements, including the number of pipeline construction spreads to be used, average workforce requirements for each pipeline construction spread and each meter or compressor station, estimated duration of construction from initial clearing activities to final restoration, and number of personnel to be hired for operation of the proposed project.

(viii) A description of current or reasonably foreseeable plans for future expansion of facilities, including additional land requirements and the compatibility of those plans with the current proposals;

(ix) Identification of all Federal, regional, state, and local permits, licenses, and certificates needed to complete the proposed action. Describe the status of such permits. Identify any environmental mitigation requirements specified in any permits that have been issued or that have been proposed in any permit application, if not specified elsewhere in these reports;

(x) A description of all related nonjurisdictional facilities that would be constructed in association with the proposed project. This description should be equivalent to the discussion in paragraph (c)(1)(i) of this section, and the facilities should be shown on the same maps and photographs specified in paragraphs (c)(1) (i) and (ii) of this section, or on additional maps or photographs if that is not practical; and

(xi) A summary of the Federal, state, and local review processes for related nonjurisdictional facilities. Identify authorization and approvals that have been obtained. Identify the issuing authority, date of issuance, and authorization or permit number.

(2) *Resource report on water use and quality.* This resource report is required for all applications except those involving only facilities within the improved areas of an existing compressor, meter, or regulator station, unless the project complies with § 157.103(c) (1), (6), (7), (11) (iii) through (vii), and (12) (ii), (iii), (vi), and (vii) of this chapter. It will discuss water quality and contain data sufficient to determine the expected impact of the project and the effectiveness of proposed mitigative, enhancement, or protective measures. The resource report must contain:

(i) A description by milepost of all perennial waterbodies and municipal water supply or watershed areas to be crossed. For each waterbody crossing, identify the approximate width, the state water quality classifications, any known potential pollutants present in the sediments, and any potable water intake sources within three miles downstream of any proposed stream crossing. For crossings of streams greater than 100 feet in width, identify width, depth and flow rates;

(ii) The applicant must adopt the Commission's "Stream and Wetland Construction and Mitigation Procedures" as required by § 157.103(c)(1) of this chapter, or provide its own alternative plan. An applicant's alternative plan must identify which portions of the Commission's procedures it does not adopt, explain why, and propose substitute measures that provide equal or greater protection to the resource. In addition, a description of the site-specific construction techniques which would be used at each river crossing must be provided, as required by § 380.14(b)(4)(ix);

(iii) A description of typical staging area requirements at both major and minor streams, and wetland crossings. Identify any streams or wetlands where staging areas are likely to be more extensive;

(iv) A description by milepost of all wetland crossings, as listed on National Wetland Inventory (NWI) maps or state wetland regulation maps. Where NWI or state wetland maps are not available, wetland areas crossed by the proposed project should be identified based on interpretation of USGS topographic maps, SCS soil surveys, and current aerial photographs, as well as aerial overflights and field inspections. For each crossing, identify the wetland classification specified by the Fish and Wildlife Service or the state, and the length of the crossing. Provide copies of NWI maps clearly showing the proposed route and mileposts. Where NWI maps are not available, provide the

appropriate state wetland maps, or USGS maps depicting wetlands identified by the applicant using the resources discussed above. The number of copies required is the same as that required under paragraph (c)(1) of this section;

(v) A description of aquifers within excavation depth in the project area, identifying the depth, current and proposed use, water quality and average yield, and any known or suspected contamination problems;

(vi) Identification of the specific locations, and method and rate of withdrawal and discharge of hydrostatic test water and the quantity required. Any suspended or dissolved material likely to be picked up by the water through contact with the pipeline should be described, particularly if any existing pipelines are being retested. Also describe any chemical or physical treatment of the pipeline for drying, cleaning, or other purposes before or after installation in the trench, and discuss waste products generated and disposal methods to be used for them;

(vii) A description of detailed mitigation measures proposed to reduce the potential for adverse impacts to surface water or groundwater quality if not covered in § 380.14 of this chapter (*e.g.*, for well drilling);

(viii) A description of the location of all known public groundwater supply wells located within 150 feet of the proposed pipeline. Provide locations of sole-source aquifers and well-head protection areas crossed by the proposed pipeline facilities; and

(ix) A list of all publications, reports, and other literature or communications, including agency contacts, that were cited or relied upon to prepare the report. The list of referenced communications and agency contacts should include the name and title of the person contacted, their affiliation, and telephone number.

(3) *Resource report on fish, wildlife, and vegetation.* This resource report is required for all applications except those involving only facilities within the improved area of an existing compressor, meter, or regulator station, unless the project complies with § 157.103(c) (1), (3), (6), (7), (11) (i) through (iv), and (12) (ii) and (iii) of this chapter. It describes aquatic life, wildlife, and vegetation in the vicinity of the proposed project; expected impacts of the project on these resources; and proposed mitigation, enhancement or protection measures. The resource report must contain:

(i) A description of warmwater, coldwater, and saltwater fisheries (commercial and recreational) in the affected area and any associated significant habitats such as spawning or rearing areas and estuaries;

(ii) A description of all terrestrial habitats, including wetlands and typical wildlife habitats that might be affected by the proposed action, specifying typical species with commercial, recreational, and aesthetic value. This should include a description of significant wildlife habitats that might be affected;

(iii) A description of all vegetation cover types that would be affected in the area of the proposed action, including unique ecosystems or communities such as remnant prairie or old-growth forest, or significant individual plants, such as old-growth specimen trees;

(iv) A description of the impact of construction and operation on aquatic and terrestrial species and habitats in the area, including a discussion of the possibility of a major alteration to ecosystems and any potential impact on state-listed endangered or threatened species. Provide an assessment of any cumulative effects of the proposed action and retained alternatives in combination with other existing or proposed projects. Provide a detailed discussion of the impact of maintenance, clearing and/or treatment of the project area on fish, wildlife, and vegetation, including specific areas of significant habitats or communities;

(v) A description of detailed, site-specific mitigation measures to minimize impacts on fisheries, wildlife, and vegetation that are in addition to, or alternatives to, those techniques or procedures discussed in §§ 380.13 and 380.14 of this chapter, such as: routing or scheduling construction of water crossings to minimize impact on reproduction, wintering, and migration of wildlife; construction methods which would minimize disturbance of riparian and bottomland vegetation, wetlands, shellfish beds, coldwater fisheries, and other important habitat; revegetation measures designed to improve wildlife habitat; and planning of routine maintenance to minimize disruption to wildlife;

(vi) Copies of all correspondence not provided pursuant to paragraph (c)(3)(v) of this section, containing recommendations, and the applicant's response to each recommendation, from appropriate Federal and state fish and wildlife agencies to avoid or limit impact on wildlife, fisheries, and vegetation; and

(vii) A list of all publications, reports, and other literature or communications, including agency contacts, which were cited or relied upon to prepare the report. The list of referenced communications and agency contacts should include the name and title of the person contacted, their affiliation, and telephone number.

(4) *Resource report on cultural resources.* This resource report must be filed with the application, unless the project complies with the requirements of § 157.103(g) of this chapter and has been found to have no effect on eligible properties as defined therein. If compliance with § 157.103(g) of this chapter is not complete at the time the application is filed, the report must be filed as supplementary information for review and approval by the Director prior to construction of any facilities. The report may be provided in phases as necessary. The only acceptable cause for delaying filing of complete Phase 1 (identification) or Phase 2 (evaluation) reports until after filing the application is denial of access to private properties by landowners. In such circumstances, supplemental Phase 1, 2, and 3 (proposed mitigation) reports for those inaccessible lands may be submitted after certification.

(i) If it is determined that an effect on an eligible property cannot be avoided, as discussed in § 157.103(g)(5)(xii) through (xiii) of this chapter, an applicant must supply Phase 3 treatment/mitigation plans developed according to the requirements discussed below. The Phase 3 plan(s) must also be supplied to the appropriate SHPOs.

(ii) The Phase 3 plan(s) is a proposal that explains and justifies the need for treatment or data recovery. The plans will be incorporated into the Commission's documentation that is filed with the Advisory Council on Historic Preservation in accordance with 36 CFR part 800. The purpose of the Phase 3 plan(s) is to explain the rationale behind a treatment effort; specify how research questions are answerable by a particular excavation or documentation strategy and define the scope of the effort; identify methods, techniques, and procedures; provide a schedule for the effort; and present these data in a standardized format to permit comparison of the proposal with the results of treatment. The plan will address proposed treatment that may include excavation, measured drawings, archival documentation, and photographic recording of National Register listed or eligible sites, buildings, structures or districts that cannot be avoided during project construction. This proposal shall include:

(A) A discussion of efforts made to eliminate or minimize adverse effects to

the site(s), building(s), structure(s), or district(s) scheduled for treatment;

(B) If avoidance of the eligible property is proposed to be accomplished by boring or directional drilling beneath the property, a discussion of how this practice will avoid the property, a plan for monitoring the operation, a contingency data recovery plan should the boring or drilling procedure fail, and either the long-term measures that will be established to preserve the property, or a plan for data recovery, if necessary;

(C) A research strategy which defines and justifies explicit goals and methodologies for recovering specific classes of information about the cultural resource. This strategy shall address the National Register significance of the site, building, structure, or district, research problems to be investigated, discussion of how the data recovery will increase knowledge, the amount and kinds of information to be gathered, methods to be used, and relationship of the treatment plan to specific regional cultural resources research models or plans (including the SHPO's plan);

(D) The Phase 3 plan(s) shall be consistent with the guidance established in the Advisory Council on Historic Preservation's "Treatment of Archaeological Properties: A Handbook" (November 1980) and "Consulting about Archaeology under Section 106" (September 1990);

(E) The SHPO's comments on the proposed treatment or data recovery plan, including any recommendations for alternative approaches. The SHPO's comments may be filed separately if they are unavailable at the time of completion of the Phase 3 plan(s);

(F) Any comments from Federal land-managers or local groups such as Native Americans with historical ties to the resources, and a discussion of how the plan responds to those comments;

(G) The curricula vitae and a discussion of the responsibilities of all supervisory personnel involved in the study. These individuals shall meet the standards of the Secretary of the Interior as published in "Archaeology and Historic Preservation; the Secretary of the Interior's Standards and Guidelines," which is available from the Commission's Public Information Office, room 3104, 941 N. Capitol St., NE., Washington, DC 20426; and

(H) A schedule for the in-depth research, fieldwork, analysis, and production of the final treatment or data recovery report.

(iii) A final treatment or data recovery report shall be filed upon completion and should be consistent with the Secretary of the Interior's Standards and Guidelines for Phase 3 documentation. Because the results of these Federally required studies must be made available to the full range of potential users within one year of completion of the final reports, one copy must be sent to the Anthropological Archives, Smithsonian Institution. The Commission encourages dissemination of the reports to research institutions such as Anthropology Departments at state colleges and universities. It also encourages the preparation and distribution of summary reports intended for the public to be distributed to state and local libraries, and other learning centers. Finally, it encourages the publication of results in professional journals.

(5) *Resource report on socio-economics.* This resource report is required only if significant aboveground facilities, such as conditioning or liquefied natural gas (LNG) plants are proposed. It identifies and quantifies the impacts of constructing and operating the proposed project on employment, population, housing, per capita income, local governmental services, local tax revenues and other factors affecting the towns and counties in the vicinity of the proposed project. The resource report must include:

(i) A description of the socioeconomic impact area,

(ii) An evaluation of the impact of any substantial in-migration of people on the impact area's governmental facilities and services, such as police, fire, health and education, and applicant's plans to reduce the impact on the local infrastructure during construction;

(iii) On-site manpower requirements and payroll during construction and operation;

(iv) Numbers of construction personnel who:

(A) Currently reside within the impact area;

(B) Would commute daily to the construction site from places situated outside the impact area; and

(C) Would relocate on a temporary basis within the impact area;

(v) A determination of whether the existing housing within the impact area is sufficient to meet the needs of the additional population;

(vi) Numbers and types of residences and businesses that would be displaced by the project, procedures to be utilized to acquire these properties, and types and amounts of relocation assistance payments;

(vii) A fiscal impact analysis evaluating incremental local government expenditures in relation to incremental local government revenues that would result from construction of the project. Incremental expenditures include, but are not limited to, school operating costs, road maintenance and repair, public safety, and public utility costs; and

(viii) A list of all publications, reports, and other literature or communications that were cited or relied upon to prepare the report. The list of communications and agency contacts should include the name and title of the person contacted, their affiliation, and telephone number.

(6) *Resource report on geological resources.* This resource report is required for all applications involving LNG facilities except those involving only facilities within the boundaries of existing aboveground facilities, such as a compressor, meter, or regulator station, unless the project complies with § 157.103(c)(12) (i), (vi), and (vii) of this chapter. It describes geological resources and hazards in the project area that might be directly or indirectly affected by the proposed action or that could place the proposed facilities at risk, the potential effects of those hazards on the facility, and methods proposed to reduce the effects or risks. The resource report must include:

(i) A description by milepost of mineral resources crossed which are currently or potentially exploitable;

(ii) A description by milepost of existing and potential geological hazards and areas of nonroutine geotechnical concern, such as earthquakes, active faults, areas susceptible to soil liquefaction, planned, active and abandoned mines, and areas of potential ground failure, such as subsidence, slumping, and landsliding. The hazards posed to the facility from each one must be discussed;

(iii) A description of how the proposed project would be located or designed to avoid or minimize adverse effects to the resources or risk to itself, including all geotechnical investigations and monitoring which would be conducted before, during, and after construction. The applicant must direct attention to the potential for blasting to affect water wells, springs, wetlands, and structures;

(iv) If surface mines are to be crossed, specify methods to be used to prevent acidic runoff along the right-of-way and the potential that the project may hinder mine reclamation or expansion efforts;

(v) If the application involves a LNG facility located at a site in zones 2, 3, or 4 of the Uniform Building Code's Seismic Risk Map of the United States, or where there is the potential for surface faulting or liquefaction, a report on earthquake hazards and engineering shall be prepared in conformance with the guidelines contained in "Data Requirements for the Seismic Review of

LNG Facilities," NBSIR 84–2833. This working document may be obtained from the Commission's Office of Pipeline and Producer Regulation, 825 N. Capitol St., NE., Washington, DC 20426;

(vi) When the application is for underground storage facilities, a description of how the applicant would control and monitor the drilling activity of others within the boundaries of the field and buffer zone. Also, describe how the applicant would monitor potential effects of the operation of any adjacent storage or production facilities on the proposed facility. Describe the measures taken to locate and determine the condition of all old wells within the field and buffer zone and how the applicant would reduce risk from failure of known and undiscovered wells. Safety and environmental safeguards required by state and Federal drilling regulations should also be specifically identified and discussed; and

(vii) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report. The list of communications and agency contacts should include the name and title of the person contacted, their affiliation, and telephone number.

(7) *Resource report on soils.* This resource report is required for all applications except those involving only facilities at an existing compressor, meter, or regulator station, unless the project complies with §§ 157.103(c)(12)(v) of this chapter and § 380.13 in its entirety. It describes the soils that would be affected by the proposed project, the effect on those soils, and measures proposed to minimize or avoid impact. The resource report must include:

(i) A list by milepost of the soil associations crossed by the proposed facilities. A description of the erosion potential, fertility and drainage characteristics of each association. Where sites for aboveground facilities of greater than five acres would be acquired, the report should list the soil series, percentage of the property comprised of each series, percentage of each series which would be permanently disturbed, and describe the characteristics of each soil series and which series are classified as prime or unique farmland by the U.S. Department of Agriculture;

(ii) A description of the impact of the proposed action resulting from: soil erosion due to water, wind or loss of vegetation; soil compaction and damage to soil structure resulting from movement of construction vehicles; wet soils and/or soils with poor drainage which are especially prone to structural damage; damage to drainage tile systems due to movement of construction vehicles and trenching activities; and interference with the operation of agricultural equipment due to the probability of large stones or blasted rock occurring on or near the surface as a result of construction. Project areas should be identified by their soil series and by milepost location. Identify by milepost cropland and residential areas where loss of soil fertility due to trenching and backfilling could occur;

(iii) A description of mitigation proposed to reduce the potential for adverse impact to soils or agricultural productivity. The applicant must adopt the Commission's "Erosion Control, Revegetation, and Maintenance Plan" described in § 380.13, as required by § 157.103(c)(1) of this chapter. Include in this resource report an overall description of proposed mitigation in addition to or as alternatives to those techniques or procedures discussed in § 380.13. An applicant's alternative plan must identify which portions of the Commission's procedures it does not adopt, explain why, and propose specific substitute measures to provide equal or greater protection to the resource; and

(iv) A list of all publications, reports, and other literature or communications, including agency contact, which were cited or relied upon to prepare the report. The list of communications and agency contacts should include the name and title of the person contacted, their affiliation, and telephone number.

(8) *Resource report on land use, recreation and aesthetics.* This resource report is required for all applications except those involving only project complies with §§ 157.103(c) (5), (8), (11) (i, ii, viii, and ix), (12)(iv), (13), and (14) of this chapter. It describes the existing uses of the lands on, or within one-quarter mile of, a proposed new aboveground facility site adjacent to or crossed by the proposed pipeline, and changes to those land uses that would occur if the proposed project is approved. The report may reference the discussions of land uses in other sections of this exhibit. It includes measures proposed to mitigate adverse effects, including protection and enhancement of existing land use. The resource report must include:

(i) A description of land requirements indicating the width and acreage requirements of all construction and permanent rights-of-way and the acreage required for each proposed plant and/or operational site, including injection or withdrawal wells. List locations by milepost where the proposed right-of-way would be adjacent to existing rights-of-way of any kind. Where these existing rights-of-way would be used for a portion of the construction or operation right-of-way, identify the overlap and how much additional width would be required for both construction and operation. The description must identify the total amount of land to be purchased or leased for each aboveground facility, the amount of land that would be disturbed for construction and operation of the facility, and the use of the remaining land not required for project operation. Identify the size of typical staging areas and expanded work areas, such as those at railroad, road, and waterbody crossings, and the size and location of all pipe storage yards;

(ii) A description of existing land use crossed by the proposed pipeline which identifies miles of land presently used for commerce, industry, mining, quarrying, recreation, residence, cropland, pastureland, forest, and open space. A description of existing land use on and adjacent to each proposed plant and/or operational site. Planned development, if known, should be described, the timeframe for development should be identified, and proposed coordination to minimize impact should be identified. Identify by milepost and length of crossing of, and the direct effect of each proposed plant and/or operational site on sugar maple stands, all orchards and nurseries, landfills, operating mines, state wild and scenic rivers, state or local designated trails, nature preserves, game management areas, remnant prairie, old-growth forest, national or state forests, parks, golf courses, designated natural, recreational or scenic areas, or registered natural landmarks, Native American religious sites and reservations, lands identified under the Special Area Management Plan of the Office of Coastal Zone Management, National Oceanic Atmospheric Administration, and lands owned or controlled by Federal or state agencies or private preservation groups. Identify by milepost all residences and business establishments within 50 feet of the edge of the proposed pipeline construction right-of-way and the distance of the residential or commercial building from that edge. Provide survey drawings or alignment sheets, if available, to illustrate the location of the facilities in relation to the buildings;

(iii) A description of any areas crossed by the proposed pipeline or at or adjacent to each proposed plant and/or operational site which are included

in, or are designated for study for inclusion in:

(A) The National Wild and Scenic Rivers System (16 U.S.C. 1271);

(B) The National Trails System (16 U.S.C. 1241); or

(C) A wilderness area designated under the Wilderness Act (16 U.S.C. 1132);

(iv) A description of the impact of the project on present use of the affected area, including commercial use, mineral resources, recreational areas, public health and safety, and the aesthetic value of the land and its features. Describe any temporary or permanent restrictions on land use resulting from the project.

(v) A description of proposed mitigation for all special use areas identified under paragraph (c)(8)(ii) of this section. In residential areas describe proposed typical mitigation measures for each residence within 50 feet of the edge of the pipeline construction right-of-way, as well as any proposed residence-specific mitigation. Describe how private property would be restored (fences, driveways, stone walls, sidewalks, and septic systems, for example). Describe compensation plans for temporary and permanent rights-of-way and the eminent domain process for the affected areas;

(vi) A description of measures to mitigate the aesthetic impact of the facilities; and

(vii) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report. The list of communications and agency contacts should include the name and title of the person contacted, the affiliation (if appropriate), and telephone number.

(9) *Resource report on air and noise quality.* This resource report is required for applications involving new compressor facilities (at new or existing stations), unless the project complies with §§ 157.103(c)(2) and (13) of this chapter, and for all new liquefied natural gas facilities. It identifies the effects of the project on the existing air quality and noise environment and describes any proposed measures to mitigate the effects. The noise attributable to any new or additional compressor facility must not exceed a day-night sound level (Ldn) of 55 dBA at any noise-sensitive area identified in resource report 1. The resource report must include:

(i) A description of the existing air quality, including background levels of nitrogen dioxide and any other criteria pollutants which may be emitted above EPA-identified significance levels;

(ii) A quantitative description of the existing noise levels at the noise-sensitive areas identified in resource report 1. Existing noise levels must be reported as the Leq (day), Leq (night) and Ldn and include the basis for the data or estimates. For proposed new compressor station sites without existing equipment in operation, the existing ambient sound environment should be measured or estimated based on current land uses and activities. For existing stations, include a sound level survey at the site property line and nearby noise-sensitive areas while the compressors are operated at full load. Include a plot plan identifying the noise measurement locations and identify the time of day, duration of measurements, weather conditions, windspeed and direction, engine load, and other noise sources present for each measurement;

(iii) An estimate of the impact of the proposed project on air quality, including how regulatory standards in effect for the area would be met. Provide the emission rate of nitrogen oxides from the existing and proposed facilities, expressed in pounds per hour and tons per year for maximum operating conditions, including supporting calculations, emission factors, fuel consumption rates, and annual hours of operation. For major sources (as defined by the EPA), provide copies of any applications to the EPA (or the designated state air pollution control agency) for permits to construct or applicability determinations under regulations for the prevention of significant air quality deterioration and subsequent determinations, when available.

(iv) A quantitative estimate of the impact of the proposed project on the noise levels at the noise-sensitive areas identified in resource report 1. The estimate should include, step-by-step supporting calculations, far-field sound level data for maximum facility operation, and the source of the data. Supporting calculations should be provided in the resource report with sufficient detail and explanation to facilitate a thorough review and confirmation of results. Information to be provided as part of the supporting calculations includes: sound pressure levels for unmuffled engine inlets and exhausts, engine casings, and cooling equipment; dynamic insertion loss for all mufflers; sound transmission loss for all compressor building components, including walls, roof, doors, windows, and ventilation openings; sound attenuation from the station to nearby noise-sensitive areas; and the manufacturer's name, model number, performance rating, and description of each noise source and noise control component to be employed at the proposed compressor station. Far-field sound level data measured from similar units in service elsewhere, when available, may be substituted for manufacturer's far-field sound level data. Show that the proposed project complies with applicable noise regulations and will not exceed a day-night sound level (Ldn) of 55 dBA at any noise-sensitive areas. If specific noise control equipment has not been chosen at the time the report is prepared, the report must include a schedule for submitting the data prior to the desired certification date;

(v) A description of measures and manufacturer's specifications for equipment proposed to mitigate impact to air and noise quality, including emission control systems, installation of filters, mufflers, or insulation of piping and buildings, and orientation of equipment away from noise-sensitive areas; and

(vi) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report. The list of communications and agency contacts should include the name and title of the person contacted, their affiliation, and telephone number.

(10) *Resource report on alternatives.* This resource report is required for all applications. It describes alternatives to the project and a comparison of their environmental impacts to those of the proposal. The report should discuss the procedure used to arrive at the proposed action, starting with the broadest feasible objectives and progressively narrowing the alternatives to a specific action at a specific location. This procedure should include the decision criteria used, the information weighed, and an explanation of the conclusion at each decision point. The decision criteria must show how environmental benefits and costs were weighed against economic benefits and costs, and technological and procedural constraints. Describe the timeliness and the environmental consequences of each alternative discussed. The resource report must contain:

(i) A discussion of the "no action" alternative and the potential for accomplishing the proposed objectives through the use of other systems, energy conservation, or realistic energy alternatives such as artificial gas, oil, coal, or electricity. Provide an analysis of the relative environmental benefits and costs;

(ii) A description of all alternative routes or locations considered for each

facility, including a description of the environmental characteristics of each route or site, and the environmental, technical, or economic reasons for rejecting it. Provide the location of such alternatives on maps of sufficient scale to depict their location and relationship to the proposed action, and for pipelines their relationship to existing rights-of-way;

(iii) A description of all alternative locations or routes considered reasonable, but not preferable, to each facility including a description of environmental characteristics of each route or site and the environmental, technical, or economic reasons for rejecting it. Provide environmental characteristics used as resource decision factors in comparative tables for the alternative and proposed action. Provide the location of any alternatives considered reasonable but not preferable on the same maps required in paragraph (c)(1)(ii) of this section; and

(iv) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report. The list of communications and agency contacts should include the name and title of the person contacted, their affiliation, and telephone number.

(11) *Resource report on reliability and safety.* This resource report is required for applications involving new or recommissioned LNG facilities. Information previously submitted to the Commission need not be refiled, provided the applicant verifies that the information is still valid. It addresses the potential hazard to the public from failure of facility components resulting from accidents or natural catastrophes, how these events would affect reliability, and what procedures and design features have been used to reduce potential hazards. The resource report must contain:

(i) A description of measures, including equipment, training, and liaison with local authorities, to be used to protect the public from failure of the proposed facilities as a result of accidents or natural catastrophes;

(ii) A discussion of hazards, the environmental impact, and service interruptions which could reasonably ensue from failure of the proposed facilities as a result of accidents or natural catastrophes;

(iii) A discussion of design and operational measures to avoid or reduce risk associated with accidents or natural hazards such as violent storms, floods, landslides, and earthquakes;

(iv) A discussion of contingency plans for maintaining service or reducing downtime as a result of accidents or natural catastrophes;

(v) A description of measures to exclude the public from hazardous areas. Discuss measures to minimize problems arising from malfunctions and accidents (with estimates of probability of occurrence). Identify standard procedures for protecting services and public safety during maintenance and breakdowns; and

(vi) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report. The list of communications and agency contacts should include the name and title of the person contacted, their affiliation, and telephone number.

(11) *Resource report on engineering and design material.* This resource report is required for construction of new LNG facilities, or the recommissioning of existing LNG facilities. Information previously submitted to the Commission need not be refiled, provided the applicant verifies that the information is still valid. This report shall contain detailed engineering and design material, including:

(i) A detailed plot plan showing the location of all major components to be installed, including compression, pretreatment, liquefaction, storage, transfer piping, evaporization, truck loading, vent stacks, pumps, and auxiliary or appurtenant service facilities;

(ii) A detailed layout of the fire protection system showing the location of fire water pumps, piping, hydrants, hose reels, dry chemical systems, high expansion foam systems, and auxiliary or appurtenant service facilities;

(iii) A layout of the hazard detection system showing the location of combustible-gas detectors, fire detectors, heat detectors, smoke or combustion product detectors, and low temperature detectors. Identify those detectors that activate automatic shutdowns, and the equipment that would shutdown. Include all safety provisions incorporated in the plant design, including automatic and manually activated emergency shutdown (ESD) systems;

(iv) A detailed layout of the spill containment system showing the location of impoundments, sumps, subdikes, channels, and water removal systems;

(v) Manufacturer specifications, drawings, and literature on the fail-safe shut-off valve for each loading area at a marine terminal (if applicable);

(vi) A detailed layout of the fuel gas system showing all taps with process components;

(vii) Copies of company, engineering firm, or consultant studies of a conceptual nature that show the engineering planning or design approach to the construction of new facilities or plants;

(viii) Engineering information on major process components related to paragraphs (c)(12) (i) through (vi) of this section, which include (as applicable) function, capacity, type, manufacturer, drive system (horsepower, voltage), operating pressure, and temperature;

(ix) Manuals and construction drawings for LNG storage tank(s);

(x) Up-to-date piping and instrumentation diagrams. Include a description of the instrumentation and control philosophy, type of instrumentation (pneumatic, electronic), use of computer technology, and control room display and operation. Also, provide an overall schematic diagram of the entire process flow system;

(xi) Engineering information on the plant's electrical power generation system, distribution system, emergency power system, interruptible power system, and battery backup system;

(xii) Identification of all codes and standards under which the plant (and marine terminal, if applicable) will be designed and any special consideration of safety provisions that were applied to the design of plant components;

(xiii) A list of all permits or approvals from local, state, Federal, or Indian agencies required prior to and during construction of the plant, and the status of each, including the date filed, the date issued, and any known obstacles to approval. Include a description of data records required for submission to such agencies and transcripts of any public hearings by such agencies. Also, provide copies of any correspondence relating to the actions by all, or any, of these agencies regarding all required approvals; and

(xiv) Identification of how each requirement for 49 CFR part 193 will be complied with, in particular, the siting requirements of 49 CFR part 193, subpart B. If applicable, vapor dispersion calculations from LNG spills over water should also be presented to ensure compliance with the U.S. Coast Guard's LNG regulations at 33 CFR part 127.

§ 380.13 Erosion control, revegetation, and maintenance plan.

(a) *Supervision and inspection.* (1) This plan applies to all certificated projects and projects subject to § 157.103 of this chapter. Paragraphs (b)

through (g) of this section require that judgment be applied in the field and must be implemented under the supervision of the Environmental Inspector(s) or other qualified professional(s) with knowledge of soil conditions and conservation plantings. All non-wetland areas disturbed by construction shall be treated in accordance with the appropriate portions of this plan. Deviations that involve less protective measures will only be permitted as certificated by the Commission or by the written approval of the Director, or his designee, upon an appropriate showing of need, unless specifically required by the Federal or state land-managing agency having control of the appropriate portions of the right-of-way. If less protective measures are specified by a Federal or state land-managing agency, a description of these measures shall be filed with the Commission. Except as a result of reconciliation pursuant to § 157.103(e) of this chapter, alternative provisions to this plan are not permitted for projects constructed pursuant to the Commission's regulations under NGPA section 311, or the automatic or prior notice authorizations contained in part 157, subpart F of this chapter.

(2) One Environmental Inspector is required for each construction spread used during construction. Environmental Inspectors shall have direct responsibility to enforce the following requirements. They shall have peer status with all other activity inspectors. Problems with contractor compliance shall be reported to the Environmental Inspector(s) for remedial action and Environmental Inspector(s) shall have the authority to order correction of acts that violate the environmental conditions of the FERC certificate. The duties of the Environmental Inspector include monitoring and/or supervision of the following:

(i) Compliance with the requirements of this section, the Stream and Wetland Construction and Mitigation Procedures of § 380.14 of this chapter, environmental conditions of the FERC certificate, and other environmental permits and approvals;

(ii) Marking of surface and subsurface drainage system locations;

(iii) Identification of stabilization needs in all areas;

(iv) Performance of appropriate tests of subsoil and topsoil to determine the extent of compaction across the disturbed right-of-way;

(v) Restoration of the soil profile as required;

(vi) Approval of imported soils used as fill and/or additional cover material;

(vii) Documentation of the temporary and permanent revegetation programs; and

(viii) Setting up a program for monitoring of crop productivity for not less than two years to determine the success of the restoration and the need for additional restoration where restoration is unsuccessful, and preparation of activity reports not less than quarterly during this period documenting problems identified by company personnel and/or landowners, and solutions identified and implemented;

(3) All reporting requirements of this section apply only to projects subject to a project-specific certificate. Within 30 days of the in-service date for the facilities, a summary shall be filed with the Commission detailing the following:

(i) Quantity and type of fertilizer for each pipeline segment;

(ii) The amount of lime (if required), seed, and mulch;

(iii) The equipment used to implement this plan;

(iv) The acreage treated;

(v) The dates of backfilling and seeding;

(vi) The number of landowners specifying other seeding requirements and a description of the requirements; and

(vii) If the in-service date precedes the seeding season, the materials and equipment to be used, and the dates for future seeding as well as the temporary stabilization measures to be used until permanent seeding takes place.

(b) *Preconstruction planning.* (1) Locate all drainage tiles prior to construction.

(2) Undertake an assessment of vegetation requirements for screening and landscaping of new compression, metering, and other major aboveground (*e.g.*, LNG plants) facilities. A report shall be submitted to Commission for review and approval prior to construction.

(3) Locate all roadway crossings/access points to ensure that safe and accessible conditions exist throughout the construction phase. Use of 50-foot-long crushed stone access pads, sweeping, culvert installation, matting and other forms of rutting protection shall be required subject to local permit conditions. If crushed stone access pads are used, stone shall be placed on a synthetic fabric in active agricultural areas.

(c) *Clearing and installation.* (1) Prevent the mixing of topsoil with subsoil by using topsoil segregation construction methods in annually cultivated or rotated croplands and in residential areas. In all actively cultivated agricultural lands, which includes permanent or rotated cropland and hayfields, topsoil shall be stripped from the trench line. For pipelines larger than 12-inch-nominal diameter, topsoil shall be stripped from either the full work area or from the trench and subsoil storage area (ditch plus spoilside method). At a minimum, topsoil will be segregated from beneath the subsoil storage area and the ditchline in all other improved areas and in other areas at the landowner's request. The area of topsoil storage for full work area segregation shall not exceed one-third the authorized nominal construction right-of-way width. In no case shall the maximum construction right-of-way, including topsoil storage, exceed 100 feet. The construction right-of-way for the ditch plus spoilside method shall be limited to 75 feet, including the topsoil storage area. For deep soils (*e.g.*, on floodplains and stream terraces), 12 inches of topsoil shall be segregated. Where soils are shallow to bedrock or have a stony subsoil, eight inches of topsoil segregation is recommended. If the amount of topsoil covering an area is less than the stated depth requirement, every effort should be made to segregate the entire topsoil layer. Remover stones greater than four inches in any shape or dimension from all segregated topsoil.

(2) Probe all drainage systems with a sewer rod or pipe snake to determine if damage has occurred. All tiles damaged during construction shall be flagged by the trench inspector, then repaired to their original or better condition. Filter-covered drain tiles should only be used after consultation with the local soil conservation authorities. Qualified specialists shall be used to ensure proper repairs and adequate probing/testing of the repaired drainage systems.

(3) Contact landowners and local soil conservation authorities to determine future drain tile locations. Increase depth of cover over the pipeline to four feet or more for new pipelines, if needed, so the pipeline is below the anticipated depth of drain tile installations that are likely to occur within three years of the proposed construction. For pipeline loops, the new pipeline shall be installed with at least the same depth of cover as the existing pipeline(s).

(4) Construct and maintain temporary slope breakers at the following spacing:

Slope (%)	Spacing (ft)
5–15	300
16–30	200

The outfall of all temporary slope breakers should be directed toward appropriate energy-dissipating devices and off the construction right-of-way, if possible. Temporary slope breakers shall be repaired at the end of each working day.

(5) Use temporary sediment barriers, such as silt fences and/or staked hay/straw bales, at the base of slopes adjacent to road crossings where vegetation has been disturbed within the following distances from the road:

Slope (%)	Spacing (ft)
<5	25
5–15	50
15–30	75
>30	100

These temporary sediment barriers should remain in-place until permanent revegetation measures have been judged successful by the Environmental Inspector.

(6) Use temporary sediment barriers, such as silt fences and/or staked hay/straw bales, at the base of slopes at all stream crossings, as required in the Stream and Wetland Construction and Mitigation Procedures of § 380.14 of this chapter and at the edge of the right-of-way to prevent siltation of farm ponds or other waterbodies downslope of the construction right-of-way. These temporary sediment barriers should remain in place until permanent revegetation measures have been judged successful by the Environmental Inspector.

(7) Construct trench breakers so that the bottom of one breaker is at the same elevation as the top of the next breaker down slope, unless this requires a breaker spacing of less than 50 feet, in which case breakers shall be spaced no further than 50 feet apart along the trench. The use of topsoil in trench breakers shall be prohibited.

(d) *Cleanup.* (1) Final clean-up (including final grading) and permanent erosion control measures, shall be completed within 10 days after the trench is backfilled, weather and soil conditions permitting. A travel lane may be left open to allow for access by construction traffic. This travel lane must be restored in accordance with this plan when access for construction or revegetation of the construction right-of-way is no longer required.

(2) Blast rock may be used to backfill the trench to the top of the existing bedrock profile in all areas. Excess loose rock larger than four inches shall be removed from at least the top twelve inches of soil in all rotated and permanent cropland and hayfields, as well as residential areas, pastures, and other areas at the landowner's request.

(3) Test for soil compaction, both topsoil and subsoil, across the project right-of-way in agricultural areas. Tests shall be done on the same soil type under the same moisture conditions and should include the following areas:

(i) Soil from undisturbed areas;

(ii) Soil stockpile areas;

(iii) The trenched zone;

(iv) The work area; and

(v) Any traffic areas related to the project. COE-style cone penetrometers or other appropriate devices may be used to test for compaction.

(4) Plow severely compacted or rutted agricultural areas with a paraplow (or similar "winged" plow), or arrange with the landowner to plant and plow under a "green manure" crop, such as alfalfa, to decrease soil bulk density and improve soil structure. If plowing is employed, the stripped construction right-of-way will be plowed first, followed by replacement of the segregated topsoil. Where necessary, additional plowing of the topsoil will be undertaken to prevent subsurface compaction. If subsequent construction and cleanup activities result in further compaction, additional tilling will be done.

(5) Remove construction debris from the right-of-way and grade it to leave the soil in the proper condition for planting.

(6) Permanent slope breakers shall be constructed and maintained in all areas, except cultivated areas and lawns, using the recommendations obtained from the local soil conservation authority. Divert concentrations of surface flow to a stabilized outlet using slope breakers with a two percent outslope that are directed toward appropriate energy-dissipating devices located off the right-of-way.

(7) Restore all turf, ornamental shrubs, and other landscaping in accordance with the landowner's request, or compensate the landowner in an amount equal to replacement of the damaged landscaping. Restoration work shall be performed by a landscaping contractor familiar with local horticultural and turf establishment practices.

(e) *Revegetation*—(1) *General requirements.* (i) Consult with local soil conservation authorities and obtain written recommendations to determine the appropriate soil pH for revegetation plantings. Apply the appropriate soil pH modifying agent in accordance with the recommendations to obtain the correct soil pH. This may include the application of agricultural limestone or sulfur-based compounds.

(ii) Fertilize permanent grass and/or legume plantings using recommendations obtained from the local soil conservation authority. If manure is applied, reduce the addition of nitrogen by half for each 10 tons of manure applied. Where possible, incorporate lime and fertilizer into the top two inches of soil.

(iii) Prepare the seedbed to a depth of three to four inches using appropriate equipment to provide a firm, smooth seedbed. If hydroseeding is to be done, scarify the seedbed to facilitate lodging and germination of seed.

(iv) The project area should be seeded in accordance with the written recommendations on seed mix and seeding dates obtained from the local soil conservation authority. Alternative seed mixes specifically requested by the landowner or land-managing agency may be used. Any soil disturbance that occurs outside of the recommended permanent seeding season or any bare soil left unstabilized by vegetation shall be treated as a winter construction problem and mulched. Except in lawns, all seeding of permanent cover should be done within the recommended seeding dates. If seeding cannot be done within those dates, temporary erosion control measures shall be used and seeding of permanent cover shall be done at the beginning of the next recommended seeding season.

(v) Seed slopes steeper than 33 percent immediately after final grading, weather permitting, subject to the limitations addressed in paragraph (e)(1)(iv) of this section.

(vi) Seed rights-of-way within six working days of final grading, weather permitting, subject to the limitations addressed in paragraph (e)(1)(iv) of this section.

(2) *Temporary erosion control.* (i) In the event that construction is completed more than 30 days before the seeding season for perennial vegetation, all areas adjacent to perennial and intermittent streams shall be mulched with three tons/acre of hay or straw, or its equivalent, for a minimum of 100 feet on either side of the waterway. The mulch shall be anchored with a mulch anchoring tool, as discussed in paragraph (e)(4) of this section.

(ii) Fertilize temporary plantings in accordance with the written recommendations of the local soil conservation authority. Where possible, incorporate soil pH modifier and fertilizer into the top two inches of soil.

(3) *Seed specifications.* (i) Purchase seed in accordance with the Pure Live Seed (PLS) specifications for seed mixes.

(ii) Use seed within 12 months of testing.

(iii) Treat legume seed with an inoculant specific to the species. For conventional seeding, use four times the manufacturer's recommended rate of inoculant, and 10 times the recommended rate if hydroseeding methods are being used.

(iv) Uniformly apply the seed over the area and cover it 0.5- to one-inch deep, depending on seed size. A seed drill equipped with a cultipacker is preferred, but broadcast or hydroseeding can be used at double the recommended seeding rates. Where broadcasted, firm the seedbed with a cultipacker or roller.

(4) *Mulch specifications.* (i) Mulch all dry sandy sites and all slopes greater than eight percent with two tons/acre of straw or hay or its equivalent. Spread mulch uniformly over the area so that at least 75 percent of the ground surface is covered. If a mulch blower is used, the strands shall not be shredded less than eight inches in length to allow anchoring.

(ii) Anchor mulch immediately after placing to minimize loss by wind and water. Use a mulch anchoring tool, which is a series of straight notched disks specifically designed for the purpose, to crimp the mulch to a depth of two to three inches. A regular farm disc should not be used.

(iii) Mulch may also be anchored using a liquid mulch binder. Cutback asphalt (rapid or medium curing), or emulsified asphalt applied at 200 gallons/acre may be used. Synthetic binders should be used at rates recommended by the manufacturer. Use caution in residential areas or areas of pedestrian traffic, because asphaltic and some synthetic binders can damage shoes, clothing, and automobile paint.

(iv) Use jute thatching or bonded fiber blankets (instead of straw or hay) on streambanks to stabilize seeded areas. Anchor the thatching with pegs or staples.

(v) Up to 1 ton/acre of wood chips may be added as mulch if areas so mulched are top-dressed with 11 lbs/acre available nitrogen or a similar quantity of 50 percent slow-release fertilizer.

(f) *Off-road vehicle control.* To each land-owner and manager of forest lands, offer to install and maintain, based on state and local regulations, the following off-road vehicle control measures and install one or more of them, as requested, at the completion of clean-up and reseeding, or as appropriate prior to the completion of clean-up and reseeding:

(1) Install a locking, heavy steel gate with fencing extending a reasonable distance to prevent bypassing the gate, and post appropriate signs.

(2) Plant conifers across the right-of-way. The spacing of trees and length of right-of-way planted should be sufficient to limit access and to screen the right-of-way from view.

(3) Install a slash and timber barrier, a pipe barrier, or a line of boulders across the right-of-way to restrict vehicle access.

(4) Post signs at all points of access and along the right-of-way at intervals not to exceed 2,000 feet, saying "This Area Seeded for Wildlife Benefits and Erosion Control."

(g) *Maintenance.* (1) Follow-up inspections shall occur after the first and second growing season, normally three to six months and twelve to fifteen months after planting, respectively, to determine the success of revegetation. Revegetation shall be considered successful if perennial vegetation is similar in density to adjacent undisturbed lands, based on representative random sampling in the field. If vegetative cover is less, the judgment of a professional agronomist shall be used to determine the need for fertilizing or reseeding based on site conditions, and those actions shall be undertaken at the beginning of the next growing season.

(2) Right-of-way vegetation routine maintenance clearing shall not be done more frequently than every three years, and not between April 15 and August 1 of any year. However, to facilitate periodic corrosion/leak surveys, a corridor centered on the pipeline up to 10 feet wide may be maintained annually in a herbaceous state.

(3) Efforts to control off-road vehicle use, in cooperation with the landowner, shall continue throughout the life of the project. Signs, gates, and vehicle trails shall be maintained as necessary.

(4) Monitor and correct drainage problems in active agricultural areas that have resulted from pipeline construction.

§ 380.14 Stream and wetland construction and mitigation procedures.

(a) These procedures require proposed pipeline projects to be routed in a manner that minimizes the crossing and disturbance of stream and wetland ecosystems to the maximum extent practicable. If a project sponsor considers a specific part of these procedures to be technically infeasible due to site-specific engineering constraints, the project sponsor must identify in its application the alternative provision(s) that it would implement, on a site-specific basis, that would provide an equal or greater level of protection to stream and wetland ecosystems. The Commission's staff will review these alternative provision(s) and make recommendations to the Commission for consideration. Site-specific construction plans, prepared pursuant to paragraphs (b)(4)(ix) and (c)(3)(xii) of this section, if applicable, must be submitted with the application. Except as a result of reconciliation pursuant to § 157.103(e) of this chapter, alternative provisions to these procedures are not permitted for projects constructed pursuant to the Commission's regulations under NGPA section 311, or automatic or prior notice authorization contained in part 157, subpart F of this chapter.

(1) One Environmental Inspector is required for each pipeline spread used during construction. Environmental Inspectors shall have direct responsibility to represent the project sponsor and enforce these procedures. They shall have peer status with all other activity inspectors. The Environmental Inspector shall have the authority to order the correction of acts that violate the environmental conditions of the FERC certificate.

(2) The procedures in paragraphs (b) through (d) of this section require that judgment be applied in the field and must be implemented under the supervision of the project sponsor's Environmental Inspector or other qualified professional with knowledge of stream and wetland conditions in the project area. Non-compliance with these procedures must be reported to the Environmental Inspector for remedial action. Deviations from these procedures will only be permitted as certificated by the Commission or by the written approval of the Director, or his designee, upon an appropriate showing of need.

(b) *Perennial Stream Crossings*—(1) *Staging Areas and Additional Rights-of-Way (ROW).* (i) Locate at least 50 feet away from streambank, if topographic conditions permit.

(ii) Limit size to minimum needed to construct the stream crossing.

(iii) Do not store hazardous materials, chemicals, fuels, lubricating oils, or perform concrete coating activities, within 100 feet of streambanks or within any municipal watershed area.

(iv) Refuel all construction equipment at least 100 feet from streambanks. Where conditions require that construction equipment (*e.g.*, barge-mounted backhoes, trench dewatering pumps) be refueled within 100 feet of streambanks, specifically address these activities in the Spill Prevention, Containment, and Control Plan prepared

pursuant to § 157.103(c)(1)(ii) of this chapter.

(2) *Spoil Pile Placement and Control.* (i) Trench spoil must be placed at least 10 feet away from streambanks at all minor and major stream crossings.

(ii) Spoil piles located above streambanks must be protected with sediment filter devices.

(iii) Prevent flow of spoil off of ROW.

(3) *Time Window for Construction.* (i) June 1 through September 30, unless expressly permitted or further restricted by the appropriate state agency on a site-specific basis.

(ii) Notify authorities responsible for potable water supplies located within three miles downstream at least one week prior to commencement of in-stream work.

(4) *Crossing Procedures.* (i) Provide notification to the U.S. Army Corps of Engineers (COE) of the proposed construction activities, and submit a copy of the COE's determination regarding the need for individual section 404 and/or section 10 permits with the application.

(ii) Comply with section 404 nationwide permit program conditions (33 CFR part 330) at a minimum.

(iii) Apply for state-issued stream crossing permits and obtain individual or generic section 401 water quality certification or waiver.

(iv) Construct crossings perpendicular to the axis of the stream channel as engineering and routing conditions permit.

(v) Use clean gravel for upper one foot of fill over backfilled trench in all minor and major streams which contain coldwater fisheries.

(vi) Maintain downstream flow rates at all times.

(vii) Minor Streams (10 feet wide or less and two feet or less average depth):

(A) For crossings of all coldwater and warmwater fisheries, construction equipment must cross the stream on a bridge consisting of one of the following:

(*1*) Equipment pads and culvert(s);

(*2*) Clean rockfill and culvert(s);

(*3*) Flexi-float or portable bridge.

(B) For crossings of all cold water fisheries, and warmwater fisheries considered significant by the state fish management agency, route stream across trench using flume pipe, and install pipeline using all of the "dry-ditch" techniques as follows:

(*1*) Install flume after blasting, but prior to trenching;

(*2*) Use sand bag or plastic dam structure;

(*3*) Properly align flume pipe;

(*4*) Do not remove flume during trenching, pipe-laying, or backfilling activities;

(*5*) Dewater trench, as required, to prevent discharge of silt laden water into stream during construction and backfilling operations; and

(*6*) Remove all flumes and dams upon completion of construction.

(C) For minor perennial stream crossings not covered by paragraph (b)(4)(vii)(B) of this section, complete instream construction (not including blasting) within 24 hours.

(viii) Major Streams (greater than 10 feet wide or greater than two feet average depth, but not greater than 100 feet wide).

(A) Construction equipment must cross on bridge consisting of one of the following:

(1) Equipment pads and culvert(s);

(2) Clean rockfill and culvert(s);

(3) Flexi-float or portable bridge.

(B) Limit in-stream equipment to that needed to construct crossing.

(C) Notify state authorities that request such notification at least 48 hours prior to commencement of in-stream trenching or blasting.

(D) Attempt to complete in-stream trenching and backfill work (not including blasting) within 48 hours, with a maximum of 72 hours allowed, unless site-specific physical conditions make completion within 72 hours impractical.

(ix) Rivers (more than 100 feet wide). Develop and submit detailed, site-specific construction procedures for each river crossing as part of the project sponsor's application.

(5) *Temporary Erosion and Sediment Control.* (i) Perform daily inspection and repair as needed.

(ii) Install and maintain sediment filter devices at all streambanks.

(iii) Use trench plugs at non-flumed minor stream, major stream, and river crossings to prevent diversion of streamflow into upland portions of pipeline trench during construction.

(6) *Bank Stabilization and Revegetation.* (i) All riprap activities must comply with section 404 nationwide permit program conditions (33 CFR part 330) at a minimum.

(ii) Limit use of riprap to areas where flow conditions preclude effective vegetative stabilization, unless otherwise specified by state permit.

(iii) Revegetate disturbed riprarian areas with conservation grasses and legumes.

(iv) Allow a riparian strip at least 10 feet wide above each perennial streambank to permanently revegetate with native woody plant species across the entire right-of-way. However, to facilitate periodic pipeline corrosion/leak surveys, a corridor centered on the pipeline up to 10 feet wide may be maintained in a herbaceous state. In addition, trees that are located within 15 feet of the pipeline and are greater than 15 feet in height may be selectively cut and removed from the right-of-way.

(v) Maintain sediment filter devices at base of all slopes located adjacent to streams until right-of-way revegetation is complete.

(vi) Install permanent slope breakers at base of all slopes adjacent to streams.

(7) *Trench Dewatering.* Dewater trench in such a manner that no silt laden water flows into any perennial stream or river.

(c) *Federally Delineated Wetland Crossings.* These procedures must be used when crossing any wetland which satisfies the delineation requirements contained in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" (Manual). This document is available from the Commission's Public Information Office, room 3104, 941 N. Capitol St., NE., Washington, DC 20426. The project sponsor must delineate all wetlands using the methodology contained in the Manual prior to construction, and upon request must provide the Commission staff with a wetland delineation report which identifies all federally delineated wetlands by milepost.

(1) *Staging areas.* (i) Locate at least 50 feet away from wetland edge, where topographic conditions permit.

(ii) Limit size to minimum needed to construct the wetland crossing.

(iii) Do not store hazardous materials, chemicals, fuels, lubricating oils, or perform concrete coating activities within 100 feet of any wetland boundary.

(iv) Attempt to refuel all construction equipment at least 100 feet from wetland boundary. Where conditions require that construction equipment (*e.g.*, pontoon-mounted backhoes, trench dewatering pumps) be refueled within 100 feet of any wetland boundary, specifically address these activities in the Spill Prevention, Containment, and Control Plan prepared pursuant to § 157.103(c)(1)(ii) of this chapter.

(v) Do not locate aboveground facilities in any Federally delineated wetland, except where the location of such facilities outside of wetlands would prohibit compliance with DOT regulations.

(2) *Spoil pile placement and control.* Use sediment filter devices to prevent flow of spoil off of ROW when standing or flowing water is present.

(3) *Crossing procedures.* (i) Provide notification to the COE concerning the proposed construction activities, and submit a copy of the COE's determination regarding the need for

individual section 404 permits with the application.

(ii) Comply with section 404 nationwide permit program conditions (33 CFR Part 330) at a minimum.

(iii) Apply for state-issued wetland crossing permit and obtain individual or generic section 401 water quality certification or waiver.

(iv) Route pipeline to avoid wetland areas to the maximum extent practicable. If wetland cannot be avoided or crossed by following an existing right-of-way, route new pipeline in a manner that minimizes disturbance to wetland. Where looping an existing pipeline, locate loop line no more than 25 feet away from existing pipeline.

(v) Minimize width of construction right-of-way to 75 feet or less.

(vi) Cut vegetation off only at ground level, leaving existing root systems intact, and remove from wetland for disposal.

(vii) Limit pulling of tree stumps and grading activities to take place directly over the trench. Do not remove stumps or root systems from the rest of the right-of-way in wetlands unless, in the judgement of the Environmental Inspector, safety-related construction constraints require removal of tree stumps from under the workpad. Where tree stumps are removed from under the workpad area, the project sponsor must specifically identify the areas where the pulling of tree stumps is required, and must develop and implement a detailed plan to actively reestablish native woody vegetation in these areas. This plan must be submitted as part of the project sponsor's application.

(viii) Segregate the top one foot of topsoil from the area disturbed by trenching, except in areas where standing water or saturated soils are present, and then return it to its original position over the backfilled trench.

(ix) Limit construction equipment operating in wetland areas to that needed to dig trench, install pipe, backfill trench, and restore right-of-way.

(x) Do not use dirt, rockfill, tree stumps, or brush riprap to stabilize ROW.

(xi) If standing water or saturated soils are present, use wide-track or balloon-tire construction equipment, or operate normal equipment off of timber pads, prefabricated equipment pads, or geotextile fabric overlain with gravel fill.

(xii) Do not cut trees located outside of right-of-way to obtain timber for equipment pads, and attempt to use no more than two layers of timber or equipment pads to stabilize the right-of-way. In the event that more than two layers of timber riprap must be used due to site-specific construction constraints, the following information must be included in the application:

(A) Specific procedures and criteria describing how the project sponsor will determine the locations where more than two layers of timber riprap are required. Such procedures should give priority consideration to using alternate methods that do not involve the use of timber riprap (*e.g.*, prefabricated equipment mats, special low-ground-weight equipment, winter construction);

(B) A detailed plan which addresses the procedures to be used to remove all timber riprap, specific measures (including the import of additional fill material) to restore preconstruction surface contours, and specific measures (including the planting of herbaceous and shrub species) to ensure successful revegetation of the construction right-of-way with native wetland plant species within three years after construction;

(C) An agreement to provide the staff with at least two weeks advance notice prior to removing any timber riprap; and

(D) A determination from the COE that the proposal either complies with the section 404 nationwide permit program or requires an individual section 404 permit.

(xiii) Remove all timber pads, prefabricated equipment pads, and geotextile fabric overlain with gravel fill upon completion of construction.

(xiv) Assemble pipeline in upland area and use "push-pull" or "float" techniques to place pipe in trench whenever water and other site conditions allow.

(4) *Temporary erosion and sediment control.* (i) Perform daily inspection and repair as needed.

(ii) Install and maintain sediment filter devices at edge of all wetlands until right-of-way revegetation is complete.

(iii) Install permanent slope breakers at base of all slopes adjacent to wetlands.

(5) *Revegetation techniques.* (i) Do not use fertilizer or lime, unless required in writing by appropriate state permitting agency.

(ii) Restore topsoil to original horizon and temporarily revegetate disturbed areas with annual ryegrass at a rate of 40 pounds per acre, unless standing water is present.

(iii) Ensure that all disturbed areas permanently revegetate with native herbaceous and woody plant species.

(iv) Develop specific procedures in coordination with the appropriate state agency to prevent the invasion or spread of undesirable exotic vegetation (*e.g.*, purple loosestrife and phragmites).

(6) *Trench dewatering.* Dewater trench in such a manner that no silt laden water flows into wetland areas off of construction right-of-way.

(7) *Right-of-way maintenance practices.* Vegetation maintenance practices over the full width of the permanent right-of-way are prohibited. However, to facilitate periodic pipeline corrosion/leak surveys, a corridor centered on the pipeline up to 10 feet wide may be maintained in a herbaceous state. In addition, trees that are located within 15 feet of the pipeline and are greater than 15 feet in height may be selectively cut and removed from the right-of-way.

(d) *Hydrostatic Testing*—(1) *Timing.* Perform 100 percent radiographic inspection of all pipeline section welds, or hydrotest pipeline sections, prior to installation under streams or wetlands.

(2) *Intake source and rate.* (i) Screen intake hose to prevent entrainment of fish.

(ii) Do not use state-designated exceptional value waters, or streams designated as public water supplies, unless appropriate state and/or local permitting agencies grant written permission.

(iii) Notify appropriate state agencies of intent to use specific sources at least 48 hours prior to testing activities.

(iv) Adequate flow rates must be maintained to protect aquatic life, provide for all in-stream uses, and provide for downstream withdrawals of water by existing users.

(v) Apply for state-issued withdrawal permit, as required.

(3) *Discharge location, method and rate.* (i) Regulate discharge rate and use energy dissipation device(s) in order to prevent erosion of upland areas, streambottom scour, suspension of sediments, or excessive stream flow.

(ii) Discharge test water from existing pipelines using velocity dispersion device, into haybale or silt fence containment structure.

(iii) Obtain National Pollutant Discharge Elimination System (NPDES) or state-issued discharge permit, as required.

(iv) Sample test water during discharge in accordance with any NPDES or state-issued discharge permit requirements. Provide a copy of the results to the Commission's environmental staff upon request.

Appendix A to part 380 [Removed]

41. Appendix A to part 380 is removed.

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities

[Docket No. RM90-1-000]

Issued September 20, 1991.

MOLER, Commissioner, *dissenting in part:*

In general I support this rule. However, I do dissent from two aspects of it. First, I object to the Commission's decision to include the negotiated rates section in this final rule, principally on procedural grounds. Second, the Commission gives short shrift to the role Federal land management agencies play in the process leading to construction of natural gas pipelines.

The subject of negotiated or deregulated, market-based rates was *not* an issue included in the NOPR. Three commenters [1] suggested we pursue the idea of negotiated rates. No one provided detailed comments on how the idea should work. Indeed, the first glimpse anyone outside the Commission has had of the negotiated rates process is in this final rule. As a result, the process created here has not received comment or been examined as part of the rulemaking process.

The Administrative Procedure Act has certain basic requirements that must be followed by an agency as part of notice-and-comment rulemaking. The courts have quite firmly said that anything included in a final rule must be a "logical outgrowth" of the proposed rule.[2] Furthermore, "a rule will be invalidated if no notice was given of an issue addressed by the final rules * * * in other words, the relevant inquiry is whether or not potential commentators would have known that an issue in which they were interested was 'on the table' and was to be addressed by a final rule." [3]

I do not believe that we have met that standard. Negotiated rates for new natural gas pipeline construction may, or may not, be a good idea. I frankly do not know. The Commission's staff has created a very interesting, complex process, dubbed the "competitive negotiation procedure" to be followed by those pipelines that want to charge negotiated rates. I frankly do not know whether the procedure makes sense, or whether it will work.

But I do know that the final rule adopts a scheme that has not been examined and subjected to the public scrutiny that is an integral part of the process we are required to follow. For that reason, I must object.

I also part company with the rule's treatment of Federal land management agencies. In order for this rule to work, the Commission and the industry must have the active cooperation and assistance of other Federal and state agencies who have a role to play in overseeing natural gas pipeline construction. The preamble to the final rule somewhat begrudgingly acknowledges that " there are other statutes not named in this section, such as the Mineral Lands Leasing Act, with which a project sponsor must comply before construction can take place." Then, inexplicably, the actual text of the regulation (§ 157.103(c)) refuses to acknowledge that a pipeline must meet the requirements of the relevant statutes and agencies before crossing public lands. I simply cannot understand the refusal to acknowledge in plain English that a pipeline wishing to cross public lands must meet the land managing agency's requirements.

Elizabeth Anne Moler,

Commissioner.

[1] The Department of Energy, the Natural Gas Supply Association, and Exxon included very brief comments on negotiated rates.

[2] See generally Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d 506, 547 (D.C. Cir. 1983) (citing cases).

[3] *American Medical Association* v. *U.S.*, 887 F.2d 760, 768 (7th Cir. 1989).

Revisions to Regulations Governing Authorizations for Construction of Natural Gas Pipeline Facilities

[Docket No. RM90-1-000]

Issued October 3, 1991

TERZIC, Commissioner, *concurring:*

I concur in the issuance of this rule to the extent it advances efforts to reform the natural gas pipeline industry. However, my concurrence does not reflect a belief that the reforms embodied in this lengthy and complex document will streamline or clarify the construction certificate process.

In my mind, the rule strays from the stated intentions of the Notice of Proposed Rulemaking (NOPR) issued in August of 1990 because it says far too little about streamlining the certificate application process and far too much about future rate treatment for new construction. The menu of rate options set forth in the rule not only exceeds the scope of the construction NOPR, it fails to address the fundamental certificate issue that this Commission has been struggling with before and after issuance of the NOPR, i.e., in an era of open access transportation and competitive supply markets, what should applicants submit to this Commission to demonstrate that construction is required by the public convenience and necessity. Put another way, the issue is whether the Kansas Pipe Line licensing criteria retain any validity.

Unlike the result in the final rule, I think the time has come to abandon Kansas. However, much like Dorothy finding herself in the strange and unfamiliar land of Oz, the Commission feels too uncomfortable with the prospect of permanent separation from Kansas to adopt such a result. Also, since I view this document primarily as a rate rule, I think at a minimum it should be consistent with the rate design initiatives set forth in the comparability Mega-NOPR. Unfortunately, I do not think the comparability NOPR and the construction rule are compatible. For these reasons, I find it necessary to discuss some problems I have with the construction rule in the hope that my comments will generate further discussion on rehearing.

Initially, I believe the at-risk conditions in the rule are predicated on the false notion that the Commission must somehow protect pipelines from themselves in order to ensure there is no construction of excess capacity. It seems to me that if the Commission's intent is to facilitate transportation competition and entry into new markets, the market should discipline pipeline investment decisions. Clearly, in an era of a greater reliance on negotiations and contracts, pipelines have little incentive to over-build or gold-plate their systems.

Furthermore, I believe the need for focusing on supply and market considerations as indicia of the public convenience and necessity has become increasingly irrelevant. This conclusion is based on a recognition that the major impetus for revising our construction regulations was a recognition that in the post Order 436 environment, pipelines have largely abandoned the sales business to transport gas and ample gas supplies exist for delivery to competitive markets. Further, as reflected in the multitude of "at risk" certificates issued in the past year, I think the Commission has come to that realization and has struggled to replace Kansas with a test better suited to demonstrating the need for additional transportation pipelines to provide service to new and expanding markets. Unfortunately, rather than replace Kansas in *toto*, the final rule: (1) Only dilutes the Kansas supply test to a perfunctory statement, and (2) inappropriately adopts the 10-year firm transportation contract standard established in the "at risk" certificates.[1]

[1] The revised definition properly eliminates the market test because in a period when pipelines are proposing transportation only projects, it makes no sense to hold them at risk for cost recovery on the basis of gas supply contracts to which they are not a party.

I believe the Kansas supply test should be eliminated given that the Commission has concluded in the Mega-NOPR that there are sufficient divertible supplies of natural gas. The firm contract standard may have been a suitable interim solution for certification. However, it makes no sense for determining public convenience and necessity when, as now, the industry relies heavily on spot markets and short-term contracts for gas supply and interruptible transportation (often having the quality of firm service). While some theorize that comparability, as proposed, will increase reliance on firm transportation and that the 10-year contract standard might be relevant, I am not convinced, because the Mega-NOPR proposes to retain pre-granted abandonment only for interruptible transportation and firm transportation having a term of one year or less. With the assurance that firm service will not be abandoned automatically under a contract with a term of more than one year, shippers need not enter into long-term contracts. This is disturbing because beginning with Arkla,[2] virtually no major traditional 7(c) certificate considered by the Commission has met the 10-year contract standard. Thus, the Commission has promulgated a redefined Kansas standard that recent experience suggests cannot be met.

I would have preferred that the Commission adopt an approach to public convenience and necessity determinations that places greater reliance on competitive market forces as opposed to Commission regulation. However, the risk of market failure should not be thrust completely upon pipelines, who as monopolies, are still subject to traditional regulation. In short, the traditional Kansas approach—a compact that guarantees cost recovery for a finding of public convenience and necessity—should be abandoned. Such an approach would be consistent with the Mega-NOPR because there the Commission indicated that it does not intend to "prescribe uniform terms and conditions to implement comparability because it recognizes that pipeline systems differ in many respects." [3] Yet, in the construction rule, the Commission has surrendered its discretion to make such determinations by generically relying on a 10-year contract standard and mechanical rate formulas to determine whether and how pipelines can recover their costs. Substituting a mechanical approach for the Commission's judgment may lead to illogical results.[4]

As an alternative to the Kansas, the Commission could establish a rebuttable presumption with respect to non-environmental issues, that a project is in the public convenience and necessity based on the filing of an application. The issuance of a certificate would ultimately turn on environmental compliance and rate review. The rebuttable presumption could be combined with the self-implementing environmental procedures in this rule. It is unlikely that such an approach would lead to frivolous applications, given the expenditure of resources required to prepare the environmental compliance report required under § 157.103.

To ensure that existing customers are sheltered from the cost of new facilities, the initial pricing for the new plant would be incremental. New facilities could receive initial rolled-in rate treatment with the consent of existing customers, or if it is clear the incremental facilities would benefit existing customers. Ultimate consumers served by LDC-shippers would be protected in the event of project failure by state public service commission prudence reviews. As for other users of the system, such as marketers, brokers, producers, etc., pipelines can reduce the risk of under-recovery of costs in the event of the loss of customers by imposing stringent creditworthiness provisions in transportation contracts. Such provisions would be subject to Commission approval.

While I have considerable concern that the cost-based rate elements may inhibit timely construction, I feel otherwise about the feasibility of the negotiated rate process set forth in the rule. It property recognizes two points: (1) That competition exists with respect to entry into new markets, and (2) that once a project is constructed it may assume the characteristics of a monopoly. In effect, the Commission has codified the open season process conducted to develop the Northeast and Mobile Bay Projects.

The rule goes one step further by allowing the parties to negotiate rates on the premise that, if the procedures are properly followed, the Commission will have the assurance that the process itself will preclude a pipeline from exercising market power. Thus, a market-oriented process will ensure that the negotiated rates will be just and reasonable. The requirement that rates for projects built under this procedure remain permanently incremental protects existing customers from unwarranted cost shifting. Under this approach, a pipeline's ability to recover its costs is solely a function of the terms and conditions of the contracts it negotiates. Thus, contracts are the vehicle for allocating the risk of cost recovery as opposed to rigid regulations and traditional ratebase rate of return ratemaking.

My concern is that with the exception of the environmental sections and the portions dealing with expansion of facilities that can be constructed with prior notice under the blanket construction certificate, the rule primarily is concerned with rates. The rate aspects of the rule, while intended to give pipelines and customers certainty as to the nature of cost-recovery, are overly complex and limit the Commission's discretion to make both factual and equity determinations in individual rate cases with respect to rolled-in versus incremental rate treatment and at-risk cost recovery.

Moreover, the distinction in the Mega-NOPR between the restructuring of rates for services provided on existing facilities and rates for services on new facilities has the potential of making the interplay between the two rules unworkable. The Mega-NOPR would require SFV rate design absent agreement by the parties to another rate design, while the construction rule would allow parties to negotiate a particular rate design that reflects an agreed upon allocation of risk. To the extent that this process leads to two different rate designs on a pipeline's system, it may preclude rolled-in rate treatment in situations where it may be appropriate.

Finally, environmental compliance has consistently been cited as the major source of delay in the Commission's certification process. Self-implementing environmental compliance procedures set forth in the new § 157.103 are designed to expedite the process. However, the scope of the compliance report that a pipeline is required to file with the prior notice projects under Subpart F and 311 projects merely increases pipeline time spent prior to the filing of an application. In effect, under the new rule, the official clock starts ticking later than sooner, giving the appearance that the process has been expedited once an application is through the Commission's door. The true test of

[2] Arkla Energy Resources, 54 FERC ¶ 61,033 (1991).

[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation, ¶ 32,480 at p. 32,550 (1991).

[4] For instance, under the rule a pipeline with 10 year contracts equivalent to the full capacity at a 50 percent load factor would not be subject to the at-risk conditions. However, another pipeline building the same facility with contracts for less than full capacity, but a higher load factor would be subject to the at risk condition notwithstanding higher achieved throughput.

whether the process will be expedited is the success of the reconciliation process designed to keep applications from falling through to Subpart A case-specific determinations in the event an applicant is unable to satisfy the standard environmental conditions of § 157.103(c).

In conclusion, I want to reiterate that I support reform of the construction rules. However, I am not sure that what we have issued improves sufficiently upon the prior rules to warrant their ultimate adoption. Thus, I hope the issued order serves as a vehicle for continued debate on rehearing that leads to a less complex construction rule that is more consistent with our comparability initiatives.

Branko Terzic,

Commissioner.

[FR Doc. 91-24948 Filed 10-17-91; 8:45 am]

BILLING CODE 6717-01-M

federal register

Friday
October 18, 1991

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 201, and 202

Title I Property Improvement and Manufactured Home Loans; Final Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 201, and 202

[Docket No. R-91-1496; FR-2623-F-02]

Introduction; Title I Property Improvement and Manufactured Home Loans; Approval of Lending Institutions; Reform of the Title I Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Department is amending 24 CFR parts 200, 201, and 202 with regard to the insurance of lenders against losses sustained as a result of borrower defaults on property improvement and manufactured home loans. The changes to part 200 are to delete obsolete provisions. The changes being made to parts 201 and 202 are directed towards the following major areas of program reform:

1. Broadening participation by qualified lending institutions through the use of loan correspondents, while eliminating any role in the program by loan brokers and other unregulated or unsupervised third parties.
2. Establishing higher qualification standards for lenders and dealers' and more objective criteria for lenders and loan correspondents to use in approving loans.
3. Requiring greater oversight of dealers through more personal contact between lenders and borrowers and through site inspections of dealers, work.
4. Requiring more secure collateral for both property improvement and manufactured home loans.
5. Encouraging on-site repossession and resale of manufactured homes to reduce claim losses for lenders and HUD.
6. Adding debt collection provisions for the Title I program.

EFFECTIVE DATE: November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, Room 9158, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708-2880. Hearing- or speech-impaired individuals may call the Office of Housing's TDD number, which is (202) 708-4594. (These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Requirements

The information collection requirements in part 201 of this rule have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520) and have been assigned OMB Control Number 2502-0328. The information collection requirements in part 202 of this rule have also been approved by OMB under the same Act and have been assigned OMB Control Number 2502-0017.

Introduction

Under Title I, section 2 of the National Housing Act (12 U.S.C. 1703), the Department insures approved lending institutions against losses sustained as a result of borrower defaults on property improvement loans and manufactured home loans. The regulations implementing the Title I loan insurance program are contained in 24 CFR part 201. The regulations governing the approval of property improvement and manufactured home lending institutions are found in 24 CFR part 202. In addition, certain sections in 24 CFR Part 200 contain provisions relating to the Title I program.

On January 29, 1991 (56 FR 3302), the Department published a proposed rule to amend 24 CFR parts 200, 201, and 202 (the proposed rule), and interested persons were invited to submit comments on the rule. The changes to part 200 in the proposed rule were to delete obsolete provisions. The changes proposed to parts 201 and 202 were directed toward the following major areas of program reform:

1. Broadening participation by qualified lending institutions through the use of loan correspondents, while eliminating any role in the program by loan brokers and other unregulated or unsupervised third parties.
2. Establishing higher qualification standards for lenders and dealers' and more objective criteria for lenders and loan correspondents to use in approving loans.
3. Requiring greater oversight of dealers through more personal contact between lenders and borrowers and through site inspections of dealers, work.
4. Requiring more secure collateral for both property improvement and manufactured home loans.
5. Encouraging on-site repossession and resale of manufactured homes to reduce claim losses for lenders and HUD.
6. Adding debt collection provisions for the Title I program.

Comments on the proposed rule were received from more than 200 respondents, including lenders, home improvement contractors, loan brokers, service companies, manufactured home dealers and manufacturers, insurance companies, borrowers, industry trade associations, lobbyists, Members of Congress, and others. Many of the lenders and trade associations submitted detailed comments on the rule. In addition, the Department received a large number of letters from home improvement contractors in a five-State area who submitted copies of the same form letter; after eliminating the unsigned copies and duplicates from the same company, there were 61 of these form letters. All of the comments were carefully considered, and a number of the comments have been adopted, in whole or in part, in this final rule.

Each of the proposed amendments to the regulations is discussed below in the same order it appeared in the proposed rule's preamble, with a brief synopsis of the proposed change, a summary of the public comments, and a description of the action being taken on the proposed change. To assist the reader, all references to specific sections in parts 200, 201 and 202 are to the sections as they are amended, unless the text clearly indicates otherwise.

General Program Reforms

In the proposed rule, the Department outlined a number of program reforms that would be applicable to both the property improvement and manufactured home loan programs. These reforms are concerned with higher qualification standards for lenders; the use of loan correspondents for loan origination; a prohibition against referrals from loan brokers; changes to the requirements for dealer approval and supervision, credit examination, refinancing and assumption of loans, lender efforts to cure default, claim filing, and insurance reserves; and new provisions on waivers and debt collection. In later sections of the preamble, proposed changes that are specific to the property improvement and manufactured home loan programs are addressed.

Qualification Standards for Lenders

Under the proposed rule, part 202 would be amended to increase the minimum net worth requirement for nonsupervised lenders and those supervised lenders that are not members of the Federal Reserve System, or whose accounts are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration,

from $100,000 to $250,000. Other supervised lenders not previously covered by minimum net worth requirements also would be required to have a minimum net worth of $250,000. In addition, the Department proposed to increase the minimum warehouse line of credit requirement for nonsupervised lenders from $250,000 to $500,000.

Title I lenders previously approved by the Secretary would have three years to meet these new requirements. Lending institutions applying for approval to originate, purchase, sell and/or service Title I loans after the effective date of these changes would be required to meet them immediately.

Six comments were received with regard to these higher qualification standards for lenders. All of them supported the changes; however, several commenters recommended a five-year phase-in period for previously approved lenders to meet the new requirements. In addition, one commenter requested that the Department permit the source of the warehouse line of credit to be a parent or affiliated company, provided that the parent or affiliated company furnishes a balance sheet which demonstrates sufficient liquidity to meet the warehouse credit demands of the Title I lender, and the two companies have a written and enforceable intercompany agreement for the provision of such credit.

The Department sees no need for a longer phase-in period than the three years that was proposed. Accordingly, part 202 is being amended to increase the minimum net worth and warehouse line of credit requirements for lenders without change from the proposed rule. The Department has no objection to permitting a parent or affiliated company to be the source of a lender's warehouse line of credit under the conditions outlined in the previous paragraph, and this procedure will be incorporated into a future revision of the Title I Lender Approval Handbook (HUD Handbook 4700.2).

Approval of Loan Correspondents

To encourage more financial institutions to participate in the origination of Title I loans, the proposed rule would amend part 202 to create a new category of approved lending institutions, to be known as "loan correspondents." As defined in §§ 201.2(q) and 202.2(b), a loan correspondent would be "a financial institution approved by the Secretary for the purpose of originating Title I direct loans for sale or transfer to a sponsoring financial institution holding a valid Title I contract of insurance."

The proposed rule would require that a loan correspondent have a minimum net worth of $100,000 and have a principal-agent relationship with only one sponsoring lender; however, sponsoring lenders would be able to purchase Title I loans from more than one loan correspondent.

A total of 16 comments were received on this issue. All of them were supportive of establishing this new category of lending institutions. However, many of them were critical of one or more aspects of the proposed eligibility or operational requirements for loan correspondents.

Several commenters recommended that loan correspondents not be limited to "financial institutions," in the belief that this term referred only to depository institutions. They suggested that the term should be defined in the regulations, and should include units of local government providing housing assistance. In response, the Department notes that the term "financial institution" has been used for many years in the definition of "lender" without needing to be further defined, and that units of local government are clearly included by virtue of meeting the definition of "governmental institution" in § 202.2. However, to clarify the type of institution which would qualify as either a Title I lender or loan correspondent, the Department has revised the general approval requirements in § 202.3(a) to state that the financial institution shall be a corporation or other chartered institution or permanent organization having succession, and shall be authorized under Federal or State law or regulation to originate or purchase consumer and mortgage loans or shall be a Federal, State or municipal agency.

A number of commenters recommended that the minimum net worth requirements for loan correspondents be consistent with those in FHA's Title II home mortgage program. Currently, Title II loan correspondents are required to have and maintain a minimum net worth of $25,000, plus an additional $25,000 for each branch office approved by the Secretary, up to a maximum requirement of $100,000. A proposed rule published in the **Federal Register** on June 25, 1991 (51 FR 29100) would increase the minimum net worth for Title II loan correspondents to $50,000, plus $25,000 for each approved branch office, up to a maximum requirement of $250,000. The Department agrees with the commenters that there is some benefit in having consistent net worth requirements between the two programs. Accordingly, § 202.6(a) has been revised to provide the same net worth requirements for Title I loan correspondents as are proposed in the June 25 proposed rule.

A majority of the commenters recommended that a loan correspondent not be limited to a single sponsor, because the loan correspondent is too dependent on one source of loan funds, and some sponsors may be more restrictive than others in their conditions for purchasing loans. One commenter suggested that the treatment of loan correspondents under the Title I program should be the same as under the Title II home mortgage program. After considering the comments, the Department finds merit in the reasons advanced for loan correspondents having more than one sponsor. Therefore, § 202.6(b) has been revised to state that a loan correspondent may sell or transfer Title I loans only to its sponsoring lenders, but there is no limitation on the number of sponsoring lenders that a loan correspondent may have.

A number of commenters urged that a loan correspondent not be required to have a principal-agent relationship with its sponsor, as had been proposed. Several of them indicated that the term "principal-agent relationship" imposes certain Federal, State and common law obligations on the sponsor for the acts of its loan correspondents which go well beyond the scope of the Title I program. To clarify the Department's intent, § 202.6(c) has been revised to simply state that the sponsor shall be responsible to the Secretary for the actions of its loan correspondents in originating Title I loans.

Several commenters requested that the regulations clarify which entity (the sponsor or the loan correspondent) should close and fund the loan. They expressed a preference for having the sponsor close and fund the loan, noting that the correspondent is not required to have a warehouse line of credit. However, the Department believes it is essential for program integrity that all Title I loans originated by a loan correspondent be funded by and closed in the name of the correspondent, prior to their sale or transfer to the sponsor. A new § 202.6(d) has been added to explicitly state that requirement.

One commenter recommended that loan correspondents be allowed to make both dealer and direct loans, because most manufactured home loans are dealer loans. The Department sees the role of loan correspondents as providing a network for the generation of direct loans. Since manufactured home retailers already provide a similar

network for the generation of dealer loans for approved Title I lenders, there does not seem to be any benefit to be derived from having loan correspondents make dealer loans.

Finally, the preamble to the proposed rule invited comments on an alternative of permitting loan correspondents to be approved and supervised by their sponsoring lenders, rather than by the Secretary. Two commenters supported this alternative, but offered no reasons why it should be adopted. Other commenters on this issue all supported having the Department approve loan correspondents; therefore, no change is being made.

Approved Lending Areas

Under the proposed rule, part 202 would be amended to provide that a Title I lender or loan correspondent would be authorized to originate Title I loans only within a specific geographic area approved by the Secretary. A lender or loan correspondent could be approved for an expanded lending area if the Secretary determined that the lender or loan correspondent had the capability to carry out proper loan origination in compliance with the program regulations within the expanded area.

Three comments were received on this provision. Two commenters supported the concept of approved lending areas, but questioned what criteria would be used for determining lending areas and how this provision would impact on lenders already approved. The third commenter stated that the provision is inconsistent with recent changes in Federal and State banking laws, which promote intrastate and interstate banking.

The Department's purpose in including this provision is to give a regulatory basis for establishing approved lending areas for all lenders. The Department expects to be looking at new criteria to provide a more rational basis for establishing approved lending areas for the future. However, lending areas already approved will not be affected unless there is evidence that lender performance is being affected. Accordingly, the provision is being adopted without change from the proposed rule.

Other Changes Affecting Lender Approval

The proposed rule would amend § 202.3 to exclude trusts as a type of business entity eligible to be approved as a Title I lender, because of the undue burden in approving and administering trusts and the difficulties in separating the various roles of the lender as holder of its own loans and as trustee for trust assets. Although the express reference to trusts would be removed, a trust could still be approved as a Title I lender if it is a "permanent organization having succession." No comments were received in response to this proposal, and therefore, it is being adopted without change from the proposed rule.

The Department invited comments on whether certain types of general and limited partnerships should be eligible to be approved as Title I lending institutions. No comments were received in response to this invitation. The Department has determined that the phrase "permanent organization having succession" should not be interpreted any more broadly than it has been previously in connection with the approval of Title I lending institutions. Therefore, partnerships will not be eligible to be Title I lending institutions.

Commenters were also invited to express their views on whether Title I loan servicing should be limited to approved lending institutions. Six comments were received on this issue from lenders and service companies that carry out loan servicing, all of them opposing any change from the present arrangement. Several commenters stated that they perform a variety of loan servicing functions that benefit lenders and could not readily be carried out by lenders because of distance from borrowers or other considerations. Based on the information received, the Department has determined that no change will be made in the requirements for the servicing of Title I loans at this time. Under § 201.41(a) of the regulations, service companies may function as the lender's agent in the servicing of Title I loans, with the lender remaining fully responsible to the Secretary for their actions.

Referrals from Loan Brokers

The proposed rule would make several changes to reinforce the prohibition against loan broker involvement enunciated in Title I letter TI–405, issued on August 22, 1990. In the definition of "direct loan" in § 201.2(i), the reference to "a person acting at the direction of the borrower who is not a dealer" would be changed to read "a person acting at the direction of the borrower who does not have a financial interest in the loan transaction." This change was intended to clarify that the borrower could obtain assistance in understanding and completing the credit application from a personal advisor such as a family member, friend or attorney, but not from someone with a financial interest in whether the borrower obtains the loan. The other change would add a new § 201.25(d), stating that neither the lender nor the borrower may pay a referral fee to any dealer, home manufacturer, contractor, supplier, real estate broker, loan broker, or any other party in connection with any Title I loan.

As an alternative to these changes, the Department invited comments on an approach that would permit loan brokers to make referrals to approved Title I lenders under certain conditions. Commenters favoring this approach were asked to indicate what controls would need to be instituted by lenders and the Department to ensure that the loan proceeds are used only for the purposes specified on the loan application, and to minimize the risks of fraud or misrepresentation by the loan broker and the borrower.

A total of 20 comments were received on the issue of loan broker involvement. Five commenters supported the actions being taken to prohibit loan brokers, including one Member of Congress who stated that: "Prohibition of referral fees is in the best interests of the borrower, and is consistent with the provisions in the Real Estate Settlement Procedures Act, which also prohibit such fees." Several others suggested that loan brokers should only be approved within a carefully structured program and with full disclosure to the borrower of the broker's fee. Ten comments were received from loan brokers and one from the National Association of Mortgage Brokers, expressing a desire to be included in the Title I program; however, none of these commenters addressed the Department's concern for additional controls to minimize or prevent the abuses that have occurred.

One commenter who favors the prohibition against loan brokers questioned the wording of § 201.25(d), because it could inadvertently preclude the payment of fees in connection with bulk sales of loan portfolios. The Department agrees that the proposed wording of § 201.25(d) could have that unintended result. Therefore, § 201.25(d) has been revised to prohibit payment of a referral fee "in connection with *the origination of* a loan insured under this part." (emphasis added) The amendment to § 201.2(i) as contained in the proposed rule is adopted without change.

Dealer Approval and Supervision

The proposed rule would amend § 201.27(a) to change the qualification requirements for dealer approval and reapproval. A property improvement dealer would be required to have a minimum net worth of $25,000 and have

demonstrated business experience as a property improvement contractor or supplier. A manufactured home dealer would be required to have a minimum net worth of $50,000 and have demonstrated business experience in manufactured home retail sales. A dealer may not be reapproved if it is unable to meet the appropriate minimum net worth requirement. The proposed rule would also expand the documentation needed to support a dealer's application for approval or reapproval to include consumer credit reports on the owners, principals, and officers of the dealership.

A total of 77 comments were received concerning the $25,000 net worth requirement for property improvement dealers. Several commenters favored the requirement, including one dealer who stated that it was needed "to help weed out the fly-by-night operations." The rest of the commenters opposed the requirement. The objections raised were that the net worth requirement would discriminate against small contractors and those just starting out who may have extensive home improvement experience but have not established the required net worth. In response, the Department points out that participation in the Title I program already requires that dealers be able to demonstrate to the lender's satisfaction that they are "reliable, financially responsible, and qualified to satisfactorily perform their contractual obligations to borrowers . . ." (see § 201.27(a)(1) of the present regulations). The Department believes that a financially responsible dealer should be able to meet the $25,000 minimum net worth requirement.

The Department also received seven comments concerning the $50,000 minimum net worth requirement for manufactured home dealers. Most of the commenters expressed support for the requirement, although two of them suggested that the Department should allow the net worth of the principals in the dealership to be considered, accompanied by a personal guarantee. Two other commenters indicated some concern that the net worth requirement may be too high, but admitted they had no evidence that this was the case; they proposed that State-mandated surety bonds and warranties be allowed to substitute for part or all of the net worth. The Department has considered these various options for overcoming deficiencies in the net worth, but has concluded that they do not meet the objective of assuring that the dealership itself has some minimal financial stability. Therefore, the minimum net worth requirements for dealers as contained in the proposed rule are being adopted without change.

One commenter stated that providing an audited financial statement to verify compliance with the net worth requirement would be very costly for small contractors. The Department agrees that this would be a costly burden for dealers, and § 201.27(a)(2) has been revised to make it clear that a current financial statement prepared by a licensed public accountant is acceptable, without requiring that it be audited.

The proposed rule would also amend § 201.27(a)(4) to require that the lender visit each dealer's place of business at least once in every six months to review the dealer's Title I performance. The present regulations state only that visits must be conducted "periodically during the year," and many lenders have asked for a more definitive time period.

Two commenters objected to this requirement, stating that visits every six months would be very time-consuming, and suggesting that the requirement should apply only to dealers where there are performance problems or borrower complaints. The Department does not believe that this is an onerous requirement, since periodic visits are already required as an ongoing part of dealer supervision. Therefore, the amendment is being adopted without change from the proposed rule.

Credit Investigation Procedures

A number of changes to the credit investigation procedures required of lenders under § 201.22(a) are contained in the proposed rule. These changes would require that the lender (a) verify the validity of the borrower's Social Security number; (b) conduct a face-to-face or telephone interview with the borrower; (c) for any property improvement loan, verify that the borrower is not over 30 days delinquent on any senior mortgage or deed of trust on the property being improved; (d) verify whether the borrower is in default or a claim has been paid in connection with any loan obligation owed to or insured or guaranteed by the Federal government; and (e) obtain written verification of the existence of all funds needed for the borrower's initial payment, if such payment would exceed two percent of the loan amount.

Several commenters requested that the Department specify the documentation required to verify a borrower's Social Security Number. The Department expects to issue separate guidance in a Title I letter, indicating what types of documentation would be acceptable evidence of validity of the borrower's Social Security Number.

A total of 80 comments were received on the proposal to require a face-to-face or telephone interview with the borrower, with nearly all of them opposed to the requirement because of an anticipated increase in the time and cost of loan processing. Most of the commenters were home improvement contractors who stated that the interview requirement would be very costly to lenders, and would reduce the number of qualified dealers using the program because of the constraints on receiving a prompt determination of creditworthiness. Several commenters indicated that the requirement would be difficult to fulfill because most borrowers work full-time during regular business hours, and lenders would be required to pay staff to work evenings to conduct these interviews.

As stated in the preamble to the proposed rule, one of the purposes of this interview is to ascertain the accuracy and completeness of the information on the credit application. In particular, the Department felt that the interview would help to identify situations where a dealer or contractor had influenced the borrower to be less than truthful in completing the application. It does not seem to be an undue imposition to expect the lender to deal personally with the borrower before making a loan, and the Department finds it difficult to understand why a borrower who is seeking approval on a loan application could not be available to meet with or talk by telephone with the lender.

Therefore, the Department is adopting the proposal to require that the lender conduct a face-to-face or telephone interview with the borrower as part of its credit investigation procedures. However, the timing of this interview has been changed to a later point in the process, after the lender has had an opportunity to review the other documentation required by § 201.22(a). The Department has added a new § 201.22(a)(9) to require that the lender use the interview to resolve any discrepancies between the credit application and the other information received on the borrower.

The Department received five comments objecting to the proposal that, for any property improvement loan, the lender must verify that the borrower is not over 30 days delinquent on any senior mortgage or deed of trust on the property to be improved. One commenter suggested that written verification from the lienholder should be required only when the borrower's credit report does not contain the necessary information. The Department

agrees with this suggestion, and § 201.22(a)(6) has been revised accordingly.

No comments were received on § 201.22(a)(7), which would require that the lender verify, in such manner as the Secretary may prescribe, whether the borrower is in default or a claim has been paid in connection with any loan obligation owed to or insured or guaranteed by the Federal government. Therefore, this provision is being adopted without change from the proposed rule.

Finally, 34 comments were received opposing the proposal to require that the lender obtain written verification of the existence of the funds needed for the borrower's initial payment, if that payment would exceed two percent of the loan amount. Several commenters pointed out that the two percent threshold is very unrealistic, because on a loan of $5,000, the lender would be trying to verify whether the borrower had as little as $100. A number of commenters were of the opinion that verifying the funds in a checking account was pointless, because the account balance can fluctuate on a daily basis. Other commenters indicated that, since property improvement loans do not require a downpayment and the closing costs are usually minimal, there should be no need to demonstrate that the borrower has the necessary funds.

The current regulations require verification of the existence of the funds for the initial payment only for manufactured home loans, in the belief that any initial payment in connection with property improvement loans would be minimal. However, in the last few years, property improvement lenders in some market areas have begun collecting up-front fees and charges that sometimes exceed 10 percent of the loan amount. Because of this, the proposed rule would extend the verification of funds requirement to property improvement loans. However, the Department agrees with those commenters who stated that the threshold is too low. Therefore, § 201.22(a)(8) has been revised to require verification of the source of the funds only for loans with a total principal balance in excess of $5,000, and only if the initial payment will be in excess of five percent of the loan amount.

Income Requirements for Borrowers

The proposed rule would amend § 201.22(b) to extend the use of maximum expense-to-income ratios to property improvement loans and to specify these ratios in the regulations rather than in a **Federal Register** Notice. In addition, the present ratios of 38 percent of net effective income for housing expenses and 53 percent of net effective income for total fixed expenses would be changed to 29 percent and 41 percent of effective gross income, respectively, to conform to the practice in the lending community and in other FHA loan and mortgage insurance programs. The proposed rule also would add clear definitions for all of the terms used in calculating these ratios.

Two comments were received in support of the proposed change in the gross income ratios for manufactured home loans. A total of 51 comments were received on the proposal to establish maximum expense-to-income ratios for property improvement loans, and all but one of them opposed some aspect of the proposal.

Most of the commenters pointed out that a so-called "front-end ratio" of housing expenses to income is never used in connection with consumer loans and second mortgage loans. The commenters stated that the imposition of such a ratio for property improvement loans would be unrealistic, because these are not first mortgage loans. Requiring a front-end ratio would unfairly discriminate against lower income homeowners, who generally spend a greater percentage of their income for housing than middle and upper income homeowners. The commenters predicted that the consequence of imposing a front-end ratio would be that a very high percentage of otherwise eligible borrowers would be excluded from participation in the Title I program.

A majority of the commenters also expressed a belief that the proposed back-end ratio of 41 percent for total fixed expenses is not consistent with prevailing industry practice. The commenters indicated that, while a few lenders use a back-end ratio as low as 41 percent, most use a ratio in the range of 45 to 50 percent, with some flexibility for consideration of other factors such as longevity on the job, length of home ownership, savings history, and disposable income per family member.

There is also some evidence that small changes in this ratio have significant impacts on the number of borrowers that could qualify for a loan. For example, the Title One Home Improvement Lenders Association conducted a sample survey of 19,000 loans originated by five major lenders, and found that 43 percent of the borrowers could not have been approved if a 41 percent ratio of total fixed expenses to income had been in place when these loans were approved.

The Department has decided to implement the maximum expense-to-income ratios for manufactured home loans as contained in the proposed rule. The Department agrees with the commenters that requiring a maximum ratio of housing expenses to gross income for property improvement loans is unworkable, and language requiring this front-end ratio has been deleted from the final rule. Based upon the comments received, the Department has decided to require a maximum ratio of total fixed expenses to gross income of 45 percent for property improvement loans.

The Department has also decided that the past practice of publishing these ratios in a **Federal Register** Notice will be continued, so that they may be more readily adjusted from time to time as circumstances warrant. Compensating factors that would warrant the published ratios being exceeded will also be included in the Notice. The Notice is published elsewhere in today's edition of the **Federal Register**.

Section 201.22(b)(1) has been revised to reflect the fact that these maximum expense-to-income ratios will be published separately. In response to questions raised by some commenters, the Department has also clarified the definition of "effective gross income" in § 201.22(b)(2) to indicate that the term means continuing income from all sources, without any deduction for income taxes or other items. Property improvement lenders should also be aware that, in calculating whether a borrower meets the maximum expense-to-income ratio, the anticipated installment payment on the property improvement loan is to be included as part of total fixed expenses.

Notice Requirements

The proposed rule would require that, prior to loan disbursement, the lender must provide the borrower with a written notice that (a) states that the loan will be insured by HUD and describes the actions the Secretary may take to recover the debt if the borrower defaults on the loan and an insurance claim is paid, and (b) constitutes the borrower's agreement to HUD's imposition of penalties and administrative costs as required by law. In the case of a direct property improvement loan, this notice would also constitute an acknowledgement of the borrower's post-disbursement obligation to furnish a completion certificate and to permit an on-site inspection by the lender or its agent. A copy of the notice, signed by the borrower, would be retained in the loan

file. The lender would also have to provide a similar notice to an assumptor prior to execution of an assumption agreement.

Twelve comments were received on the notice requirements. Many of the commenters stated that the notice requirements simply added to already burdensome paperwork requirements, and several of them suggested that they constituted an unnecessary "scare tactic," because borrowers are already aware of the consequences if they default on the loan. Four commenters supported the idea behind the notice requirement, but felt that the contents of the notice should be included in the promissory note or sales contract.

In response, the Department notes that lenders are already required to provide the borrower with a written notice describing HUD's role in the loan and the consequences to the borrower of default and a claim being paid (see Title I letter TI-360, issued May 7, 1985). The only new element being introduced is that, by signing the notice, the borrower will be agreeing to HUD's imposition of penalties and administrative costs, without requiring that the lender modify its existing note forms to include the necessary information. As pointed out in the preamble to the proposed rule, the Department considered requiring that these provisions be included in the note, but concluded that a separate notice, signed by the borrower, would be preferable. Therefore, the Department is adding new §§ 201.26(a)(6) and (b)(7) and a new § 201.19(c)(3) to include the various notice requirements. The precise language for each of these notices will be furnished to lenders in a Title I letter prior to the effective date of this rule.

Refinancing Delinquent Loans

The proposed rule would amend § 201.19(a)(1)(i) to provide that an existing loan that is in default may not be refinanced for an amount greater than the original principal balance of the loan. This would replace the current provision, which permits the lender to offer the option of refinancing at any time up to the point when the lender has accelerated the loan. Because of this open-ended time period, some lenders have refinanced loans many months after the date of default, with the result that refinanced loan balances often include excessive amounts of accrued but unpaid interest.

One commenter expressed support for this change, while another objected to the amendment on the basis that if a borrower defaults very early in the loan term, the accrual of interest may make it infeasible to refinance without a substantial payment from the borrower. The Department agrees that this may occur; however, as stated in the preamble to the proposed rule, this amendment is intended to bring about more rapid decisions by lenders and borrowers on whether or not to refinance the loan, *before* the accrual of interest becomes an obstacle to refinancing. Therefore, this provision is being adopted without change from the proposed rule.

Loan Assumptions

The proposed rule would add a new § 201.19(c) to provide specific requirements relating to the assumption of Title I loans. As proposed, an existing Title I loan may be assumed at the option of the lender, provided that the assumptor (a) meets the borrower eligibility and credit underwriting requirements of the regulations, and (b) executes an assumption agreement that is satisfactory to the lender and signed by the assumptor and the original borrower or previous assumptor at the time of assumption. The proposed rule also included a procedure whereby the original borrower or previous assumptor would be automatically released from liability after the assumptor had made regular installment payments on the loan for a period of 24 consecutive months without any period of default.

Five comments were received on this issue. Two commenters recommended that the original borrower be released from liability at the time of loan assumption, since the lender will have determined that the assumptor meets the necessary credit qualifications. One commenter objected to the additional recordkeeping that would be required to determine when the original borrower was eligible to be released from liability, and several others questioned how the determination of eligibility would be made if there were multiple assumptions of a loan within the 24-month period. Several commenters suggested that the automatic release provision should apply only to loans made after the effective date of the final rule, and one recommended that the effective date be delayed 60 days to give lenders time to incorporate the necessary provisions into their notes and security instruments.

In response to these comments, the Department has decided to withdraw the automatic release provision. Instead, § 201.19(c) has been revised to provide that, if the other requirements of this section are met, the lender at its option may release the original borrower or previous assumptor from liability for the repayment of the loan obligation. The prior approval of the Secretary under § 201.24(e) is not required. Because this language gives the lender complete discretion to decide whether or not to release the original borrower or previous assumptor from liability, there is no need for a delay in the effective date.

Several commenters recommended that lenders be permitted to charge the assumptor for the costs of conducting a credit investigation and preparing the needed documents. In response, the Department has revised § 201.25(c) to permit the lender to charge a fee for approving the assumptor and preparing the assumption agreement. This fee may not to exceed one percent of the unpaid principal balance of the loan.

Definition of Default

The proposed rule would amend § 201.2(h) to limit the definition of "default" to a failure to make any payment due under the note, and to provide that the date of default would be 30 days after the first failure to make an installment payment on the note which is not covered by subsequent payments. As a matter of practice, Title I claims have been filed by lenders only for monetary defaults, because otherwise there is no claimable loss.

Three comments were received on this amendment, expressing the view that the present definition of "default," which includes the failure to perform any obligation under the note, should be retained. One commenter stated that the ability to declare a default and accelerate the loan should be available to serve as a remedy for, or deterrent against, misrepresentation or the misuse of loan proceeds. Another commenter stated that the current definition serves to protect HUD and lenders from risk of loss from perils such as physical abuse, deterioration or abandonment of the property or its conversion to uses other than a residence, all of which could cause severe value depreciation.

The Department has no objection to a lender using a broader definition of "default" in its loan documents. However, since the Department will only pay an insurance claim where there is a monetary default, a more restrictive definition of default is appropriate for purposes of the Title I program. Therefore, the amendment is being adopted without change from the proposed rule.

Lender Efforts to Cure Default

The proposed rule would modify § 201.50(a) to give lenders the option of either a face-to-face meeting or telephone contact before taking action to accelerate the maturity of a loan in default. At the same time, § 201.50(a)

would be amended to clarify that the lender is expected to contact all persons obligated by the note, to discuss the reasons for the default as well as their plans for bringing the loan current.

Only one comment was received on this amendment, agreeing that the lender should have the option of a telephone contact if a face-to-face meeting with the borrower is not possible. Therefore, the Department is adopting the proposed changes. In addition, § 201.50(a) has been further revised to require only that the borrower be contacted "to discuss the reasons for the default and to seek its cure," without specifying what options might be offered for curing the default. The Department is concerned that the present language implies that a borrower has to be offered all possible options for effecting a cure, even though some options may not be feasible. As an example, refinancing is probably not feasible if the borrowers are now divorced and one of them has left the area.

Claim Filing Procedures

The proposed rule would amend § 201.54(b) to increase the maximum claim filing period for any manufactured home loan to three months after the date of sale of the property securing the loan, but not to exceed 18 months after the date of default. This section would also be amended to provide that the Secretary may extend the claim filing period in a particular case, but only where the lender can show clear evidence that the delay in claim filing was in the interest of the Secretary or was caused by litigation related to the loan, or because management control of the lender or the Title I loan portfolio has been assumed by a Federal or State supervisory or regulatory agency.

Two comments were received on this amendment, both of them opposed to any time limit on the late submission of claims. The commenters maintain that the claim filing process imposes its own penalty against late submissions, since the Department does not pay interest beyond nine months after the date of default, even if the claim is filed after that time. However, the Department's concern is that claims be filed as soon as practicable after the date of default, so that all persons obligated by the note can be located and debt collection procedures can be initiated in a timely manner. In the case of a defaulted manufactured home loan, filing a claim within three months after the date of sale should not be difficult for the lender to accomplish. Therefore, the amendment is being adopted without change, except that the phrase "supervisory or regulatory" has been deleted from § 201.54(b)(2)(ii) to be certain that the language is broad enough to include the situation where the servicing of a manufactured home loan portfolio has been taken over by GNMA.

The proposed rule would amend § 201.54(c) to provide that any supplemental claim must be filed within six months after the date of payment on the initial claim. In addition, a reprocessing fee, in an amount to be established by the Secretary, would be charged for any supplemental claim and any resubmission of an initial claim that was denied due to the claim application or supporting documentation being incomplete.

Six comments were received on this proposal, all of them adamantly opposed to the imposition of a reprocessing fee when a lender is resubmitting a claim that was denied due to incomplete documentation. The commenters asserted that imposition of such a fee is unfair and will create animosity between lenders and the Department. They felt that charging a reprocessing fee could penalize the lender for HUD's mistakes, since claims are frequently denied because the HUD claims examiner overlooked documents in the claim file; in other cases, the claims examiner may request additional documentation that was not required to be filed initially.

One commenter suggested that, rather than charging a fee for reconsideration of a denied claim, perhaps the Department should charge a processing fee on all claim submissions, with no fee for reevaluation if the claim is denied and the lender disagrees with HUD's decision. Other commenters recommended that the Department establish a time limit on claim processing by the Department.

In response to these comments, the Department has revised § 201.54(c) to provide that a reprocessing fee will be charged only in connection with a supplemental claim, and not in connection with denied claims that are being resubmitted with an appeal of the claim denial or a request for a waiver of the regulations. This section has also been revised to clarify that the six-month time limit applies both to the resubmission of denied claims and to supplemental claim submissions. The Department has been attempting to streamline and standardize claim processing for both the lenders and HUD, but it is evident from the comments that more needs to be done. The recommendation for a time limit on HUD claims processing appears reasonable on the surface; however, the ebb and flow in claims volume and the uncertainties in staffing levels would make any such time limit unworkable.

The proposed rule also would amend § 201.54(e) to state that, upon notification to the lender that the obligation may not be either valid or enforceable against the borrower, the Department may (a) deny the claim and reassign the note to the lender, or (b) require that the lender repurchase a paid claim and accept reassignment of the note. This amendment is to clarify the regulatory language in § 201.54(e) and does not represent any change in the Department's policy that it is the lender's responsibility to resolve any issue of validity or enforceability of the loan obligation, whether the issue is identified before or after a claim is paid.

Only one comment was received on this amendment, requesting clarification for those cases where State law prohibits both a foreclosure and a deficiency judgment, so that a valid and enforceable deficiency judgment cannot be assigned to the Department. The Department's position, which is stated in §§ 201.51 (a)(2) and (b)(1) as amended by this rule, is that the lender must take all actions necessary under State or local law to preserve its rights, if any, to obtain a valid and enforceable deficiency judgment against the borrower. In the situation raised by the commenter, the lender does not have any such rights, and therefore, the lender has complied with the regulations. Since there were no other comments on this amendment, it is being adopted essentially as it appeared in the proposed rule, except for some clarifying changes.

Finally, the proposed rule would amend § 201.55(b)(2) to eliminate the present language authorizing the payment of interest for three additional months beyond the date of default, if the Secretary finds good cause for the extension. This provision has never been used in the five years since it was added to the regulations, and the Department sees no need for its retention. No comments were received on this amendment, and it is being adopted without change.

Insurance Coverage Reserve Accounts

The proposed rule would amend §§ 201.32 (a) and (b) to eliminate the present requirement for a ten percent annual deduction from a lender's insurance coverage reserve account after the lender has held a Title I contract of insurance for more than five years. In its place, the Department proposed that the lender's reserves be adjusted for loans that are reported as

paid-in-full and loans that have reached maturity. The amount of the adjustment would be the amount originally credited to the reserve account when the loan was originated or purchased from another lender. The Department believed that this was a more equitable approach than the present annual deduction, and would result in the lender having more reserves available at any time for the payment of claims.

Seventeen comments were received on this proposal, nearly all of them critical of its potentially negative impact on the reserves that would be available for the payment of claims. A majority of the commenters recommended that the present system of a 10-percent annual adjustment be retained because its impact is predictable and quantifiable. Several commenters were supportive of the Department's efforts to find a more equitable method for adjusting the insurance reserves, but did not believe that the proposed approach would work. Two of these commenters submitted detailed examples to illustrate why they believe the Department's proposal is flawed and would result in the reserve account of many lenders being reduced to zero long before their loan portfolios have paid out.

Based on the comments received on this proposal, the Department has decided not to implement any change in the method of adjusting insurance reserves at the present time. It is apparent that further analysis is needed to meet the Department's objective of a more equitable and rational method of adjusting insurance reserves to reflect changes in the lender's portfolio.

Several commenters recommended that the Department convert Title I to a loan-by-loan coinsurance program and eliminate the need for maintaining reserve accounts. The Department does not have the statutory authority to make this change, since Title I of the National Housing Act limits the payment of insurance benefits to any lender to 10 percent of the total amount of that lender's loan portfolio.

The proposed rule also would amend § 201.32(a) to provide for the establishment of separate contracts of insurance with separate reserve accounts for lenders making both property improvement and manufactured home loans. In addition, an amendment to § 201.32(d)(1) would permit the Secretary to earmark reserves transferred from another lender when a determination is made that it is in the Secretary's interest to do so. No comments were received on the first proposal, and the only comment on the second proposal supported the earmarking of reserves on loans or pools of loans. Therefore, the two amendments are being adopted without change from the proposed rule.

Waiver Provisions

The proposed rule would amend § 201.5 so that the present waiver provision would be limited to situations where a lender is in noncompliance with the regulations, which more closely tracks the statutory language in section 2(e) of the National Housing Act. In addition, § 201.5 would be amended to provide that the Secretary may waive any regulatory provision, subject to statutory limitations, if the Secretary finds that application of such provision would adversely affect achievement of the purposes of the Act. No comments were received on this proposal, and it is being adopted without change.

Debt Collection Requirements

The proposed rule would add a new subpart G to part 201, consisting of §§ 201.60 through 201.63. This new subpart would codify existing Title I debt collection practice and procedures, and would be applicable to debts owed to the Department by defaulted borrowers and by lenders as a result of repurchase demands and unpaid insurance charges. In the case of debts owed by defaulted borrowers, § 201.61 would establish the principal amount of the debt, usually referred to as the "legal debt," and § 201.62 would establish the basis for the collection of interest, penalties, and administrative costs in connection with the debt.

No comments were received on the proposed debt collection requirements. However, the Department has decided to defer publication of a new subpart G at this time, pending receipt of a ruling from the Comptroller General of the United States on the proper methods of calculating initial debt owed by a borrower to the Department in connection with a defaulted Title I loan, and the proper method of assessing interest on that debt.

Property Improvement Loan Reforms

The proposed rule contained a number of changes that would be made to the property improvement loan program in the areas of equity requirements for certain loans, completion certificates for direct loans, property inspections, and proceeding against the loan security.

Equity Requirements for Certain Loans

The proposed rule would add a new § 201.20(a)(3) and would amend § 201.26(a)(1) to require that, for any property improvement loan in excess of $5,000, the borrower shall have equity in the property being improved at least equal to the loan amount. Acceptable procedures for determining the market value of the property and evaluating whether the borrower has sufficient equity in the property would be established by the Secretary, and lenders would be given notice of the procedures.

A total of 127 comments were received on this proposal, far more than on any other provision in the proposed rule. All of the commenters expressed opposition to the proposal as written. More than two-thirds of the commenters stated that an equity requirement is not appropriate for Title I property improvement loans, which are consumer loan transactions where the key determinant is the creditworthiness of the borrower, not the borrower's equity position in the property being improved.

Many commenters expressed concern that the equity requirement would preclude the very borrowers that the Title I program was intended to benefit—first-time homebuyers and low- and moderate-income borrowers. A majority of the commenters pointed out that the equity requirement would eliminate many borrowers who had purchased their homes with low downpayments under FHA's home mortgage program and have not been in them long enough to build up much equity. The same problem exists with veterans who bought homes under the VA guarantee program, which requires little or no downpayment.

Several commenters expressed concern that the Title I program would no longer be available for use by State and local government agencies in connection with housing assistance and neighborhood revitalization efforts. A number of State and local housing and community development agencies use the Title I program in conjunction with interest subsidies, supplemental loans, and urban homesteading programs to assist low- and moderate-income families and individuals. Thus, imposition of an equity requirement would have a disproportionate effect on less affluent neighborhoods where the homes could most benefit from the program.

A majority of the commenters also pointed out that the equity requirement would penalize borrowers living in economically depressed areas where property values have leveled off or fallen, such as the "oil patch" States and some metropolitan inner cities. It is in these kinds of areas where Title I has been most beneficial in assisting borrowers who are trying to rehabilitate

their homes, but do not have much equity in the property.

A majority of the commenters expressed serious doubts about whether an equity requirement would be of any value in reducing defaults. They maintain that loan defaults are most often a result of divorce, loss of employment, or catastrophic illness, and the fact that the borrower has some equity in the property does nothing to mitigate the real causes of the default. Several commenters indicated that, unless the property has a market value at least 20 percent above the outstanding loan balances on the property, foreclosure by the lender or HUD will probably result in a loss, due to the time required to foreclose and dispose of the property and the cost of carrying the senior liens.

A number of commenters also indicated that determining the market value of the home will be costly and time-consuming for borrowers and lenders. With new Federal and State rules on the approval and licensing of appraisers, it can be expected that the cost of appraisals will increase, and a $200 to $300 fee for an appraisal is unreasonable on property improvement loans as small as $5,000.

Finally, a number of commenters recommended that, if the Department is insistent on having an equity requirement, it should be applicable only to loans above the present single family loan limit of $17,500 (assuming that the Department is planning to increase that limit to $25,000 as authorized in the Cranston-Gonzalez National Affordable Housing Act). Several commenters also recommended that consideration be given to permitting title examination costs and appraisal fees to be financed with the loan proceeds.

The Department has given serious consideration to all of the comments and concerns expressed about this proposal, and agrees that to require equity for all property improvement loans over $5,000 would be unreasonable and burdensome. At the same time, the Department is concerned about the Department's exposure to claim losses on larger-sized loans, as those loans become a larger share of the outstanding portfolio. Therefore, the Department has revised §§ 201.20(a)(3) and 201.26(a)(1) to require that, for any property improvement loan or combination of such loans on the same property with a total principal balance in excess of $15,000, the borrower must have equity in the property being improved at least equal to the loan amount. However, this requirement would not be applicable to any loan originated by or on behalf of a governmental institution to provide assistance to a low- or moderate-income family or individual. As defined in § 202.2(e), the term "governmental institution" includes any Federal, State or municipal agency, and thus, these agencies are exempt from the equity requirement on Title I loans that provide assistance to low- and moderate-income families and individuals.

As previously noted, several commenters recommended that the costs of title examination and appraisal fees be allowed to be financed with the loan proceeds, to reduce the borrower's upfront costs and make the equity requirement less onerous. In response, the Department has revised § 201.25(b)(1) to include title examination costs and appraisal fees in the list of fees and charges that may be financed with the proceeds of a property improvement loan; however, appraisal fees are only eligible for financing if incurred in connection with a loan or combination of loans on the same property with a total principal balance in excess of $15,000.

Completion Certificates for Direct Loans

The proposed rule would amend § 201.40(b) to delete a requirement that the contractor or seller must sign the completion certificate on a direct property improvement loan. The Department had concluded that this procedure imposed an unwarranted requirement on the contractor or seller to certify that the property improvements were eligible under the Title I regulations, when the contractor or seller was not a party to the loan transaction. This section would also be amended to require that, if the borrower fails to submit a completion certificate within the time limits specified in this section, an on-site inspection must be conducted by the lender or its agent to verify the eligibility of the improvements and determine whether the improvements have been completed.

No comments were received on these amendments, and they are being adopted as published in the proposed rule, except for some minor changes in wording.

Property Inspections

The proposed rule would amend § 201.40(b)(2) to eliminate the requirement for an on-site inspection on any property improvement loan under $7,500; however, it would be retained for all direct property improvement loans of $7,500 or more. In addition, the proposed rule would require the lender or its agent to conduct an on-site inspection for any dealer property improvement loan of $7,500 or more, to be carried out prior to the disbursement of funds to the dealer.

Only one comment was received on the proposal to eliminate the inspection requirement for loans under $7,500, recommending that an inspection be required on all dealer loans, regardless of the amount. The Department has no objection if a lender wishes to conduct inspections on all dealer loans, but that decision should be up to the lender.

A total of 86 comments were received on the proposal to require that inspections be conducted on all dealer loans of $7,500 or more prior to loan disbursement, rather than after disbursement as required by the present regulations. All of the comments were opposed to requiring a pre-disbursement inspection; some of the objections raised included the need for additional staffing to carry out the inspection quickly, the travel distances involved to reach the improved properties, and scheduling problems with borrowers who are working out of the home during regular business hours. While these same factors are involved whether inspections are conducted before or after disbursement, the Department agrees that staffing, scheduling and distance factors are more significant when the improvements have been completed to the borrower's satisfaction and the dealer is waiting to be paid.

Many of the commenters supported a procedure of conducting a pre-disbursement telephone interview with the borrower to determine that the work was completed to the borrower's satisfaction, and a few commenters suggested that the completion certificate should eliminate the need for an on-site inspection. However, past experience has shown that some dealers have had borrowers sign completion certificates in advance, in spite of clear warnings on the certificate not to sign it until the work is completed. Dealers have also been known to coach borrowers to give the "right" answers in telephone interviews. In the Department's view, neither of these approaches is an adequate substitute for having a representative of the lender determine on-site that the terms and conditions for the loan have been met.

Because of the staffing, scheduling and distance problems cited earlier, the Department has decided to retain the present post-disbursement inspection requirement for all property improvement loans of $7,500 or more. However, the lender or its agent must complete the inspection on all dealer loans within 60 days after the date of disbursement. On direct loans, the

lender or its agent must complete the inspection within 60 days after receipt of the completion certificate from the borrower, or as soon as the lender determines that the borrower is unwilling to cooperate in submitting a completion certificate. If the borrower will not cooperate in permitting an on-site inspection, the lender shall report that fact to the Secretary. These requirements are contained in a new § 201.40(c).

Proceeding Against the Loan Security

The proposed rule would amend §§ 201.51(a) (1) and (2) to permit the lender to proceed against the secured property and later submit an insurance claim if the lender (a) obtains a HUD-approved appraisal of the property, (b) proceeds against the secured property in compliance with all applicable State and local laws, and (c) takes all actions necessary to preserve its rights to obtain a valid and enforceable deficiency judgment against the borrower. The Department expected that giving lenders the opportunity to pursue foreclosure and also file a claim for any deficiency would reduce claim losses for both lenders and the Department.

Only two comments were received on this proposal. One commenter recommended that the amount of any deficiency balance be limited to the original loan amount, so that the Department is not faced with paying a claim that is larger than it would have been without foreclosure. The other commenter suggested that the proposed amendment be revised to deal with those States where a foreclosure against the property precludes the lender's having any right to a deficiency judgment against the borrower.

In response to these comments, the Department has revised § 201.51(a)(2) to require that the lender obtain the prior approval of the Secretary before proceeding against the secured property. The Secretary's decision will be based upon all relevant factors, including but not limited to the appraised value and the amount of all outstanding loan obligations on the property, the estimated costs of foreclosure and disposition, and the anticipated time to dispose of the property. In proceeding against the property, the lender must comply with all applicable State and local laws and take all actions necessary to preserve its rights, if any, to obtain a valid and enforceable deficiency judgment against the borrower.

Manufactured Home Loan Reforms

The proposed rule contained a number of changes that would be made to the manufactured home loan program in the areas of nonfinanceable items, site inspections, refinancing of combination loans, proceeding against the loan security, and maximum loan amounts for repossessed homes.

Nonfinanceable Items

The proposed rule would amend §§ 201.10(b)(1) and (d)(1) to prohibit the cost of itemized specialty items from being included in the calculation of the maximum loan amount. Section 201.2(ii), which would also be deleted, defines "specialty items" as including extended warranty or service contracts and the purchase of wheels and axles. The rental of wheels and axles would continue to be eligible for financing.

Nine comments were received in opposition to the proposal to exclude the cost of extended warranties and service contracts from the maximum loan amount calculation. The commenters maintained that extended warranties and service contracts protect the lender's security interest, add value to the home, make resale more feasible, and protect the subsequent purchaser. They indicated that borrowers who cannot finance these items will generally not purchase the coverage separately, and when problems occur, the resulting costs could force the homeowner into default and foreclosure.

The Department has found that extended warranties and service contracts are seldom financed to any great degree as part of Title I loans, and therefore, the elimination of these items should not have a major impact. The borrower who wishes to purchase such coverage is not precluded from doing so, as long as the premiums are not included in the maximum loan amount calculation. Therefore, the proposal to exclude the cost of extended warranties and service contracts from the maximum loan amount calculation is being adopted without change.

Seven commenters opposed the Department's proposal that the cost of purchasing wheels and axles be excluded from the maximum loan amount calculation. Many of the commenters recommended that the Department delay the implementation of this change to give time for further study of how it would work. They pointed out that there is no industry-wide rental system, and even though some reconditioned wheels and axles are used in the construction process, manufacturers are not in the business of renting them. For a rental system to work, manufacturers will have to determine the cost of providing the wheels and axles until homes are ultimately sited, and implement a retrieval system for returning the wheels and axles to the factory. As an alternative to making this change, several commenters suggested that the Department require that a strongly worded warning be furnished to the borrower about the consequences of removing the wheels and axles.

The Department notes that the placement certificate executed by the borrower already contains a certification that the wheels and axles will not be sold or disposed of without the lender's permission. However, a 1988 audit of the manufactured home loan program by HUD's Office of Inspector General found that the practice of wheels and axles being sold by the borrower was growing. In its response to the audit report, the Department stated that, given the small dollar amounts involved and the uncertainties of proving whether the wheels and axles were removed by the dealer and the borrower, it would be difficult to prosecute such violations of the regulations under the U.S. Criminal Code. However, the Department indicated that the problem of false certifications could be prevented by eliminating the purchase of wheels and axles as an item that could be financed.

The trade associations representing the manufactured housing industry have been aware for some time that a prohibition against the purchase of wheels and axles was included in the Department's proposed regulatory agenda, and the Department believes that the manufactured housing industry has had ample time to determine how it will cope with this prohibition. Therefore, the proposal is being adopted without change.

The proposed rule also would amend § 201.25(b)(2) to prohibit the financing of any premiums for hazard insurance, secured interest protection insurance, flood insurance, extended warranty coverage, or extended service contracts on the manufactured home, whether offered by the manufacturer or the dealer. At the present time, premiums paid by the borrower for up to three years of such coverage may be included in the loan amount, as long as their inclusion does not cause the maximum loan amount specified in § 201.10 to be exceeded.

In the preamble to the proposed rule, the Department indicated that it had conducted an extensive evaluation of the "soft costs" that are typically included in the loan amount, but add little or no value in the event that the borrower defaults on the loan and the home must be repossessed. Some of these cost items (transportation, set-up,

skirting, air conditioning, and sales taxes) are needed to make the home usable and livable, and they usually cannot be deferred or paid for in some other way. If these cost items could not be financed, the borrower would have no choice except to pay for them in cash, thereby increasing what is already a substantial downpayment. In the case of premiums for hazard insurance, flood insurance, extended warranties and service contracts, the Department expressed the view that these items are generally payable on an annual basis, and could be eliminated from the loan without severely impacting on the borrower's cash investment in the manufactured home.

Eleven comments were received in opposition to this proposed amendment, particularly the prohibition against financing hazard insurance and flood insurance premiums. Most of the commenters stated that excluding hazard insurance coverage as an eligible item for financing would increase the Department's losses on insurance claims, not reduce them. The commenters challenged the Department's assertion that these costs could be eliminated from the loan without severely impacting on the borrower's cash investment. They pointed out that, in addition to a minimum cash downpayment of approximately ten percent of the purchase price of the home, the borrower will have to make a substantial cash investment to obtain hazard insurance coverage (and flood insurance, where required) for at least the first year. Several commenters recommended that, at a minimum, the Department should permit the first year of hazard insurance and flood insurance premiums to be included in the loan amount.

The Department has reviewed and considered the comments received in response to the current proposal, as well as the 26 comments received in response to an earlier proposed rule published in the **Federal Register** on August 15, 1988 (53 FR 30697), in which the Department had proposed to reduce the number of years of hazard insurance coverage that could be financed from three years to one year. The Department has decided to revise § 201.25(b)(2) to permit the loan amount to include the cost of premiums for hazard insurance and secured interest protection coverage for the first year of the loan term, including premiums for flood insurance where applicable.

The Department shares the concern of many lenders that limiting the financing of hazard insurance to one year may create problems when the premiums for the second and subsequent years come due. To ensure that hazard insurance is maintained at an adequate level, the Department strongly recommends that lenders establish escrow accounts to receive regular installment payments from borrowers and to pay the premiums for such coverage, including premiums for flood insurance where applicable. In a future rulemaking, the Department expects to propose an amendment to the regulations to require that lenders establish and maintain escrow accounts to pay for hazard insurance and flood insurance premiums. While the primary purpose of these escrow accounts would be to ensure that funds are accumulated for the payment of hazard insurance premiums, the Department has no objection to their use for other purposes, such as the payment of real property or personal property taxes or loan insurance premiums.

Site Inspections

The proposed rule would add a new § 201.26(b)(6) to require that the lender or its agent conduct a site-of-placement inspection in connection with any manufactured home purchase loan or combination loan. This inspection would be conducted prior to the disbursement of funds to the dealer or seller, or before final approval in the case of a previously uninsured loan being refinanced under Title I. The purpose of the inspection would be to verify that (a) the terms and conditions of the purchase contract have been met; (b) the manufactured home and any itemized options and appurtenances have been delivered and installed; (c) the manufactured home has been properly erected or installed on the homesite without any structural damage or other defects resulting from its transportation or installation, and all plumbing, mechanical and electrical systems are fully operational; and (d) for any dealer loan, the placement certificate executed by the borrower and the dealer is in order.

Eight comments were received on this issue, all of them stating that the requirement for a pre-disbursement inspection would be burdensome and costly. Their objections were similar to those raised by commenters on the proposal for pre-disbursement inspection on property improvement loans (i.e., the need for additional staffing to carry out the inspection quickly, the travel distances involved to reach homesites, and scheduling problems with borrowers who are working out of the home during regular business hours). A few commenters also expressed a concern that the Department seemed to be requiring an engineering inspection of the home's installation, which would be very costly. Several commenters suggested that a better solution, given the concerns raised above, would be to require a telephone interview with the borrower prior to loan disbursement, followed by an on-site inspection within 60 days after disbursement.

As noted earlier in the discussion of property improvement loan inspections, many of the factors being brought up as obstacles exist whether the inspection is conducted before or after disbursement. However, the commenters do raise a legitimate concern that staffing, scheduling and distance factors are more significant when the home has been delivered and installed to the borrower's satisfaction and the dealer is waiting to be paid.

Therefore, the Department has decided to establish a new § 201.40(d) to require that, for any loan involving the sale of a manufactured home by a dealer, the lender (or an agent of the lender that is not a manufactured home dealer) must conduct a site-of-placement inspection within 60 days after the date of disbursement. The inspection will be to verify that (a) the terms and conditions of the purchase agreement have been met; (b) the manufactured home and any itemized options and appurtenances have been delivered and installed; and (c) the placement certificate executed by the borrower and the dealer is in order.

The Department has also revised § 201.26(b)(6) so that it applies only to inspections in connection with direct loans for the purchase of a manufactured home or a home and lot. In these situations, the lender (or an agent of the lender that is not a manufactured home dealer) must conduct the inspection prior to loan disbursement, to verify that (a) the terms and conditions of the purchase contract have been met; (b) the manufactured home and any itemized options and appurtenances have been delivered and installed; and (c) the manufactured home has been properly erected or installed on the homesite without any apparent structural damage or other serious defects resulting from its transportation or installation, and all plumbing, mechanical and electrical systems are fully operational.

Refinancing of Combination Loans

The proposed rule would add new §§ 201.10(f)(5) and 201.11(c)(4) and would amend §§ 201.19(a)(3), 201.21(b)(1) and 201.23(d) to permit the

proceeds of a combination loan to be used for the purchase of a manufactured home lot in connection with the refinancing of a manufactured home already owned by the borrower.

Two comments were received in support of these changes, and they are being adopted without change from the proposed rule.

Proceeding Against the Loan Security

The proposed rule would redesignate § 201.51(b)(1) as § 201.51(b)(2) and would amend it to require that a visual inspection and preparation of a condition report be carried out by the lender or its agent on all manufactured home loans prior to foreclosure or repossession. If the lender determines that the borrower had abandoned the property, the lender would be expected to take immediate steps to secure and preserve the property, and would not have to send a notice of default and acceleration to the parties who are liable for the repayment of the loan, unless required to do so by State law.

No comments were received on this amendment. The Department has determined that it should retain the present requirement that a notice of default and acceleration be sent to the borrower, even in cases where it is evident that the property has been abandoned. At the same time, the Department recognizes the lender's responsibility to protect its interest in the property securing the loan. Therefore, § 201.51(b)(2) has been revised to provide that, if the lender determines that the property has been abandoned, the lender may take such steps as are permitted under State or local law to repossess or foreclose upon the property, without waiting for the notice period required under § 201.50(b) to run.

The proposed rule also would amend § 201.51(b)(3) to require that the HUD-approved appraisal of the property be performed on the homesite, unless the site owner requests in writing that the home be removed before the appraisal can be performed. In a related change, § 201.55(b)(3) would be amended to explicitly state that the costs of site inspection and property appraisal in connection with the repossession are eligible for reimbursement as part of the lender's insurance claim.

Two comments were received objecting to the requirement for an on-site appraisal. The commenters stated that the decision on whether to leave a home on-site versus moving it to a dealership for resale is a decision best made by the lender under the particular circumstances. They also noted that the site owner may be so uncooperative that the lender may not be able to obtain a letter refusing permission to have the home appraised and resold on-site.

The Department continues to believe that lenders could do more to obtain higher resale prices by selling homes on-site, and for this reason, the requirement for an on-site appraisal is being adopted. However, it is clear that a lender cannot compel a site owner to provide a written request for removal of the home. Therefore, § 201.51(b)(3) has been revised to state that the appraisal shall be performed on the homesite, unless the site owner requires that the home be removed before the appraisal can be performed. When this occurs, the lender should document the loan file as to the efforts made to seek cooperation from the site owner and the owner's response, whether written or oral.

Maximum Loan Amount for Repossessed Homes

The proposed rule would delete §§ 201.10(b)(3) and (d)(3) from the regulations, and would amend §§ 201.10(b)(2) and (d)(2) to indicate that the maximum loan amount for all existing manufactured homes and home and lot combinations would be based upon the lesser of the purchase price or the appraised value. The sections to be deleted had been included in the regulations in a belief that they would help prevent "low ball" appraisals by independent fee appraisers, which would drive down the resale price of repossessed or foreclosed properties. This is no longer a relevant issue, since all appraisals of repossessed or foreclosed units are now carried out under a contract with the Department. In addition, the Department has determined that the application of these sections has always resulted in the purchase price, and not the appraised value, being the determinant of the loan amount. As a consequence, if the purchase price is higher than the appraised value, the Department could be insuring a loan amount that is greater than the value of the property.

No comments were received on these amendments, and they are being adopted as published in the proposed rule.

Other Amendments to Part 201

Increased Fees and Charges

At the request of a number of commenters, the Department has reviewed the present allowances for certain fees and charges that are permitted under the regulations to determine whether they should be increased. In the six years since the present allowances were published, the fees paid by lenders for on-site inspections and the charges paid by manufactured home dealers for transportation, set-up, anchoring, and skirting have increased significantly due to inflation. In addition, the Department has determined that a $25 handling charge for the processing of refinancings and modification agreements is unreasonably low. Therefore, the Department is making the following revisions:

1. In § 201.10(b)(1), the allowance for transportation, set-up and anchoring charges is increased from $600 to $750 per module, and the allowance for skirting costs is increased from $400 to $500.

2. In § 201.10(d)(1), the allowance for transportation, set-up and anchoring charges is increased from $900 to $1,200 per module.

3. In § 201.25(b) (1) and (2), the allowance for inspection of the property is increased from $50 to $75.

4. In § 201.25(c)(10), the handling charge to refinance or modify an existing loan is increased from $25 to $100.

5. In § 201.55(b)(3), the allowance for actual cost of removing and transporting the manufactured home is increased from $600 to $750 per module.

Manufacturer's Certification

Two commenters, both trade associations for the manufactured housing industry, raised an issue that has been unresolved since the Title I regulations were recodified in January 1986. At that time, the definition of "manufacturer's invoice" in § 201.2(p) (which is § 201.2(r) in this rule) included a manufacturer's certification that is required on every invoice for a manufactured home being financed with a Title I loan. The certification states in relevant part as follows:

> The undersigned certifies under applicable criminal and civil penalties for fraud and misrepresentation that * * * (3) except for any payments of volume incentives or special benefits related to this transaction, all such prices and charges exclude any costs of—and the manufacturer will make no payments to or for the benefit of the dealer and/or home purchaser concerning—trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than a nominal value of $10 which will inure to the benefit of the dealer and/or home purchases at any date.

After this certification became part of the regulations in 1986, several manufactured housing industry trade associations submitted a proposal to the Department for the use of an FHA invoice supplement, which would allow

manufacturers to deduct from their invoices any payments to dealers or home purchasers that were prohibited under the certification. These trade associations pointed out that, at the time the invoice is issued, the manufacturer often does not know whether the home is to be financed with a Title I loan, and it would be unreasonable to expect manufacturers to conform to the Department's invoicing requirements when most manufactured homes are not financed under Title I. The Department agreed to the use of the FHA invoice supplement so that manufacturers would not have to issue new invoices on already completed homes being financed with Title I loans. The FHA invoice supplement would be attached to and made a part of the original invoice, and the manufacturer would make its certification on the supplement.

Although this procedure has been in effect for the past five years, it is flawed because the phrase "and the manufacturer will make no payments to or for the benefit of the dealer and/or home purchaser concerning" in the manufacturer's certification is often not true. Although such payments have been backed-out of the invoice for purposes of calculating the maximum loan amount under § 201.10, they nevertheless may have been made. The commenters urged that the Department resolve this situation by deleting the phrase quoted above.

The Department agrees that some change in the certification is needed to conform it to the realities of the situation. However, the Department is concerned that simply removing the above-quoted phrase would permit the manufacturer to make payments to or for the benefit of the dealer or home purchaser which are outside of the invoice, and such payments could result in circumvention of the limitations on the maximum loan amount under § 201.10 or the minimum downpayment required of the borrower under § 201.23. Therefore, the Department has revised the certification in § 201.2(r) by deleting the phrase, so that item (3) of the certification relates only to the prices and charges included in the invoice, and by adding a new item (4) which states that "the manufacturer has not made and will not make any payments to or for the benefit of the dealer and/or home purchaser that are not disclosed on this invoice or invoice supplement."

Conforming and Clarifying Amendments

The Department has amended various other sections in Part 201 to conform them to the changes made by this rule. In addition, other changes have been made for the purpose of clarifying the text of the regulations. Particular attention is called to the following amendments:

1. In § 201.2, the term "debtor" has been defined as the borrower, any co-maker or co-signer, and any assumptor who is liable for the repayment of a defaulted loan obligation insured under part 201.

2. The previous text of § 201.4, which provided for extending the claim filing period under certain circumstances if the defaulted borrower is a "person in military service" under the Soldiers' and Sailors' Civil Relief Act of 1940, has been moved to § 201.54(b)(3). In its place, a new § 201.4 provides that words in the singular include the plural and vice-versa, unless the context indicates otherwise. This new section is intended to minimize disputes with lenders over the adequacy of notices sent to defaulted borrowers and the need for all borrowers to sign loan documents such as completion and placement certificates. Since this provision merely codifies a long-standing rule of construction applicable to part 201, the Department has determined that public comment prior to its adoption is unnecessary.

3. In § 201.10(b)(1), the provision for including the cost of a garage, carport, patio or other comparable appurtenance in calculating the maximum amount of a manufactured home purchase loan has been changed from "actual cost to the borrower" to "actual dealer's cost," to conform with the other items in the loan calculation which are all based upon the wholesale or dealer's cost. Similarly, the provision on appurtenances in connection with a combination loan in § 201.10(d)(1) has been changed from "actual cost to the borrower or the appraised value" to "actual dealer's cost."

4. The provision for rebating unearned interest in connection with full prepayment of a loan has been removed from § 201.17. Interest on all loans with applications approved on or after January 15, 1986 must be calculated according to the actuarial method, and thus, there should be no unearned interest to be rebated. Loans with applications approved prior to that date are subject to the requirements of the regulations that existed at the time the loan was made.

5. Section 201.21(c) has been amended to require that any permanent foundation for a manufactured home must be constructed in accordance with the current edition of HUD's Permanent Foundations Guide for Manufactured Housing (HUD Handbook 4930.3). In addition, this section has been amended to clarify that the requirement for dealer inspection and testing of the manufactured home is applicable only in cases where a dealer was involved in the sale of the home.

6. The provisions on trading-in an existing manufactured home in § 201.23(b)(3) have been amended to require that the borrower's equity in the existing home must be based upon its retail value as determined by a HUD-approved appraisal. In response to a number of questions from lenders, this section has also been clarified to state that the trade-in cannot result in any cash payment to the borrower.

7. Section 201.26(a)(2) has been amended to require that, if the borrower plans to use a dealer or contractor to carry out the property improvements, the lender shall obtain a copy of the proposal or contract which describes in detail the work to be performed and the estimated or actual cost. If the borrower plans to carry out the work without the services of a dealer or contractor, the borrower shall be required to furnish a detailed written description of the work to be performed, the materials to be furnished, and their estimated cost. The previous language stated in part that "If there is no contract, . . . the borrower shall be required separately to furnish a written description of the work to be performed and its estimated cost." Some lenders have incorrectly interpreted this language as permitting them to accept such general categories of work as landscaping, painting, new kitchen, etc., without a cost breakdown. As a consequence, the Department is seeing an increasing incidence of loan proceeds being misused in connection with direct property improvement loans. The Department believes that rigorous adherence to this provision will help to assure that loan proceeds are used only for eligible property improvements.

8. Section 201.26(b)(10), which required that the lender provide the borrower with a written notice six days prior to disbursement on any manufactured home loan disbursed to anyone other than the borrower, has been removed. The Department has decided that this requirement is no longer necessary, since execution of the placement certificate on a dealer loan constitutes adequate notice that the loan proceeds will be disbursed to the dealer.

9. A new § 201.30(c) has been added to provide that, with the prior approval of the Secretary, the lender may use electronic transmission to report loans for insurance. Electronic loan reporting had been requested by a number of lenders, and the Department now has the ability to accommodate such

requests. The Department has determined that public comment on this new provision is unnecessary, since electronic loan reporting is not mandatory and will be more efficient for those lenders who elect to use it.

10. Section 201.54(d) has been amended to provide that, in connection with a claim submission, the assignment of any security interest to the United States shall be recorded in the local jurisdiction, unless the Secretary determines that recordation by the lender in that jurisdiction is impractical. The Department has seen several instances of local jurisdictions refusing to accept such assignments for recordation either because of the form of the security instrument, or because of a State or local law requiring prior acceptance of the assignment by the United States. This amendment provides the necessary latitude for dealing with these situations.

Amendments to Part 200

The proposed rule contained a proposal to remove subparts F and R from part 200. Subpart F contains a general description of the Title I program as it existed in 1971, and has never been amended. Subpart R on Claims Collection Standards has not been revised since 1983. No comments were received in response to these changes, and they are being adopted as published in the proposed rule. Provisions relating to Title I debt collection are to be included in a new subpart G of part 201, which will be the subject of future rulemaking.

The Department is also removing § 200.89 in subpart D of part 200. Section 200.89 delegated authority to a Substantial Compliance Committee to exercise the Secretary's waiver authority under § 201.5(b), and provided for Committee members to be appointed by the Secretary or the Assistant Secretary for Housing. In accordance with section 7(q)(2) of the Department of Housing and Urban Development Act, which was added by section 106 of the Department of Housing and Urban Development Reform Act of 1989 (Pub.L. 101–235, approved December 15, 1989), the Secretary's waiver authority may not be delegated to any official below the rank of Assistant Secretary. Therefore, § 200.89 is now obsolete.

Applicability of Amendments

The Department has added a new § 201.3(b) to indicate the applicability of the amendments made by this rule. The amendments to § 201.27(a) relating to the approval, reapproval and supervision of dealers apply to any application for dealer approval or reapproval received by the lender on or after the effective date of this rule. Amendments to the following sections apply to any new loan for which a credit application is approved by a lender or loan correspondent on or after the effective date of this rule, and to any refinancing or assumption of an existing loan that is approved by a lender on or after the effective date of this rule:

§§ 201.2(o), (q), (r), (ll), and (mm)
§§ 201.10(b), (d), and (f)(5)
§ 201.11(c)(4)
§ 201.19(a)(1) and (3), and (c)
§ 201.20(a)(3)
§ 201.21(c)(3)
§§ 201.22(a)(2), (6), (7), (8) and (9), and (b)
§§ 201.23(b)(3) and (d)
§§ 201.25(b)(1) and (2), (c), and (d)
§§ 201.26(a)(1), (2) and (6), and (b)(4), (6) and (7)
§ 201.32(a)(1)
§§ 201.40(b), (c), and (d)

Other amendments in this rule are applicable to all loans in existence on or after the effective date of this rule, regardless of when they have been or will be reported for insurance.

Other Matters

Environmental Impact

At the time of publication of the proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The initial Finding of No Significant Impact remains applicable to this final rule, and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. Analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

Under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the majority of financial institutions participating in the Title I program are large depository institutions and none of the proposed changes pose undue burdens for small entities seeking to conduct Title I loan transactions.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this rule are directed to lenders and borrowers, and will not impinge upon the relationship between the Federal government and State and local governments. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12606, The Family, has determined that this rule will not have potential for significant impact on family formation, maintenance, or general well-being, and thus, is not subject to review under the Order. The rule involves requirements for property improvement and manufactured home loans insured by the Department. Any effect on the family will likely be indirect and insignificant.

Regulatory Agenda

This rule was listed as item number 1264 in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured Home Loan Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Loan programs—Housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Manufactured homes and lots, Mobile homes, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Approval of lending institutions, Credit insurance, Government contracts.

Accordingly, 24 CFR parts 200, 201, and 202 are amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701 through 1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In subpart D, Delegations to Particular Positions, § 200.89 is removed; subpart F, Property Improvement Loan Procedures and Processing, consisting of §§ 200.165 through 200.179, is removed; and subpart R, Claims Collection Standards, consisting of §§ 200.900 and 200.905, is removed. Subparts F and R are reserved.

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

3. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. Section 201.2 is amended by removing paragraph (ii); by redesignating paragraphs (g) through (o) as paragraphs (h) through (p); by redesignating paragraphs (p) through (hh) as paragraphs (r) through (jj); by redesignating paragraphs (jj) through (ll) as paragraphs (kk) through (mm); by adding new paragraphs (g) and (q); and by revising paragraph (c), and newly redesignated paragraphs (h) introductory text, (i), (o), (r), (ll)(2), and (mm) to read as follows:

§ 201.2 Definitions.

* * * * *

(c) *Borrower* means one who applies for and receives a loan insured under this part. The term may also include any co-maker or co-signer or any assumptor who is obligated for the repayment of a loan obligation insured under this part.

* * * * *

(g) *Debtor* means the borrower, any co-maker or co-signer, and any assumptor who is liable for the repayment of a defaulted loan obligation insured under this part.

(h) *Default* means a failure by the borrower to make any payment due under the note, when such failure continues for a period of 30 days. For the purpose of these regulations, the "date of default" shall be considered as 30 days after the first failure to make an installment payment on the note which is not covered by subsequent payments, when applied to the overdue installments in the order in which they became due.

(i) *Direct loan* means a loan for which a borrower makes application directly to a lender without any assistance from a dealer. The credit application, signed by the borrower, may be filled out by the borrower or by a person acting at the direction of the borrower who does not have a financial interest in the loan transaction. The lender may disburse the loan proceeds solely to the borrower or jointly to the borrower and other parties to the transaction. If a dealer takes legal action required by State law in order for the lender to obtain a valid and enforceable lien against the property, such action by the dealer will not convert an otherwise direct loan to a dealer loan.

* * * * *

(o) *Lender* means a financial institution which (1) holds a valid Title I contract of insurance and continues to be approved by the Secretary under 24 CFR part 202 to originate, purchase, service, and/or sell loans insured under this part; or (2) is under suspension or holds a Title I contract of insurance that has been terminated, but which remains responsible for servicing or selling Title I loans which it holds and is authorized to file insurance claims on such loans. For purposes of loan origination under subparts A, B and C of this part, the term "lender" also includes a "loan correspondent" as defined in paragraph (q) of this section.

* * * * *

(q) *Loan correspondent* means a financial institution approved by the Secretary to originate Title I direct loans for sale or transfer to a sponsoring lending institution which holds a valid Title I contract of insurance and is not under suspension.

(r) *Manufacturer's invoice* means a document issued by a manufacturer and provided with a manufactured home to a retail dealer which separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options (large appliances, built-in items and equipment), plus actual itemized charges for freight from the factory to the dealer's lot or the homesite (including any rental of wheels and axles) and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category. The manufacturer shall certify on the invoice, or on a supplement which is attached to and made a part of the invoice, as follows:

The undersigned certifies under applicable criminal and civil penalties for fraud and misrepresentation that: (1) The wholesale (base) prices for the manufactured home and itemized options, the charges for freight and dealer-paid sales taxes, and all other statements in this invoice are true and accurate; (2) all such prices reflect the actual dealer costs at the factory, as quoted in the applicable current manufacturer's wholesale (base) price list; (3) except for any payments of volume incentives or special benefits related to this transaction, all such prices and charges exclude any costs of trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than nominal value which will inure to the benefit of the dealer and/or home purchaser at any date; and (4) the manufacturer has not made and will not make any payments to or for the benefit of the dealer and/or home purchaser that are not disclosed on this invoice or invoice supplement.

* * * * *

(ll) * * *

(2) Whether or not available on an optional basis, do not increase or decrease the wholesale (base) prices for the sale of a specific home or options or the charges for freight and dealer-paid sales taxes as detailed in the manufacturer's invoice, for a specific sale to a retail dealer;

* * * * *

(mm) *Wholesale (base) price list* means the price list or lists, as periodically amended, which are published and distributed by a home manufacturer to all retail dealers in a

given marketing area, quoting the actual wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options offered for sale to such dealers during a specified period of time. The wholesale (base) prices may include the manufacturer's projected costs of providing volume incentives and special benefits related to sales to dealers during the period. All such wholesale (base) prices shall exclude any costs of trade association fees or charges, discounts, bonuses, refunds, rebates, prizes, loan discount points or other financing charges, or anything else of more than nominal value which will inure to the benefit of a dealer and/or home purchaser at any date. Each price list and amendment shall be retained by the manufacturer for a minimum period of six years from the date of publication so as to be available to HUD and other Federal agencies upon request.

5. Section 201.3 is revised to read as follows:

§ 201.3 Applicability of the regulations.

(a) *Effect on insurance privileges.* The regulations in this part may be amended by the Secretary at any time. Such amendment shall not adversely affect the insurance privileges of a lender on any loan which has been made or for which a loan application has been approved before the effective date of the amendment.

(b) *Applicability of amendments published on October 18, 1991.* The regulations in this part were amended by final rule published in the **Federal Register** on October 18, 1991. The amendments to § 201.27(a) apply to any application for dealer approval or reapproval received by the lender on or after November 18, 1991. Amendments to the following sections apply to any new loan for which a credit application is approved by a lender or loan correspondent on or after November 18, 1991, and to any refinancing or assumption of an existing loan that is approved by a lender on or after November 18, 1991;

§§ 201.2(o), (q), (r), (ll), and (mm)
§§ 201.10(b), (d), and (f)(5)
§ 201.11(c) (4)
§ 201.19(a) (1) and (3), and (c)
§ 201.20(a) (3)
§ 201.21(c) (3)
§§ 201.22(a) (2), (6), (7), (8) and (9), and (b)
§§ 201.23(b) (3) and (d)
§§ 201.25(b) (1) and (2), (c), and (d)
§§ 201.26(a) (1), (2) and (6), and (b) (4), (6) and (7)
§ 201.32(a) (1)
§§ 201.40(b), (c), and (d)

Other amendments made by the final rule are applicable to all loans in existence on or after November 18, 1991, regardless of when they have been or will be reported for insurance.

6. Section 201.4 is revised to read as follows:

§ 201.4 Rules of construction.

As used in this part, and unless the context indicates otherwise, words in the singular include the plural, and words in the plural include the singular.

7. Section 201.5 is revised to read as follows:

§ 201.5 Waivers.

(a) *Waiver of regulatory requirements.* The Secretary in an individual case (or in a class of cases) may waive any requirement of this part not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of the Act.

(b) *Waiver of lender's noncompliance.* The Secretary may waive a lender's noncompliance with any provision of this part, subject to statutory limitations, when it is determined that enforcement of the regulations would impose an injustice upon a lender which has substantially complied with the regulations in good faith and refunded or credited any excess charge made, and when such waiver does not involve an increase in the Secretary's obligation beyond that which would have been involved if the lender was in full compliance with the regulations.

8. Section 201.10 is amended by revising paragraphs (b) and (d) and by adding a new paragraph (f)(5) to read as follows:

§ 201.10 Loan amounts.

* * * * *

(b) *Manufactured home purchase loans.* (1) The total principal obligation for a loan to purchase a new manufactured home shall not exceed the sum of the following itemized amounts, up to a maximum of $40,500:

(i) 125 percent of the sum of the wholesale (base) prices of the home and any itemized options and the charge for freight, as detailed in the manufacturer's invoice;

(ii) The charge for any sales taxes to be paid by the dealer, as detailed in the manufacturer's invoice;

(iii) Transportation to the homesite, including the rental of wheels and axles (if not included in the freight charges), set-up and anchoring charges, not to exceed $750 per module;

(iv) Skirting costs, not to exceed $500;

(v) The actual dealer's cost of a garage, carport, patio or other comparable appurtenance to the manufactured home, as approved by the Secretary;

(vi) The actual dealer's cost of purchasing and installing a central air conditioning system or heat pump, if not installed by the manufacturer; and

(vii) Any applicable charges authorized at § 201.25(b).

(2) The total principal obligation for a loan to purchase an existing manufactured home shall not exceed the lesser of the following amounts, up to a maximum of $40,500:

(i) 90 percent of the appraised value of the home as equipped and furnished (as determined by a HUD-approved appraisal) and 90 percent of any itemized amounts allowed under paragraphs (b)(1) (iii) through (vii) of this section, if incurred; or

(ii) 90 percent of the purchase price of the home.

(3) The purchase price of a new manufactured home financed with a manufactured home purchase loan includes the retail cost to the borrower, as itemized in the purchase contract, of all items set forth in paragraph (b)(1) of this section. The purchase price of an existing manufactured home financed with a manufactured home purchase loan includes the retail cost to the borrower, as itemized in the purchase contract, of the home as equipped and furnished, including any itemized amounts allowed under paragraphs (b)(1) (iii) through (vii) of this section, if incurred.

* * * * *

(d) *Combination loans.* (1) The total principal obligation for a loan to purchase a new manufactured home and a lot on which to place the home shall not exceed the sum of the following itemized amounts, up to a maximum of $54,000:

(i) 125 percent of the sum of the wholesale (base) prices of the home and any itemized options and the charge for freight, as detailed in the manufacturer's invoice;

(ii) The charge for any sales taxes to be paid by the dealer, as detailed in the manufacturer's invoice;

(iii) Transportation to the homesite, including the rental of wheels and axles (if not included in the freight charges), set-up and anchoring charges, not to exceed $1,200 per module;

(iv) The actual dealer's cost of purchasing and installing a central air conditioning system or heat pump, if not installed by the manufacturer;

(v) The appraised value of the developed manufactured home lot (as determined by a HUD-approved appraisal, including on-site water and utility connections, sanitary facilities,

site improvements and landscaping) or the purchase price, whichever is less;

(vi) The actual dealer's cost of appurtenances to the home such as a permanent foundation, garage, carport or patio; and

(vii) Any applicable charges authorized at § 201.25(b).

(2) The total principal obligation for a loan to purchase an existing manufactured home and lot shall not exceed the lesser of the following amounts, up to a maximum of $54,000:

(i) 95 percent of the total appraised value of the home, the lot, and any appurtenances (as determined by a HUD-approved appraisal), plus 95 percent of any applicable charges authorized at § 201.25(b); or

(ii) 95 percent of the purchase price of the home, the lot, and any appurtenances.

(3) The purchase price of a new manufactured home and a lot financed with a combination loan includes the retail cost to the borrower, as itemized in the purchase contract or contracts, of all items set forth in paragraph (d)(1) of this section. The purchase price of an existing manufactured home and lot financed with a combination loan includes the retail cost to the borrower, as itemized in the purchase contract or contracts, of the home, the lot, and any appurtenances, including any applicable charges authorized at § 201.25(b).

* * * * *

(f) * * *

(5) The total principal obligation of the combination loan which results from a borrower's existing uninsured manufactured home purchase loan being refinanced in connection with the purchase of a manufactured home lot shall not exceed the lesser of the following amounts, up to a maximum of $54,000:

(i) The cost to the borrower of prepaying the existing loan on the home, plus the purchase price of the lot; or

(ii) The appraised value of the home and lot (as determined by a HUD-approved appraisal).

* * * * *

9. Section 201.11 is amended by revising paragraph (c)(2) and by adding a new paragraph (c)(4) to read as follows:

§ 201.11 Loan Maturities.

* * * * *

(c) * * *

(2) The term of a loan made to refinance a borrower's existing uninsured manufactured home purchase loan or existing uninsured combination loan shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

* * * * *

(4) The term of the combination loan which results from a borrower's existing uninsured manufactured home purchase loan being refinanced in connection with the purchase of a manufactured home lot shall not exceed the maximum term permitted under paragraph (b) of this section for the particular type of loan.

10. Section 201.17 is revised to read as follows:

§ 201.17 Prepayment provision.

The note shall contain a provision permitting full or partial prepayment of the loan.

11. Section 201.19 is amended by revising the section heading and paragraphs (a)(1) (i) and (iv) and 3 (ii) and (iii); by revising the heading of paragraph (b); and by adding new paragraphs (a)(3)(iv) and (c), to read as follows:

§ 201.19 Refinanced and assumed loans.

(a) * * *

(1) * * *

(i) A loan that is in default may not be refinanced for an amount greater than the original principal balance of the loan;

* * * * *

(iv) A loan that was assumed in accordance with paragraph (c) of this section may be refinanced, subject to all of the requirements of this part except §§ 201.20(b) and (c), 201.21(b) through (e), 201.22, 201.23, and 201.26, as long as the original borrower and any intervening assumptors were released from liability for repayment of the loan at the time the loan was assumed. A lender may not refinance a previously assumed loan under any other circumstances, unless the requirements of § 201.22 are also met and the Secretary has approved a release of the original borrower and any intervening assumptors in accordance with § 201.24(e).

* * * * *

(3) * * *

(ii) Refinancing of an existing uninsured manufactured home purchase loan or combination loan shall be subject to all the requirements of this part applicable to the particular type of loan except §§ 201.23 and 201.26(b)(4);

(iii) Refinancing of an existing uninsured manufactured home lot loan in connection with the purchase of a manufactured home shall be subject to all of the requirements of this part; and

(iv) Refinancing of an existing uninsured manufactured home purchase loan in connection with the purchase of a manufactured home lot shall be subject to all of the requirements of this part except § 201.26(b) (4).

(b) *Note and security requirements for refinanced loans.* * * *

(c) *Assumed loans.* (1) At the option of the lender, an existing insured property improvement loan or manufactured home loan may be assumed, subject to the following conditions:

(i) A determination by the lender that the assumptor is eligible under § 201.20(a) or 201.21(a) and meets the requirements of § 201.22; and

(ii) The execution of an assumption agreement that is satisfactory to the lender and is signed by the assumptor and the original borrower or previous assumptor at the time of assumption.

(2) The lender shall not permit an assumption under any circumstances other than those contained in this section, and shall include appropriate provisions in any note or security agreement to enforce this requirement.

(3) Prior to the execution of the assumption agreement, the lender shall provide the assumptor with a written notice, to be signed by the assumptor and retained in the loan file, that:

(i) States that the loan being assumed is insured by HUD, and describes the actions the Secretary may take to recover the debt if the assumptor defaults on the loan and an insurance claim is paid; and

(ii) Constitutes the assumptor's agreement to pay penalties and administrative costs imposed by HUD as authorized by 31 U.S.C. 3717.

(4) If the other requirements of paragraph (c) of this section are met, the lender at its option may release the original borrower and any intervening assumptors from liability for the repayment of a loan obligation insured under this part. The prior approval of the Secretary under § 201.24(e) is not required. The lender shall retain documentation of the release in the loan file.

12. Section 201.20 is amended by adding a new paragraph (a)(3) to read as follows:

§ 201.20 Property improvement loan eligibility.

(a) * * *

(3) For any property improvement loan or combination of such loans on the same property with a total principal balance in excess of $15,000, the borrower shall have equity in the property being improved at least equal to the loan amount. However, this requirement shall not be applicable to any loan originated by or on behalf of a

governmental institution (as that term is defined in 24 CFR 202.2) to provide assistance to a low- or moderate-income family or individual. Acceptable procedures for determining the market value of the property and evaluating whether the borrower has sufficient equity in the property will be established by the Secretary and published by Notice in the **Federal Register**.

* * * * *

13. Section 201.21 is amended by revising paragraphs (b)(1), the heading of paragraph (c), paragraphs (c) (2) and (3); and by adding a new paragraph (c)(4), to read as follows:

§ 201.21 Manufactured home loan eligibility.

* * * * *

(b) * * *

(1) The loan proceeds may be used for the purchase or refinancing of a manufactured home, a suitably developed lot on which to place a manufactured home already owned by the borrower, or a manufactured home and a suitably developed lot for the home in combination. The loan proceeds may also be used to refinance an existing manufactured home already owned by the borrower in connection with the purchase of a manufactured home lot, or to refinance a lot already owned by the borrower in connection with the purchase of a manufactured home. Where the proceeds are for a manufactured home purchase loan or combination loan, the home must be the borrower's principal residence. Where the proceeds are for a manufactured home lot loan, the borrower's manufactured home must be placed on the lot and occupied as the borrower's principal residence within six months after the date of the loan.

* * * * *

(c) *Construction, transportation and installation requirements.* * * *

* * * * *

(2) During any period of transportation from the factory to the borrower's homesite, the structural integrity of the manufactured home shall be maintained so that it will be livable and durable.

(3) The installation or erection of the manufactured home on the homesite shall comply with the manufacturer's requirements for anchoring, support, stability and maintenance. Any permanent foundation shall be constructed in accordance with the current edition of HUD's Permanent Foundations Guide for Manufactured Housing (HUD Handbook 4930.3).

(4) For any manufactured home purchase loan or combination loan involving a sale of the manufactured home by a dealer, the dealer shall inspect the manufactured home, as installed or erected on the homesite, for structural damage or other defects resulting from the transportation and installation of the home. The dealer shall also test the performance of the home's plumbing, mechanical and electrical systems to assure that they are fully operational.

* * * * *

14. Section 201.22 is amended by redesignating paragraphs (a) (3), (4), and (6) as paragraphs (a) (4), (5), and (10), respectively; by adding new paragraphs (a) (7), (8), and (9); and by revising paragraphs (a) (2) and (b); and adding new paragraphs (a)(3) and (6), to read as follows:

§ 201.22 Credit requirements for borrowers.

(a) * * *

(2) The lender shall obtain a separate dated credit application on a HUD-approved form, executed by the borrower and any co-maker or co-signer under applicable criminal and civil penalties for fraud and misrepresentation, for each loan made. The lender shall verify that the borrower's Social Security Number is valid, through such documentation as may be prescribed by the Secretary.

(3) The lender shall conduct a credit investigation based on the credit application, and shall obtain written verification of or otherwise document the current employment and current income of the borrower and any co-maker or co-signer. If the borrower or any co-maker or co-signer has changed employment within the past two years, the lender shall obtain written verification of or otherwise document the person's prior employment and prior income during the two-year period. If the borrower or any co-maker or co-signer was self-employed during any period of the previous two years, the lender shall obtain documentation of the person's income during such period of self-employment.

* * * * *

(6) If the consumer credit report does not contain the necessary information, the lender shall obtain written verification that the borrower is not over 30 days delinquent on any senior mortgages or deeds of trust on the property being improved with a property improvement loan.

(7) The lender shall verify, in such manner as the Secretary may prescribe, whether the borrower is in default or a claim has been paid in connection with any loan obligation owed to or insured or guaranteed by the Federal Government.

(8) For any loan with a total principal balance in excess of $5,000, the lender shall obtain written verification of the source of all funds of the borrower required for the borrower's initial payment, if such payment will be in excess of five percent of the loan.

(9) Before making a final determination on the creditworthiness of the borrower, the lender shall conduct a face-to-face or telephone interview with the borrower and any co-maker or co-signer to resolve any discrepancies in the information on the credit application and to assure that the information is accurate and complete.

* * * * *

(b) *Income requirements.* (1) For any Title I loan, the credit application and review must establish that the borrower's income will be adequate to meet the periodic payments required by the loan, as well as the borrower's other housing expenses and recurring charges. For a borrower's income to be considered adequate, housing expenses and total fixed expenses generally may not exceed maximum percentages of effective gross income which the Secretary will publish by Notice in the **Federal Register**. If the published expense-to-income ratios are exceeded, the borrower's income may be considered adequate only if the lender determines and documents in the loan file the existence of compensating factors concerning the borrower's creditworthiness which support approval of the loan.

(2) In determining whether the borrower's income is adequate, the following definitions are applicable:

(i) *Effective gross income* is defined as continuing income from all sources that is reasonably expected to be available during the first two years of the loan obligation, without any deduction for income taxes or other items.

(ii) *Total fixed expenses* is the sum of the borrower's housing expenses and other recurring charges.

(iii) *Housing expenses* includes all payments for principal, interest, loan or mortgage insurance charges, ground rent or leasehold charges, real estate taxes, hazard insurance, and homeowners association or condominium fees, but does not include utility costs.

(iv) *Other recurring charges* includes all payments on automobile loans, furniture loans, student loans, installment loans, revolving charge accounts, alimony or child support, child

care, and any other debt where the obligation is expected to continue for six months or more.

* * * * *

15. Section 201.23 is amended by revising paragraphs (b)(3) and (d) to read as follows:

§ 201.23 Borrower's initial payment.

* * * * *

(b) * * *

(3) The borrower's equity in an existing manufactured home and any movable appurtenances may be traded-in on a new home and accepted in lieu of full or partial cash downpayment, but without any cash payment to the borrower. The existing manufactured home being traded-in shall be clearly identified, and the borrower's equity in the home shall be based upon the retail value of the home and appurtenances (as determined by a HUD-approved appraisal), less the total of all loans outstanding on the home and appurtenances.

* * * * *

(d) *Combination loans.* In the case of a combination loan, the borrower shall make a minimum cash downpayment of at least five percent of the first $5,000 and 10 percent of the balance of the purchase price of the manufactured home and lot. Where the borrower already owns a manufactured home or a lot on which a manufactured home is to be placed, the borrower's equity in such home or lot may be accepted in lieu of full or partial cash downpayment on a combination loan, but without any cash payment to the borrower.

16. Section 201.25 is amended by revising paragraphs (b)(1)(iii)–(v), (b)(2)(iii)–(iv), and (c) (5), (8), (10) and (11); and by adding new paragraphs (b)(1)(vi), (c)(12) and (d), to read as follows:

§ 201.25 Charges to borrower to obtain loan.

* * * * *

(b) * * *

(1) * * *

(iii) Credit report costs;

(iv) Title examination costs;

(v) Appraisal fees in connection with a loan or combination of loans on the same property with a total principal balance in excess of $15,000; and

(vi) A fee for inspection of the property by the lender or its agent as required under § 201.40(c), not to exceed $75.

(2) * * *

(ii) Premiums paid by the borrower for hazard insurance and secured interest protection coverage for the first year of the loan term, including premiums for flood insurance where applicable;

(iii) Credit report costs; and

(iv) A fee for inspection of the property by the lender or its agent as required under § 201.26(b) (6) or 201.40(d), not to exceed $75.

(c) * * *

(5) Title insurance costs;

* * * * *

(8) Appraisal fees that are not eligible for financing under paragraph (b)(1) of this section;

* * * * *

(10) A handling charge to refinance or modify an existing loan, not to exceed $100;

(11) A fee for approving an assumptor and preparing the assumption agreement, not to exceed one percent of the unpaid principal balance on the loan; and

(12) Such other items as may be specified by the Secretary.

(d) *Fees and charges which may not be paid.* The lender may not pay a referral fee to any dealer, home manufacturer, contractor, supplier, real estate broker, loan broker or any other party in connection with the origination of a loan insured under this part.

17. Section 201.26 is amended by revising paragraphs (a) (1), (2) and (5) (ii); by redesignating paragraph (a) (6) as (a)(7); by redesignating paragraph (b)(9) as (b)(8) and removing paragraph (b)(10); and by revising paragraphs (b)(2)(iii) and (iv), (3)(i), (iii), (v), and (vi), (4), (6), and (7); and adding new paragraphs (a) (6) and (b)(3)(vii), to read as follows:

§ 201.26 Conditions for loan disbursement.

(a) * * *

(1) The lender shall ensure that the following conditions are met:

(i) The borrower is eligible for a property improvement loan in accordance with § 201.20(a) (1) or (2);

(ii) The interest of the borrower in the property is valid, through such title or other evidence as is generally acceptable to prudent lending institutions and leading attorneys in the community in which the property is situated; and

(iii) For any loan or combination of loans on the same property with a total unpaid principal balance in excess of $15,000, the borrower has equity in the property being improved at least equal to the loan amount, except that this requirement shall not be applicable to any loan originated by or on behalf of a governmental institution (as that term is defined in 24 CFR 202.2) to provide assistance to a low- or moderate-income family or individual.

(2) If the borrower plans to use a dealer or contractor to carry out the improvement work, the lender shall obtain a copy of a proposal or contract which describes in detail the work to be performed and the estimated or actual cost. If the borrower plans to carry out the improvement work without the services of a dealer or contractor, the borrower shall be required to furnish a detailed written description of the work to be performed, the materials to be furnished, and their estimated cost.

* * * * *

(5) * * *

(ii) Except for any discount points paid by the dealer to the lender under § 201.13, the borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, sales commission, or anything of more than nominal value from the dealer as an inducement for the consummation of the transaction.

(6) For any property improvement loan, the lender shall provide the borrower with a written notice, to be signed by the borrower and retained in the loan file, that:

(i) States that the loan will be insured by Hub and describes the actions the Secretary may take to recover the debt if the borrower defaults on the loan and an insurance claim is paid;

(ii) Constitutes the borrower's agreement to pay penalties and administrative costs imposed by HUD as authorized by 31 U.S.C. 3717; and

(iii) In the case of a direct loan, constitutes an acknowledgement of the borrower's postdisbursement obligation to furnish a completion certificate and to permit an on-site inspection by the lender or its agent in accordance with §§ 201.40(b) and (c).

* * * * *

(b) * * *

(2) * * *

(iii) Copies of itemized statements of other costs, fees and charges, whether paid by the borrower or financed with the loan proceeds; and

(iv) The note and security instrument and copies of all other documents relating to the loan transaction.

(3) * * *

(i) The manufactured home being financed with a manufactured home purchase loan or combination loan will be occupied as the borrower's principal residence;

* * * * *

(iii) The initial payment required under § 201.23 was made, and no part of the initial payment was borrowed from or otherwise advanced or paid to or for the benefit of the borrower by the dealer or seller, the manufacturer, or any other party to the transaction, and if any part

of the initial payment was obtained through a gift or loan, the source of the gift or loan and the security for any such loan was disclosed on the credit application;

* * * * *

(v) While any portion of the loan obligation on a combination loan is unpaid, the manufactured home will not be moved to a new site;

(vi) The borrower has paid the remaining unpaid balance on any other insured manufactured home loan secured by a different property, unless the Secretary determines that compliance with this requirement is impractical; and

(vii) Except for any discount points paid by the dealer to the lender under § 201.13, the borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of more than nominal value from the manufacturer or dealer as an inducement for the consummation of the transaction.

(4) For any manufactured home purchase loan or combination loan involving the sale of a manufactured home by a dealer, the lender shall obtain a placement certificate, on a HUD-approved form and signed by the dealer under applicable criminal and civil penalties for fraud and misrepresentation, certifying that:

(i) The manufactured homesite meets the requirements of § 201.21(e);

(ii) The structural integrity of the manufactured home was maintained during the process of transporting the home to the borrower's homesite;

(iii) The manufactured home has been installed or erected on the homesite in accordance with the manufacturer's requirements for anchoring, support, stability and maintenance;

(iv) If the manufactured home is placed on a permanent foundation, such foundation has been constructed in accordance with the requirements of § 201.21(c)(3);

(v) The dealer has performed the inspection and tests required under § 201.21(c)(4) and has determined that the manufactured home has sustained no structural damage or other defects resulting from its transportation or installation, and all plumbing, mechanical and electrical systems are fully operational;

(vi) Any initial payment required under § 201.23 was made by the borrower, and no part of the initial payment was loaned, advanced or paid to or for the benefit of the borrower by the manufacturer, dealer, or any other party to the loan transaction;

(vii) Except for any discount points paid by the dealer to the lender under § 201.13, the borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, or anything of more than nominal value from the manufacturer or dealer as an inducement for the consummation of the transaction; and

(viii) Any discount points to be paid by the dealer to the lender under § 201.13 are from the dealer's own resources and will not be reimbursed by the borrower, the manufacturer, or any other party.

* * * * *

(6) For any direct manufactured home purchase loan or combination loan, the lender (or an agent of the lender that is not a manufactured home dealer) shall conduct a site-of-placement inspection to verify that:

(i) The terms and conditions of the purchase contract have been met;

(ii) The manufactured home and any itemized options and appurtenances included in the purchase price of the home or to be financed with the loan proceeds have been delivered and installed; and

(iii) The manufactured home has been properly erected or installed on the homesite without any apparent structural damage or other serious defects resulting from its transportation or installation, and all plumbing, mechanical and electrical systems are fully operational.

(7) The lender shall provide the borrower with a written notice, to be signed by the borrower and retained in the loan file, that:

(i) States that the loan will be insured by the HUD and describes the actions the Secretary may take to recover the debt if the borrower defaults on the loan and an insurance claim is paid; and

(ii) Constitutes the borrower's agreement to pay penalties and administrative costs imposed by HUD as authorized by 31 U.S.C. 3717.

* * * * *

18. Section 201.27 is revised by redesignating paragraphs (a) (3), (4), and (5) as (a) (5), (6), and (7), respectively; by revising paragraphs (a) (1) and (2); and by adding new paragraphs (a) (3) and (4), to read as follows:

§ 201.27 Requirements for dealer loans.

(a) *Dealer approval and supervision.* (1) The lender shall approve only those dealers which, on the basis of experience and information, the lender considers to be reliable, financially responsible, and qualified to satisfactorily perform their contractual obligations to borrowers and to comply with the requirements of this part. However, in no case shall the lender approve a dealer that is unable to meet the following minimum qualifications:

(i) A property improvement dealer shall have and maintain a net worth of not less than $25,000 in assets acceptable to the Secretary, and shall have demonstrated business experience as a property improvement contractor or supplier; and

(ii) A manufactured home dealer shall have and maintain a net worth of not less than $50,000 in assets acceptable to the Secretary, and shall have demonstrated business experience in manufactured home retail sales.

(2) The lender's approval of a dealer shall be documented on a HUD-approved form, signed and dated by the dealer and the lender under applicable criminal and civil penalties for fraud and misrepresentation, and containing information supplied by the dealer on its trade name, places of business, type of ownership, type of business, and names and employment history of the owners, principals, officers, and salespersons. The dealer shall furnish a current financial statement prepared by a licensed public accountant, together with such other documentation as the lender deems necessary to support its approval of the dealer. The lender shall obtain a commercial credit report on the dealer and consumer credit reports on the owners, principals, and officers of the dealership.

(3) The lender shall require each dealer to apply annually for reapproval. The dealer shall furnish the same documentation as is required under paragraph (a)(2) of this section to support its application for reapproval. In no case shall the lender reapprove a dealer that is unable to meet the minimum net worth requirements in paragraph (a)(1) of this section.

(4) The lender shall supervise and monitor each approved dealer's activities with respect to loans insured under this part. The lender shall visit each approved dealer's places of business at least once in every six months to review its Title I performance and compliance. The lender shall maintain a file on each approved dealer which contains the executed dealer approval form and supporting documentation required under paragraph (a)(2) of this section, together with information on the lender's experience with Title I loans involving the dealer. Each dealer file shall contain information about borrower defaults on Title I loans over time, records of completion or site-of-placement inspections conducted by the lender or its agent, copies of letters concerning borrower complaints and their

resolution, and records of the lender's periodic review visits to the dealer's premises. The lender may also require that the dealer furnish records on individual loan transactions, if needed to enable the lender to review the dealer's Title I performance and compliance.

* * * * *

19. Section 201.30 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 201.30 Reporting of loans for insurance.

(a) *Date of reports.* The lender shall transmit a loan report on the prescribed form to the Secretary within 31 days from the date of the loan's origination or purchase from a dealer or loan correspondent. Any loan refinanced under this part shall similarly be reported on the prescribed form within 31 days from the date of refinancing. When a loan insured under this part is transferred to another lender without recourse, guaranty, guarantee, or repurchase agreement, a report on the prescribed form shall be transmitted to the Secretary within 31 days from the date of the transfer. No report is required when a loan insured under this part is transferred with recourse or under a guaranty, guarantee, or repurchase agreement.

* * * * *

(c) *Electronic loan reporting.* With the prior approval of the Secretary, the lender may use electronic transmission to report loans for insurance in accordance with paragraph (a) of this section.

20. Section 201.32 is amended by revising paragraphs (a) and (d)(1) to read as follows:

§ 201.32 Insurance coverage reserve account.

(a) *Establishment.* (1) The Secretary shall establish an insurance coverage reserve account for each lender. Separate Title I contracts with separate reserve accounts shall be established for lenders that are originating, purchasing or holding both property improvement and manufactured home loans.

(2) The amount of insurance coverage in each reserve account shall equal 10 percent of the amount disbursed, advanced or expended by the lender in originating or purchasing eligible loans registered for insurance under this part, less the amount of all insurance claims approved for payment in connection with losses on such loans, and less the amount of any annual adjustments made in accordance with paragraph (b) of this section.

* * * * *

(d) * * *

(1) In all cases involving the sale, assignment or transfer of loans sold without recourse, guaranty, guarantee, or repurchase agreement, the Secretary shall transfer insurance coverage to the reserve account established for the transferee lender in an amount equal to 10 percent of the actual purchase price or the net unpaid principal balance, whichever is lesser, but not to exceed the amount of insurance coverage in the transferor lender's reserve account prior to the transfer. Insurance coverage shall be added to the existing amount of insurance coverage in the transferee lender's reserve account. The Secretary may transfer insurance coverage with earmarking when a determination is made that it is in the Secretary's interest to do so.

* * * * *

21. Section 201.40 is amended by revising paragraph (b)(1) introductory text, (1)(iii) and (2); and adding new paragraphs (c) and (d) to read as follows:

§ 201.40 Post-disbursement loan requirements.

* * * * *

(b) *Requirements on direct property improvement loans.* (1) After receiving the proceeds of a direct property improvement loan, and after the work is completed to the borrower's satisfaction, the borrower shall submit a completion certificate to the lender, on a HUD-approved form and signed by the borrower under applicable criminal and civil penalties for fraud and misrepresentation, certifying that:

(i) * * *

(iii) The borrower has not obtained the benefit of and will not receive any cash payment, rebate, cash bonus, sales commission, or anything of more than nominal value from any contractor or supplier as an inducement for the consummation of the loan transaction.

(2) The borrower shall submit the completion certificate promptly upon the work's completion, but not later than six months after the disbursement of the loan proceeds, with one six-month extension if necessary. If the borrower fails to submit the completion certificate within these time limits, an on-site inspection shall be conducted in accordance with paragraph (c) of this section.

(c) *Inspection requirement on property improvement loans.* The lender or its agent shall conduct an on-site inspection on any property improvement loan where the principal obligation is $7,500 or more, and on any direct property improvement loan where the borrower fails to submit a completion certificate as required under paragraph (b) of this section. On a dealer loan, the inspection shall be completed within 60 days after the date of disbursement. On a direct loan, the inspection shall be completed within 60 days after receipt of the completion certificate, or as soon as the lender determines that the borrower is unwilling to cooperate in submitting the completion certificate. The purpose of the inspection is to verify the eligibility of the improvements and whether the work has been completed. If the borrower will not cooperate in permitting an on-site inspection, the lender shall report this fact to the Secretary.

(d) *Inspection requirement on dealer manufactured home loans.* For any manufactured home purchase loan or combination loan involving the sale of a manufactured home by a dealer, the lender (or an agent of the lender that is not a manufactured home dealer) shall conduct a site-of-placement inspection within 60 days after the date of disbursement to verify that:

(1) The terms and conditions of the purchase contract have been met;

(2) The manufactured home and any itemized options and appurtenances included in the purchase price of the home or financed with the loan proceeds have been delivered and installed; and

(3) The placement certificate executed by the borrower and the dealer is in order.

22. Section 201.50 is amended by revising paragraph (a) to read as follows:

§ 201.50 Lender efforts to cure the default.

(a) *Personal contact with the borrower before acceleration and foreclosure or repossession.* (1) The lender shall undertake foreclosure or repossession of the property securing a Title I loan that is in default only after the lender has serviced the loan in a timely manner and with diligence in accordance with the requirements of this part, and has taken all reasonable and prudent measures to induce the borrower to bring the loan account current. Before taking action to accelerate the maturity of the loan, the lender or its agent shall contact the borrower and any co-maker or co-signer, either in a face-to-face meeting or by telephone, to discuss the reasons for the default and to seek its cure. If the borrower and the co-makers or co-signers cannot be located, will not discuss the default, or will not agree to its cure, the lender may proceed to take action under paragraph (b) of this section. The lender shall document the

results of its efforts to contact the borrower and any co-maker or co-signer, and shall place in the loan file a copy of any modification agreement or repayment plan that has been offered.

* * * * *

23. Section 201.51 is amended by revising paragraphs (a) (1) and (2); by redesignating paragraph (b)(2) as paragraph (b)(1) and paragraph (b)(1) as paragraph (b)(2), and by revising newly redesignated paragraph (b)(2) and paragraph (b)(3), to read as follows:

§ 201.51 Proceeding against the loan security.

(a) * * *

(1) After acceleration of maturity on a secured property improvement loan, the lender may either proceed against the loan security under its Title I security instrument or make claim under its contract of insurance. If the lender proceeds against the loan security, it may submit an insurance claim only if it complies with the requirements of paragraph (a)(2) of this section.

(2) The lender may proceed against the secured property under its Title I security instrument and later submit a claim under its contract of insurance only with the prior approval of the Secretary. The Secretary's decision will be based upon all relevant factors, including but not limited to the appraised value and the amount of all outstanding loan obligations on the property, the estimated costs of foreclosure and disposition, and the anticipated time to dispose of the property. In proceeding against the secured property, the lender shall comply with all applicable State and local laws, and shall take all actions necessary to preserve its rights, if any, to obtain a valid and enforceable deficiency judgment against the borrower.

* * * * *

(b) * * *

(2) Prior to foreclosure or repossession, the lender or its agent shall make a visual inspection of the property and prepare a report on its condition for placement in the loan file. If the lender determines that the property has been abandoned, the lender shall take such steps as are permitted under State or local law to repossess or foreclose upon the property, without waiting for the notice period under § 201.50(b) to run.

(3) The lender shall obtain a HUD-approved appraisal of the property as soon after repossession as possible, or earlier with the permission of the borrower. This appraisal shall be performed on the homesite, unless the site owner requires that the home be removed before the appraisal can be performed, and it should reflect the retail value of comparable manufactured homes in similar condition and in the same geographic area where the repossession occurred. When the manufactured home is without hazard insurance and has sustained, at any time prior to the sale or disposition of the home, damage which would normally be covered by such insurance, the lender shall report this situation in submitting an insurance claim, and the appraised value shall be based upon the retail value of comparable homes in good condition and in the same geographic area, without any deduction for such damage.

24. Section 201.54 is amended by revising paragraphs (a) introductory text and (3), (b), and (c), the last sentence of paragraph (d), and paragraph (e), to read as follows:

§ 201.54 Insurance claim procedure.

(a) *Claim application.* A claim for reimbursement for loss on any eligible loan shall be made on a HUD-approved form, executed by a duly qualified officer of the lender under applicable criminal and civil penalties for fraud and misrepresentation. The insurance claim shall be fully documented and itemized, and shall be accompanied by all documents and materials required by the Secretary for claim review. The claim submission shall contain original copies of all notes, security instruments, assumption agreements, releases of liability for repayment of the loan, judgments obtained by the lender against the borrower, and any related documents and forms, except where State or local law requires their retention by the lender or a governmental body such as a court. As appropriate, the claim application shall be supported by the following:

* * * * *

(3) Where a borrower has declared bankruptcy or insolvency or is deceased, copies of the documentation required to be retained in the loan file under § 201.42.

(b) *Maximum claim period.* (1) An insurance claim shall be filed not later than the following dates:

(i) For property improvement loans—nine months after the date of default.

(ii) For manufactured home loans—three months after the date of sale of the property securing the loan, but not to exceed 18 months after the date of default.

(2) The Secretary may extend the claim filing period in a particular case, but only where the lender shows clear evidence that the delay in claim filing was in the interest of the Secretary or was caused by:

(i) Litigation related to the loan; or

(ii) Management control of the lender or the Title I loan portfolio having been assumed by a Federal or State agency.

(3) If a borrower is a "person in military service" as that term is defined in the Soldiers' and Sailors' Civil Relief Act of 1940 and is in default on a loan insured under this part, any period of military service after the date of default shall be excluded in computing the maximum time period for filing an insurance claim.

(c) *Resubmitted and supplemental claims.* (1) Any insurance claim which is resubmitted with an appeal of a claim denial or a request for a waiver of the regulations in accordance with § 201.5(a) shall be filed within six months after the date of the claim denial.

(2) Any supplemental insurance claim shall be filed within six months after the date of payment on the initial claim. A reprocessing fee, in an amount prescribed by the Secretary, will be charged for any supplemental claim.

(d) * * * If the security interest has been assigned to the United States, the assignment shall be recorded in that jurisdiction prior to filing the insurance claim, unless the Secretary determines that recordation by the lender in that jurisdiction is impractical.

(e) *Valid and enforceable obligation when assigned.* The loan obligation evidenced by the note must be both valid and enforceable against the debtor at the time the note is assigned to the United States of America. If the Secretary has reason to believe that the obligation may not be either valid or enforceable against the borrower, the Secretary may either deny the claim and reassign the loan note to the lender, or require the lender to repurchase the paid claim and accept reassignment of the note. The lender will be notified of the reasons for the claim denial or repurchase. If the lender subsequently obtains a valid and enforceable judgment against the borrower for the unpaid balance of the loan, the lender may resubmit the claim with an assignment of the judgment.

* * * * *

25. Section 201.55 is amended by revising paragraphs (a)(2) and (b) (2) and (3) to read as follows:

§ 201.55 Calculation of insurance claim payment.

* * * * *

(a) * * *

(2) Interest on the unpaid amount of the loan obligation from the date of

default to the date of the claim's initial submission for payment plus 15 calendar days, calculated at the rate of seven percent per annum. However, interest shall not be paid for any period greater than nine months from the date of default.

* * * * *

(b) * * *

(2) Interest on the unpaid amount of the loan obligation from the date of default to the date of the claim's initial submission for payment plus 15 calendar days, calculated at the rate of seven percent per annum. However, interest shall not be paid for any period greater than nine months from the date of default.

(3) For manufactured home purchase loans, the amount of costs paid to a dealer or other third party to repossess and preserve the manufactured home and other property securing repayment of the loan (including the costs of site inspection, property appraisal, hazard insurance premiums, personal property taxes and site rental, where appropriate), plus actual costs not to exceed $750 per module for removing and transporting the home to a dealer's lot or other off-site location.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS UNDER TITLE I

26. The authority citation for 24 CFR part 202 continues to read as follows:

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); Title I, Sec. 2, National Housing Act (12 U.S.C. 1703).

27. Part 202 is amended by redesignating §§ 202.5 and 202.6 as §§ 202.7 and 202.8, respectively; by revising §§ 202.1 through 202.4; and by adding new §§ 202.5 and 202.6, to read as follows:

§ 202.1 Approval of financial institutions.

(a) *Purpose.* This part establishes minimum standards and requirements for the approval of financial institutions to participate in the property improvement and manufactured home loan insurance programs under Title I, section 2 of the National Housing Act (12 U.S.C. 1703).

(b) *Approval as a lender or loan correspondent.* A request for approval to become a Title I lender or loan correspondent shall be made on a form prescribed by the Secretary and signed by the applicant. The approval form shall be accompanied by such documentation as may be prescribed by the Secretary to support the request for approval. The issuance of a Title I contract of insurance or approval as a loan correspondent shall constitute an agreement between the financial institution and the Secretary which shall govern participation in the Title I loan insurance program.

(c) *Approved lending area.* A Title I lender or loan correspondent may originate loans or purchase advances of credit only within a geographic lending area approved by the Secretary. Expansion of the lending area of the lender or loan correspondent shall be subject to a determination by the Secretary that the lender or loan correspondent has the capability to carry out proper loan origination in compliance with 24 CFR part 201 within the expanded area.

(Approved by the Office of Management and Budget under control number 2502–0328.)

§ 202.2 Definitions.

As used in this part, the term: (a) *Lender* means a financial institution which (1) holds a valid Title I contract of insurance and continues to be approved by the Secretary under this part to originate, purchase, service, and/or sell loans insured under 24 CFR part 201; or

(2) Is under suspension or holds a Title I contract of insurance that has been terminated, but which remains responsible for servicing or selling Title I loans which it holds and is authorized to file insurance claims on such loans.

(b) *Loan correspondent* means a financial institution approved by the Secretary to originate Title I direct loans for sale or transfer to a sponsoring financial institution which holds a valid Title I contract of insurance and is not under suspension.

(c) *Supervised institution* means a financial institution which is a member of the Federal Reserve System or whose accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. The term also includes any financial institution which is subject to inspection and supervision by a governmental agency that is required by law or regulation to make periodic examinations of its books and accounts.

(d) *Nonsupervised institution* means a financial institution which has as its principal activity the lending or investment of funds in mortgages, consumer installment notes, or similar advances of credit, or the purchase of consumer installment contracts, and which is not required by law or regulation to submit to periodic inspection and supervision by a governmental agency.

(e) *Governmental institution* means a Federal, State or municipal agency, a Federal Reserve Bank, a Federal Home Loan Bank, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation.

§ 202.3 General approval requirements.

To be approved for participation in the Title I property improvement and manufactured home loan programs as either a lender or a loan correspondent, the financial institution shall establish to the satisfaction of the Secretary that it meets, and will continue to meet, the following general requirements:

(a) It shall be a corporation or other chartered institution or permanent organization having succession, and shall be authorized under Federal or State law or regulation to originate or purchase consumer and mortgage loans, or shall be a Federal, State or municipal agency.

(b) It shall employ trained personnel competent to perform their assigned responsibilities in consumer and mortgage lending activities, and shall have adequate staff and facilities to originate and/or service Title I loans.

(c) It shall ensure that all employees who will report Title I loans for insurance on behalf of the lender shall be corporate officers or shall otherwise be authorized to bind the lender in matters involving the origination of Title I loans.

(d) It shall comply with Title VIII of the Civil Rights Act of 1968, Executive Order 11063, the Equal Credit Opportunity Act, and other Federal laws relating to consumer lending activities.

(e) It shall not use escrow funds collected from borrowers for any purpose other than that for which they were received.

(f) It shall originate Title I loans from branch offices only with the prior approval of the Secretary, and it shall be responsible to the Secretary for all actions taken by its lending and servicing branches.

(g) It shall file a yearly verification report on a form prescribed by the Secretary.

(h) It shall submit a copy of its latest financial statement and such other information as the Secretary may request, and shall submit to an examination of that portion of its records which relates to its Title I lending activities.

(i) It shall provide prompt notification, on a form prescribed by the Secretary, of all corporate changes, including but not limited to mergers, terminations, changes in name or location, control of ownership, and character of business.

(j) Except for governmental institutions as defined in § 202.2, it shall pay an application fee and an annual fee, including an additional fee for each

branch office authorized by the Secretary to originate Title I loans. These fees shall be in such amount as the Secretary may require to assist in defraying the cost of approving and supervising lenders and loan correspondents for participation in the Title I program.

(k) No lender or loan correspondent, nor any officer, director, principal or employee of a lender or loan correspondent, shall:

(1) Be under suspension, debarment, or other restrictions under 24 CFR Part 24 or 25 or under similar procedures of any other Federal agency; or

(2) Be indicted for or convicted of an offense which reflects adversely upon the lender or loan correspondent's integrity or its ability to participate in the Title I program.

(Approved by the Office of Management and Budget under control number 2502–0328.)

§ 202.4 Requirements for supervised lenders.

In addition to the general approval requirements in § 202.3, a supervised institution shall meet the following requirements to qualify as a lender:

(a) A supervised institution shall have and maintain a net worth of not less than $250,000 in assets acceptable to the Secretary.

(b) Supervised institutions which were approved prior to November 18, 1991 shall have until November 18, 1994 to meet the net worth requirements of paragraph (a) of this section.

(c) A supervised institution shall provide prompt notification to the Secretary in the event of termination of its supervision by its supervisory agency.

§ 202.5 Requirements for nonsupervised lenders.

In addition to the general approval requirements in § 202.3, a nonsupervised institution shall meet the following requirements to qualify as a lender:

(a) A nonsupervised institution shall have and maintain a net worth of not less than $250,000 in assets acceptable to the Secretary, and shall have and maintain a reliable warehouse line of credit or other funding program acceptable to the Secretary of not less than $500,000 for use in originating or purchasing Title I loans.

(b) Nonsupervised institutions which were approved prior to November 18, 1991 shall have until November 18, 1994 to meet the net worth and warehouse line of credit requirements of paragraph (a) of this section.

(c) Within 90 days of the close of its fiscal year and at such other times as may be requested by the Secretary, a nonsupervised institution shall file with the Secretary an audit report and financial statements in a form acceptable to the Secretary, consisting of a balance sheet, a statement of operations and retained earnings, an analysis of net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds. The audit report and financial statements shall be based upon an audit performed by a Certified Public Accountant or by a qualified Independent Public Accountant (as defined by the Comptroller Ceneral of the United States) licensed by a State or other political subdivision of the United States.

(Approved by the Office of Management and Budget under control number 2502–0328.)

§ 202.6 Requirements for loan correspondents.

In addition to the general approval requirements in § 202.3, a financial institution shall meet the following requirements to qualify as a loan correspondent:

(a) A loan correspondent shall have and maintain a net worth of not less than $50,000 in assets acceptable to the Secretary, plus an additional $25,000 for each branch office authorized by the Secretary, up to a maximum requirement of $250,000.

(b) A loan correspondent may sell or transfer Title I loans only to its sponsoring lenders. There is no limitation on the number of sponsoring lenders that a loan correspondent may have, and no limitation on the number of loan correspondents that a lender may sponsor.

(c) Each sponsoring lender shall request approval of its loan correspondents from the Secretary, and shall be responsible to the Secretary for the actions of its loan correspondents in originating Title I loans.

(d) All Title I loans shall be funded by and closed in the name of the loan correspondent, prior to their sale or transfer to a sponsoring lender.

(e) Within 90 days of the close of its fiscal year and at such other times as may be requested by the Secretary, a loan correspondent which is a nonsupervised institution shall file with the Secretary an audit report and financial statements in a form acceptable to the Secretary, consisting of a balance sheet, a statement of operations and retained earnings, an analysis of net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds. The audit report and financial statements shall be based upon an audit performed by a Certified Public Accountant or by a qualified Independent Public Accountant (as defined by the Comptroller General of the United States) licensed by a State or other political subdivision of the United States.

(f) A loan correspondent and its sponsoring lender shall provide prompt notification to the Secretary if their loan correspondent agreement is terminated.

(Approved by the Office of Management and Budget under control number 2502–0328.)

Dated: October 1, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–24721 Filed 10–17–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-91-3329; FR-3175-N-01]

Title I Property Improvement and Manufactured Home Loans; Income Requirements for Borrowers

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In today's **Federal Register**, the Department is publishing a final rule implementing major changes to reform the Title I property improvement and manufactured home loan programs. The final rule amends 24 CFR 201.22(b) to revise the method for calculating the maximum expense-to-income ratios that are used in connection with manufactured home loans, and to extend the use of such ratios to borrowers obtaining property improvement loans. This Notice publishes the maximum expense-to-income ratios that are to be used by lenders in determining the creditworthiness of borrowers under both the property improvement and manufactured home loan programs.

EFFECTIVE DATE: November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, Room 9158, 451 Seventh Street SW., Washington, DC 20410. Telephone number (202) 708-2880. Hearing- or speech-impaired individuals may call HUD's TDD number, which is (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In today's **Federal Register**, the Department is publishing a final rule implementing major changes to reform the Title I property improvement and manufactured home loan programs. One of the goals of program reform is to establish more objective criteria for lending institutions to use in approving loans. The final rule amends the program regulations at 24 CFR 201.22(b) to revise the method for calculating the maximum expense-to-income ratios that are used in determining whether a borrower's income is adequate to qualify for a manufactured home loan. In addition, 24 CFR 201.22(b) has been revised to extend the use of such ratios to borrowers obtaining property improvements loans. For both programs, the Secretary has established maximum ratios of expenses to effective gross income which may not be exceeded unless there are compensating factors.

This Notice publishes the maximum expense-to-income ratios to be used by lenders in determining the creditworthiness of borrowers under both the property improvement and manufactured home loan programs. These maximum ratios are applicable to all credit applications approved by the lender on or after the effective date of this Notice. When effective, this Notice supersedes that portion of a Notice published in the **Federal Register** on March 21, 1986 (51 FR 9786) which provided maximum ratios of expenses to net effective income that were applicable only to manufactured home loans.

Definitions

In determining whether a borrower's income is adequate to qualify for a Title I loan, the following definitions are applicable:

"Effective gross income" is defined as continuing income from all sources that is reasonably expected to be available during the first two years of the loan obligation, without any deduction for income taxes or other items.

"Total fixed expenses" is the sum of the borrower's housing expenses and other recurring charges.

"Housing expenses" includes all payments for principal, interest, loan or mortgage insurance charges, ground rent or leasehold charges, real estate taxes, hazard insurance, and homeowners association or condominium fees, but does not include utility costs.

"Other recurring charges" includes all payments on automobile loans, furniture loans, student loans, installment loans, revolving charge accounts, alimony or child support, child care, and any other debt where the obligation is expected to continue for six months or more.

Ratio for Property Improvement Loans

The Secretary has determined that, for a borrower's income to be considered adequate to qualify for a property improvement loan, the borrower's total fixed expenses (including payments on the property improvement loan) shall not exceed 45 percent of effective gross income.

Ratios for Manufactured Home Loans

The Secretary has determined that, for a borrower's income to be considered adequate to qualify for a manufactured home loan, the borrower's total housing expenses (including payments on the manufactured home loan) shall not exceed 29 percent of effective gross income, and the borrower's total fixed expenses (including payments on the manufactured home loan) shall not exceed 41 percent of effective gross income.

Compensating Factors

If the maximum expense-to-income ratios are exceeded, a borrower's income may be considered adequate to qualify for a loan only if the lender determines and documents in the loan file the existence of compensating factors concerning the borrower's creditworthiness that support approval of the loan. Examples of such factors include but are not limited to the following:

1. The borrower receives employee benefits not included in effective gross income, but which directly affect the borrower's ability to meet financial obligations (e.g., a company automobile that is available for personal use).
2. A considerable portion of the borrower's effective gross income is from nontaxable sources.
3. The borrower has substantial cash reserves available for contingencies (e.g., a savings account with the equivalent of several months' income).
4. The borrower's total fixed expenses have been at the same or higher levels for the past two years, without any evidence of delinquency.

If the lender has any doubt about whether a particular compensating factor is acceptable, a specific ruling should be requested from the Department.

Authority: Sec. 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: October 1, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-24757 Filed 10-17-91; 8:45 am]

BILLING CODE 4210-27-M

federal register

Friday
October 18, 1991

Part V

Department of Defense

48 CFR Part 233

Federal Acquisition Regulation Supplement; Contracting Officer's Final Decisions; Interim Rule With Request for Comments

DEPARTMENT OF DEFENSE

48 CFR Part 233

Department of Defense Federal Acquisition Regulation Supplement; Contracting Officer's Final Decisions

AGENCY: Department of Defense (DOD).

ACTION: Interim rule with request for comments.

SUMMARY: The Defense Acquisition Regulations (DAR) Council has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) by adding a new section 233.211 to require that all contracting officer final decisions include a note alerting the contractor to a recent court decision which could affect the contractor's choice of a forum for appeal.

Note: This rule amends the 1988 edition of DFARS, not the 1991 edition which was published July 31, 1991 (56 FR 36280).

DATES: *Effective Date:* October 4, 1991.

Comment Date: Comments on the interim rule should be submitted in writing at the address shown below on or before (November 18, 1991), to be considered in the formulation of the final rule. Please cite DAR Case 91-043D in all correspondence.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric Mens, OUSD(A)DP, The Pentagon, Washington, DC 20301-3000. Telefax Number (703) 697-9845.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

In *The Finney Company, Inc.*, versus *United States* (Claims Court No. 91-1141C), the contractor appealed a termination for default that did not include a money claim. The contracting officer's final decision used language substantially the same as that found at FAR 33.211(a)(4)(v) concerning contractor appeals to either the Armed Services Board of Contract Appeals or the Claims Court. Based upon the decision by the Court of Appeals for the Federal Circuit in *Overall Roofing & Construction, Inc.* versus *United States*, 929 F.2d 687, the Claims Court held that it did not have jurisdiction to decide this appeal absent a money claim. The Claims Court also concluded that the contracting officer's final decision had misinformed the contractor regarding its right to appeal to the Claims Court, and therefore, it did not comply with the Contract Disputes Act. The Court took this action even though the contracting officer's final decision was issued prior to the Circuit Court's decision in *Overall Roofing*.

Section 233.211 is added to the Defense Federal Acquisition Regulation Supplement to require contracting officers to insert a "note" in all contracting officer final decisions, immediately following the paragraph required by FAR 33.211(a)(4)(v). The note advises the contractor to refer to a recent Circuit Court decision which may affect the contractor's choice of a forum for appeal.

B. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this regulation as an interim rule. This action is necessary because the Claims Court decision in *The Finney Company, Inc.*, versus *United States* (Claims Court No. 91-1141C) has a potential impact on all contracting officer final decisions which contain language substantially the same as set forth in FAR 33.211(a)(4)(v). Similar changes proposed for FAR 33.211 will not be published until a later date. Therefore, it is essential that guidance be issued expeditiously in the DFARS.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies but the interim rule is not expected to have a significant economic impact on a substantial number of small entities because the rule does not change existing appeal procedures under FAR subpart 33.1 or DFARS subpart 233.1. It merely provides additional information for consideration by contractors who choose to appeal a contracting officer's final decision. An initial regulatory flexibility analysis has therefore not been performed. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 610 (DAR Case 91-610D) in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the interim rule does not impose any recordkeeping requirements or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 233

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 233 is amended as follows:

1. The authority citation for 48 CFR Part 233 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 233—PROTESTS, DISPUTES, AND APPEALS

2. A new section 233.211 is added to read as follows:

233.211 Contracting officer's decision.

(a)(4)(v) Insert the following "Note" in all final decisions immediately after the paragraph required by FAR 33.211(a)(4)(v) (i.e., after "claims of $50,000 or less"):

"(**Note:** The U.S. Court of Appeals for the Federal Circuit has issued a decision that you should consider in evaluating your choice of a potential forum for any appeal from this final decision. See *Overall Roofing & Construction, Inc.* versus *U.S.*, 929 F2.d 687 (Fed. Cir. 1991))."

[FR Doc. 91-24887 Filed 10-17-91; 8:45 am]

BILLING CODE 3810-01-M

federal register

Friday
October 18, 1991

Part VI

Department of Energy

Proposed Subsequent Arrangements Between the United States Government and the European Atomic Energy Community; Notice

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements Between the United States Government and the European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

These subsequent arrangements would give approval, which must be obtained under the above-mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows:

Switzerland to France for the purpose of reprocessing, 42 irradiated fuel assemblies, containing approximately 7,435 kilograms of uranium, enriched to approximately 0.77% in U–235 and 64 kilograms of plutonium, from the Muhleberg nuclear power station, and 36 irradiated fuel assemblies, containing approximately 15,000 kilograms of uranium, enriched to approximately 0.90% in U–235 and 150 kilograms of plutonium, from the Gosgen-Daniken nuclear power station. These subsequent arrangements are designated as RTD/EU(SD)–75 and RTD/EU(SD)–76, respectively.

The United States has received assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Issued in Washington, DC on October 16, 1991.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 91–25392 Filed 10–17–91; 10:58 am]

BILLING CODE 6450–01–M

Reader Aids

Federal Register

Vol. 56, No. 202

Friday, October 18, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202-523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
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

FEDERAL REGISTER PAGES AND DATES, OCTOBER

49661-49836 1
49837-50028 2
50029-50234 3
50235-50472 4
50473-50642 7
50643-50808 8
50809-51144 9
51145-51316 10
51317-51630 11
51631-51822 15
51823-51964 16
51965-52186 17
52187-52442 18

CFR PARTS AFFECTED DURING OCTOBER

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.

1 CFR

Proposed Rules:
462 51854

3 CFR

Proclamations:
5365 (See Proc. 6343) 50003
5646 (See Proc. 6343) 50003
6030 (See Proc. 6343) 50003
6142 (See Proc. 6343) 50003
6320 (See Proc. 6352) 51317
6340 49661
6341 49663
6342 49665
6343 50003
6344 50029
6346 50643
6347 50645
6348 51141
6349 51143
6350 51145
6351 51313
6352 51317
6353 51629
6354 51631
6355 51823
6356 51965
6357 51967
6358 51969

Executive Orders:
October 9, 1917 Revoked in part by PLO 6885 50059
10448 (See EO 12776) 51315
11145 (Continued by EO 12774) 49835
11183 (Continued by EO 12774) 49835
11287 (Continued by EO 12774) 49835
11776 (Continued by EO 12774) 49835
12131 (Continued by EO 12774) 49835
12196 (Continued by EO 12774) 49835
12216 (Continued by EO 12774) 49835
12345 (Continued by EO 12774) 49835
12367 (Continued by EO 12774) 49835
12382 (Continued by EO 12774) 49835
12658 (Revoked by EO 12774) 49835
12661 (Partially revoked by EO 12774) 49835
12686 (Revoked by EO 12774) 49835
12692 (Superseded by EO 12774) 49835
12776 51315

Administrative Orders:
Presidential Determinations:
No. 91-46 of July 13, 1991 (See Presidential Determination No. 91-53) 49837
No. 91-53 of September 16, 1991 49837
No. 92-2 of October 9, 1991 51633

Memorandums:
October 1, 1991 50031

5 CFR

1201 52187
2636 51319

7 CFR

17 50809
46 51825
75 51319
245 52120
905 51971
932 49667
985 51826
987 50647
944 49669
966 51147
981 51149
989 51150
1902 50648
1210 51320
1230 51635

Proposed Rules:
271 51854
273 51854
Ch. VI 51868
319 52004
360 52005
905 50677
907 51345
908 51345
931 51180
1209 50283

8 CFR

100 50810
103 49671
208 50810
212 50033
235 50810

242 ... 50810
245 ... 49839
299 ... 49671
392 ... 49671
499 ... 49671

9 CFR

53 ... 51973
72 ... 51974
112 ... 51975
Proposed Rules:
91 ... 52007
312 ... 52218
318 ... 52218
322 ... 52218
327 ... 52218
381 ... 52218

10 CFR

2 ... 51321
13 ... 49945
15 ... 51829
16 ... 51829
Proposed Rules:
32 ... 51182

12 CFR

202 ... 51322
208 ... 51152
213 ... 51322
225 ... 51152
226 ... 51322
338 ... 50034
1680 ... 52160
Proposed Rules:
Ch. X ... 51854
359 ... 50529
1620 ... 50829

13 CFR

121 ... 49672, 49841
122 ... 52187

14 CFR

39 ... 50042, 50048, 50649, 50650, 51156–51162, 51322–51327, 51637–51646, 52188
71 ... 49842–49844, 51166, 51327
91 ... 51167, 51257, 51618
161 ... 51257
Proposed Rules:
39 ... 50294–50301 50678–50682, 51346–51351
71 ... 49855, 50066, 51352, 51353

15 CFR

19 ... 51257
771 ... 51833
774 ... 51833
1160 ... 51257
1170 ... 51257
400 ... 50790
Proposed Rules:
928 ... 52220
932 ... 52220

16 CFR

305 ... 50812
Proposed Rules:
435 ... 50419

17 CFR

30 ... 51650
Proposed Rules:
4 ... 50067

18 CFR

2 ... 52330
154 ... 52330
157 ... 50235, 52330
284 ... 50235, 52330
375 ... 52330
380 ... 52330
Proposed Rules:
284 ... 50072

19 CFR

Proposed Rules:
4 ... 51168, 51762
10 ... 49844, 51762
102 ... 51762
134 ... 51762
177 ... 51762

20 CFR

200 ... 50246
404 ... 50157
422 ... 50157
Proposed Rules:
404 ... 52231

21 CFR

5 ... 51169
175 ... 49673
176 ... 49673
429 ... 50248
510 ... 49845, 50652
520 ... 50652, 50654, 50813
522 ... 50652, 50814
524 ... 50652
540 ... 50652
558 ... 49846, 50049, 50652, 50655
1220 ... 50249
Proposed Rules:
211 ... 51354
314 ... 51354
333 ... 50754, 52008
514 ... 51354

22 CFR

42 ... 49675–49678, 51170, 51172
43 ... 49821
Proposed Rules:
41 ... 49729–49821
312 ... 50684

23 CFR

1205 ... 50250

24 CFR

91 ... 49683
200 ... 50814, 52414
201 ... 52414
202 ... 52414
235 ... 49683
888 ... 51834
966 ... 51560
Proposed Rules:
81 ... 51854
961 ... 50772

26 CFR

1 ... 52120
5c ... 51175
301 ... 49684
602 ... 52120
Proposed Rules:
1 ... 50754, 50755, 51184, 51258, 52120, 52240
301 ... 50831, 50833, 51258, 51855–51860

27 CFR

9 ... 52190

28 CFR

2 ... 51176
51 ... 51834
68 ... 50049
Proposed Rules:
11 ... 49729
16 ... 50833
32 ... 50160

29 CFR

96 ... 50784
102 ... 50820
541 ... 50256
2610 ... 51820, 52192
2622 ... 51820
2644 ... 51821
2676 ... 51822
Proposed Rules:
541 ... 50302

30 CFR

56 ... 52193
57 ... 52193
75 ... 51610
948 ... 50256
Proposed Rules:
701 ... 51861
785 ... 51861
845 ... 51184
904 ... 51188
935 ... 49856
870 ... 50741

31 CFR

515 ... 49846

32 CFR

93 ... 51328
162 ... 50270
199 ... 50273, 52193–52198
290 ... 49685
293 ... 51976
295 ... 49693
312 ... 51976
Proposed Rules:
806b ... 50303

33 CFR

100 ... 50655, 51331, 51332, 51980
117 ... 49705
165 ... 50274, 51980
330 ... 51837
Proposed Rules:
Ch. II ... 51868

34 CFR

307 ... 51582
Proposed Rules:
400 ... 51448
401 ... 51448
402 ... 51448
403 ... 51448
405 ... 51448
406 ... 51448
407 ... 51448
408 ... 51448
409 ... 51448
410 ... 51448
411 ... 51448
412 ... 51448
413 ... 51448
414 ... 51448
415 ... 51448
416 ... 51448
417 ... 51448
418 ... 51448
419 ... 51448
421 ... 51448
422 ... 51448
423 ... 51448
424 ... 51448
425 ... 51448
426 ... 51448
427 ... 51448
428 ... 51448
791 ... 51122

36 CFR

327 ... 49706
Proposed Rules:
254 ... 49948

37 CFR

201 ... 50657

38 CFR

3 ... 51651
4 ... 51651
Proposed Rules:
21 ... 49735, 51663, 51861

39 CFR

111 ... 51838, 51981

40 CFR

52 ... 50172, 50659, 51982, 52205
136 ... 50758
180 ... 51841
186 ... 51841
257 ... 50978
258 ... 50978
271 ... 51762
272 ... 51762
281 ... 51333
Proposed Rules:
Ch. I ... 51868
52 ... 49857, 52008–52011
80 ... 52316
82 ... 50693
88 ... 50196, 52013
141 ... 52241
142 ... 52241
185 ... 50190, 50466
228 ... 49858
261 ... 51592
271 ... 51592
302 ... 51592
764 ... 49863

41 CFR

302–6 ... 51177

42 CFR

110 ... 51798
400 ... 50058
406 ... 50058
407 ... 50058
414 ... 50821
417 ... 51984

484 51334
Proposed Rules:
36 51189
413 50834

43 CFR

Public Land Orders:
6831 (Corrected by PLO 6885) 50059
6883 50058
6884 49847
6885 50059
6886 50661
6887 50824
6888 50661
6889 51177
6890 51334
6891 51986
6892 52210
6893 52210
6894 52211
6895 52212
Proposed Rules:
2090 49962
2200 49962

44 CFR

65 ..... 51335, 51337
67 51338
Proposed Rules:
65 ..... 50838, 51358
67 51362
72 ..... 50838, 51358

45 CFR

402 49706
1160 ..... 49848, 51842

46 CFR

28 49822
30 52122
67 51653
151 52122
153 52122
189 50754
197 52122
327 50274
504 50662
550 50824
580 51987
581 51987
583 51987
Proposed Rules:
550 50841

47 CFR

1 51178
2 ..... 51178, 51655
69 ..... 51656, 51843
73 ..... 49707, 50277, 50278, 50419, 50827, 50828, 51657–51659, 51844, 51845
74 50662
76 49707
78 50662
87 51655
97 51762
Proposed Rules:
69 ..... 51666, 51869
73 ..... 50303, 50304, 50842, 50843, 51667, 51870
90 49875

48 CFR

233 52440
509 51659
552 51659
705 52212
706 52212
719 52212
726 52212
752 52212
1825 52213
Proposed Rules:
246 50693
252 50693
503 50073
552 50073

49 CFR

71 51997
171 ..... 49831, 49980
172 49980
173 ..... 49980, 50664
174 49980
195 50665
385 51342
571 ..... 50666, 51845
639 51786
1105 49821
1152 49821
Proposed Rules:
107 51294
171 51294
225 52241
350 50305
396 50305
533 50694
544 51871
564 52242
571 52242

50 CFR

17 49850
23 ..... 49708, 50059
204 50061
216 ..... 50278, 50672
247 50278
285 50061
642 49853
651 50063
661 51660–51662
663 ..... 49727, 50063
672 ..... 50157, 50279–50281, 51179, 51848, 52213
675 52214
685 ..... 51849, 52214
Proposed Rules:
Ch. I 51868
Ch. IV 51868
17 ..... 50075, 50701, 51668
80 50844
251 50305
611 50084
630 51367
641 51367
652 51368
658 50844
663 50084
649 51191
672 51669
675 51669

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2935/Pub. L. 102–129

To designate the building located at 6600 Lorain Avenue in Cleveland, Ohio, as the "Patrick J. Patton United States Post Office Building". (Oct. 15, 1991; 105 Stat. 625; 1 page) Price: $1.00

Last List October 16, 1991

Would you like to know...

if any changes have been made to the Code of Federal Regulations or what documents have been published in the Federal Register without reading the Federal Register every day? If so, you may wish to subscribe to the *LSA (List of CFR Sections Affected)*, the *Federal Register Index*, or both.

LSA • List of CFR Sections Affected

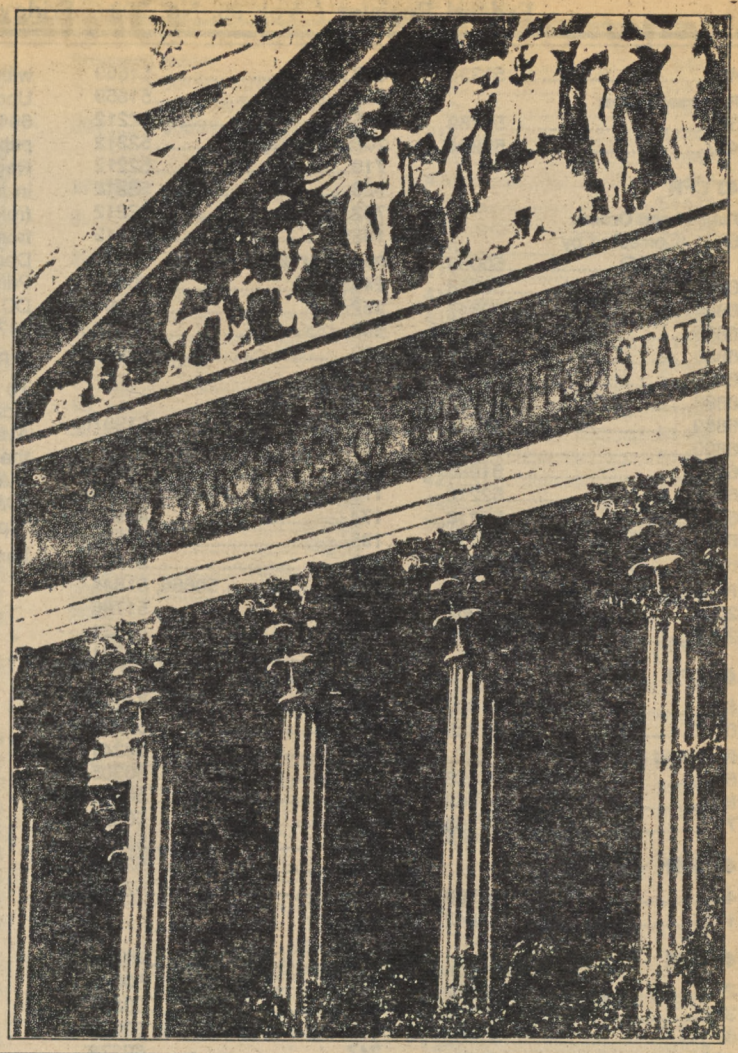
The LSA (List of CFR Sections Affected) is designed to lead users of the Code of Federal Regulations to amendatory actions published in the Federal Register. The LSA is issued monthly in cumulative form. Entries indicate the nature of the changes—such as revised, removed, or corrected.
$21.00 per year

Federal Register Index

The index, covering the contents of the daily Federal Register, is issued monthly in cumulative form. Entries are carried primarily under the names of the issuing agencies. Significant subjects are carried as cross-references.
$19.00 per year.

A finding aid is included in each publication which lists Federal Register page numbers with the date of publication in the Federal Register.

Note to FR Subscribers:
FR Indexes and the LSA (List of CFR Sections Affected) are mailed automatically to regular FR subscribers.



Superintendent of Documents Subscriptions Order Form

Order Processing Code:
***6483**

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

☐ **YES,** please send me the following indicated subscriptions:

☐ LSA • List of CFR Sections Affected—one year as issued—$21.00 (LCS)

☐ Federal Register Index—one year as issued—$19.00 (FRSU)

1. The total cost of my order is $_____ . All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

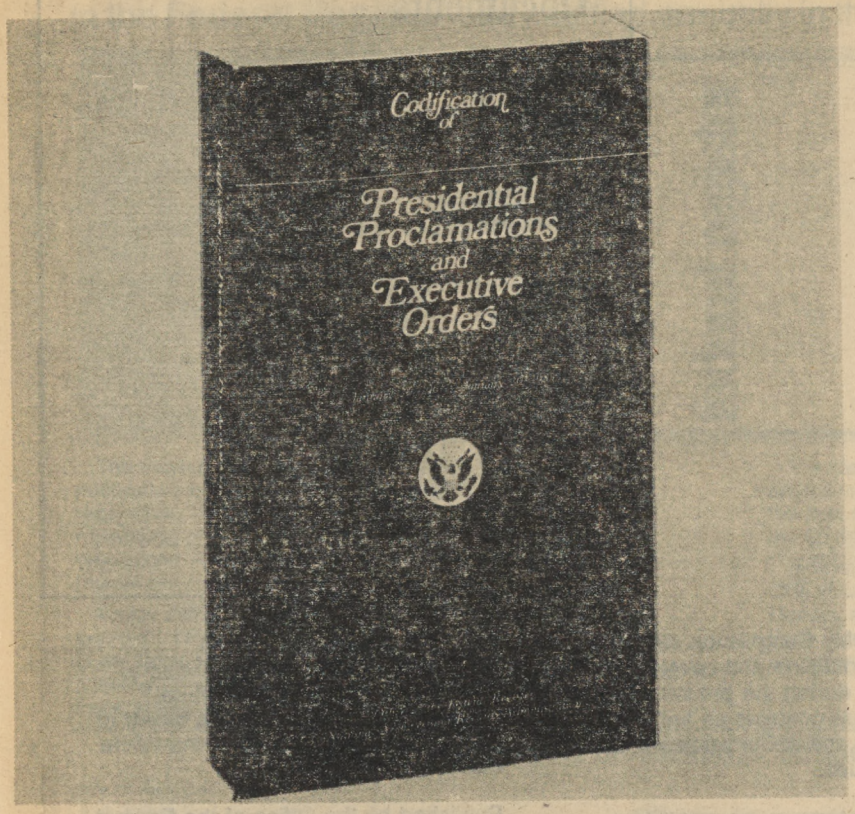
Thank you for your order!

_____
(Signature)

(REV. 10-1-88)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9371

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Superintendent of Documents **Publications** Order Form

Order Processing Code:
***6661**

P3

Charge your order. It's easy!

To fax your orders and inquiries—(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS, S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

(Company or personal name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

( )
(Daytime phone including area code)

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!

(Signature)

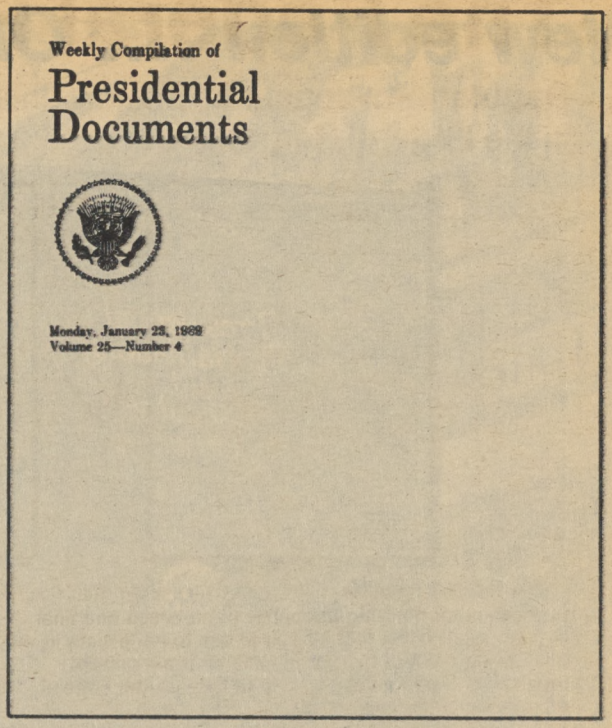
7-89

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
***6466**

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. **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!

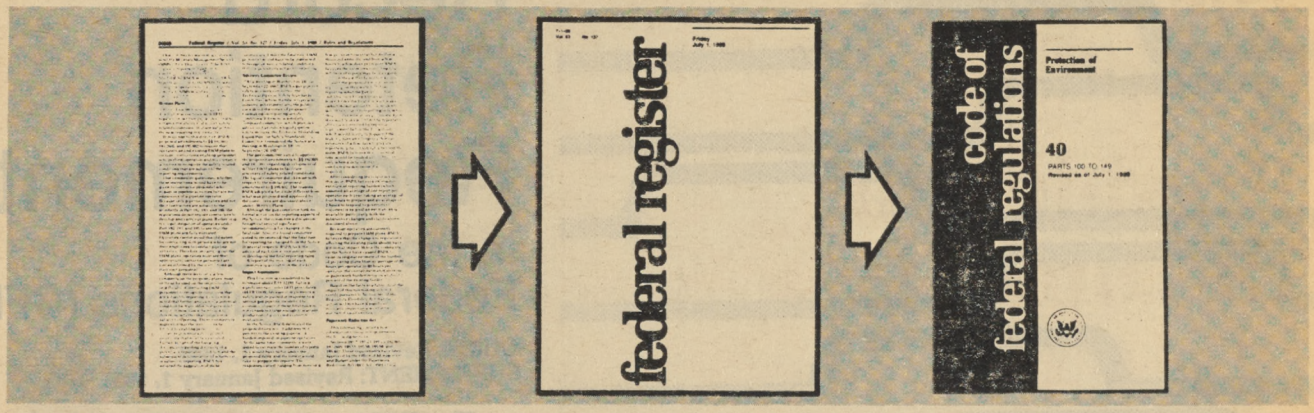
_____
(Signature)

(Rev. 1-20-89)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



The **Federal Register,** published daily, is the official publication for notifying the public of proposed and final regulations. It is the tool for you to use to participate in the rulemaking process by commenting on the proposed regulations. And it keeps you up to date on the Federal regulations currently in effect.

Mailed monthly as part of a **Federal Register** subscription are: the LSA (List of CFR Sections Affected) which leads users of the **Code of Federal Regulations** to amendatory actions published in the daily **Federal Register;** and the cumulative **Federal Register Index.**

The **Code of Federal Regulations** (CFR) comprising approximately 196 volumes contains the annual codification of the final regulations printed in the **Federal Register**. Each of the 50 titles is updated annually.

Individual copies are separately priced. A price list of current **CFR** volumes appears both in the **Federal Register** each Monday and the monthly **LSA** (List of **CFR** Sections Affected). Price inquiries may be made to the Superintendent of Documents, or the Office of the Federal Register.

Superintendent of Documents Subscription Order Form

Order Processing Code:

***6463**

Charge your order. It's easy! MasterCard VISA

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please send me the following indicated subscriptions:

- **Federal Register**
  - **Paper:**
    - ____$340 for one year
    - ____$170 for six-months
  - **24 x Microfiche Format:**
    - ____$195 for one year
    - ____$97.50 for six-months
  - **Magnetic tape:**
    - ____$37,500 for one year
    - ____$18,750 for six-months
- **Code of Federal Regulations**
  - **Paper**
    - ____$620 for one year
  - **24 x Microfiche Format:**
    - ____$188 for one year
  - **Magnetic tape:**
    - ____$21,750 for one year

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

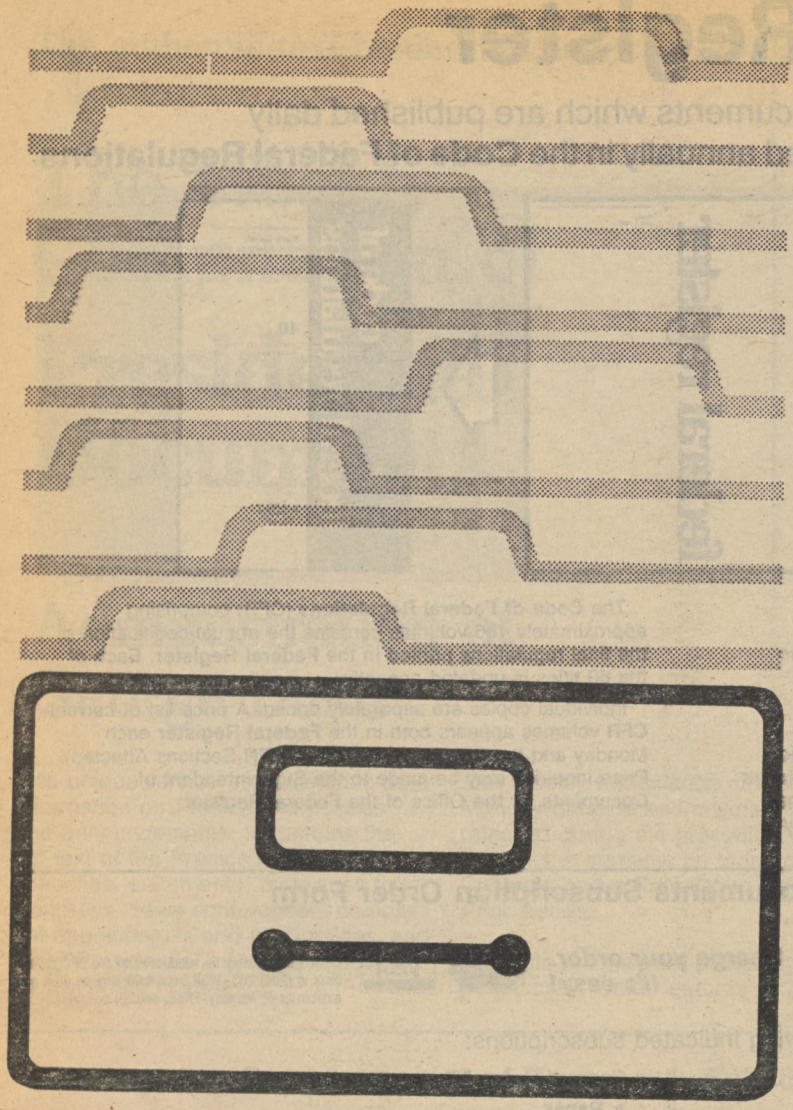
☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature) (Rev. 2/90)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325.

Superintendent of Documents Publication Order Form

Order Processing Code: ***6788**

Charge your order. It's easy!

To fax your orders and inquiries. 202–275–2529

☐ **YES,** please send me the following indicated publication:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069–000–00020–7 at $12.00 each.

_____copies of the 1991 SUPPLEMENT TO THE GUIDE, S/N 069–000–00038–0 at $1.50 each.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 9/91. After this date, please call Order and Information Desk at 202–783–3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. 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!

_____
(Signature)

3/91

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325