8–13–93
Vol. 58 No. 155

federal register

Friday
August 13, 1993

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

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SECOND CLASS NEWSPAPER

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

8–13–93
Vol. 58 No. 155
Pages 43065–43238

federal register

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WHO: The Office of the Federal Register.

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

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

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

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(two briefings)

When: September 17 at 9:00 am and 1:30 pm
Where: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
Reservations: 202–523–4538

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV-93-928-3]

Papayas Grown in Hawaii; Order Directing That a Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of Referendum Agents To Conduct the Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This action terminates a referendum conducted last March among producers of Hawaiian papayas, and directs that another referendum be conducted. The Secretary of Agriculture has determined that sufficient cause exists to terminate the prior referendum and to hold another referendum, based on nearly 200 petitions received by the Department from producers of Hawaiian papayas representing over two-thirds of the papaya industry.

DATES: The representative production period is from July 1, 1991, through June 30, 1992. The referendum will be conducted from September 1 through September 30, 1993.

ADDRESSES: Copies of the text of the aforesaid marketing order may be obtained from the office of the referendum agent at 2202 Monterey Street, Suite 102B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC, 20090–6456.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2431; Kurt J. Kimmel or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 928 (7 CFR part 928), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted within the period September 1 through September 30, 1993, among producers in the production area who, during the period July 1, 1991, through June 30, 1992, (which period is hereby determined to be a representative period for purposes of such referendum), were engaged in the production of papayas covered by the said marketing order to ascertain whether continuance of the order is favored by the producers.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of papayas represented in the referendum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum, but also all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all producers favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot materials that will be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0102. It has been estimated that it will take an average of 20 minutes for each of the approximately 300 producers of papayas to participate in the voluntary referendum balloting.

U.S. Department of Agriculture conducted a referendum from March 1 through 31 to determine whether Hawaiian papaya producers favored continuation of the Federal marketing order. During the referendum period, nearly 200 signatures on a petition were received by the Department from producers. Producers signing the petition indicated they needed additional time to review the marketing order before casting their votes to determine whether they favor continuance of their marketing order, allowing the U.S. Department of Agriculture to determine whether sufficient industry support exists to continue the program. Given this level of producer concern, the March referendum is terminated and a new referendum will be held from September 1 through September 30, 1993.

Mr. Kurt J. Kimmel and Mr. Martin Engeler, California Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et seq.*).

Ballots will be mailed to all producers and may also be obtained from the referendum agent and from his appointees at the above address.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: August 9, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19492 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 998

[Docket No. FV93–998–1FIR]

Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, without change, the provisions of an interim final rule that authorized expenditures for administration and indemnification, established an assessment rate, and authorized continuation of an indemnification reserve under Marketing Agreement 146 (agreement) for the 1993–94 crop year. Authorization of this budget enables the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay those expenses, and settle indemnification claims during the 1993–94 crop year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

EFFECTIVE DATES: July 1, 1993, through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: John R. Toth, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770, or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments, and deductible type insurance for 1993–94 indemnification expenses. This rule authorizes expenditures and establishes an assessment rate for the Committee for the fiscal period beginning July 1, 1993. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 47,000 producers of peanuts in the 16 States covered under the agreement, and approximately 70 handlers regulated under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of the producers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and, thus, are in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide meetings. Thus, all directly affected persons have an opportunity to provide input in recommending the budget, assessment rate, and indemnification reserve. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received by handlers from July 1, 1993. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expenses.

The Committee met on March 24–25, 1993, and unanimously recommended 1993–94 crop year administrative expenses of $1,020,000 and an administrative assessment rate of $0.60 per net ton of assessable farmers' stock peanuts received by handlers. In comparison, 1992–93 crop year budgeted administrative expenditures were $1,042,000, and the administrative assessment rate was $0.57 per ton.

Administrative budget items for 1993–94 which have increased compared to those budgeted for 1992–93 (in parentheses) are: Field representative salaries, $278,778 ($266,420); Committee members travel, $40,000 ($32,000); Committee meeting expenses, $4,000 ($3,000); and audit fees, $9,500 ($8,000). Items which have decreased compared to those budgeted for 1992–93 (in parentheses) are: Executive salaries, $134,304 ($138,364); clerical salaries, $127,479 ($158,366); payroll taxes, $45,000 ($46,850); employee benefits $145,000 ($147,000); and office rent and parking, 52,500 ($54,000). All other items are budgeted at last year's amounts. The administrative budget includes $4,439 for contingencies ($9,000 last year).

The Committee also unanimously recommended 1993 crop indemnification claims payments of up to $9,000,000 and an indemnification assessment of $1.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. The 1992–93 crop year indemnification assessment was $2.00 per net ton. The Committee recommended a lower assessment rate because sufficient reserve funds are available and because the Committee believes it is in the interest of signatory handlers to reduce their indemnification assessment burdens. The $9,000,000 of indemnification claims coverage to be provided on 1993 crop peanuts includes $5,000,000 in excess loss insurance to be purchased by the Committee—the same as last year.

The cost of the indemnification insurance premium and the costs to carry out indemnification procedures sampling and testing of 2–AB and 3–AB Subsamples, and crushing supervision, of indemnified peanuts, pursuant to § 998.200(c)), are additional indemnification costs which must be authorized and paid from available indemnification funds. Such costs are not expected to exceed $2,000,000.

The total assessment rate is $1.60 per ton of assessable peanuts ($0.60 for administrative and $1.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,700,000 will yield $1,020,000 for program administration and $1,700,000 for indemnification. The indemnification amount, when added to expected cash carry over from 1992–93 indemnification operations of $12,750,000, will provide $14,450,000, which should be adequate for the 1993 fund, and to maintain an adequate reserve.

An interim final rule was published in the **Federal Register** on June 11, 1993 (58 FR 32600). That interim final rule added § 998.406 which authorized expenditures for administration and indemnification, established an assessment rate, and authorized continuation of an indemnification reserve for the Committee. That rule provided that interested persons could file comments through July 12, 1993. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1993–94 crop year for the program began on July 1, 1993, and the marketing agreement requires that the rate of assessment for the crop year apply to all assessable peanuts handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule adding § 998.406, which was published in the **Federal Register** (57 FR 32600), June 11, 1993, is adopted as a final rule without change.

Note: This section will not appear in the Code of Federal Regulations.

Dated: August 9, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–19494 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1007

[DA–93–14]

Milk in the Georgia Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the month of August 1993 provisions of the Georgia Federal milk marketing order that provide for payments to producers on the basis of a base and excess payment plan. The action, which was requested by three cooperative associations that represent a substantial number of producers on the Georgia market, is being taken to remove a disincentive to produce more milk during the short production month of August.

EFFECTIVE DATES: August 1, 1993 through August 31, 1993.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 23, 1993; published June 30, 1993 (58 FR 34946).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action will encourage milk production during the month of August, which is a month of declining milk production.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect, and it will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice of proposed rulemaking was published in the **Federal Register** (58

FR 34946) on June 30, 1993, concerning the proposed suspension for July and August 1993 of the base and excess payment plan provisions of the Georgia order. The public was afforded the opportunity to comment on the notice by submitting written data, views, and arguments by July 14, 1993. Several comment letters were received in response to this notice.

One of the comment letters was submitted by a cooperative association with producers in the Georgia market. This cooperative supported the proposed suspension, noting that producer receipts on the Georgia order are down 4 percent for the first 5 months of 1993 compared to the comparable period of 1992, and that Class I utilization is up 9.5 percent during the same period.

Four individual dairy farmers submitted letters opposing the proposed suspension on the grounds that:

(1) They had purchased base earlier in the year and would not be able to recoup their investment if the base and excess payment plan were suspended for July and August;

(2) The suspension would not be in the best interest of dairy farmers in the Georgia market;

(3) It will cause conflicts between dairy farmers delivering milk to different handlers; and

(4) It would be a severe financial strain.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order will not tend to effectuate the declared policy of the Act during the month of August 1993.

1. In § 1007.32, paragraph (a).

2. In § 1007.61(a), the words "of September through January".

3. In § 1007.61, paragraph (b).

Statement of Consideration

This action will make inoperative the requirement that producers be paid on the basis of the base and excess payment plan for the month of August 1993. The proposal was submitted by Dairymen, Inc. (DI), Carolina/Virginia Milk Producers Association, Inc., and Southern Milk Sales, Inc. These three cooperative associations have a substantial amount of milk pooled on the Georgia milk market. In support of their proposal, the cooperative associations stated that the suspension was needed because in recent years milk in this area has been in short supply during July and August. Without the suspension, the cooperatives contend the market's base and excess plan would discourage production in those months.

Producer receipts in the Georgia market for the months of January through May 1993 are about 5 percent below the comparable months of 1992. At the same time, the pounds of milk utilized for fluid use have been running about 10 percent above year-earlier figures, resulting in a Class I utilization that has averaged 79 percent during the first 5 months of 1993, compared to 69 percent for the comparable period of 1992. The extremely hot weather that is now gripping the Southeastern United States can only be expected to further reduce milk production in the Georgia market.

In view of the high Class I utilization now existing in the Georgia market, it may be necessary to bring in supplemental milk to meet the needs of the market during the months of July and August. At such a time, there is no reason to pay the market's producers the excess milk price for any of their production.

Recogizing that the month of July will be over, or nearly so, by the time that this suspension is issued, it is reasonable to limit the suspension period to the month of August 1993. This will help to assure an adequate supply of milk and orderly marketing conditions during August without unnecessarily penalizing base-holding producers during the month of July.

The effect of the suspension should be insignificant on the vast majority of producers in this market. Although it can be expected that the uniform price that will be paid to producers for deliveries during the month of August will be somewhat less than the base price would have been, this difference is partly offset by the fact that producers will not receive the lower excess price for any production in excess of their base. Since there are approximately 575 producers on the Georgia market, we believe that the economic hardship alleged by the four producers who opposed the suspension will be very minimal.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties, and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective August 1, 1993.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in title 7 part 1007 are hereby suspended from August 1 through August 31, 1993:

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. The authority citation for 7 CFR part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1007.32 [Temporarily suspended in part]

2. In § 1007.32, paragraph (a) is suspended in its entirety.

§ 1007.61 [Temporarily suspended in part]

3. In § 1007.61, the words "September through January" in the introductory text of paragraph (a) are suspended, and paragraph (b) is suspended in its entirety.

Dated: August 9, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19493 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93–007–2]

Validated Brucellosis-Free States; New Jersey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding New Jersey to the list of brucellosis-free States. We have determined that New Jersey meets the criteria for classification as a validated brucellosis-free State. The interim rule relieved certain restrictions on the interstate movement of breeding swine from New Jersey.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Senior Staff

Veterinarian, Swine Health Staff, VS, APHIS, USDA, suite 204, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436–7767.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the Federal Register on May 13, 1993 (58 FR 28342–28343, Docket No. 93–007–1), we amended the brucellosis regulations in 9 CFR part 78 by adding New Jersey to the list of validated brucellosis-free States in §78.43.

Comments on the interim rule were required to be received on or before July 12, 1993. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12291 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.43 that was published at 58 FR 28342–28343 on May 13, 1993.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 6th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–19491 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB25

Receivership Rules

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule interprets a provision of an amendment, enacted on August 10, 1993, to section 11(d)(11) of the Federal Deposit Insurance Act (FDI Act) providing for a national depositor preference for amounts realized from the liquidation or other resolution of any depository institution insured by the Federal Deposit Insurance Corporation (FDIC). The regulation describes the expenses that are includable under the priority in the new statutory amendment for administrative expenses of the receiver. The intended effect of the interim rule is to clarify the requirements of the statute relative to the priority afforded to administrative expenses of the receiver in connection with the liquidation or other resolution of FDIC-insured institutions.

DATES: The interim rule is effective on August 13, 1993. Written comments must be received by the FDIC on or before October 12, 1993.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC, 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC 20429, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Stephen N. Graham, Associate Director, Division of Liquidation (202/898–7377), Sharon Powers Sivertson, Assistant General Counsel, Legal Division (202/736–0112), Rodney D. Ray, Counsel, Legal Division (202/736–0348), Joseph A. DiNuzzo, Senior Attorney, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, Washington, DC, 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

The Board hereby certifies that the interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It will not impose burdens on depository institutions of any size and will not have the type of economic impact addressed by the Act. Accordingly, the Act's requirements regarding an initial and final regulatory flexibility analysis (Id. at 603 & 604) are not applicable here.

Reason for the Interim Rule

The national depositor preference statute was signed into law on August 10, 1993. Public Law 103–66, 107 Stat. 312 (1993). It applies to all FDIC-insured institutions for which a receiver is appointed after that date. The FDIC Board of Directors (Board of Directors) has determined that, in order to ensure an orderly continuation of the handling of closed institutions, it is necessary to clarify the requirements of the statutory amendment relative to the definition and treatment of administrative expenses of the receiver of such institutions. The Board of Directors also believe that it is necessary that the regulation providing this clarification apply immediately to all receiverships subject to the new statutory amendment.

For these reasons, the Board of Directors has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the prior notice and public comment and the customary 30-day delayed effective date. Nevertheless, the Board desires to have the benefit of public comment before adoption of a permanent final rule on this subject, and so invites interested persons to submit comments during a 60-day comment period. In adopting a final regulation, the Board will make such revisions to the interim rule as may be appropriate based on the comments received.

Background

On August 10, 1993, the President signed into law a bill that amended section 11(d)(11) of the FDI Act (12 U.S.C. 1821(d)(11)) to provide for a national depositor preference for amounts realized from the liquidation or other resolution of FDIC-insured depository institutions. Public Law 103–66, 107 Stat. 312 (1993).

Generally, the amendment provides that distributions shall be made from all future receivership estates in the following order:

1. Administrative expenses of the receiver;
2. Deposit liability claims;
3. Other general or senior liabilities of the institution, other than subordinated obligations or shareholder claims;
4. Subordinated obligations; and
5. Shareholder claims.

The legislation applies to all receiverships of insured institutions established after its enactment date and supersedes any inconsistent state or other federal distribution provisions.

As noted, the first priority encompasses "administrative expenses of the receiver." The language of the statute explicitly covers post-appointment obligations incurred by a receiver as part of the liquidation of an institution. The Board of Directors has determined that this priority also covers certain expenses incurred prior to the appointment of the receiver. Such expenses include obligations which may have been incurred prior to the closing of the institution but which the receiver determines should be paid by the receiver to facilitate the smooth and orderly transfer of banking operations to a purchasing institution or to obtain an accounting and orderly disposition of the assets of the institution. These expenses may include, but are not limited to, for example, the payment of the institution's last payroll, guard services, data processing services, utilities and expenses related to leased facilities. Generally, they do not include expenses such as severance pay claims, golden parachute claims and claims arising from contract repudiations. The interim rule limits the inclusion of expenses within the scope of "administrative expenses" to those that the receiver determines are necessary and appropriate for the orderly liquidation or resolution of the institution. This general language is necessitated by the variety of such expenses ordinarily incurred by a receiver for a particular failed depository institution.

The legislative history of the statute is explicit on the coverage of certain pre-receivership obligations within the scope of the "administrative expenses" priority of the receivership. The House/Senate Conference Report on the legislation notes that: "it is the conferees' intent that the FDIC interpret the depositor preference provision for the payment of administrative expenses of the receiver as including ordinary and necessary expenses of the institution that are unpaid at the time of failure, but only those that the receiver determines are necessary to maintain services and facilities to effect an orderly resolution of the institution." H.R. Rep. No. 213, § 3001, Omnibus Budget Reconciliation Act of 1993, 103rd Cong., 1st Sess. (1993). The conferees noted that such coverage of expenses is the FDIC's current practice (in its role as receiver of failed insured institutions): "the conferees intend that the FDIC continue its current practice of paying these expenses prior to paying deposits or other expenses if it determines such payment is required for an orderly resolution of the institution." *Id.*

To prevent any ambiguity on the coverage of administrative expenses of the institution/receiver that were incurred by the institution prior to the appointment of a receiver, the FDIC is issuing the interim rule. The rule clarifies that receivers have the authority to pay certain pre-closing obligations of the failed institution as an "administrative expense" under the statute.

Interim Rule

The interim rule adds a new section to part 360 of the FDIC's regulations (12 CFR part 360) to clarify the priority for administrative expenses contained in the new depositor preference statute.

As provided for in the statute, all insured institutions for which a receiver is appointed after the date of enactment of the statute will be subject to the priorities provided therein. Pre-appointment expenses that the receiver determines are within the scope of the "administrative expenses" priority will be included within that priority after the enactment date of the statute. As the conferees noted in House/Senate Conference Report, "[p]rior to the implementation of such regulations [to clarify the meaning of the term administrative expenses], it is the conferees' intent that the FDIC continue its current practice of paying these expenses before paying depositors." *Id.*

The current § 360.2 of the FDIC's regulations (12 CFR 360.2) specifies receivership priorities for failed savings associations. These provisions will continue to apply to such savings associations for which a receiver was appointed on or prior to the effective date of the statutory amendment, August 10, 1993. Liquidations or other resolutions of all insured depository institutions (including savings associations) for which a receiver is appointed after that date will be subject to the statutory amendments and the interim rule.

Request for Public Comment

The FDIC is issuing this interim rule in response to the immediate need to clarify the provisions of the statutory amendment. The FDIC is, however, hereby requesting comment during a 60-day comment period on all aspects of the interim rule.

List of Subjects in 12 CFR Part 360

Savings and loan associations.

For the reasons set out in the preamble, part 360 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 360—RECEIVERSHIP RULES

1. The authority citation for part 360 is revised to read as follows:

Authority: Sec. 401(h), Pub. L. 101–73, 103 Stat. 357; 12 U.S.C. 1821(d)(11).

2. A new paragraph (f) is added to § 360.2 to read as follows:

§ 360.2 Priorities.

* * * * *

(f) Under the provisions of section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11)), the provisions of this § 360.2 do not apply as to all receiverships established and liquidations or other resolutions occurring after August 10, 1993.

3. A new § 360.3 is added to read as follows:

§ 360.3 Administrative expenses.

The priority for "administrative expenses of the receiver", as that term is used in section 11(d)(11) of the Act (12 U.S.C. 1821(d)(11)), shall include those necessary expenses incurred by the receiver in liquidating or otherwise resolving the affairs of a failed insured depository institution. Such expenses shall include pre-failure and post-failure obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the institution.

By order of the Board of Directors.

Dated at Washington, DC, this 10th day of August, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–19688 Filed 8–12–93; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ANE–40]

Revocation of Class E Airspace; Claremont, NH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace at Claremont, New Hampshire. This action was prompted by the relocation of the Claremont Non-

Directional Beacon (NDB) and the cancellation of all Standard Instrument Approach Procedures (SIAP) to the Claremont Airport.

EFFECTIVE DATE: 0901 UTC, September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, Airspace Specialist, System Management Branch, ANE–530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 270–2428; fax (617) 273–4345 or (617) 272–0395.

SUPPLEMENTARY INFORMATION:

History

On March 3, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Claremont, NH Transition Area due to the relocation of the Claremont Non-Directional Beacon (NDB) and the cancellation of all Standard Instrument Approach Procedures (SIAP) to the Claremont Airport (58 FR 12197).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The FAA received no comments to the proposal.

Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace" for airspace extending upward from 700 feet or more above ground level. Other than that change in terminology this amendment is the same as that proposed in the notice. Class E airspace designations for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 in effect as of September 16, 1993. The Class E airspace designation listed in the document will be removed subsequently from the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations is prompted by the relocation of the Claremont Non-Directional Beacon (NDB) and the cancellation of all Standard Instrument Approach Procedures (SIAP) to the Claremont Airport.

The FAA has determined that this regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep these regulations operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated economic cost will be so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

ANE NH E5 Claremont, NH [Removed]

* * * * *

Issued in Burlington, Massachusetts, on June 8, 1993.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 93–19515 Filed 8–12–93; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL COMMUNICATIONS COMMISSION

14 CFR Part 97

[PR Docket No. 92–136; FCC 93–352]

Relaxing Restrictions on the Scope of Permissible Communications in the Amateur Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the rules for the amateur service by lessening restrictions on the scope of the permissible communications that amateur stations may transmit. This action addresses two petitions and a letter asking for amendment of § 97.113 of the Commission's Rules. The petitioners indicated this rule needed to be reviewed in light of contemporary communication demands and the operational capabilities of licensees in the amateur service. They also argue that the prohibition against using the amateur service as an alternative to other authorized radio services, except as necessary for emergency communications, may unnecessarily restrict amateur operators from participating in many public service activities and from satisfying their personal communications requirements. The effect of the rule is to provide greater flexibility for amateur stations to transmit communications for public service projects and personal matters and to eliminate rules that bar amateur stations from transmitting occasionally messages that could indirectly facilitate the business or commercial affairs of some party and messages that could be transmitted in other radio services.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Federal Communications Commission, Private Radio Bureau, Personal Radio Branch, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted July 15, 1993, and released July 28, 1993. The complete text of this action is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street NW., Washington, DC. The complete text of this action, including the rule amendments, may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. These rules for the amateur service have been amended to lessen restrictions on the scope of the permissible communications that amateur stations may transmit. This amendment will permit greater flexibility for amateur stations while transmitting communications for public service projects and personal matters. Prior to this amendment, § 97.113(a) of the Commission's Rules, 47 CFR 97.113(a), prohibited amateur stations

from transmitting any communications the purpose of which is to facilitate the business or commercial affairs of any party, or using the amateur service as an alternative to any other authorized radio service.

2. The amateur service community stated that it generally desired a relaxation of this restriction to accommodate contemporary communications demands and the operational capabilities of amateur station licensees. Any amateur-to-amateur communication, therefore, will be permitted unless specifically prohibited, or unless transmitted for compensation, or unless done for the pecuniary benefit of the station control operator or his or her employer. The Commission specifically noted the American Radio Relay League's statements that it expects no noticeable change in amateur operations as a result of this rule amendment and that the proposed rule is a good, workable middle ground offering the requisite protection against exploitation.

3. The rules are set forth at the end of this document.

4. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

5. This Report and Order is issued under the authority of sections 301, 303 (l)(1) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 301, 303 (l)(1) and (r).

List of Subjects in 47 CFR Part 97

Business communications, Prohibited communications, Radio.

William F. Caton,

Acting Secretary.

Rule Changes

Part 97 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.113 is revised to read as follows:

§ 97.113 Prohibited transmissions.

(a) No amateur station shall transmit:

(1) Communications specifically prohibited elsewhere in this Part;

(2) Communications for hire or for material compensation, direct or indirect, paid or promised, except as otherwise provided in these rules;

(3) Communications in which the station licensee or control operator has a pecuniary interest, including communications on behalf of an employer. Amateur operators may, however, notify other amateur operators of the availability for sale or trade of apparatus normally used in an amateur station, provided that such activity is not conducted on a regular basis;

(4) Music using a phone emission except as specifically provided elsewhere in this Section; communications intended to facilitate a criminal act; messages in codes or ciphers intended to obscure the meaning thereof, except as otherwise provided herein; obscene or indecent words or language; or false or deceptive messages, signals or identification;

(5) Communications, on a regular basis, which could reasonably be furnished alternatively through other radio services.

(b) An amateur station shall not engage in any form of broadcasting, nor may an amateur station transmit one-way communications except as specifically provided in these rules; nor shall an amateur station engage in any activity related to program production or news gathering for broadcasting purposes, except that communications directly related to the immediate safety of human life or the protection of property may be provided by amateur stations to broadcasters for dissemination to the public where no other means of communication is reasonably available before or at the time of the event.

(c) A control operator may accept compensation as an incident of a teaching position during periods of time when an amateur station is used by that teacher as a part of classroom instruction at an educational institution.

(d) The control operator of a club station may accept compensation for the periods of time when the station is transmitting telegraphy practice or information bulletins, provided that the station transmits such telegraphy practice and bulletins for at least 40 hours per week; schedules operations on at least six amateur service MF and HF bands using reasonable measures to maximize coverage; where the schedule of normal operating times and frequencies is published at least 30 days in advance of the actual transmissions; and where the control operator does not accept any direct or indirect compensation for any other service as a control operator.

(e) No station shall retransmit programs or signals emanating from any type of radio station other than an amateur station, except propagation and weather forecast information intended for use by the general public and originated from United States Government stations and communications, including incidental music, originating on United States Government frequencies between a space shuttle and its associated Earth stations. Prior approval for shuttle retransmissions must be obtained from the National Aeronautics and Space Administration. Such retransmissions must be for the exclusive use of amateur operators. Propagation, weather forecasts, and shuttle retransmissions may not be conducted on a regular basis, but only occasionally, as an incident of normal amateur radio communications.

[FR Doc. 93–19313 Filed 8–12–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 207, 213, 220, 221, 231, 232, 234, 242, and 244

[Docket No. R–93–1534; FR–2892–F–01]

RIN 2502–AF14

Expansion of Operating Loss Loan Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements section 427 of the Housing and Community Development Act of 1987. That section expands the coverage of insured operating loss loans in connection with HUD insured multifamily projects to include operating losses (and certain mortgagor cash contributions) for any consecutive 24-month period within the first 10 years after the date of completion of the project. Before the enactment of section 427, operating loss loans were limited to losses incurred during the first 24 months of operation of the project.

EFFECTIVE DATE: September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Linda D. Cheatham, Director, Office of Insured Multifamily Housing

Development, room 6134, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3000. A telecommunications device for deaf persons (TDD) is available at (202) 708–4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Section 427 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) extensively amends subsection 223(d) of the National Housing Act. The major change from previous law effected by the Section 427 was the inclusion of a new subsection (d)(3) authorizing an operating loan program for unsubsidized projects which (1) does not limit coverage to losses in the first 24 months of operation and (2) can be in an amount "not exceeding 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project". The new subsection (d)(3) reads as follows: To be eligible for insurance pursuant to paragraph (d)(3) of the National Housing Act—

• The existing project mortgage (i) shall have been insured by the Secretary at any time before or after the date of enactment of the Housing and Community Development Act of 1987; (ii) shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and (iii) shall not cover a subsidized project, as defined by the Secretary;

• The loan shall be in an amount not exceeding 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Secretary, except that in no event may the amount of the loan exceed the operating loss during such period;

• The loan shall be made within 10 years after the end of the period of consecutive months referred to in the preceding subparagraph of the National Housing Act; and

• The project shall meet all applicable underwriting and other requirements of the Secretary at the time the loan is to be made.

It should be noted that, under these new statutory provisions, the amount of any loan may not exceed the "operating loss" for the period of 24 or fewer months covered by the loan. The "operating loss" is defined in section 223(d)(1) of the statute. Only expenditures made to cover such operating losses will be eligible for treatment as an "unreimbursed cash contribution" under this rule.

This rule implements subsection 223(d)(3) of the National Housing Act. It should be noted the rule provides that, where the FHA Commissioner has already insured a loan under the pre-1987 law covering the first two years of losses, only one additional loan can be insured under new, post-1987 authority. In no event may more than two operating loss loans be insured by the Commissioner for any particular project.

Public Comment on Proposed Rule

On August 18, 1992 the Department published in the **Federal Register** (57 FR 37119) a proposed rule, identical in text, to this final rule. Two comments were received by the public on this proposed rule.

One comment was from the Institute of Real Estate Management. The Institute stated that it is "very supportive of the proposed rule, but feels that it is necessary to clarify the provision which prohibits the amount of the loan from exceeding 80 percent of the unreimbursed cash contributions of the project owner. It is unclear at what point the advance must be made by the owner so that the amount of the loan could be determined."

The Institute also stated that "it would be advisable to apply the same operating loss loan program to subsidized projects listed in § 207.4(g)(l)(iii), particularly 236 and BMIR projects. The same operating losses encountered by insured projects can also be experienced by projects with direct rental subsidy. The subsidy is not always sufficient to cover these losses."

HUD Response: The new operating loss loan (OLL) program found in section 223(d)(3) permits the insurance of a loan in an amount not exceeding 80 percent of the unreimbursed cash contribution made by the project owner during the period (not to exceed 24 consecutive months) in which an operating loss occurs. The regulation follows the statutory language in 223(d)(3)(B). Handbook instructions will provide the operating mechanisms for the actual processing of OLL applications. The owner will have to specify the period to which the OLL request is applicable.

With respect to use of OLLs for subsidized projects, it was not the intent of Congress to authorize OLLs for subsidized programs such as Section 236 and Below Market Interest Rate projects. The authorizing statute specifically permits OLLs only for unsubsidized projects under the National Housing Act (24 CFR parts 207, 213, 220, 221, 231, 232, 234, 242, and 244). There are no administrative means that would allow the Department to provide insured OLLs to subsidized projects in view of the Congress' specific exclusion.

The second comment was from a private law firm. The commenters suggested that revisions be made in the proposed rule relative to use of the 80 percent of the unreimbursed cash contributions of the project owner to more clearly reflect the statutory language.

HUD Response: Section 223(d) operating loss loans (OLLs) typically provide owners of HUD-insured projects a means for recouping out-of-pocket expenditures that were used to keep the project operating during the loss period. The new OLL program (section 223(d)(3)(B)) permits the insurance of a loan in an amount not exceeding 80 percent of the unreimbursed cash contributions made by the project-owner for an operating loss, which is the difference between operating expenses and project income as defined by the regulation and operating instructions. The proposed regulation already follows the statutory language in 223(d)(3)(B) of the National Housing Act. The phrase "to cover operating losses" does not change the meaning of the sentence since HUD has merely reiterated the statutory language that the purpose of an OLL is to cover operating losses. OLLs may not exceed the actual operating losses.

The commenter also asked for an explanation-justification for the maximum mortgage amounts limitation set out in the proposed rule.

HUD Response: The maximum mortgage limit was established because of the Department's concern that there be an overall limitation on mortgage amounts. This limit is similar to the overall limit in the section 241 Supplemental Loan Program which is HUD's other major second mortgage program.

Finally, the commenter discussed a number of aspects of the current OLL program and expansion of the program to formerly coinsured projects. These comments are not germane to this specific rule and therefore are not addressed in this Preamble.

Procedural Matters

This rule does not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does 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 on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with a respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

The Secretary, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule expands the availability of operating loss loans for FHA multifamily mortgagors. This limited category of small entities will be provided additional assistance in their efforts to maintain and operate successful multifamily projects.

This rule was listed as item H–35–90 (Sequence No. 1464) in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24414) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. By providing additional assistance to FHA mortgagors for the successful maintenance and operation of their multifamily projects the rule should prove beneficial to families who rent units in these projects.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have Federalism implications and, thus, are not subject to review under the Order. The rule does not change in any way existing relationships between HUD, the States and local governments.

The Catalog of Federal Domestic Assistance program number is 14.167.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 231

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 244

Health facilities, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 207, 213, 220, 221, 231, 232, 234, 242 and 244 are amended to read as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 continues to read as follows:

Authority: 12 U.S.C. 1713, 1715b; 42 U.S.C. 3535(d). Sections 207.258 and 207.258b are also issued under 12 U.S.C. 1701z–11(e).

2. Section 207.4 is amended by revising paragraph (f)(3) and by adding a new paragraph (g), to read as follows:

§ 207.4 Maximum mortgage amounts.

* * * * *

(f) * * *

(3) *Maximum interest rate.* The loan may bear interest at a rate agreed upon by the mortgagor and mortgagee. Interest shall be payable in monthly installments on the principal then outstanding.

* * * * *

(g) In addition to the insurance of loans to cover two-year operating losses under paragraph (f) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (g)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses, as defined in paragraph (f)(1) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 207 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (g)(2) of this section.

(4) The project shall meet all applicable underwriting and other

requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (g) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance under § 207.4(f) or under this paragraph (g), or under both paragraphs (f) and (g) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (f) and (g) of this section in connection with the same period of months referred to in paragraph (g)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 207.4(f), no more than one additional loan may be insured under this paragraph (g). Where no previous insurance has been provided under § 207.4(f), a maximum of two loans may be insured under this paragraph (g).

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 213 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

4. Section 213.7 is amended by revising paragraph (k)(3) and by adding a new paragraph (n), to read as follows:

§ 213.7 Maximum insurable amounts.

* * * * *

(k) * * *

(3) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagor and mortgagee. Interest shall be payable in monthly installations on the principal then outstanding.

* * * * *

(n) In addition to the insurance of loans to cover two-year operating losses under paragraph (k) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (n)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (k) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the existing indebtedness relating to the property, does not exceed the amount insurable under section 213 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (n)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (n) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 213.7(k) or under this paragraph (n), or under both paragraphs (k) and (n) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (k) and (n) of this section in connection with the same period of months referred to in paragraph (n)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 213.7(k), no more than one additional loan may be insured under this paragraph (n). Where no previous insurance has been provided under § 213.7(k), a maximum of two loans may be insured under this paragraph (n).

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

5. The authority citation for 24 CFR part 220 continues to read as follows:

Authority 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

6. Section 220.507 is amended by adding a new paragraph (f), to read as follows:

§ 220.507 Maximum mortgage amounts.

* * * * *

(f) In addition to the insurance of loans to cover two-year operating losses under paragraph (e) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (f)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (e) of this section incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 220 of the Act.

(3) The loan shall be made within 10 years after the end of the period of

consecutive months referred to in paragraph (f)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (f) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 220.507(e) or under this paragraph (f), or under both paragraphs (e) and (f) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (e) and (f) of this section in connection with the same period of months referred to in paragraph (f)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 220.507(e), no more than one additional loan may be insured under this paragraph (f). Where no previous insurance has been provided under § 220.507(e), a maximum of two loans may be insured under this paragraph (f).

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

7. The authority citation for 24 CFR part 221 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715*l*; 42 U.S.C. 3535(d). Section 221.544(a)(3) is also issued under 12 U.S.C. 1707(a).

8. Section 221.514 is amended by revising paragraph (e)(3) and by adding a new paragraph (f), to read as follows:

§ 221.514 Maximum mortgage amounts.

* * * * *

(e) * * *

(3) *Maximum interest rate.* The loan may bear interest at a rate agreed upon by the mortgagor and mortgagee. Interest shall be payable in monthly installments on the principal then outstanding.

* * * * *

(f) In addition to the insurance of loans to cover two-year operating losses under paragraph (e) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commission at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (f)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based Section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (e) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 221 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (f)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (f) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 221.514(e) or under this paragraph (f), or under both paragraphs (e) and (f) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (e) and (f) of this section in connection with the same period of months referred to in paragraph (f)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 221.514(e), no more than one additional loan may be insured under this paragraph (f). Where no previous insurance has been provided under § 221.514(e), a maximum of two loans may be insured under this paragraph (f).

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

9. The authority citation for 24 CFR part 231 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715v; 42 U.S.C. 3535(d).

10. Section 231.7 is revised to read as follows:

§ 231.7 Loans to cover operating loss.

(a) *Loans to cover operating loss during first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (b)(1)(iii), subsidized projects are:

(A) Projects insured under Section 236.

(B) Projects insured under the Section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based Section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses (as defined in paragraph (a) of this section, incurred during any period of consecutive months (not exceeding 24 months)) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 213 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such a manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 231.7(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (a) and (b) of this section in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 231.7(a), no more than one additional loan may be insured under this paragraph (b). When no previous insurance has been provided under § 231.7(a), a maximum of two loans may be insured under this paragraph (b).

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

11. The authority citation for 24 CFR part 232 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715w; 42 U.S.C. 3535(d).

12. Section 232.31a is revised to read as follows:

§ 232.31a Loans to cover operating loss.

(a) *Loans to cover operating loss during first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at such rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987; and

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling.

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses, as defined in paragraph (a) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 232 of this Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the load is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 232.31a(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (a) and (b) of this section in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 232.31a(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 233.31a(a), a maximum of two loans may be insured under this paragraph (b).

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

13. The authority citation for 24 CFR part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715y; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1707(a).

14. Section 234.531 is revised to read as follows:

§ 234.531 Loans to cover operating loss.

(a) *Operating loss loans during the first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the

Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceed the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (b)(1)(iii), subsidized projects are:

(A) Projects insured under Section 236.

(B) Projects insured under the Section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based Section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses (as defined in paragraph (a) of the section) incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 234 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter on the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 234.531(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (a) and (b) of this section in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 234.531(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 234.531(a), a maximum of two loans may be insured under this paragraph (b).

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

15. The authority citation for 24 CFR part 242 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(f), 1715z–7; 42 U.S.C. 3535(d).

16. Section 242.95 is revised to read as follows:

§ 242.95 Loans to cover operating loss.

(a) *Operating loss loans during the first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987; and

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling.

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (a) of this section, during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 242 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in each manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 242.951(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an

existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (a) and (b) of this section in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 242.951(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 242.951(a), a maximum of two loans may be insured under this paragraph (b).

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

19. The authority citation for 24 CFR part 244 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1749aaa–5; 42 U.S.C. 3535(d).

20. Section 244.38 is revised to read as follows:

§ 244.38 Loans to cover operating loss.

(a) *Operating loss loans during the first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987; and

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling.

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses, as defined in paragraph (a) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner; or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 244 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 244.38(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both paragraphs (a) and (b) of this section in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 244.38(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 244.38(a), a maximum of two loans may be insured under this paragraph (b).

Dated: July 30, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93-19181 Filed 8-12-93; 8:45 am]

BILLING CODE 4210-27-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule updates the table of interest rates issued by the Pension Benefit Guaranty Corporation (PBGC) for actuarial valuations of multiemployer pension plans following mass withdrawal. The rule adds to the table the rate series for September 1993.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington DC 20006; 202–778–8820 (202–778–1958 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This rule amends the PBGC's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of September 1993.

The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply (*See* 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not 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; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. §§ 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates the new entries to read as follows:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_k are: i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i
*	*	*	*	*	*	*										
September 1993	.055	.05375	.0525	.05125	.05	.0475	.0475	.0475	.0475	.0475	.045	.045	.045	.045	.045	.04

Issued at Washington, D.C., on this 9th day of August 1993.

Martin State,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–19499 Filed 8–12–93; 8:45 am]

BILLING CODE 7708–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI 26–01–5741; FRL–4683–7]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is taking action to approve a revision to the Wisconsin State Implementation Plan (SIP), Sections NR 420, 425, 439, 484 and 494, Wisconsin Administrative Code, pertaining to implementation of the Stage II Gasoline Vapor Recovery Program. This revision was approved by the Wisconsin Natural Resources Board (NRB) Order AM–15–92. On November 18, 1992, Wisconsin submitted a SIP revision request to USEPA, to satisfy the requirement of section 182(b)(3) of the Clean Air Act (CAA), which requires all ozone nonattainment areas classified as moderate or above to require owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment. This revision applies to the counties of Kenosha, Kewaunee, Manitowoc, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha.

EFFECTIVE DATE: This action will be effective October 12, 1993, unless notice is received by September 13, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register** (FR).

ADDRESSES: Written comments should be addressed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (5AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the requested SIP revision, technical support document and public comments received are available at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Air Toxics and Radiation Branch (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Angela L. Bandemehr, Regulation Development Section, Air Toxics and Radiation Branch (5AT–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6858.

SUPPLEMENTARY INFORMATION: Under Section 182(b)(3), USEPA was required to issue guidance as to the effectiveness of these Stage II systems. In November 1991, USEPA issued technical and enforcement guidance to meet this requirement.[1] In addition, on April 16, 1992, USEPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what USEPA believes a State submittal needs to include to meet the requirement.

The counties in Wisconsin that are designated moderate nonattainment for ozone are Kewaunee, Manitowoc and Sheboygan. The counties designated as severe ozone nonattainment areas are Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha (56 FR 56694, November 16, 1991). Under Section 182(b)(3) of the Clean Air Act (CAA), 42 U.S.C. 7511a(b)(3), Wisconsin was required to submit Stage II vapor recovery rules for these areas by November 15, 1992. On November 18, 1992, the Wisconsin Department of Natural Resources (WDNR) submitted to USEPA Stage II vapor recovery rules that had been approved by the NRB on July 29, 1992, and adopted on August 20, 1992. The rules became effective on February 1, 1993, after they were published in the Wisconsin Administrative Code in January 1993. With this notice of final rulemaking, USEPA is taking action to approve this submittal. USEPA has reviewed the State submittal against the statutory requirements and for consistency with USEPA guidance. A summary of USEPA's analysis is provided below; in addition a more detailed analysis of the State submittal is contained in a Technical Support Document (TSD), dated March 4, 1993, which is available from the Region 5 office listed above.

[1] These two documents are entitled "Technical Guidance—Stage II Vapor Recovery Systems for control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

I. Applicability

Under Section 182(b)(3) of the CAA, 42 U.S.C. 7511a(b)(3), States were required to adopt regulations by November 15, 1992, requiring owners or operators of gasoline dispensing systems in moderate and above ozone nonattainment areas to install vapor recovery equipment at their facilities. The CAA specifies that these State rules must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more that 50,000 gallons of gasoline per month. Section 324 of the CAA, 42 U.S.C. 7625, defines an ISBM. The State has adopted a general applicability requirement of 10,000 gallons per month and has provided an applicability requirement of 50,000 gallons per month for ISBMs.

As more fully discussed in USEPA's "Enforcement Guidance for Stage II Vehicle Refueling Control Programs" (Enforcement Guidance) and General Preamble (57 FR at 13514), the State has provided that the gallons of gasoline dispensed per month will be calculated as the average volume dispensed per month for the 2-year period prior to State adoption of the regulation. In addition, the State has specified that the Stage II requirements apply to all gasoline dispensing facilities, including retail outlets and fleet fueling facilities.

The State has adopted the statutory definition of ISBM in its regulations. An ISBM is a person engaged in the marketing of gasoline who would be required to pay for the installation and operation of Stage II equipment. There are four exceptions to this definition (i.e., four groups that cannot be ISBMs): (1) A refiner; (2) a person who controls, is controlled by or is under common control with a refiner; (3) a person who is otherwise directly or indirectly affiliated with a refiner or a person who controls, is controlled by or is under common control with a refiner (unless the sole affiliation is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark or other identifying symbol or name owned by such refiner or any such person; or (4) a person who receives less than 50 percent of his or her annual income from refining or marketing of gasoline.

II. Implementation of Stage II

The CAA specifies that the time period for installation and operation of the Stage II equipment shall run from the State adoption date of the Stage II rule. The Act defines adoption to mean the date the State adopts the requirements for installation and operation of the Stage II equipment. For all facilities, these compliance dates, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990; (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month; and (3) 2 years for all other facilities. The Wisconsin Stage II rule time schedule sets compliance dates of May 15, 1993, November 15, 1993, and November 15, 1994, respectively for the above three deadlines (Section NR 425.035(3), Wis. Admin. Code). The State has adopted this schedule for all affected facilities, including those owned or operated by ISBMs. Although Wisconsin adopted its Stage II regulations on August 20, 1993, USEPA believes it is appropriate to interpret the adoption date to be February 1, 1993.

USEPA is proposing to approve the submitted time table for the following reasons. First, the Act states that the adoption date must be used to calculate the compliance schedule for Stage II implementation at facilities. In this case, USEPA defines the adoption date to be the date after which a rule becomes effective in a State. Based on this definition of adoption date USEPA accepts the February 1, 1993, rule publication date as the adoption date from which the compliance schedule is calculated. Second, the compliance deadlines triggered by this date begin within the time schedule specified by the CAA. Third, remedying this deficiency by amending the compliance schedule would cause further delay in the implementation of Stage II in Wisconsin. Finally, the Wisconsin rule otherwise fulfills the Stage II requirements and USEPA believes it will provide substantial air quality benefits to the regulated areas. Therefore, USEPA believes it is in the public interest to approve and make enforceable this requirement at the earliest time feasible. In the limited circumstances above, USEPA believes that it is not inconsistent to interpret the adoption date to be February 1, 1993.

III. Additional Program Requirements

Consistent with USEPA's Enforcement Guidance, the State requires that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency. USEPA has indicated three acceptable methods of demonstrating a 95 percent emission reduction efficiency: (1) A method tested and approved by the California Air Resources Board (CARB); (2) an equivalent testing program adopted by the State, conducted by the Program Oversight Agency (POA) or by a third party recognized by the POA, and submitted and approved by USEPA for incorporation into the SIP; or (3) a system approved by CARB. Enforcement Guidance at Section 4.2. The State is requiring sources to use a vapor recovery system that is certified by the CARB to achieve 95 percent vapor recovery. Since all components of the Stage II system must be CARB certified, USEPA believes that this requirement, combined with the annual tests listed below, is sufficient to ensure that major modifications achieve 95 percent vapor recovery. The State requires sources to perform initial compliance tests consisting of a Leak Test on the complete vapor recovery system and a Liquid Blockage Test on each vapor recovery nozzle. A Leak Test and a Dynamic Backpressure Test are required annually. Every 5 years a Leak Test, Liquid Blockage Test and a Dynamic Backpressure Test are required.

With respect to recordkeeping, the State has adopted those items recommended in USEPA's Enforcement Guidance. The State has provided that sources must maintain records on the facility premises for a minimum of 3 years and must make them available upon request to an authorized WDNR representative. The records to be maintained are: (a) Any and all WDNR approvals or permits which are necessary for the operation of the facility or the vapor recovery system; (b) a maintenance and inspection log; (c) results of the compliance tests; (d) all compliance records, including warnings and notices of violation, issued by the WDNR; (e) a permanent record demonstrating required employee training; and (f) the quantity of gasoline dispensed at the facility on a monthly basis. The last record is not required to be maintained on the facility premises but shall be made available to the State within 15 days of a WDNR request to view them.

The State plans to perform facility inspections on an annual basis as was shown in the SIP submittal in a fiscal estimate that provides for funds to fulfill staffing needs of 5.0 FTE per year for inspections. The State will conduct follow-up inspections resulting from identification of violations in vapor recovery systems and subsequent equipment repair verification by the department, as well as on-site discussions with owners, review and evaluation of recordkeeping, and equipment certification review.

To enforce violations of the Stage II requirements the State has an enforcement system, whereby the

WDNR refers any violations to the Wisconsin Department of Justice (Wisconsin DOJ). Under Sections NR 144.98, 144.99, 144.423, and 144.426, Wis. Admin. Code the Wisconsin DOJ has the authority to enforce penalties and violations relating to air pollution.

Rulemaking Action

Because USEPA believes that the State has adopted a Stage II regulation in accordance with the CAA, as interpreted in USEPA's guidance, USEPA is proposing to approve the regulation as a direct final action.

USEPA is publishing this action without prior proposal because the USEPA views this as a noncontroversial revision and anticipates no adverse comments. This action will be effective October 12, 1993, unless, by September 13, 1993, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 12, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. § 600 et. seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under Section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. Section 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of 2 years (54 FR 2222). USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

List of Subjects in 40 CFR Part 52

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

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

Dated: July 9, 1993.

Valdas V. Adamkus,

Regional Administrator.

Part 52, 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. 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2570 is amended by adding paragraph (c)(69) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(69) On November 18, 1992, the State submitted rules regulating volatile organic compound emissions from gasoline dispensing facilities' motor vehicle fuel operations.

(i) Incorporation by reference.

(A) Wisconsin Administrative Code, Chapter NR 420 Control of Organic Compound Emissions from Petroleum and Gasoline Sources; Section 420.02 Definitions, Sections NR 420.02(8m), (24m), (32m), (38m), (39m); Section NR 420.045 Motor Vehicle Refueling; published in Wis. Admin. Code in January 1993, and took effect on February 1, 1993.

(B) Wisconsin Administrative Code, Chapter NR 425 Compliance Schedules, Exceptions, Registration and Deferrals for Organic Compound Emissions Sources in Chapters 419 to 424; Section 425.035 Throughput Reporting and Compliance Schedules for Motor Vehicle Refueling; published in Wis. Admin. Code in January 1993, and took effect on February 1, 1993.

(C) Wisconsin Administrative Code, Chapter NR 439 Reporting, Recordkeeping, Testing, Inspection and Determination of Compliance Requirements; Section NR 439.06(3)(c); Section NR 439.06(3)(i); published in the Wisc. Admin. Code in January 1993, and took effect on February 1, 1993.

(D) Wisconsin Administrative Code, Chapter NR 484 Incorporation by Reference; Section 484.05(1) Test Method 21 in appendix A of 40 CFR part 60 is incorporated by reference; Section NR 484.06(2) Other Materials (introduction); Section NR 484.06(2) (u) and (v) were created to incorporate San Diego Air Pollution Control District Test Procedures TP–91–1 and TP–91–2; incorporated by reference in Wis. Admin. Code in January 1993, and took effect on February 1, 1993.

(E) Wisconsin Administrative Code, Chapter NR 494 Enforcement and Penalties for Violation of Air Pollution Control Provisions; renumbered Sections NR 494.025 and 494.03 to NR 494.03 and 494.05; Section NR 494.04 Tagging Gasoline Dispensing Equipment; published in the Wisc. Admin. Code in January 1993 and took effect on February 1, 1993.

(ii) Additional materials.

(A) Stage II Vapor Recovery SIP Program Description dated November 15, 1992.

(B) Letter from WDNR dated March 29, 1993, citing State authority under Sections NR 144.98, 144.99, 144.423, and 144.426, Wis. Admin. Code, to enforce the Stage II program.

(C) Packet of public education materials on Stage II distributed by WDNR.

[FR Doc. 93–19497 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[IN7-3-5706; FRL-4683-2]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: On November 2, 1992, USEPA proposed to approve a revision to the Indiana Total Suspended Particulate (TSP) State Implementation Plan (SIP) involving an emissions trade for Navistar International Transportation Corporation (Navistar). The proposal stated that prior to final approval it was necessary for the State to submit a modeling analysis consistent with the Emissions Trading Policy Statement (ETPS). Public comments were solicited on the proposed SIP revision and on USEPA's proposed action. This rule discusses the modeling analysis and approves the incorporation of the requested revision, into the SIP.

USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of the Clean Air Act.

EFFECTIVE DATE: This final rulemaking becomes effective on September 13, 1993.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone David Pohlman at (312) 886–3299, before visiting the Region 5 Office.)

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Indiana SIP is available for inspection at: Jerry Kurtzweg (ANR–443), Office of Program Management Operations, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: On July 21, 1989, the Indiana Department of Environmental Management (IDEM) submitted a revision to rule 326 IAC 6–1–12 to the USEPA as a revision to the Indiana TSP SIP. Supplemental material was submitted on February 15, 1990. This revision involves an emission trade or "bubble" for Navistar, which operates a gray-iron foundry in Indianapolis, Indiana. The emissions trade is comprised of increases in emission limits for some sources at Navistar which are offset by the permanent shutdown of other sources.

In a proposed rule published in the **Federal Register** on November 2, 1992 (57 FR 49436), USEPA proposed to approve this trade as consistent with the ETPS, if the State were to submit a Level II modeling analysis showing no ambient impact above significance levels for PM (particulate matter with an aerodynamic diameter of a nominal 10 microns or less). It also stated that the USEPA would interpret significance levels for PM to be the same as those for TSP: 10 micrograms per cubic meter (μg/m³) for the 24 hour standard and 5 μg/m³ for the annual standard.

On May 5, 1993, the State submitted to USEPA a Level II modeling analysis for Navistar. The analysis used the Industrial Source Complex (ISC) model to evaluate the ambient effects of the PM emission changes resulting from the July 21, 1989, SIP revision request. The short-term and long-term versions of the ISC model, applied in the regulatory default mode in accordance with USEPA guidance, predicted 24-hour and annual impacts from this SIP revision of 3.0 μg/m³ and −0.3 μg/m³, respectively. These concentrations are well below the applicable significance levels. This SIP revision, therefore, meets USEPA's modeling requirements under the ETPS.

The public comment period for the November 2, 1992, notice of proposed rulemaking closed on December 2, 1992, and no comments were received.

Rulemaking Action

Based on the information contained in the State's July 21, 1989, submittal, supplemental material submitted on February 15, 1990, and the modeling analysis submitted on May 5, 1993, USEPA is approving Indiana's emission trade for Navistar.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

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 October 12, 1993. 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, Incorporation by reference, Intergovernmental relations, Particulate matter.

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

Dated: July 9, 1993.

Valdas V. Adamkus,

Regional Administrator.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(88) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(88) On February 15, 1990, the Indiana Department of Environmental Management submitted a request to revise the Indiana State Implementation Plan by adding a site specific particulate matter revision for Navistar International Transportation Corporation (Navistar) gray iron foundry and engine plant in Indianapolis, Indiana.

(i) Incorporation by reference.

(A) Title 326 Air Pollution Control Board, Indiana Administrative Code

(IAC) 6–1–12 as amended, effective January 13, 1990.

[FR Doc. 93–19495 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AK2–1–5480; AD–FRL–4666–3]

Approval and Promulgation of State Implementation Plans; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA proposes approval of the state implementation plan (SIP) submitted by the State of Alaska Department of Environmental Conservation (ADEC) for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The implementation plan was submitted by ADEC on October 15, 1991, to satisfy certain federal Clean Air Act requirements for an approvable moderate PM_{10} nonattainment area SIP for Eagle River, Alaska. This action to approve this plan has the effect of making requirements adopted by the ADEC federally enforceable by EPA.

EFFECTIVE DATE: October 12, 1993.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Environmental Protection Agency, Air Programs Branch, Docket # AK2–1–5480, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101; Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, Telephone: 206/553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

The Eagle River, Alaska area was designated nonattainment for PM_{10} and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991). The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.[2] EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM_{10} nonattainment area SIP requirements. See generally 57 FR 13498 (April 16, 1992); see also 57 FR 18070 (April 28, 1992).

On March 12, 1993, EPA announced its proposed approval of the moderate nonattainment area PM_{10} SIP for Eagle River, Alaska (58 FR 13572–13575). In that rulemaking action, EPA described its interpretations of Title 1 and its rationale for proposing to approve the Eagle River PM_{10} SIP taking into consideration the specific factual issues presented.

Those states containing initial moderate PM_{10} nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determines that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Additional provisions are due at a later date. States with initial moderate PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992 (see section 189(a)). Such states also must submit contingency measures by November 15, 1993, which become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–13544).

II. Response to Comments

EPA received no comments on its March 12, 1993, (58 FR 13572–13575) **Federal Register** proposal to approve the Eagle River moderate nonattainment area PM_{10} SIP as a revision.

III. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review and processing of SIP submittals (see 57 FR 13565–13566). In today's action, EPA is approving the plan submitted to EPA on October 15, 1991. EPA has determined that the submittal meets all of the applicable requirements of the Act. Among other things, the Alaska Department of Environmental Conservation has demonstrated the Eagle River moderate PM_{10} nonattainment area will attain the PM_{10} NAAQS by December 31, 1994.

IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

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 5 U.S.C. 605(b), I certify that this revision will not have a significant

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM_{10} nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

economic impact on a substantial number of small entities (See 46 FR 8709).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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 October 12, 1993. 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)) (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of the Federal Register on July 1, 1972.

Dated: June 3, 1993.

Gerald A. Emison,

Acting Regional Administrator.

Title 40, chapter I, part 52 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. 7401–7671q.

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(17) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(17) On October 17, 1991, the State of Alaska Department of Environmental Conservation submitted a PM_{10} nonattainment area state implementation plan for Eagle River, Alaska.

(i) Incorporation by reference.

(A) October 15, 1991 letter from Alaska Department of Environmental Conservation to EPA Region 10 submitting the PM_{10} nonattainment area state implementation plan for Eagle River, Alaska.

(B) The PM_{10} nonattainment area state implementation plan for Eagle River, Alaska, as adopted by the Anchorage Assembly on February 6, 1990 and effective on September 24, 1991.

[FR Doc. 93–19496 Filed 8–12–93; 8:45 am]

BILLING CODE 6560-50-B

Proposed Rules

Federal Register
Vol. 58, No. 155
Friday, August 13, 1993

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket 91–161–1]

Tuberculosis in Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the tuberculosis regulations by adding a definition for States whose accredited-free status has been suspended due to detection of tuberculosis in any cattle or bison in those States, and by adding requirements for moving cattle and bison interstate from States whose accredited-free status has been suspended. This action appears necessary to clarify the requirements concerning the interstate movement of cattle and bison.

DATES: Consideration will be given only to comments received on or before October 12, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–161–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 734, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations, contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious and communicable disease caused by *Mycobacterium bovis*. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations via incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Section 77.1 defines and lists accredited-free, modified accredited, and nonmodified accredited States. An accredited-free State, as defined in § 77.1 of the regulations, is a State that has had no findings of tuberculosis in any cattle or bison in the State for at least 5 years. The State must also comply with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free States. The definition of accredited-free State also specifies that detection of tuberculosis in any cattle or bison in the State will result in suspension of the State's accredited-free status. If tuberculosis is detected in two or more herds in the State within 48 months, the State's accredited-free status is revoked.

We are proposing to add a new definition to § 77.1 for States whose accredited-free status has been suspended due to detection of tuberculosis in any cattle or bison in those States. Accredited-free (suspended) States would be defined as States with accredited-free status in which tuberculosis has been detected in any cattle or bison in the State, and the definition would list States designated accredited-free (suspended).

We are also proposing to add a provision to the definition explaining how States whose accredited-free status has been suspended can qualify for redesignation as an accredited-free State. To qualify for redesignation of accredited-free status, a State would be required to place the herd in which tuberculosis is detected under quarantine pending the completion of an epidemiological investigation. The completed epidemiological investigation would be required to confirm that the disease has not spread from the herd and that any reactor cattle or bison have been destroyed.

Sections 77.3 through 77.5 set out the requirements for moving cattle and bison interstate from accredited-free, modified accredited, and nonmodified accredited States.

We are proposing to revise § 77.3 to provide that cattle and bison not known to be affected with or exposed to tuberculosis may be moved interstate from an accredited-free (suspended) State without restriction. Section 77.3 currently provides that cattle and bison not known to be affected with or exposed to tuberculosis, originating in an accredited-free State or a modified accredited State, may be moved interstate without restriction. We currently apply the same rule to the interstate movement of cattle and bison not known to be affected with or exposed to tuberculosis, that originate in a State whose accredited-free status has been suspended. However, this is not spelled out in the regulations.

These changes appear necessary to clarify what requirements apply to the interstate movement of cattle and bison from States whose accredited-free status has been suspended (not revoked).

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a 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.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Cattle and bison not known to be affected with or exposed to tuberculosis are already allowed to move interstate without restriction from modified accredited States and accredited-free States, including States whose accredited-free status has been suspended. We are proposing to clarify the regulations with respect to requirements for the interstate movement of cattle and bison from a State whose accredited-free status has been suspended. Consequently, this action would not have any economic impact on those persons affected by this proposed rule.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 would be amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 would continue to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 77.1 would be amended by adding in alphabetical order a definition for "Accredited-free (suspended) State" to read as follows:

§ 77.1 [Amended]

* * * * *

Accredited-free (suspended) State. (1)(i) A State with the status of an accredited-free State is designated as accredited-free (suspended) if tuberculosis is detected in any cattle or bison in the State.

(ii) A State is qualified for redesignation of accredited-free status after the herd in which tuberculosis is detected has been quarantined, an epidemiological investigation has confirmed that the disease has not spread from the herd, and all reactor cattle and bison have been destroyed.

(2) Accredited-free (suspended) States: None.

* * * * *

3. Section 77.3 would be revised to read as follows:

§ 77.3 Movement from accredited-free States, accredited-free (suspended) States, and modified accredited States.

Cattle or bison not known to be affected with or exposed to tuberculosis, originating in an accredited-free State, an accredited-free (suspended) State, or a modified accredited State, may be moved interstate without restriction.[3]

Done in Washington, DC, this 9th day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-19541 Filed 8-12-93; 8:45 am]

BILLING CODE 3410-34-P

[3] The regulations of the State of destination should be consulted before shipments are made from accredited-free, accredited-free (suspended) and modified accredited States.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Commodity Options; Prohibited Trading

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to include an additional exception from the prohibition on futures commission merchants ("FCMs") from assuming any financial responsibility for the fulfillment of commodity options. This rule was first promulgated by the Commission's predecessor agency in order to help ensure the financial integrity of FCMs. The Commission believes that this goal is more directly addressed under the Commission's rules regarding required regulatory capital for FCMs. The Commission therefore also is proposing to amend its regulation to provide an appropriate capital treatment for certain of such positions and is also requesting comment on the appropriate treatment for computing net regulatory capital for various other types of option positions on commodities which are not currently included in that rule.

DATES: Comments must be received by September 13, 1993.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, and should make reference to "Revision to Rule 1.19."

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Deputy Director, Division of Trading and Markets or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–8955, 254–6990, respectively.

SUPPLEMENTARY INFORMATION: Commission Rule 1.19 prohibits futures commission merchants ("FCMs") and introducing brokers ("IBs") from assuming any financial responsibility for the fulfillment of any commodity option, with two exceptions. These exceptions are for options traded on or subject to the rules of a designated option contract market or on a foreign board of trade, in accordance with the requirements of part 30 of the Commission's rules.[1]

Commission Rule 1.19 was first promulgated by the Commission's predecessor agency, the Commodity Exchange Authority, in 1973. 38 FR 28031 (October 11, 1973.) At that time,

[1] Commission Rule 1.19 provides that:

No futures commission merchant or introducing broker may make, underwrite, issue, or otherwise assume any financial responsibility for the fulfillment of, any commodity option except

(a) Commodity options traded on or subject to the rules of a contract market in accordance with the requirements of part 33 of this chapter; or (b) Commodity options traded on or subject to the rules of a foreign board of trade in accordance with the requirements of part 30 of this chapter.

commodity options were prohibited for those commodities enumerated in the Commodity Exchange Act. The commodities enumerated in the Act generally included those domestic agricultural commodities in which futures contracts were traded on United States exchanges.[2] All other commodities were not regulated under the Act. In promulgating this rule, the Commodity Exchange Authority reasoned that:

[t]he purpose of the proposed regulation is to protect the funds of persons trading in regulated commodities through registered futures commission merchants. During the past year selling 'puts' and 'calls', * * * became very popular in nonregulated commodities. The vast majority of this business was done in so-called naked options * * *. [T]he potential liability of the option firm as a result of adverse price movements, is virtually unlimited. Large losses were, in fact, realized over the past year by firms that traded in commodity options. Several of the larger option houses were placed in bankruptcy as a result of such trading. The Commodity Exchange Authority feels an obligation to prevent futures commission merchants under its jurisdiction from exposing themselves to the enormous financial dangers of trading in commodity options and the likely temptation of misappropriating the funds of regulated commodity customers to meet their obligations to option holders.

38 FR at 28031.

Subsequently, in light of the abuses discussed above, the Congress, in enacting the Commodity Futures Trading Commission Act of 1974, granted the Commission broad power to regulate commodity options in the previously unregulated commodities. At that time, commodity options in the previously-regulated, enumerated commodities continued to be prohibited by statute, however.

Shortly following its creation, the Commission promulgated a general anti-fraud rule applicable to commodity option transactions. 40 FR 26504 (June 24, 1975). Later, the Commission promulgated a broad regulatory scheme to govern the trading of commodity options in the United States. See 17 CFR part 32. As part of its consideration of that regulatory scheme for options, the Commission, in 1977, expressed an intent to repeal Rule 1.19, once revisions to Rule 1.17, which establishes the method for computing minimum net capital requirements for FCMs, were adopted. See, 42 FR 18246, 18259 (April 5, 1977).

However, before it undertook the repeal of Commission Rule 1.19, the Commission found it necessary, because of widespread fraud and abuse in the offer and sale of the formerly-unregulated commodity options, generally to suspend the offer and sale of commodity options in the United States, effective June 1, 1978. The Commission provided only two exceptions, for trade options, and for dealer options, from this general suspension of option trading.[3]

Commodity option trading in the United States subsequently was reintroduced as part of the Commission's pilot program for domestic, exchange-traded options. See, 46 FR 54500 (November 3, 1981). As part of this program, Rule 1.19 was amended to exempt FCMs from its prohibitions when offering or selling exchange-traded commodity options pursuant to Part 33 of the Commission's rules, subject to an appropriate capital treatment under Commission Rule 1.17. As the Commission noted in proposing this amendment, "Section 1.19 would however, remain in effect with regard to all other commodity option transactions." 45 FR 33293, 33298 (June 29, 1981). Later, an additional exception to the Rule 1.19 prohibition was added for commodity options traded on or subject to the rules of a foreign board of trade, subject to the above-cited capital treatment. 53 FR 28980 (August 5, 1987).

The Commission, upon further experience over the years, is convinced that its previously stated intent to delete the prohibition in Rule 1.19 as it applies to FCMs, subject to a capital treatment, is appropriate. In this regard, the Commission notes that Rule 1.19 as it applies to FCMs from its prohibitions for options traded on exchanges. The prohibition of Rule 1.19 therefore, currently applies to off-exchange options permitted under part 32 of the Commission's rules. Although concern over the risk to FCMs from dealing in certain over-the-counter options previously may have supported the prohibition, the Commission believes that FCMs generally have had a sufficient opportunity during the intervening years to become sufficiently familiar with option trading and theory, so that they can institute appropriate internal controls to address their risk from such positions provided that the Commission has articulated a capital treatment for such positions.[4]

In light of the above, the Commission is proposing a further exception from the rule 1.19 prohibition on FMCs from assuming any "financial responsibility for the fulfillment of nay commodity option." The effect of this revision will be to permit FCMs to grant certain off-exchange trade options, under Commission Rule 32.4, 17 CFR 32.4.[5] All other trading in off-exchange options remains subject to the general suspension of option trading under Commission Rule 32.11.

Of course, although the proposed exception would permit FCMs to assume financial responsibility for additional types of option positions, the risk of such positions to the FCM would be required to be reflected fully by FCMs in the computation of their minimum required net capital under Commission Rule 1.17. However, Rule 1.17 currently does not explicitly specify a method to compute the net capital treatment for all option positions which otherwise could be included under the exception. Nor does the SEC rule reference a particular treatment for commodity options, and to the extent that such a rule has been modified by interpretation, only forex options, governments and stock indices are separately identified. Therefore, option positions for which Rule 1.17 fails to specify a method of computation are

[2] Specifically, the commodities enumerated in the Act include wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils, cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice. Commodities not enumerated were, at this time, not regulated under the Act.

[3] Trade options were, and are, exempt from many of the rules contained in part 32, including the suspension of option trading permitted under part 32 rules. Dealer options, which are defined in Rule 32.12(a) as options on a physical commodity granted by a person in the business of buying, selling, producing or otherwise utilizing that commodity or in the business of granting such options and subject to the additional requirements of that rule, also are specifically exempted from the general suspension on option trading, but are subject to a separate regulatory scheme. See, 17 CFR 32.4 and 32.12.

[4] The Commission believes that this prohibition is still appropriately applied to Introducing Brokers because, unlike FCMs, they do not ordinarily have back offices or handle customer funds.

[5] Rule 32.4 provides, in part, that: the provisions of this part shall not apply to a commodity option offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and that such producer, processor, commercial user of merchant is offered or entered into the commodity option transactions solely for purposes related to its business as such.

By amending the prohibition of Rule 1.19 that FCMs not assume financial responsibility for the fulfillment of any commodity option, the Commission is not expanding the scope of options which can be traded legally. That is, the existing general suspension for off-exchange trading of commodity options remains in effect under Commission Rule 32.11. Accordingly, the proposed amendment to Rule 1.19 will permit FCMs to grant options, pursuant to Commission Rule 32.4, where the offeree is a producer, processor or commercial user of the underlying commodity in its business.

excluded until such time as Rule 1.17 is amended to reflect the risk of such positions or the Commission addresses applications on a case-by-case basis. See e.g., Letter 19–1 of the Commodity Futures Trading Commission, (1991–1992 Transfer Binder) Comm. Fut. L. Rep., (CCH) ¶25,065 (May 29, 1991). In other words, the proposed exception from the Rule 1.19 prohibition extends only to options on those underlying commodities for which an appropriate capital treatment is specified under Rule 1.17.

Currently, Commission Rule 1.17 requires that certain "haircuts" must be taken in computing net capital for "securities options." 17 CFR 1.17(c)(5)(vi).[6] The Commission is hereby proposing to extend the treatment contemplated by that provision to over-the-counter options on foreign currencies, as well as security indices and options on government debt.[7] Moreover, the Commission hereby is proposing to apply the same capital treatment to over-the-counter options or options on such "securities." For all such instruments, the charges in § 1.17(c)(5)(vi) would apply rather than those in § 1.17(c)(5)(xi).

Rule 1.17(c)(5)(vi) currently does not specify the treatment of off-exchange options on underlying commodities other than those listed above for the purpose of computing a firm's net capital. Before the proposed exemption from Rule 1.19 would include over-the-counter options on underlying commodities other than foreign currencies, stock indices and government debt, Rule 1.17 would have to be amended to specify the appropriate method of computation for such positions. In this regard, the Commission is considering amending Rule 1.17 to specify the appropriate means of reflecting the risk of such positions in the computation of a firm's net capital. Any such rule would not permit the creation of regulatory capital by the mere writing, granting, issuing or otherwise undertaking to fulfill option transactions.

The Commission is interested in obtaining the views of the public concerning this issue. Specifically, the Commission requests that commenters address the following questions:

1. What would be the impact upon the public, including the customers of futures commission merchants and the regulated markets if this activity were permitted? To what additional risks would customers using these markets be exposed? How would customers of regulated firms benefit? Is it useful and a consistent extension of the existing regulatory scheme to permit firms registered both as futures commission merchants and securities broker/dealers to engage in the same conduct subject to the same capital charges?

What is the likely impact upon self-regulatory organizations (SROs) ability to monitor regulatory compliance? The Commission relies upon the commodity industry's SROs to conduct periodic and "for cause" audits of futures commission merchants for regulatory compliance, including compliance with the Commission's capital requirements.

Are there any risk management or systemic concerns that the Commission should have if regulated firms can make two-way markets in over-the-counter options?

2. Is there current or potential commercial demand that will be addressed by these amendments, i.e., permitting FCMs to grant over-the-counter options? Is there such a demand in commodities other than foreign currencies, stock indices and government debt? If so, which commodities?

3. In computing haircut amounts, current regulatory rules apply a fixed percentage to the value of the securities or commodities underlying a derivative instrument. This methodology, generally, may be more difficult to apply where pricing references are not readily available. Should the Commission have different requirements for options for which there are futures reference prices?

4. Some firms have developed risk-assessment models, based upon pricing methodologies, which are intended to refine coverage of their exposures for risk management purposes. What would be the best regulatory method of specifying a pricing methodology and/or setting appropriate haircuts for options positions, including uncovered, hedge and spread positions? How would the Commission and the relevant SROs audit such pricing models?

5. To what extent should the Commission coordinate any approach to options pricing for risk management and regulatory capital purposes with the Securities and Exchange Commission?

6. Commission regulation 1.17(c)(5)(ii), parts (A), (B) & (C) provides different percentage haircuts for different types of offsetting (or "covered") transactions:

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract or by a commodity option on a physical—no charge.

(B) Inventory which is covered by an open futures contract or commodity option—5 percent of the market value.

(C) Inventory which is not covered—20 percent of the market value.

(D) Fixed price commitments (open purchases and sales) and forward contracts which are covered by an open futures contract or commodity option—10 percent of the market value.

(E) Fixed price commitments (open purchases and sales) and forward contracts which are not covered by an open futures contract or commodity option—20 percent of the market value.

The percentages differ, because the risks for each type of position are different. For example, using futures contracts as cover for inventory held by the firm, which is registered as deliverable on a contract market, would entail little credit risk, whereas forward contracts are subject to a risk of default by the counterparty. In this connection, the Commission is soliciting comment as to what types of over-the-counter options FCMs may envision granting and how best to develop appropriate haircuts to address such intended activity. Commenters should specifically address how best to design charges for default risk, credit risk or market risk based on the type of options to be granted and whether exotic or long-term options ought to be precluded.

7. Exchanges have other financial/market protections, in addition to clearing member capital requirements, intended to manage financial risk. In a similar connection, should there be leverage or position limitations and/or

[6] 17 CFR 1.17(c)(5)(vi) incorporates by reference the net capital rules of the Securities and Exchange Commission (SEC), which contains a generic treatment for options positions, stating that in computing net capital, the calculation should use:

In the case of securities options used by the applicant or registrant in computing net capital, the deductions specified, in § 240.15c3–1 appendix A of this title, after effecting certain adjustments to net capital for listed and unlisted options as set forth in such appendix:

An SEC interpretative letter, covering the net capital treatment of baskets of securities offset by securities options on broad based security indices was issued to Mr. David Marcus, New York Stock Exchange, Inc., on Febraury 27, 1986. SEC interpretative letters covering foreign currency option spreads and forwards offset by foreign currency options were issued to Ms. Susan R. Mann and Mr. Robert B. Gilmore, of the Philadelphia Stock Exchange, Inc., dated January 15, 1985 and February 14, 1986, respectively. The SEC interpretative letter covering the treatment of government option was issued to Mr. Salvatore Pallante, New York Stock Exchange, Inc., on January 31, 1990. Commission Rule 1.17 currently incorporates by reference securities haircuts, and automatically reflects any amendments to those haircuts permitted by the SEC.

[7] By extending the capital treatment of such instruments under SEC regulations to certain instruments, which are regulated by the Commission under the CEA, see, section 2(a)(1)(B) of the Act, the Commission does not intend to affect jurisdictional boundaries, but rather, merely to treat equally, for regulatory capital purposes, economically similar instruments.

reporting requirements for over-the-counter options? For example, are capital requirements sufficient to assure daily marking-to-market of exposures. See e.g., Letter 91–1 of the Commodity Futures Trading Commission (1991–1992 Transfer Binder) Comm. Fut. L. Rep., (CCH) ¶25,065 (May 29, 1991).

8. Amendment of Rule 1.19 as described herein, could lead to fundamental changes in the business profile of some FCMs. The Commission wishes to be advised as to whether such changes in business profiles might require additional or different internal controls.

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "FCMs" and similar entities are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules modify certain minimum capital requirements for FCMs. The proposed amendments also permit FCMs to undertake additional option strategies and do not otherwise impose any additional burdens, but rather, alleviate an already existing prohibition. Accordingly, if promulgated, this rule would have no significant impact on a substantial number of small entities. For the above reasons, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Acting Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comments from any firms or other persons which believe that the promulgation of the proposed rule amendments might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the Act the Commission has submitted these amended rules and their associated information collection requirements to the Office of Management and Budget ("OMB"). Rule 1.19, including its proposed revision, has no burden associated with it and is not part of a group of rules having a burden.

With respect to the proposed amendments to Rule 1.17, OMB approved the collection of information associated with these rules on January 25, 1993, and assigned OMB control number 3038–0024. The burden associated with this entire collection including this proposed amendment is as follows:

Average burden hours per response—0.50
Number of respondents—100 (FCMs); 15 (IBs)
Frequency of response—Annually

Persons wishing to comment on the estimated paperwork burden associated with these amended rules should contact the Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 1

Commodity options, Financial requirements, Reporting and record keeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 4f, 4g, and 8a of the Act, 7 U.S.C. 6c, 6f, 6g, and 12a (1988), the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 9, 12, 12a, 12c, 13a–1, 13a–2, 16, 19, 21, 23 and 24, unless otherwise noted.

2. Section 1.17 is proposed to be amended by revising paragraph (c)(5)(vi) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(5) * * *

(vi) In the case of securities options and/or other options for which a haircut has been specified for the option or for the underlying instrument in § 240.15c3–1 appendix A of this title, the treatment specified in, or under, § 240.15c3–1 appendix A, after effecting certain adjustments to net capital for listed and unlisted options as set forth in such appendix;

* * * * *

3. Section 1.19 is proposed to be amended by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

§ 1.19 Prohibited trading in certain "puts" and "calls".

* * * * *

(a) Commodity options traded on or subject to the rules of a contract market in accordance with the requirements of part 33 of this chapter;

(b) Commodity options traded on or subject to the rules of a foreign board of trade in accordance with the requirements of part 30 of this chapter; or

(c) For futures commission merchants, any option permitted under § 32.4 of this chapter, *provided however*, that a capital treatment for such options is referenced in § 1.17(c)(5)(vi).

Issued in Washington, DC, this 10th day of August, 1993, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–19539 Filed 8–12–93; 8:45 am]

BILLING CODE 6351–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–4692–8]

Ocean Dumping; Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to revise the boundary coordinates for the Matagorda Ship Channel, Texas ocean dredged material disposal site. This revision is necessary because most of the existing designated site has water depths too shallow to accommodate deep draft hopper dredges. The Corps of Engineers (COE) plans to utilize a hopper dredge requiring a 30 foot water depth and much of the existing disposal site is approximately 25 feet deep.

DATES: Written comments must be received on or before September 27, 1993.

ADDRESSES: Send comments to: Norm Thomas, Chief, Federal Activities Branch (6E–F), EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Information supporting this proposed designation is available for public inspection at the following locations:

EPA, Region 6, 1445 Ross Avenue, 9th Floor, Dallas, Texas 75202–2733.
Corps of Engineers, Galveston District, 2000 Fort Point Road, Galveston, Texas 77553.

FOR FURTHER INFORMATION CONTACT: Norm Thomas 214/655–2260.

SUPPLEMENTARY INFORMATION:

A. Background

Title I of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1401 *et seq.*, (hereinafter referred to as "the Act" or "the MPRSA") regulates the ocean dumping and transportation for purposes of ocean dumping of material. With few exceptions, the MPRSA prohibits the transportation of material from the United States for the purpose of ocean dumping except as may be authorized by a permit issued under the MPRSA. The EPA's regulations implementing the Act are set forth at 40 CFR parts 220 through 229.

The Act further provides that EPA may designate recommended times and sites for ocean dumping (MPRSA section 102(c)). EPA site designations specify the latitude and longitude of the site and also typically include limitations on the duration of use and type of materials which may be disposed of at the site. EPA's ocean dumping regulations (40 CFR 228.4(b)) provide that the designation of an ocean dumping site is accomplished by promulgation in Part 228 specifying the site. The list of EPA-designated ocean dumping sites and the terms and conditions associated with each designated site appear at 40 CFR 228.12.

By final rule published on September 10, 1990, the EPA designated a dredged material disposal site in the Gulf of Mexico offshore of Port O'Connor, Texas for the continued disposal of dredged material removed from the Matagorda Ship Channel. The existing designated disposal site has never been used. The COE has now requested the EPA to modify the existing site boundaries to include more area with deeper depths (30 feet or greater) so that hopper dredges with deeper drafts could be utilized. For this reason the COE has asked that the site be shifted 3,000 feet seaward.

B. EIS Information

The EPA's Draft and Final Environmental Impact Statements (EIS) supporting designation of the existing site were distributed for public review in July, 1989 and July, 1990, respectively. The EIS alternative evaluation focused on sites located within ten statute miles of the project area, termed Zone of Siting Feasibility (ZSF). The ZSF was based on limits from (1) The cost of transportation of dredged material; (2) the feasibility of monitoring and surveillance; and (3) political boundaries. Specific areas within the ZSF were excluded from consideration for such reasons as interference with biologically sensitive areas, recreationally important areas, jetty buffer or beach buffer zones, the presence of historic properties, etc. The modified disposal site lying 3,000 feet seaward of the existing disposal site is within the ZSF, an area thoroughly addressed in the EISs. The modified site will not encompass any of the ZSF excluded areas.

Five general criteria (§ 228.5) and eleven specific criteria (§ 228.6), which are used in the selection, evaluation and approval of an ocean disposal site, were addressed in the EISs for the existing site. The EIS criteria analysis is also applicable to the modified site. The impacts of disposal at the existing site are the same as those at the modified site. The dredged material proposed for disposal is clean material and meets the ocean dumping criteria. The only change necessary relates to the geographical position of the modified site. This site is approximately one half mile farther offshore. Instead of being 1.5 miles from the coast, the modified site is located about 2 miles from beaches and other amenity areas. Additional modification of the environmental evaluation is not appropriate or required.

C. Proposed Site Designation

The proposed site is located approximately 2 miles from the coast at its closest point. While the water depth at the modified site ranges from 25 to 40 feet, most of the site has depths 30 feet or greater. The coordinates of the rectangular-shaped site are as follows: 28°23′48″ N, 96°18′00″ W; 28°23′21″ N, 96°18′31″ W; 28°22′43″ N, 96°17′52″ W; 28°23′11″ N, 96°17′22″ W.

D. Regulatory Assessments

Under the Regulatory Flexibility Act, the EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. The EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Proposed Rule does not contain any information collection requirements subject to the Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: August 3, 1993.

W.B. Hathaway,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, part 228 of chapter I of title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12, paragraph (b) (79) is amended by revising the Location to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(79) * * *

Location: 28°23′48″ N, 96°18′00″ W; 28°23′21″ N, 96°18′31″ W; 28°22′43″ N, 96°17′52″ W; 28°23′11″ N, 96°17′22″ W.

* * * * *

[FR Doc. 93–19483 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–62; DA 93–864]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Chief of the Commission's Office of Engineering and Technology has granted a 90 day extension for filing comments and reply comments in response to the Notice of

Proposed Rule Making (NPRM). This extension is in response to a request filed by the National Association of Broadcasters (NAB) and supporting comments filed by the Electromagnetic Energy Policy Alliance and CBS, Inc. The additional time will allow for completion of an important study being sponsored by NAB that will assist the Commission in addressing issues raised in the NPRM and in implementation of new radiofrequency exposure guidelines.

DATES: Comments are due by November 12, 1993. Reply comments are due by December 13, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland, Office of Engineering and Technology, Federal Communications Commission, (202) 653–8169.

SUPPLEMENTARY INFORMATION: 1. On July 9, 1993, the National Association of Broadcasters (NAB) filed a "Request for Extension of Time" with Broadcasters (NAB) and filed a "Request for Extension of Time" with the Commission in the above-named proceeding. The NAB requested that the Commission extend, by a period of ninety (90) days, the time for filing comments until November 12, 1993 and the filing date for reply comments until December 13, 1993. The deadline originally established for filing comments was August 13, 1993, and the date for reply comments was September 13, 1993. The Electromagnetic Energy Policy Alliance (EEPA) and CBS, Inc., have filed comments in support of the NAB's request.

2. The NAB has requested the extension in order to complete a study to develop non-measurement-based techniques for complying with the proposed new radiofrequency (RF) exposure guidelines.[1] The Commission has proposed to incorporate into its rules the newly revised standard of the American National Standards Institute (ANSI) and the Institute of Electrical and Electronics Engineers (IEEE) designated IEEE C95.1–1991 (also ANSI/IEEE C95.1–1992).[2]

3. The NAB points out that the new ANSI/IEEE standard is significantly different than the one it replaces, including new restrictions on currents induced in the human body by RF fields and the specification of two sets of exposure limits. The NAB believes that its study will help the Commission interpret and implement the new guidelines by providing essential technical information relevant to compliance procedures.

4. The NAB study will evaluate the impact of the new standard on compliance methods specified in the Commission's OST Bulletin No. 65; suggest modifications to existing charts and tables in the bulletin; and develop any new charts and tables that may be necessary to demonstrate compliance with either the maximum permissible exposure (MPE) limits or the induced and contact current limits contained in the new standard. The NAB believes that this information will provide a less burdensome set of alternatives, both for licensees and for the Commission, with respect to evaluating compliance with the new guidelines.

5. According to the NAB, it is not possible for its study to be completed within the existing timeframe for submission of comments in this proceeding due to the complex nature of the work involved. The NAB notes that the new standard will have significant impact for the broadcast industry and for other telecommunications services. Therefore, because of the potential benefit that the study results can have for the Commission and for its regulatees, the NAB is requesting the extension in time for filing comments. The EEPA also notes that several of its member organizations have initiated research to support comments on the Commission's proposal.

6. The Commission does not routinely grant requests for extensions of time.[3] However, we recognize the usefulness of the NAB study, and, in this case, we agree that there are extenuating circumstances warranted the granting of additional time. We believe that the public interest will be served by this extension and that the additional time will be to the benefit of all concerned parties in helping assure that new guidelines will be implemented in a reasonable and accurate manner.

7. As noted, the new ANSI/IEEE standard is complex, and a considerable amount of time and effort will be required in order to develop the data and information necessary for its implementation. We expect that the NAB study will provide the Commission with important results that will be very helpful to us in updating our technical bulletin and providing essential guidance to our regulatees with respect to compliance with the new guidelines. We are pleased that the NAB is undertaking this effort, and we agree that an extension of three months is supportable in view of the nature of the research and analytic work required.

8. Accordingly, *It is ordered that* the deadline for filing comments is extended to November 12, 1993, and the deadline for filing reply comments is extended to December 13, 1993. This action is taken pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and pursuant to §§ 0.31, 0.241 and 1.46 of the Commission's Rules, 47 CFR 0.31, 0.241 and 1.46.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 93–19449 Filed 8–12–93; 8:45 am]

BILLING CODE 6712-01-M

[1] See Notice of Proposed Rule Making in ET Docket 93–62, 8 FCC Rcd 2849 (1993).

[2] *Id.*, Note 1 at paragraph 1.

[3] 47 CFR 1.46 (1991).

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1035

[Ex Parte No. 495]

Bills of Lading

AGENCY: Interstate Commerce Commission.

ACTION: Correction to a proposed rule; extension of comment due date.

SUMMARY: This document corrects the extension notice which extended the comment due date in this proceeding and sought comment on proposed revisions of regulations pertaining to railroad and motor carrier uniform bills of lading.

DATES: The due date for comment on the proposed rule remains unchanged. Comments must be received by August 30, 1993.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 495 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 or Andrew J. Nosacek, (202) 927–5318. [TDD for the hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: The Commission published an extension of the comment due date in this proceeding on July 26, 1993 at 58 FR 39723. The summary requested comments on the proposed revision of regulations pertaining to "railroad and motor carrier" uniform bills of lading. Please correct your copy to read "railroad and water carrier" uniform bills of lading.

Decided: July 19, 1993.

By the Commission.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-19506 Filed 8-12-93; 8:45 am]

BILLING CODE 7035-01-P

Notices

Federal Register

Vol. 58, No. 155

Friday, August 13, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Joint Council on Food and Agricultural Sciences; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: Joint Council on Food and Agricultural Sciences (hereafter referred to as the JC).

Date: September 20–21, 1993.

Time: September 20—8:30 a.m.–5:30 p.m. September 21—8:30 a.m.–12 Noon.

Place: Ramada Hotel, 901 N. Fairfax Street, Alexandria, Virginia.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: The JC will review the Department's Nutritious and Safe Foods Initiatives and the strategic plans developed by the (1) Federal Coordinating Council for Science, Engineering, and Technology's Committee on Education and Human Resources; and (2) the Experiment Station Committee on Organization and Policy.

Contact Person for Agenda and More Information: Ms. Marshall Tarkington, Executive Director, Science and Education Advisory Committees, Room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; Telephone (202) 720–3684.

Done in Washington, DC, this August 4, 1993.

Dated: August 3, 1993.

John Patrick Jordan,

Administrator.

[FR Doc. 93–19540 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Suitability Study for the Yellowstone, Buffalo Fork, Gros Ventre, Hoback, Green, Greys and Salt Rivers Being Considered for National Wild and Scenic River Status; Bridger-Teton National Forest; Teton County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a legislative environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final legislative environmental impact statement associated with a study of the suitability of the Yellowstone, Buffalo Fork, Gros Ventre, Hoback, Green, Greys and Salt Rivers in the Bridger-Teton National Forest, in Wyoming, for inclusion in the National Wild and Scenic Rivers System.

The agency invites written comments and suggestions on the suitability of these rivers. In addition, the agency gives notice of the environmental analysis and decision making process associated with the study so that interested and affected people are aware of how they may participate and contribute to the decision.

DATES: Comments should be received in writing by September 1, 1993, to ensure timely consideration.

ADDRESSES: Send written comments to Brian Stout, Forest Supervisor, Bridger-Teton National Forest, P.O. Box 1888, Jackson, Wyoming 83001.

FOR FURTHER INFORMATION CONTACT: Susan Marsh or Scott Fitzwilliams, Bridger-Teton National Forest, Jackson District, P.O. Box 1689, Jackson, WY 83001, phone #(307) 739–5500.

SUPPLEMENTARY INFORMATION: The Bridger-Teton National Forest Land and Resource Management Plan was approved in March 1990. Segments of the Yellowstone, Buffalo Fork, Gros Ventre, Hoback, Greys and Salt Rivers were identified as eligible for inclusion in the National Wild and Scenic Rivers System as part of the planning process, but were not studied for their suitability at that time. The decision to be made, based on the environmental impact statement, is whether or not to recommend any or all of the above mentioned rivers for designation and inclusion in the National Wild and Scenic Rivers System. The Forest Plan will be amended accordingly.

The area of consideration for each of the rivers is a corridor a minimum of ¼-mile in width from each stream bank for the length of the eligible river segments.

The eligible segments of the Gros Ventre River are from its source in the Gros Ventre Wilderness to Lower Slide Lake to the Forest boundary. The upper segment of the river, from its source to Horn Ranch, as a wild river, and the lower segment from Horn Ranch to Lower Slide Lake, as a scenic river.

The two eligible segments of the Hoback River are the Upper Canyon from the source in the Wyoming Range to the end of Forest Road 30700 (10 miles), as a wild river, and the Lower Canyon from the confluence with Cliff Creek to the confluence with the Snake River, to which the Hoback is tributary (18 miles0, as a recreational river. The segment from the end of Forest Road 30700 to the confluence with Cliff Creek was determined ineligible for consideration due to lack of outstandingly remarkable values.

The eligible segments of the Greys River extend for 8 miles from its source to Kinney Creek, as a recreational river, and for 50 miles from Kinney Creek to its confluence with the Snake River, as a scenic river.

The eligible 12-mile segment of the Salt River from its source to Forest Road 10072 classifies as a wild river. The 3-mile segment from Forest Road 10072 to the Forest Boundary classifies as a recreational river.

The eligible segments of the Buffalo Fork River include the North Fork from its headwaters to the confluence with the South Fork, the Soda Fork from its headwaters to its confluence with the North Fork, and the South Fork from its headwaters to the confluence with the North Fork. These segments are all entirely within the Teton Wilderness and are classified as wild. The main stem of the Buffalo Fork River from the Teton Wilderness boundary to the confluence with the Snake River in Grand Teton National Park classifies as scenic.

The eligible segment of the Yellowstone River includes both forks of the river from their headwaters to the Forest boundary, approximately 28 river miles, and classifies as wild. This segment of the river is entirely within the Teton Wilderness, and enters Yellowstone National Park at the Forest boundary. The segment within the

National Park has also been determined to be eligible.

The eligible segment of the Green River is a 37-mile stretch between the source of the river in the Bridger Wilderness and the Forest boundary, classified as a wild river.

The following preliminary issues will be considered in the environmental analysis: (1) Effects on the ability of private landowners to retain their properties and use their lands as they choose; (2) effects on current uses of the river corridor including grazing, recreation, oil and gas exploration; (3) effects on future opportunities for impoundments, (4) effects on the level of recreation use if the rivers are designated, which could affect the wilderness resource and grizzly bear conservation; (5) possible effects on visitation in the Wilderness areas and adjacent back-country of Yellowstone National Park; (6) effects on timber harvesting in the area of the study rivers; and others.

A range of alternatives will be considered. They will include, as a minimum, one alternative that does not recommend designation (no action), and one that recommends designation for all the eligible river segments. Additional alternatives may be developed from public comments received during the scoping process. The environmental impact statement will disclose the direct, indirect, and cumulative effects of implementing each of the alternatives.

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposal. This input will be utilized in the preparation of the draft environmental impact statement.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1993. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. It is very important that those interested in management of these rivers participate at that time. To be most helpful, comments on the draft environmental impact statement should be as site-specific as possible.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement, may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when the agency can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, and considered by the Forest Service in preparing the final study report and environmental impact statement. The final report is scheduled to be completed by March 1994. The comments, responses, environmental consequences discussed in the final environmental impact statement, and applicable laws, regulations, and policies will be considered in preparing the agency's recommendations for Wild and Scenic River designation.

The responsible official for making recommendations to the Congress is Mike Espy, Secretary of Agriculture, Administration Building, 12th Street & Jefferson Drive, SW., Washington, DC 20250.

The decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the United States Congress.

Dated: August 4, 1993.

Thomas J. Mills,

Acting Deputy Chief.

[FR Doc. 93–19519 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Applications: Columbus, OH MSA

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is cancelling the announcement to solicit competitive applications under its Minority Business Development Center program to operate a Columbus, Ohio MBDC for a three (3) year period, starting October 1, 1993 to September 30, 1994 in the Columbus, Ohio MSA (Closing date June 24, 1993). Refer to the **Federal Register** dated May 20, 1993, 58 FR 29388.

Dated: July 14, 1993.

David Vega,

(Regional Director), Chicago (Regional Office).

[FR Doc. 93–19529 Filed 8–12–93; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

Announcing a Meeting of Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board will meet Tuesday, September 1, 1993, and Thursday, September 3, 1993, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on September 1 and 2, 1993, from 9 a.m. to 5 p.m..

ADDRESS: The meeting will take place at Hyatt Regency Baltimore, on the Inner

Harbor, 300 Light Street, Baltimore, MD 21202–9990.

Agenda

—Welcome and Update
—Overview of Meeting
—Escrowed Encryption Standard Update
—Cryptograhic Key Escrow Procedures
—Federal Trusted System Criteria Update
—Public Participation
—Board Discussion
—Pending Business
—Close

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the Computer System Security and Privacy Advisory Board, Computer Systems Laboratory, Building 225, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899. It would be appreciated if fifteen copies of written material could be submitted for distribution to the Board by August 23, 1993. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn McNulty, Associate Director for Computer Security, Computer Systems Laboratory, National Institute of Standards and Technology, Building 225, room B154, Gaithersburg, MD 20899, telephone: (301) 975–3240.

Dated: August 9, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–19546 Filed 8–12–93; 8:45 am]

BILLING CODE 3510–CN–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

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 persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 13, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. 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 persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agencies listed:

Commodities

Tool Box, Portable
5140–00–329–6305
5140–00–226–9020
5140–00–226–9021
Nonprofit Agency: Custom Manufacturing Services, Inc., Louisville, Kentucky

Cradle, Military Fuel Can
7240–01–318–5222
Nonprofit Agency: Knox County Association for Retarded Citizens, Knoxville, Tennessee

Cover, Ironing Board
7290–00–946–7905
Nonprofit Agency: Juniata Branch, Pennsylvania Association for the Blind, Lewistown, Pennsylvania

Pad, Ironing Board
7290–00–633–9124
Nonprofit Agency: Juniata Branch, Pennsylvania Association for the Blind, Lewistown, Pennsylvania

Liner, Field Pack
8465–00–935–6857
8465–00–935–6858
8465–00–258–2432
Nonprofit Agency: ORC Industries, Inc., LaCrosse, Wisconsin

Services

Administrative Services, Department of Energy, Morgantown Energy Technology Center, Morgantown, West Virginia
Nonprofit Agency: Pace Training and Evaluation Center, Star City, West Virginia

Grounds Maintenance, Social Security Administration, Metro West Complex, 300 North Greene Street, Baltimore, Maryland
Nonprofit Agency: Baltimore Association for Retarded Citizens, Inc., Baltimore, Maryland

Grounds Maintenance, Naval and Marine Corps Reserve Center, 1600 West Lafayette Avenue, Moundsville, West Virginia
Nonprofit Agency: Futtrell, Inc., Meadow Land, Pennsylvania

Janitorial/Custodial, U.S. Geological Survey, Menlo Park, California
Nonprofit Agency: Hope Rehabilitation Services, Santa Clara, California

Janitorial/Custodial, Defense Logistics Agency, Defense National Stockpike Zone, Point Pleasant, West Virginia
Nonprofit Agency: Prestera Center for Mental Health Services, Huntington, West Virginia

Mailroom Operation, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California
Nonprofit Agency: Hope Rehabilitation Services, Santa Clara, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–19543 Filed 8–12–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List disposable applicators to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 13, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 11, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 FR 32656) of the proposed addition of these applicators to the Procurement List.

Comments were received from a manufacturer of the applicators other than the firm listed in the Committee's records as the current contractor. The commenter objected to losing the opportunity to compete to supply the applicators to the Government and indicated, without providing supporting data, that inability to compete could cause significant hardship for the commenter.

The Committee does not consider loss of the opportunity to compete on a Government contract, by itself, to constitute severe adverse impact of a company. Where a company has not provided data to support its claim of severe adverse impact, the Committee has normally concluded that no such impact exists. Consequently, the Committee has concluded that the addition of the disposable applicators to the Procurement List will not have a severe adverse impact on the commenter.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodities, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities 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 action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Applicator, Disposable
6515–00–234–6838
6515–00–303–8100

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. 93–19544 Filed 8–12–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity previously furnished by such agencies.

EFFECTIVE DATE: September 13, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 30, May 14, 21 and June 18, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 26125, 28564, 29569 and 33622) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

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:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to Procurement List:

Commodities

Gasket and Preformed Packing Set
5330–00–884–4807

Cable Assembly, Electrical
6150–01–027–0125
(Remaining 50% of the Government requirement)

Case, Medical, Instrument and Supply Set
6545–00–912–9890

Pad, Comfort, Ground Troops Parachutists'
8470–01–364–7074

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Lead Seal with Cord Attachment
P.S. Item No. 0815

Beverly L. Milkman,
Executive Director.

[FR Doc. 93–19545 Filed 8–12–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Information Resources Management Service, 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 September 30, 1993.

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 Gary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Gary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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 Director of the Information Resources Management Service, 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 Cary Green at the address specified above.

Dated: August 9, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Application for Indian Education Resource Centers Cooperative Agreement.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions; small businesses or organizations.
Reporting Burden:
Responses: 15.
Burden Hours: 1,200.
Recordkeeping Burden:
Recordkeepers: 4.
Burden Hours: 128.
Abstract: This form will be used by State Educational agencies to apply for funding under the Indian Education Resource Centers Program. The Department will use the information to make grant awards.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for Grants under the Language Resource Centers Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 20.
Burden Hours: 900.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: This form will be used by State Educational agencies to apply for funding under the Language Resource Centers Program. The Department will use the information to make grant awards.

[FR Doc. 93–19450 Filed 8–12–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy, and 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.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/AU(EU)–9, for the transfer of 2 material test reactor elements containing 422 grams of uranium and 253 grams of uranium–235 (60 percent enrichment) from the United Kingdom to Australia for use as fuel in the HIFAR research and test reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on August 10, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93–19561 Filed 8–12–93; 8:45 am]

BILLING CODE 6450–01–M

Announcement of Public Scoping Meetings, Reconfiguration Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Announcement of public scoping meetings, programmatic environmental impact statement for reconfiguration of the nuclear weapons complex.

SUMMARY: The Department of Energy (DOE) will hold twelve public scoping meetings during September and October 1993 to enable the public to provide comments on the proposed scope of the Programmatic Environmental Impact Statement (PEIS) being prepared for the Reconfiguration of the Nuclear Weapons Complex. Comments received by DOE will be considered in determining the issues to be addressed in the Reconfiguration PEIS. Notice of proposed changes in the scope of the Reconfiguration PEIS was given by DOE on July 23, 1993 (58 FR 39528). The changes proposed are a result of

significant reductions in the nuclear weapons stockpile which have occurred since February 1991, when DOE originally announced its intent to prepare a PEIS for reconfiguring the nuclear weapons complex (56 FR 5590).

Through this notice, DOE again invites comments on the scope of the PEIS, announces the location, date and time for the public meetings, and provides the rules it will follow for conducting the meetings.

DATES: The dates on which each of the public scoping meetings will be held are given below The public may give oral comments or submit written comments. The submission of a written text of oral comments is also encouraged. To ensure consideration, written comments, not submitted at the public scoping meetings, must be postmarked by October 29, 1993. Late comments will be considered to the extent practicable.

ADDRESSES: Addresses for the public meeting locations are provided below.

Written comments on the scope of the PEIS should be sent to: Howard Canter, Deputy Assistant Secretary, Office of Weapons Complex Reconfiguration, U.S. Department of Energy, P.O. Box 3417, Alexandria, VA 22302, (202) 586–1300.

FOR FURTHER INFORMATION CONTACT: Requests for information on the DOE Nuclear Weapons Complex Reconfiguration Program, requests for copies of the Revised Reconfiguration PEIS Implementation Plan (when available), and requests for copies of the PEIS or PEIS Executive Summary (when available) may also be requested from the above address.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585, (202) 586–4600 or 1–(800)–472–2756.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

The revised Notice of Intent (NOI) to prepare a PEIS for Reconfiguring the Nuclear Weapons Complex proposed changes in the PEIS scope reflecting the fact that the future nuclear weapons complex can be smaller and more integrated than previously envisioned in the original NOI. The changes also reflect the increased importance associated with stewardship of existing special nuclear materials that will or may be used in the future to meet national security requirements.

To ensure that the public's concerns and views on the proposed changes in the scope of the PEIS are fully considered, DOE solicits comments on the scope of the Reconfiguration PEIS from all interested individuals, organizations, and governmental entities at the Federal, state, and local levels including Indian tribes.

Public Scoping Meetings

DOE will hold public scoping meetings in Washington, D.C. and near each of the sites to be analyzed in the Reconfiguration PEIS. Each meeting will be held from 9 a.m. to 9:30 p.m., with breaks from 1 p.m. to 2 p.m. and 5 p.m. to 6:30 p.m. DOE may extend the evening sessions, depending on the number of persons wishing to speak.

During the time comments are being received, DOE representatives will also be available in a separate area at the meeting location to answer questions from members of the public.

DOE representatives will host an open house for all interested members of the public at each scoping meeting other than Washington, DC. These open houses will be held at the scoping meeting location from 6 p.m. to 9 p.m. on the evening prior to the day oral comments are received. The purpose of the open houses will be to provide an additional opportunity for members of the public to ask questions of DOE representatives.

Registration

Persons wishing to present oral comments at the public meetings are asked to register. Registration may be done at the meetings on a first-come, first-serve basis as time permits. Registration is not required for the open house.

Preregistration for all meetings is encouraged and may be done by telephoning 1–800–683–0422. Preregistration requests will be taken for each meeting up until 5 p.m. on the Friday prior to the specific meeting. Written requests for preregistration may be mailed to: Robert Menard, Oak Ridge Associated Universities/EESD, P.O. Box 117, Oak Ridge, TN 37831–0117, ATTN: Reconfiguration PEIS.

Rules of Conduct

DOE will retain a presiding officer to chair each meeting. The presiding officer will announce the order of speakers and any additional procedures necessary to conduct the meetings. DOE representatives may ask speakers to clarify their statements to assure that DOE fully understands a comment.

Preregistered speakers are requested to sign in at the meeting registration desk. Registered speakers will be given equal time to present their remarks (five minutes each). Elected officials wishing to speak for their constituencies are asked to identify their office when registering. People who wish to speak on behalf of an organization are asked to identify the organization when registering. It is requested that only one person officially represent an organization at any given meeting. Written comments will be accepted at the scoping meetings. Speakers are encouraged to provide a written text of their oral comments for the record.

Schedule of Public Scoping Meetings

Wednesday, September 8, 1993

Rocky Flats Plant

Ramada Hotel, 8773 Yates Drive, Westminster, Colorado 80030, and

Hanford Site

Shilo Inn, 50 Comstock, Richland, Washington 99352.

Wednesday, September 15, 1993

Los Alamos National Laboratory

Los Alamos Inn, 2201 Trinity Drive, Los Alamos, New Mexico 87544, and

Albuquerque

Ramada Classic, 6815 Manual, NE., Albuquerque, New Mexico 87110.

Wednesday, September 22, 1993

Lawrence Livermore National Laboratory

Holiday Inn Livermore, 720 Las Flores Road, Livermore, California 94550, and

Washington, DC

National Guard Association of the United States, Walsh Rekord Hall of States, 1 Massachusetts Avenue, NW., Washington, D.C. 20001.

Wednesday, September 29, 1993

Pantex Plant

Amarillo Civic Center, 401 S. Buchanan, Amarillo, Texas 79101, and

Oak Ridge Reservation

Pollard Auditorium, 210 Badger Avenue, Oak Ridge, Tennessee 37830–0117.

Wednesday, October 6, 1993

Savannah River Site

North Augusta Community Center, 495 Brookside Avenue, N. Augusta, South Carolina 29841, and

West Broad YMCA, 1110 May Street, Savannah, Georgia 31401.

Wednesday, October 13, 1993

Nevada Test Site

Marjorie Barrick Museum of Natural History at the UNLV Campus, 4305 S.

Maryland Parkway, Las Vegas, Nevada 89154–4012.

Idaho Engineering Laboratory

Shilo Inn, 780 Lindsay Blvd., Idaho Falls, Idaho 83402.

Supporting Documents

DOE will prepare transcripts of the scoping meetings and make these available for public review. DOE will issue a revised PEIS Implementation Plan to provide up-dated information on how the PEIS will be prepared in light of the scoping changes. DOE will announce the availability of the draft PEIS, when completed, in the **Federal Register**, and will solicit public review and comment. Comments on the draft will be considered in preparing the final PEIS.

Copies of all transcripts, and copies of other material related to the preparation of the PEIS, will be made available for public review at the DOE reading rooms listed in the Revised NOI; reading rooms are repeated here for the reader's convenience.

California

U.S. Department of Energy, San Francisco Operations Office, Public Reading Room, 1301 Clay Street, room 700N, Oakland, California 94612–5208, (510) 637–1762.

Colorado

U.S. Department of Energy, Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 12th Avenue, Westminster, Colorado 80030, Attention: Will-ann Lamsens, (303) 469–4435.

Florida

U.S. Department of Energy, Public Reading Room, Largo Public Library, 351 East Bay Drive, Largo, Florida 34640, (813) 587–6715.

Idaho

U.S. Department of Energy, Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83402, (208) 526–9162.

Missouri

U.S. Department of Energy, Public Reading Room, Red Bridge Branch, Mid-Continent, Public Library, 11140 Locust Street, Kansas City, Missouri 64137, (816) 942–1780.

New Mexico-Albuquerque

U.S. Department of Energy, Public Reading Room, National Atomic Museum, 20358 Wyoming SE., Albuquerque, New Mexico 87185–5400, Attention: Diana Zepeda, (505) 845–6670/4378.

New Mexico-Los Alamos

U.S. Department of Energy, Community Reading Room, 1450 Central Avenue, Suite 101, Los Alamos, New Mexico 87545, (505) 665–2127.

Nevada

U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada 89193, (702) 295–1274.

Ohio

U.S. Department of Energy, Miamisburg Library, DOE Public Reading Room, 35 South Fifth Street, Miamisburg, Ohio 45342, (513) 866–1071.

South Carolina

U.S. Department of Energy Reading Room, University of South Carolina, Aiken Campus, 171 University Parkway, Aiken, South Carolina 29801, (803) 641–3320.

Tennessee

U.S. Department of Energy, Oak Ridge Operations Office, Freedom of Information Officer, 200 Administration Road, Room G–209, Oak Ridge, Tennessee 37831, (615) 576–5765.

Texas

U.S. Department of Energy Reading Room, Lynn Library/Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, Texas 79109, (806) 371–5400.

Washington

U.S. Department of Energy, Public Reading Room, Washington State University, 100 Sprout Road, Richland, Washington 99352, (509) 376–8583.

District of Columbia

U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020.

For information on the availability of specific documents and hours of operation, please contact the reading rooms at the telephone numbers provided.

Issued in Washington, DC, this 6th day of August, 1993.

Everet H. Beckner,

Acting Assistant Secretary for Defense Programs.

[FR Doc. 93–19560 Filed 8–12–93; 8:45 am]

BILLING CODE 6450–01–P

Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR Part 600.7(b) it intends to renew on a noncompetitive basis a grant to Jackson State University (JSU) as the lead institution on behalf of a consortium involving JSU, Ana G. Mendez Educational Foundation (AGMEF), and Lawrence Berkeley Laboratory (LBL) of the University of California to improve the research and instructional programs in mathematics, natural science, and computer science at JSU and the three institutions of higher education which comprise the AGMEF—the University of Turabo, Metropolitan University, and the Puerto Rico Junior College. The grant renewal will continue the project through May 31, 1994. The estimated amount is $1,665,000.

PROCUREMENT REQUEST NUMBER: 05–93ER75274.001.

PROJECT SCOPE: The grant renewal is to continue a collaborative research and manpower development effort between JSU and AGMEF in response to Congressional direction included in the conference report on the Energy and Water Development Appropriation Act of 1991. Eligibility for this award is, therefore, restricted to JSU.

FOR FURTHER INFORMATION CONTACT: Gregory A. Mills, Energy Programs Division, ER–113, U.S. Department of Energy, Oak Ridge, Tennessee 37831-8614, (615) 576–0951.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations Office.

[FR Doc. 93–19558 Filed 8–12–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–836–000, et al.]

The Montana Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 6, 1993.

Take notice that the following filings have been made with the Commission.

1. The Montana Power Company

[Docket No. ER93–836–000]

Take notice that on July 30, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a Supplement to Rate Schedule FERC No. 175, the General Transfer Agreement Between The Montana Power Company and the Bonneville Power Administration. Montana requests that the Commission accept the Supplement for filing, to be effective on October 1, 1993.

A copy of the filing was served upon Bonneville Power Administration.

Comment date: August 19, 1993, in accordance with Standard Paragraph E end of this notice.

2. The Montana Power Company

[Docket No. ER93-596-000]

Take notice that on July 30, 1993, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an amendment to its original filing of a "Firm Capacity and Energy Sales Agreement Between The Montana Power Company and Sierra Pacific Power Company"; and a "Firm Capacity and Energy Sales Agreement Between The Montana Power Company and PacifiCorp." This amended filing provides additional information requested by Commission staff.

Copies of the filing were served upon Sierra Pacific Power Company and PacifiCorp.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER93-701-000]

Take notice that on July 30, 1993, FPL submitted supplemental information regarding its filing in the above-captioned docket. FPL submitted the information in response to a request from the Commission's staff.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Columbus Southern Power Company

[Docket No. ER93-637-000]

Take notice that on August 2, 1993, American Electric Power Service Corporation, on behalf of Columbus Southern Power Company and Ohio Power Company, tendered for filing additional information in Docket No. ER93-637-000 to comply with a FERC Staff request.

A copy of the filing was served upon the City of Columbus, Ohio, American Municipal Power-Ohio Inc., and the Public Utility Commission of Ohio.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER92-316-000]

Take notice that on August 2, 1993, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company made a supplemental filing in response to the Commission's order in this proceeding.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Green Mountain Power Corporation

[Docket No. ER93-710-000]

Take notice that on August 2, 1993, Green Mountain Power Corporation (GMP) tendered for filing an amendment to correct errors in the original submittal in this docket, to submit a revised Service Agreeement for Central Vermont Public Service and to submit new Service Agreements for several Vermont municipal utilities. No terms or conditions of the Tariff are affected by this filing.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER89-48-002]

Take notice that on August 2, 1993, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power submitted revisions to the Allocation Methodology and Periodic Rate Computation Procedure Manual of the Intercompany Interchange Contract among those companies in response to the Commission's order.

Comment date: August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Power & Light Company

[Docket No. ER93-735-000]

Take notice that on July 19, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an amendment to its June 29, 1993 filing in the above-referenced docket.

Comment date: August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. John D. Zeglis

[Docket No. ID-2801-000]

Take notice that on July 20, 1993, John D. Zeglis (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions: Director, Illinois Power Company; Officer, American Telephone and Telegraph Company.

Comment date: August 18, 1993, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-19463 Filed 8-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2256-000]

Consolidated Water Power Co.; Authorization for Continued Project Operation

August 9, 1993.

On July 29, 1991, Consolidated Water Power Company, licensee for the Wisconsin Rapids Project No. 2256, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2256 is located on the Wisconsin River in Wood County, Wisconsin.

The license for Project No. 2256 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), 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. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2256 is issued to Consolidated Water Power Company for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Consolidated Water Power Company is authorized to continue operation of the Wisconsin Rapids Project No. 2256 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-19458 Filed 8-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-159-000]

Michigan Gas Storage Co., Proposed Changes in FERC Gas Tariff

August 9, 1993.

Take notice that Michigan Gas Storage Company (MGS), on July 30, 1993, tendered for filing proposed changes in its FERC Gas Tariff, Volume No. 1. MGS state that the proposed changes would increase revenues from jurisdictional sales and service by $9.6 million based on the 12-month period ending March 31, 1993, as adjusted.

MGS states that the filed tariff sheets implement a general cost of service increase from that approved by the Commission in MGS' restructuring docket (RS92-7-000). MGS states that the primary reasons for the filing are to avoid a revenue deficiency caused by increasing operating and maintenance expenses, and to include in cost of service the costs of additional pipeline facilities constructed by MGS.

MGS states that copies of the filing were served upon the Company's jurisdictional customers and the Michigan Public Service Commission.

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 August 17, 1993. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-19466 Filed 8-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2292-000]

Nekoosa Papers, Inc.; Authorization for Continued Project Operation

August 9, 1993.

On July 29, 1991, Nekoosa Papers, Inc., licensee for the Nekoosa Project No. 2292, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2292 is located on the Wisconsin River in Wood County, Wisconsin.

The license for Project No. 2292 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), 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. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2292 is issued to Nekoosa Papers, Inc. for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Nekoosa Papers, Inc., is authorized to continue operation of the Nekoosa Project No. 2292 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-19456 Filed 8-12-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2255-000]

Nekoosa Papers, Inc.; Authorization for Continued Project Operation

August 9, 1993.

On July 29, 1991, Nekoosa Papers, Inc., licensee for the Centralia Project No. 2255, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2255 is located on the Wisconsin River in Wood County Wisconsin.

The license for Project No. 2255 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year and 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. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2255 is issued to Nekoosa Papers, Inc., for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Nekoosa Papers, Inc., is authorized to continue operation of the Centralia Project No. 2255 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19457 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2291–000]

Nekoosa Papers, Inc.; Authorization for Continued Project Operation

August 9, 1993.

On July 29, 1991, Nekoosa Papers, Inc., licensee for the Port Edwards Project No. 2291, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2291 is located on the Wisconsin River in Wood County, Wisconsin.

The license for Project No. 2291 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), 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. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2291 is issued to Nekoosa Papers, Inc. for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Nekoosa Papers, Inc., is authorized to continue operation of the Port Edwards Project No. 2291 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19461 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–592–000]

Nebraska Gas Transport Co. v. KN Interstate Gas Co.; Complaint

August 9, 1993.

Take notice that on July 28, 1993, Nebraska Gas Transport Company (NebGas) filed in Docket No. CP93–592–000 a complaint against KN Interstate Gas Company (KNI) alleging KNI has engaged in unfair, discriminatory, and anticompetitive practices by denying NebGas' request for a tap on KNI's mainline.

NebGas states that it applied to KNI for a mainline tap in order to construct a local distribution line to serve irrigation well motors. NebGas states KNI denied the requested access due to KNI's policy not to bypass existing local distribution facilities.

NebGas alleges the rates charged by the existing local distribution company, KN Energy, Inc. (KN Energy), are arbitrary and not based on a reasonable rate of return. NebGas alleges that KNI's refusal to permit a tap is intended to compel NebGas to continue pay the transportation rates by KN Energy. KNI is a wholly owned subsidiary of KN Energy.

NebGas requests the Commission order KNI to grant NebGas a tap to KNI's mainline and to deliver gas to those points as required in its tariff. NebGas further requests that the Commission order its enforcement staff to commence a formal investigation of KNI's denial of NebGas' request for access to their pipeline to show if proper channels have been circumvented in response to the request.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before September 8, 1993, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211). 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 must file a motion to intervene in accordance with the Commission's file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before September 8, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19467 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–160–000]

Tennessee Gas Pipeline Co.; Filing

August 9, 1993.

Take notice that on July 30, 1993, Tennessee Gas Pipeline Company (Tennessee) tendered for filing changes in its FERC Gas Tariff to establish a Bastian Bay Demand Surcharge to be effective September 1, 1993, consisting of the following revised tariff sheets:

Third Substitute Original Sheet No. 30
Original Sheet No. 407
Original Sheet Nos. 408–502

Tennessee states that the filing is necessary to assure that Tennessee recovers its "stranded" Bastian Bay costs without interruption.

Tennessee states that copies of the filing are being served on all jurisdictional customers and affected state commissions.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before August 16, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service 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.

Lindwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 93–19465 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2239–000]

Tomahawk Power and Pulp Co.; Authorization for Continued Project Operation

August 9, 1993.

On July 31, 1991, Tomahawk Power and Pulp Company, licensee for the Kings Dam Project No. 2239, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2239 is located on the Wisconsin River in Lincoln County, Wisconsin.

The license for Project No. 2239 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), 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. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2239 is issued to Tomahawk Power and Pulp Company for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Tomahawk Power and Pulp Company is authorized to continue operation of the Kings Dam Project No. 2239 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 93–19459 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–3–56–000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

August 9, 1993.

Take notice that Valero Interstate Transmission Company (Vitco), on July 30, 1993 tendered for filing the following tariff sheet as required by Orders 483 and 483–A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, First Revised Volume No. 2
10th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483–A. The change in rates to Rate Schedule S–3 includes an increase in purchased gas cost of $0.4744 per MMBtu as compared to the previously scheduled annual PGA filing in Docket No. TA93–1–56.

The proposed effective date of the above filing is September 1, 1993. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by September 1, 1993.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 17, 1993. 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.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 93–19464 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2113–000]

Wisconsin Valley Improvement Co.; Authorization for Continued Project Operation

August 9, 1993.

On July 30, 1991, Wisconsin Valley Improvement Company, licensee for the Wisconsin Valley Project No. 2113, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2113 is located on the Wisconsin River in Marathon, Lincoln, Oneida, Vilas, and Forest Counties, Wisconsin, and Gogebic County, Michigan.

The license for Project No. 2113 was issued for a period ending July 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), 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. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2113 is issued to Wisconsin Valley Improvement Company for a period effective August 1, 1993, through July 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Wisconsin Valley Improvement Company is authorized to continue operation of the Wisconsin Valley Project No. 2113 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19460 Filed 8–12–93; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Intent To Prepare an Environmental Impact Statement on the Proposed Sacramento 2004 Power Marketing Program; Correction

AGENCY: Western Area Power Administration, Department of Energy (DOE).

ACTION: Correction notice.

SUMMARY: Today's notice is adding a page that was inadvertently omitted from the Tuesday, August 10, 1993 (58 FR 42536) publication of a Notice of Intent to Prepare an Environmental Impact Statement on the Proposed Sacramento 2004 Power Marketing Program.

SUPPLEMENTARY INFORMATION: The following text should be inserted in the second column before the sentence that begins "The initial scoping meetings will * * *": "This notice of intent (NOI) is published to inform interested parties of the EIS process being initiated. This NOI starts the public scoping process and provides an opportunity for interested persons to have early participation in the EIS preparation process. Issues and alternatives for possible analysis in the EIS will be sought during public scoping activities. Possible issues include: Types of power services to be marketed, length of term of power contracts, determination of preference entities to whom power will be marketed and the amount of power to be marketed to each, and transmission requirements for preference entities not directly connected to Western's transmission system. The scoping process will also help Western identify the scope of evaluation necessary, a range of alternative marketing programs, and measures intended to mitigate environmental impacts.

DATES: Initial public information and scoping meetings will be held at the following locations on the dates listed below:

August 30, 1993: Sheraton Smuggler's Inn, 3737 North Blackstone, Fresno, CA 93770, Hotel telephone (209) 226–2200.

September 1, 1993: Holiday Inn Holidome, 5321 Date Avenue, Sacramento, CA 95841, Hotel telephone (916) 338–5800.

September 2, 1993: Red Lion Inn, 1830 Hilltop Drive, Redding, CA 96002, Hotel telephone (916) 221–8700.

Issued at Washington, DC, August 11, 1993.

Joel K. Bladow,

Assistant Administrator for Washington Liaison.

[FR Doc. 93–19740 Filed 8–12–93; 8:45 am]

BILLING CODE 6450–01–P

Phoenix Area Projects Proposed Rate Adjustments

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice extending the comment and consultation period for the Parker-Davis Project Proposed Rate Adjustments.

SUMMARY: The Western Area Power Administration (Western) is announcing an extension to the comment and consultation period for the rate adjustments for the Parker-Davis Project (P–DP). The original schedule for the comment and consultation period was announced in the **Federal Register** notice on May 8, 1992, at 57 FR 19904. The comment and consultation period was to end on August 6, 1992. Western issued another notice in the **Federal Register** on August 6, 1992, at 57 FR 34776 announcing the rescheduling of public forums and extending the comment and consultation period to September 28, 1992. On July 13, 1993, Western issued a third **Federal Register** notice at FRN 58 37731–37732 reopening the comment and consultation period on the proposed P–DP rate adjustments. The comment and consultation period would end August 2, 1993.

In response to significant increases in purchase power costs, Western informed the P–DP customers by letter June 29, 1993, that the comment and consultation period was reopened and that the public information and public comment forums would be held on July 14, 1993.

On July 14, 1993, Western held another public information forum and public comment forum for the P–DP rate adjustments. Due to the high level of customer concerns, Western has once again extended the comment and consultation period to end on September 4, 1993. Customers were informed of the extension by letter July 27, 1993.

Following the close of the comment and consultation period, Western will prepare, if necessary, another power repayment study for the P–DP which will include any changes due to consideration of public comments. Western will recommend the results of those studies as the final proposed rates to the Assistant Secretary for Energy Efficiency and Renewable Energy to be placed in effect on an interim basis as provisional rates and submitted to the Federal Energy Regulatory Commission for approval on a final basis.

EFFECTIVE DATE: The comment and consultation period for the P–DP rate adjustments will end on September 4 1993. Written comments should be received by the end of the comment and consultation period to be assured consideration. Comments may be sent to: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area

Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457.

SUPPLEMENTARY INFORMATION: Power and transmission rates for the P–DP are established pursuant to the various laws cited in the initial **Federal Register** notice at 57 FR 19904.

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Issued at Golden, Colorado, August 5, 1993.

William H. Clagett,

Administrator.

[FR Doc. 93–19557 Filed 8–12–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4692–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 13, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standard (NSPS) for Synthetic Fiber Production Facilities (Subpart HHH)–Information Requirements (EPA ICR No. 1156.06; OMB No. 2060–0059). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of facilities that use the solvent-spun synthetic fiber process and produce more than 500 megagrams of fiber per year must provide EPA, or the delegated State regulatory authority, with one-time notifications and the results of the initial performance test, and must keep records, as required of all facilities subject to the general NSPS requirements. The subject facilities must also report the results of subsequent quarterly performance tests that indicate when VOC emissions exceed the standards. The provisions of this subpart do not apply to facilities that use the reaction spinning process to produce spandex fiber or the viscose process to produce rayon fiber.

The notifications and reports enable EPA or the delegated State regulatory authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The burden for this collection of information is estimated to average 5.9 hours per response for reporting and 62.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

Respondents: Owners or operators of facilities that use the solvent-spun synthetic fiber process and produce more than 500 megagrams of fiber per year.

Estimated No. of Respondents: 27.

Estimated No. of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 2,325 hours.

Frequency of Collection: One-time notifications and performance test results for new facilities; quarterly reports for existing facilities.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, ffice of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 9, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19480 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL 4694–3]

Acid Rain Program; Draft Permits and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit and public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft, five-page Phase I Acid Rain permits to 26 utility plants according to the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on draft permits must be received no later than 30 days after the date of this notice or the publication date of this notice in local newspapers.

ADDRESSES: *Administrative Records.* The administrative record for each draft permit, except information protected as confidential, may be viewed at the addresses listed in "SUPPLEMENTARY INFORMATION."

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft permit to the following:

For plants in Maryland, Pennsylvania, Virginia and West Virginia: Thomas Maslany, Director, Air, Radiation and Toxics Division, EPA Region 3 (3AT–22), 841 Chestnut Bldg., Philadelphia, PA 19107.

For plants Georgia: Winston Smith, Director, Air, Pesticides and Toxics Managements Division, EPA Region 4, 345 Courtland Ave. NE., Atlanta, GA 30365;

For plants in Illinois, Indiana, Michigan and Wisconsin: David Kee, Director, Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Submit all comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the permit. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the permit.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permit.

FOR FURTHER INFORMATION CONTACT: Contact the following persons for more information about the draft permits:

For Conemaugh, Jim Topsale at (215) 597–6553, for Brunner Island, Chalk Point, C P Crane, Dickerson, Morgantown, Potomac River, and Sunbury, Kimberly Peck at (215) 597–9839, for Portland, David Campbell at (215) 597–9781. Air, Radiation and

Toxics Division, EPA Region 3 (3AT-22), (address above).

For plants in Georgia, Brian Beals at (404) 347-5014, Air, Pesticides and Toxics Management Division, EPA Region 4, (address above).

For plants in Illinois and Indiana, Cecelia Mijares at (312) 886-0968, for plants in Michigan and Wisconsin, Beth Burns (312) 886-2703. Air and Radiation Division, EPA Region 5 (A-18J), (address above).

SUPPLEMENTARY INFORMATION:

Permits

EPA proposes to approve, for 1995 only, substitution plans and reduced utilization plans (and parts of plans) with compensating units that are consistent with the current rules and proposes to defer action on these plans and parts of plans for 1996-99.

EPA recently stated, in a July 16, 1993 Federal Register notice, that it is concerned that the existing Acid Rain Program regulations could be read to provide utilities an open-ended ability to use substitution and reduced utilization plans to bring Phase II units into Phase I and create a significant number of excess, new allowances in Phase I. 58 FR 38370 (July 16, 1993). This creation of allowances would threaten achievement of the sulfur dioxide emissions reductions intended to be made under the Act and thus would be contrary to the purposes of the Act. *Id.* As stated in the July 16, 1993 notice, EPA is therefore planning to propose revision of the January 11, 1993 regulations implementing substitution and reduced utilization plans and allowance surrender related to reduced utilization. *Id.* EPA plans to explain these matters in more detail in a notice of proposed rulemaking.

The owners and operators of some affected sources, however, have already submitted to EPA substitution and reduced utilization plans based on their reading of the existing regulations. In order to provide owners and operators an opportunity to adjust their compliance strategies in the event of regulatory revisions, EPA issued on July 16, 1993, and is issuing today, draft permits that approve for 1995 those substitution plans and those reduced utilization plans (and parts of plans) with compensating units that comply with the January 11, 1993 regulations. In the draft permits, EPA defers action on those plans and parts of plans for 1996-1999 pending the potential regulatory revisions.

Further, as explained in the July 16, 1993 notice, the one-year approval is applicable only to those plans that were submitted before July 16, 1993 and that are not revised on or after that date to add units to the plans. *Id.* Where plans are submitted, or revised to add units, on or after that date and before issuance of Phase I permits for the units involved and where EPA issues the permits before the completion of the rulemaking discussed above, EPA intends to defer action on the plans for 1995-99. Similarly, where plans are submitted or revised on or after July 16, 1993 and after issuance of Phase I permits for the units, EPA also intends to defer action on those plans for 1995-99 until completion of the rulemaking. Plans on which action is deferred will be reviewed and acted on in accordance with the regulations that result from the rulemaking. In cases where a unit is designated in both a substitution plan as a substitution unit and a reduced utilization plan as a compensating unit, one type of plan can be activated only for years in which the other type of plan designating the unit is not activated. While a unit may be designated as a substitution unit in more than one conditional substitution plan, that substitution unit cannot be in more than one activated plan. Further, the activation of a reduced utilization plan for a substitution unit is contingent on the activation of the substitution plan designating the substitution unit. In addition, the reduced utilization plan designating a compensating unit can only be activated for years in which a reduced utilization plan designating sulfur-free generation for that compensating unit is not activated. EPA proposes to approve draft permits that specify the sulfur dioxide emission allowances and compliance plans for the following utility plants:

Region 3

C P Crane in Maryland: 10,058 allowances under column A of Table 1 of 40 CFR 73.10 (Table 1 allowances) in each year 1995-1999 and 2,434 Phase I Extension Reserve (Reserve) allowances in each year 1995-1999 to unit 1; 8,987 Table 1 allowances in each year 1995-1999 to unit 2; and a Phase I extension plan in which unit 1 is a transfer unit for Conemaugh. The designated representative is Ronald W. Lowman.

Chalk Point in Maryland: 21,333 Table 1 allowances in each year 1995-1999 and 4,070 Reserve allowances in each year 1995-1996 to unit 1; 23,690 Table 1 allowances in each year 1995-1999 to unit 2; 9,107 substitution allowances in 1995 to unit 3; 2,476 substitution allowances in 1995 to unit 4; a Phase I extension plan in which unit 1 is a transfer unit for Conemaugh; ten conditional substitution plans for 1995, one for each substitution unit, in which units 1 and 2 designate units 3 and 4, Dickerson units 1, 2 and 3, and Potomac River units 1, 2, 3, 4 and 5 as substitution units; two conditional substitution plans, one for each substitution unit, in which Morgantown units 1 and 2 designate units 3 and 4 as substitution units; sixteen conditional reduced utilization plans for 1995, two for each compensating unit, in which units 1 and 2 designate Dickerson units 1, 2, and 3, and Potomac River units 1,2,3,4 and 5 as compensating units; and ten conditional reduced utilization plans, one for each unit 1 and 2 for each year 1995-1999, that rely on energy conservation and improved unit efficiency measures. A Phase I extension plan naming unit 2 as a control unit is not approved. The Designated representative is James S. Potts.

Dickerson in Maryland: 11,932 substitution or compensating unit allowances in 1995 to unit 1; 11,451 substitution or compensating unit allowances in 1995 to unit 2; 12,049 substitution or compensating unit allowances in 1995 to unit 3; three conditional substitution plans for 1995, one for each substitution unit, in which Chalk Point units 1 and 2 designate units 1, 2 and 3 as substitution units; three conditional substitution plans for 1995, one for each substitution unit, in which Morgantown units 1 and 2 designate units 1, 2 and 3 as substitution units; and twelve conditional reduced utilization plans for 1995, four for each compensating unit, in which Chalk Point units 1 and 2, and Morgantown units 1 and 2 designate units 1, 2 and 3 as compensating units. The designated representative is James S. Potts.

Morgantown in Maryland: 34,332 Table 1 allowances in each year 1995-1999 and 5,532 reserve allowances in each year 1995-1996 to unit 1; 37,467 Table 1 allowances in each year 1995-1999 and 8,125 Reserve allowances in each year 1995-1996 to unit 2; a Phase I extension plan in which units 1 and 2 are transfer units for Conemaugh; ten conditional substitution plans for 1995, one for each substitution unit, in which units 1 and 2 designate Chalk Point units 3 and 4, Dickerson units 1, 2 and 3, and Potomac River units 1, 2, 3, 4 and 5 as substitution units; sixteen conditional reduced utilization plans for 1995, two for each compensating unit, in which units 1 and 2 designate Dickerson units 1, 2 and 3, and Potomac River units 1, 2, 3, 4 and 5 as compensating units; and ten reduced utilization plans, one for each unit 1 and 2 for each year 1995-1999, that rely on energy conservation and improved unit efficiency measures. The designated representative is James S. Potts.

Brunner Island in Pennsylvania: 27,030 Table 1 allowances in each year 1995–1999 to unit 1; 30,282 Table 1 allowances in each year 1995–1999 and 1,713 Reserve allowances in each year 1995–1996 to unit 2; 52,404 Table 1 allowances in each year 1995–1999 and 8,167 Reserve allowances in each year 1995–1996 to unit 3; and a Phase I extension plan in which units 2 and 3 are transfer units for Conemaugh. The designated representative is Robert G. Byram.

Conemaugh in Pennsylvania: 58,217 Table 1 allowances in each year 1995–1999, and the following Reserve allowances to unit 1: 38,377 in 1995, 37,161 in 1996, 23,233 in 1997, 23,789 in 1998 and 23,167 in 1999; 64,701 Table 1 allowances in each year 1995–1999 and the following Reserve allowances to unit 2: 21,052 in each year 1995–1996, 26,965 in 1997, 26,203 in 1998 and 26,906 in 1999; and a Phase I extension plan that requires units 1 and 2 to install qualifying Phase I control technology and that name the following as transfer units: C P Crane unit 1, Chalk Point unit 1, Morgantown units 1 and 2, Brunner Island units 2 and 3, Portland units 1 and 2, Sunbury units 3 and 4, Jack McDonough unit MB1 and Wansley unit 2. The designated representative is Alfred A. Slowik.

Portland in Pennsylvania: 5,784 Table 1 allowances in each year 1995–1999 and 3,589 Reserve allowances in each year 1995–1996 to unit 1; 9,961 Table 1 allowances in each year 1995–1999 and 7,348 Reserve allowances in 1995–1999 to unit 2; and a Phase I extension plan in which units 1 and 2 are transfer units for Conemaugh. The designated representative is Charles S. Mowbray.

Sunbury in Pennsylvania: 8,530 Table 1 allowances in each year 1995–1999 and 603 Reserve allowances in each year 1995–1996 to unit 3; 11,149 Table 1 allowances in each year 1995–1999 and 243 Reserve allowances in each year 1995–1996 to unit 4; and a Phase I extension plan in which units 3 and 4 are transfer units for Conemaugh. The designated representative is Robert G. Byram.

Potomac River in Virginia: 1,913 substitution or compensating unit allowances in 1995 to unit 1; 1,958 substitution or compensating unit allowances in 1995 to unit 2; 3,339 substitution or compensating unit allowances in 1995 to unit 3; 3,593 substitution or compensating unit allowances in 1995 to unit 4; 3,489 substitution or compensating unit allowances in 1995 to unit 5; five conditional substitution plans for 1995, one for each substitution unit, in which Chalk Point units 1 and 2 designate units 1, 2, 3, 4 and 5 as substitution units; five conditional substitution plans for 1995, one for each substitution unit, in which Morgantown units 1 and 2 designate units 1, 2, 3, 4 and 5 as substitution units; and twenty conditional reduced utilization plans for 1995, four for each compensating unit, in which Chalk Point units 1 and 2 and Morgantown units 1 and 2 designate units 1, 2, 3, 4 and 5 as compensating units. The designated representative is James S. Potts.

Region 4

Jack McDonough in Georgia: 19,386 Table 1 allowances in each year 1995–1999, 13,904 Reserve allowances in 1995 and 13,487 Reserve allowances in 1996 to unit MB1; 20,058 Table 1 allowances in each year 1995–1999 to unit MB2; and a Phase I extension plan in which unit MB1 is a transfer unit for Conemaugh. The designated representative is K.E. Adams.

Wansley in Georgia: 68,908 Table 1 allowances in each year 1995–1999 to unit 1; 63,708 Table 1 allowances in each year 1995–1999 and 50,093 Reserve allowances in each year 1995–1996 to unit 2; and a Phase I extension plan in which unit 2 is a transfer unit for Conemaugh. The designated representative is K.E. Adams.

Region 5

Collins in Illinois: 1,263 substitution allowances in 1995 to unit 1; 1,079 substitution allowances in 1995 to unit 2; 1,905 substitution allowances in 1995 to unit 3; 1,555 substitution allowances in 1995 to unit 4; 1,722 substitution allowances in 1995 to unit 5; three substitution plans for 1995, one for each substitution unit, in which Kincaid units 1 and 2 designate units 1, 2 and 3 as substitution units; two conditional substitution plans for 1995, one for each substitution unit, in which Kincaid unit 1 and 2 designates unit 4 and 5 as substitution units; and five conditional reduced utilization plans, one for each unit 1, 2, 3, 4 and 5, that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Crawford in Illinois; 3,438 substitution or compensating unit allowances in 1995 to unit 7; 5,325 substitution or compensating unit allowances in 1995 to unit 8; two conditional substitution plans for 1995, one for each substitution unit, in which Kincaid units 1 and 2 designate units 7 and 8 as substitution units; four conditional reduced utilization plans for 1995, two for each compensating unit, in which Kincaid units 1 and 2 designated units 7 and 8 as compensating units; and two conditional reduced utilization plans, one for each unit, that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Fisk in Illinois: 3,424 substitution or compensating unit allowances in 1995 to unit 19; a conditional substitution plan for 1995 in which Kincaid unit 1 and 2 designate unit 19 as a substitution unit; two conditional reduced utilization plans for 1995, in which Kincaid units 1 and 2 designate unit 19 as a compensating unit; and a conditional reduced utilization plan for unit 19 that relies on sulfur-free generation. The designated representative is Emerson W. Lacey.

Joliet 9 in Illinois: 5,595 substitution allowances in 1995 to unit 5; a conditional substitution plan for 1995 in which Kincaid units 1 and 2 designate unit 5 as a substitution unit; and a conditional reduced utilization plan for unit 5 that relies on sulfur-free generation. The designated representative is Emerson W. Lacey.

Joliet 29 in Illinois: 5,549 substitution or compensating unit allowances in 1995 to unit 71: 4,523 substitution or compensating unit allowances in 1995 to unit 72; 5,200 substitution or compensating unit allowances in 1995 to unit 81; 5,389 substitution or compensating unit allowances in 1995 to unit 82; two conditional substitution plans for 1995, one in which Kincaid units 1 and 2 designate units 71 and 72 as substitution units, and one in which Kincaid units 1 and 2 designate units 81 and 82 as substitution units; four conditional reduced utilization plans for 1995, two for units 71 and 72 and two for units 81 and 82, one in which Kincaid unit 1 designates each pair as compensating units and one in which Kincaid unit 2 designates each pair as compensating units; and four conditional reduced utilization plans, one for each unit 71, 72, 81 and 82, that rely on sulfur-free generation. The designated representative is Emerson W. Lacy.

Kincaid in Illinois: 34,564 Table 1 allowances in each year 1995–1999 to unit 1; 37,063 Table 1 allowances in each year 1995–1999 to unit 2; three substitution plans for 1995, one for each substitution unit, in which units 1 and 2 designate Collins units 1, 2 and 3 as substitution units; 19 conditional substitution plans for 1995, one for each substitution unit or pair of units in which units 1 and 2 designate Collins units 4, Collins unit 5, Crawford unit 7, Crawford unit 8, Fisk unit 19, Joliet 29 units 71 and 72, Joliet 29 units 81 and 82, Joliet 9 unit 5, Powerton units 51 and 52, Powerton unit 61 and 62, Waukegan unit 7, Waukegan unit 8, Waukegan unit 17, Will County unit 1, Will County unit 2, Will County unit 4, State Line unit 3, and State Line unit 4 as substitution units; 20 conditional reduced utilization plans for 1995, 10 each for units 1 and 2, that designate the following units or pairs of units: Crawford unit 7, Crawford unit 8, Fisk unit 19, Joliet 29 units 71 and 72, Joliet 29 units 81 and 82, Waukegan unit 7, Waukegan unit 8, Will County unit 3, Will County unit 4, and State Line unit 3 as compensating units; and two conditional reduced utilization plans for units 1 and 2 that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Powerton in Illinois: 8,026 substitution allowances in 1995 to unit 51; 7,929 substitution allowances in 1995 to unit 52; 8,156 substitution allowances in 1995 to unit 61; 8,220 substitution allowances in 1995 to unit 62; two conditional substitution plans for 1995, one in which Kincaid units 1 and 2 designate units 51 and 52 as substitution units and one in which Kincaid units 1 and 2 designate units 61 and 62 as substitution units; and four reduced utilization plans, one for each unit 51, 52, 61 and 62, that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Waukegan in Illinois: 6,002 substitution or compensating unit allowances in 1995 to unit 7; 4,758 substitution or compensating unit allowances in 1995 to unit 8; 1,427 substitution or compensating unit allowances in 1995 to unit 17; three conditional substitution plans, one for each compensating unit, in which Kincaid units 1 and 2 designate units 7, 8 and 17 as substitution units; four conditional reduced utilization plans for 1995, two for each compensating unit, one in which Kincaid unit 1 designates unit 7 and unit 8 as compensating units and one in which Kincaid unit 2 designated unit 7 and unit 8 as compensating units; and three conditional reduced utilization plans, one for each unit 7, 8 and 17, that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Will County in Illinois: 2,428 substitution or compensating unit allowances in 1995 to unit 1; 2,381 substitution or compensating unit allowances in 1995 to unit 2; 4,940 substitution or compensating unit allowances in 1995 to unit 3; 8,682 substitution or compensating unit allowances in 1995 to unit 4; four conditional substitution plans for 1995, one for each substitution unit, in which Kincaid units 1 and 2 designate units 1, 2, 3 and 4 as substitution units; four conditional reduced utilization plans for 1995, two for each compensating unit, in which Kincaid unit 1 designates unit 3 and unit 4, and Kincaid unit 2 designates unit 3 and unit 4; and four conditional reduced utilization plans for units 1, 2, 3 and 4 that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

State Line in Indiana: 3,282 substitution or compensating unit allowances in 1995 to unit 3; 5,735 substitution or compensating unit allowances in 1995 to unit 4; two conditional substitution plans for 1995, one for each substitution unit, in which Kincaid units 1 and 2 designate units 3 and 4 as substitution units; two conditional reduced utilization plans for 1995 in which Kincaid units 1 and 2 designate unit 3 as a compensating unit; and two conditional reduced utilization plans for units 3 and 4 that rely on sulfur-free generation. The designated representative is Emerson W. Lacey.

Presque Isle in Michigan: 81 compensating unit allowances in 1995 to unit 2; 2,335 compensating unit allowances in 1995 to unit 3; 2,005 compensating unit allowances in 1995 to unit 4; 3,554 compensating unit allowances in 1995 to unit 5; 3,571 compensating unit allowances in 1995 to unit 6; 2,065 compensating unit allowances in 1995 to unit 7; 1,949 compensating unit allowances in 1995 to unit 8; 1,437 compensating unit allowances in 1995 to unit 9; and the parts of 32 conditional reduced utilization plans for 1995, four for each compensating unit, in which North Oak Creek unit 1, South Oak Creek unit 8, Valley unit 4 and Port Washington unit 4 designate units 2, 3, 4, 5, 6, 7, 8 and 9 as compensating units. The designated representative is Jere M. Jacobi.

North Oak Creek in Wisconsin: 5,083 Table 1 allowances in each year 1995–1999 to unit 1; 5,005 Table 1 allowances in each year 1995–1999 to unit 2, 5,229 Table 1 allowances in each year 1995–1999 to unit 3; 6,154 Table 1 allowances in each year 1995–1999 to unit 4; four conditional reduced utilization plans, one each for units 1, 2, 3 and 4, that rely on energy conservation measures and sulfur-free generation; the parts of eight conditional reduced utilization plans for 1995, one for each compensating unit, in which unit 1 designates Presque Isle units 2, 3, 4, 5, 6, 7, 8 and 9 as compensating units and the parts of these plans for 1995–1999 that rely on energy conservation measures and sulfur-free generation. The designated representative is Jere M. Jacobi.

Port Washington in Wisconsin: 1,968 substitution allowances in 1995 to unit 1; 3,782 substitution allowances in 1995 to unit 2; 3,108 substitution allowances in 1995 to unit 3; 2,745 substitution allowances in 1995 to unit 4; 3,412 substitution allowances in 1995 to unit 5; five conditional substitution plans for 1995, one for each substitution unit, in which South Oak Creek unit 5 designates units 1, 2, 3, 4 and 5 as substitution units; five conditional reduced utilization plans, one each for units 1, 2, 3, 4 and 5, that rely on energy conservation and measures and sulfur-free generation; and the parts of eight conditional reduced utilization plans for 1995, one for each compensating unit, in which unit 4 designates Presque Isle units 2, 3, 4, 5, 6, 7, 8 and 9 as compensating units, and the parts of these plans for 1995–1999 that rely on energy conservation and measures and sulfur-free generation. The designated representative is Jere M. Jacobi.

South Oak Creek in Wisconsin: 9,416 Table 1 allowances in each year 1995–1999 to unit 5, 11,723 Table 1 allowances in each year 1995–1999 to unit 6; 15,754 Table 1 allowances in each year 1995–1999 to unit 7; 15,375 Table 1 allowances in each year 1995–1999 to unit 8; nine conditional substitution plans for 1995, one for each compensating unit, in which unit 5 designates Port Washington units 1, 2, 3, 4 and 5, and Valley units 1, 2, 3 and 4 as substitution units; a conditional reduced utilization plan for unit 8 that relies on energy conservation measures and sulfur-free generation; and the parts of eight conditional reduced utilization plans for 1995, one for each compensating unit, in which unit 8 designates Presque Isle units 2, 3, 4, 5, 6, 7, 8 and 9 as compensating units, and the parts of these plans for 1995–1999 that rely on energy conservation measures and sulfur-free generation. The designated representative is Jere M. Jacobi.

Valley in Wisconsin: 3,675 substitution allowances in 1995 to unit 1; 3,713 substitution allowances in 1995 to unit 2; 3,404 substitution allowances in 1995 to unit 3; 3,311 substitution allowances in 1995 to unit 4; four conditional substitution plans for 1995, one for each substitution unit, in which South Oak Creek unit 1 designates units 1, 2, 3 and 4 as substitution units; four conditional reduced utilization plans, one each for unit 1, 2, 3 and 4, that rely on energy conservation measures and sulfur-free generation; the parts of eight conditional reduced utilization plans for 1995, one for each compensating unit, in which unit 4 designates Presque Isle units 2, 3, 4, 5, 6, 7, 8 and 9 as compensating units, and the parts of these plans for 1995–1999 that rely on energy conservation measures and sulfur-free generation. The designated representative is Jere M. Jacobi.

Addresses

The administrative records for each plant may be viewed during normal operating hours at the following locations:

Region 3

For plants in Maryland, Pennsylvania, Virginia and West Virginia: EPA Region 3,841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9800.

Region 4

For plants in Georgia: (1) EPA Region 4 Library, 345 Courtland St., NE., Atlanta, GA 30365, (404) 347–4216; (2) Air Protection Branch, Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, suite 120, Atlanta, GA 30354, (404) 368–7000, and (3) the additional locations for each plant:

For Wansley: Heard County Public Library, 564 Main St., Franklin, GA 30217, (706) 675–6501.

For Jack McDonough: Cobb County Library, 266 Roswell St., Marietta, GA 30060, (404) 528–2346.

Region 5

For plants in Illinois: (1) EPA Region 5, Ralph H. Metcalfe Federal Bldg., Room 1822, 77 West Jackson Blvd., Chicago, IL 60604, and (2) Illinois Environmental Protection Agency Library, 2200 Churchill Road, Springfield, IL 62706.

For plants in Indiana: EPA Region 5, (address above).

For plants in Michigan: Michigan Department of Natural Resources, Air Quality Division, Steven T. Mason Bldg., 4th Fl., 530 W. Alleghan, Lansing, MI 48933.

For plants in Wisconsin: (1) EPA Region 5, (address above), and (2) Wisconsin Department of Natural Resources, 101 S. Webster St., 7th Floor, Madison, WI 53703.

Dated: August 10, 1993.

Brian McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–19547 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4690–68]

Clean Air Act Advisory Committee Request for Candidates

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990 to provide independent advice and counsel to EPA on policy issues associated with the implementation of the Clean Air Act of 1990. The charter for the CAAAC was reissued and the Committee was authorized to be extended until November 19, 1994 under regulations established by the Federal Advisory Committee Act (FACA).

While the CAAAC has been reauthorized, the membership of the Committee expired on March 31, 1993. At this time, EPA requests nominations of candidates for membership on this Advisory Committee. The membership of the Committee will represent a balance of interested persons with diverse perspectives and professional qualifications and experience to contribute to the functions of the Advisory Committee. Members will be drawn from: Business and industry; academic institutions; state and local governmental bodies; environmental and nongovernmental organizations; unions and service groups.

DATE: Submit nominations of candidates no later than September 17, 1993. Any interested person or organization may submit the names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, organization, position, address, and telephone number. Candidates are asked to submit a brief statement that summarizes their background, experience, qualification and other relevant information as a part of the review process.

ADDRESSES: Submit suggestions for the list of candidates to Paul Rasmussen, Advisory Committee Nominations, Office of Air and Radiation, (ANR–443), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Fax number: 202–260–8509.

FOR FURTHER INFORMATION CONTACT: Paul Rasmussen at the above address, or call 202–260–7430. The Agency will not formally respond to nominations until the Committee's membership has been chosen.

SUPPLEMENTARY INFORMATION: The CAAAC has been established to advise EPA on the development, implementation, and enforcement of the new and expanded regulatory and market-based programs required by the Clean Air Act of 1990. The programs falling under the purview of the CAAAC include those for meeting National Ambient Air Quality Standards, reducing emissions from vehicles and vehicle fuels, reducing air toxics emissions, issuing operating permits and collecting fees, and carrying out new and expanded compliance authorities. The Clean Air Act Advisory Committee may advise on issues that cut across several program areas.

The responsibilities of the Advisory Committee include providing the Agency with advice on the following:

- Approaches for new and expanded programs, including those using innovative or market-based means to achieve environmental improvements.
- Potential health, environmental, and economic effects of programs required by the 1990 amendments and potential impacts on the public, the regulated community, state and local governments and other Federal agencies.
- Policy and technical contents of proposed major EPA rulemaking and guidance required by the Clean Air Act in order to help effectively incorporate appropriate outside advice and information.
- Integration of existing policies, regulations, standards, guidelines, and procedures in programs for implementing requirements of the Act.

The Committee shall be composed of some 25 to 30 members. Meetings will be open to all interested parties. Committee members shall serve two-year terms, or until the termination of the CAAAC, whichever comes first.

Members of the Committee shall be selected on the basis of their qualifications and diversity of perspectives that will enable them to provide advice and guidance to the Agency in implementing the Clean Air Act of 1990. Both previous members of the CAAAC interested in reappointment to the Committee and newly nominated candidates will be considered for membership.

The Advisory Committee will be authorized to form subcommittees to consider specific issues or actions and report back to the Committee.

Meetings will be held at least four times a year or as necessary, as determined by the Chairperson.

No honoraria or salaries are contemplated in association with membership on the Advisory Committee, but compensation for travel and nominal daily expenses while attending meetings may be provided.

The Agency intends to hold the initial meeting of the reauthorized Clean Air Act Advisory Committee in Washington, D.C. in the month of November, 1993.

Suggestions for the list of candidates should be submitted no later than September 17, 1993.

Dated: August 3, 1993.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93–19481 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4623–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly receipt of Environmental Impact Statements filed August 2, 1993 through August 6, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930262, DRAFT EIS, AFS, NM, Angostura Diversity Unit Vegetative Management Plan, Implementation, Timber Harvesting and Regrowing, Carson National Forest, Camino Real Ranger District, Taos County, NM, Due: November 8, 1993, Contact: Carol Holland (505) 587–2255.

EIS No. 930263, FINAL EIS, FHW, MT, Shiloh Road Interchange Project, Construction, I–90 in the vicinity of the existing Shiloh Road Overpass (I–90 milepost 443) and Improvements to the South Frontage Road, Funding and Section 404 Permit, between the Cities of Laurel and Billing, Yellowstone County, MT, Due: September 13, 1993, Contact: Dale W. Paulson (406) 449–5305.

EIS No. 930264, DRAFT EIS, COE, NC, Wilmington Harbor Channel Widening and Navigation Improvement, Cape Fear River, Port of Wilmington, New Hanover and Brunswick Counties, NC, Due: September 27, 1993, Contact: Hugh Heine (919) 251–4070.

EIS No. 930265, FINAL EIS, AFS, ID, Big Eightmile, North Fork of Timber and Alder Creek Timber Sale, Reforestation and Road Construction, Implementation, Lemhi Range Roadless Area, Salmon National Forest, Lemhi County, ID, Due: September 13, 1993, Contact: Lynn M. Bennett (208) 756–2215.

EIS No. 930266, FINAL EIS, BLM, UT, Diamond Mountain Resource Area, Resource Management Plan, Implementation, Daggett, Duchesne and Uintah Counties, UT, Due: September 13, 1993, Contact: Jean Nitschke-Sinclear (801) 781–4400.

EIS No. 930267, FINAL EIS, NOA, NC, FL, SC, GA, South Atlantic Region Shrimp Fishery Management Plan, Implementation, Exclusive Economic Zone (EEZ), NC, SC, FL and GA, Due: September 13, 1993, Contact: Nancy Foster (301) 713–2341.

EIS No. 930268, FINAL EIS, AFS, ID, Moyer Salt Timber Sale, Timber Harvest and Road Construction/Reconstruction, Implementation, Salmon National Forest, Cobalt Ranger District, Lemhi County, ID, Due: September 13, 1993, Contact: Lynn M. Bennett (208) 756–2215.

EIS No. 930269, DRAFT EIS, COE, WI, East Channel of the Mississippi River at Prairie du Chien Long-Term Channel Maintenance Plan and St. Feriole Island and Adjacent Mainland Barge Transloading Facility Upgrading and Expansion, Implementation and COE Permits, Prairie du Chien, WI, Due: September 27, 1993, Contact: Dennis Anderson (612) 220–0272.

EIS No. 930270, DRAFT EIS, SFW, OR, Hart Mountain National Antelope Refuge Comprehensive Management Plan, Implementation, Lake County, OR, Due: September 27, 1993, Contact: Barry Reiswig (503) 947–3315.

EIS No. 930271, FINAL EIS, FHW, MI, Grand Rapids South Beltline Construction, I–196 in Ottawa County to I–96 in Kent County, Funding and COE Section 404 Permit, Ottawa and Kent Counties, MI, Due: September 13, 1993, Contact: Norman Stoner (517) 377–1851.

EIS No. 930272, DRAFT EIS, NIH, MD, William H. Natcher Building, Phase II Construction and Consolidation, Located on National Institutes of Health Bethesda Campus, Funding and NPDES Permit, Montgomery County, MD, Due: September 27, 1993, Contact: Thomas Flavin (301) 496–5787.

Amended Notices

EIS No. 930183, DRAFT EIS, AFS, AK, Ushk Bay Timber Sale, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Chichagof Island, AK, Due: August 25, 1993, Contact: Michael Weber (907) 747–6671. Published FR 6–11–93—Review period extended.

EIS No. 930211, FINAL EIS, FHW, PA, PA–33 Extension, US 22 Interchange in Bethlehem Township to I–78 Interchange in Lower Saucon Township, Funding and COE Section 404 Permit, Northampton County, PA, Due: August 20, 1993, Contact: Manuel A. Marks (717) 782–4422. Published FR–6–25–93—Review period extended.

EIS No. 930239, DRAFT SUPPLEMENT, COE, MS, Mississippi River and Tributaries Flood Control, Updated Information, Upper Yazoo Projects (UYP), Yazoo River Basin, several Counties, MS, Due: September 7, 1993, Contact: Gary Young (601) 631–5906. Published FR 7–23–93—Due Date Correction.

Dated: August 10, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–19548 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–U

[ER-FRL–4623–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 26, 1993 through July 30, 1994 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 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–L65198–OR Rating EC2, Ochoco National Forest and Crooked River National Grassland Revised Land and Resource Management Plan for Standards and Guidelines Regarding Oil and Gas Leasing, Implementation, Grant, Crook, Wheeler, Jefferson and Harney Counties, OR.

Summary: EPA expressed environmental concerns based on the potential for adverse water quality effects. Additional information regarding surface to groundwater effects, air quality effects, and mitigation feedback were requested.

ERP No. D–BLM–G65055–OK Rating EC2, Oklahoma Comprehensive Land and Resource Management Plan for Oil and Gas Leasing and Development, Coal Tract Leasing, Townsite Disposal and Red River Management, Tulsa District, several Counties, OK.

Summary: EPA expressed environmental concerns and requested additional information in the following areas: the preferred alternative and the basis for its selection should be clearly described; mitigation measures for protecting surface waters and ground water from oil and gas activities should be identified; the proposed use and associated impacts from disposal wells should be addressed; and the presence of prime farmlands in the project area as well as mitigation to protect these soils should be evaluated.

ERP No. D–BLM–K67018–CA Rating EC2, Fort Cady Minerals Solution Mining Project, Construction and Operation, Associated Right-of-Way Grants and Mineral Material Sales Permits, San Bernardino County, CA.

Summary: EPA expressed environmental concerns regarding potential project impacts to surface water and groundwater resources and the need for additional information in the Final EIS regarding potential impacts to water resources, measures to mitigate project impacts, and Federal Underground Injection Control requirements as mandated by the Federal Safe Drinking Water Act. EPA noted that it would be responsible for permitting and enforcement associated with any Class III underground injection wells needed by the project.

ERP No. D–FHW–B40075–MA Rating EC2, I–495 Interchange Project, Construction between Route 9 and Route 20 Interchange to provide access to Crane Meadow Road, Funding, Right-of-Way, NPDES and COE Section 404 Permits, Marlborough and Southborough, MA.

Summary: EPA had environmental concerns regarding additional measures to be evaluated to protect water supply resources and water quality, and the need to prepare a compensatory mitigation plan to offset adverse wetland impacts. Additionally, EPA expressed concern that air quality benefits from the proposed action would be offset in the future from project support secondary development and increase in vehicle miles traveled. EPA recommended evaluation of Transportation Demand Management alternatives to reduce use of single occupant vehicles.

ERP No. D–FHW–B40130–RI Rating EC2, I–195 Transportation Improvements, between the west end of the Washington Bridge and Interstate Route I–95 through Providence, Funding, COE Section 404 and US Coast Guard Bridge Permits, Providence County, RI.

Summary: EPA expressed environmental concerns based on the need of additional information for the evaluation of impacts to water quality, testing and handling of urban fill soils potentially contaminated by hazardous materials, and mitigation necessary to offset impacts to waters of the United States. EPA recommended that this information be included in the Final EIS.

ERP No. D–FHW–L40183–WA Rating EC2, I–5/196th Street SW/WA–524 Interchange Project, Improvements, Funding, NPDES and COE Section 404 Permits, Snohomish County, WA.

Summary: EPA had environmental concerns based on potential wetland impacts particularly to the unique pine bog community and potential water quality impacts. Additional information is needed on wetland mitigation plans and on water quality mitigation measures.

ERP No. D–FTA–L40200–OR Rating EC2, Hillsboro Corridor Transit Improvements, Implementation, Between SW. 185th Avenue and downtown Hillsboro, Funding, Washington, Clackamas and Multnomah Counties, OR and Clark County, WA.

Summary: EPA had environmental concerns based on the potential for adverse water quality effects. EPA had requested additional information about mitigation measures, mitigation effectiveness, mitigation feedback, and monitoring plans.

Final EISs

ERP No. F–NPS–B61018–VT Appalachian National Scenic Trail Protection from Deer Leap Mountain to the Mendon-Shrewsbury Town Line, Pico/Killington Section, Implementation, Rutland County, VT.

Summary: EPA continued to object to the National Park Service's proposed relocation of the Appalachian Trail (AT) in Vermont. EPA stated that the choice of an alternative for protecting the existing AT should not be based on whether it potentially affects future ski area development, but on which alternative maximizes protection for the Trail.

Dated: August 10, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–19549 Filed 8–12–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4693–9]

Review of a Draft Epidemiology and Human Data Chapter for the Reassessment of Dioxin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of upcoming activities regarding EPA's Reassessment of Dioxin.

SUMMARY: The EPA has scheduled a peer-review workshop to be held on September 7 and 8, 1993, from 9 a.m. to 5 p.m. to review a revised draft of Chapter 7. Epidemiology/Human Data, which will be part of a future *Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) and Related Compounds.* The health assessment document is one component of the Agency's reassessment of dioxin.

The draft chapter on epidemiology and other human data is being made available in advance of the workshop as part of the Agency's continuing commitment to conduct the reassessment of dioxin in an open and participatory manner, to keep the public informed of its progress, and to encourage public participation in the document development process. The public is invited to attend the workshop, to present oral comments, and/or to submit written comments. Seating will be limited, and advance reservations are suggested. Information about attending the meeting and obtaining a copy of the draft chapter is provided elsewhere in this notice. At the workshop, a panel of scientific experts from outside the Agency will review the draft epidemiology and human data chapter which, at this stage, is preliminary, developmental, and does not represent Agency policy. Since the chapter evaluates only the human data components of the overall database on dioxin and related compounds, no general conclusions regarding the potential health effects or classification of these compounds will be presented. The chapter will ultimately be part of a full draft health assessment of 2,3,7,8-TCDD and related compounds, which will be completed following this workshop. It is this full draft document that will present EPA's tentative conclusions on the human health consequences of exposure to dioxin. An External Review Draft of the *Health Assessment Document for 2,3,7,8-TCDD and Related Compounds* will be released for public review and comment and review by the Agency's Science Advisory Board.

DATES: The peer-review workshop to review the draft epidemiology and human data chapter will be held September 7, and 8, 1993.

ADDRESSES: Eastern Research Group, Inc. (ERG), an EPA contractor, is providing logistical support for the peer-review workshop. The meeting will be held at The Ritz-Carlton, Pentagon City, in Arlington, Virginia. Members of the public wishing to register to attend the meeting may phone ERG at 617–674–7374 between 9 a.m. and 5 p.m. Eastern Daylight Time. Members of the public who wish to present formal statements at the meeting should phone Helen

Murray (ERG) at 617–674–7307 to request a time slot. Time will be limited in order to give everyone an equal opportunity to speak. Individuals and organizations who are not assigned a time in advance of the workshop will be heard as time permits. In addition, during the meeting some time will be designated for questions and comments from the floor to encourage interactions among authors, peer-panel members, and the other meeting attendees.

Members of the public may also submit written comments and other materials relevant to the topic to: Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, MA 02173–3198, Attention: Helen Murray. Comments will be accepted up to 10 working days following the meeting. After that time, written comments should be directed to: Office of Health and Environmental Assessment (RD–689), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

ATTENTION:

Dioxin Reassessment

To obtain a copy of the draft epidemiology and human data chapter, interested parties should contact the ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; fax (513) 569–7566. Please provide your name, mailing address, and the chapter title and EPA number as follows: Chapter 7. Epidemiology/Human Data, EPA/600/AP–92/001g (Revised June 1993).

The draft chapter also will be provided for inspection at the ORD Public Information Shelf, EPA Headquarters Library, 401 M Street, SW., Washington, DC 20460, between the hours of 10 a.m. and 4 p.m., Monday through Friday, except for Federal holidays, and at all of the EPA Regional and Laboratory libraries.

FOR FURTHER INFORMATION CONTACT: For copies of the document: ORD Publications Center, CERI–FRN, Office of Research and Development, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; fax (513) 569–7566.

For questions on the epidemiology and human data chapter: David Bayliss, Human Health Assessment Group, Office of Health and Environmental Assessment (RD–689), Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–5726; fax (202) 260–3803.

For questions on the overall reassessment of dioxin: William Farland, Office of Health and Environmental Assessment (RD–689), Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7315; fax (202) 260–0393.

SUPPLEMENTARY INFORMATION:

History of the Scientific Reassessment of Dioxin

In April 1991, EPA announced that it would conduct a scientific reassessment of the health risks of exposure to 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) and chemically similar compounds collectively known as dioxin. The reassessment is part of the Agency's goals to improve the research and science base and to incorporate improved research and science into EPA decisions.

The EPA has undertaken this task in response to emerging scientific knowledge of the biological, human health, and environmental effects of dioxin. Significant advances have occurred in the scientific understanding of mechanisms of dioxin toxicity, of the carcinogenic and other adverse health effects of dioxin in people, of the pathways to human exposure, and of the toxic effects of dioxin to the environment.

In 1985 and 1988, the Agency prepared assessments of the human health risks from environmental exposures to dioxin. These assessments were reviewed by the Agency's Science Advisory Board (SAB). At the time of the 1988 risk assessment, there was general agreement within the scientific community that there could be a substantial improvement over the existing response approach, but there was no consensus as to a more biologically defensible methodology. The Agency was asked to explore the development of such a method. The current reassessment activities are in response to this request.

The EPA is making each phase of the current reassessment of dioxin an open and participatory effort. It previously has convened two public meetings (on November 15, 1991, and April 28, 1992) to inform the public of the Agency's plans and activities, to hear and receive public comments and reviews of the proposed plans for the reassessment, and receive any current, scientifically relevant information.

The Agency convened two peer-review workshops to review draft documents related to EPA's scientific reassessment of the health effects of dioxin. The first workshop was held September 10 and 11, 1992, to review a draft exposure assessment titled, Estimating Exposures to Dioxin-Like Compounds. The second workshop was held September 22–25, 1992, to review eight chapters of a draft health assessment document. It should be noted that outside scientists have been heavily involved in the writing and peer review of these draft documents.

The purpose of the peer-review workshop scheduled for September 1993 is to review the draft of a revised and expanded epidemiology and human data chapter. The revised chapter evaluates the scientific quality and strength of the epidemiology data in the evaluation of toxic health effects, both cancer and noncancer, from exposure to dioxin, with an emphasis on the specific congener, 2,3,7,8–TCDD. A critical analysis of all available data has been performed. It is hoped that the workshop review will facilitate the production of a thorough, succinct, accurate description of the state of the epidemiologic knowledge regarding the potential carcinogenicity of dioxin and related compounds and their potential to cause other noncancer toxic effects.

Stages of the Reassessment of Dioxin

The scientific reassessment of dioxin consists of five activities:

1. Development of a biologically based dose-response model for dioxin.
2. Update and revision of the health assessment document for dioxin.
3. Laboratory research in support of the dose-response model.
4. Update and revision of the dioxin exposure assessment document.
5. Research to characterize ecological risks in aquatic ecosystems.

The first three activities will result in a Health Assessment Document for 2,3,7,8–Tetrachlorodibenzo-*p*-dioxin (TCDD) and Related Compounds. The process for developing the health assessment document consists of three phases which are outlined in later paragraphs.

The fourth activity is nearing completion. A draft exposure document titled, Estimating Exposures to Dioxin-Like Compounds (EPA/600/6–88/005B), was the subject of a peer-review workshop in September 1992; an External Review draft will be made available for public review and comment this year.

The fifth activity, which is in progress at EPA's Environmental Research Laboratory in Duluth, Minnesota, involves characterizing ecological risks in aquatic ecosystems from exposure to dioxins. Research efforts are focused on the study of organisms in aquatic food webs to identify the effects of dioxin exposure that are likely to result in significant population impacts. A report titled, Interim Report on Data and Methods for the Assessment of 2,3,7,8-Tetrachlorodibenzo-*p*-Dioxin (TCDD) Risks to Aquatic Organisms and Associated Wildlife (EPA/600/R-93/055), was published in April 1993. This report will serve as a background document for assessing dioxin-related ecological risks. Ultimately, these data will support the development of aquatic life criteria which will aid in the implementation of the Clean Water Act.

As mentioned previously, completion of the health assessment document will involve three phases:

Phase 1 includes completing state-of-the-science chapters and a dose-response model for the health assessment document and conducting a peer review by a panel of experts. Drafts of most of the chapters that ultimately will comprise the Agency's health assessment document were reviewed at a peer-review workshop held in September 1992. A second peer-review workshop is being held in September of 1993 to review a revised draft chapter on epidemiology and other human data.

Phase 2, preparation of the risk characterization, began during the September 1992 workshop with discussions by the peer-review panel and formulation of points to be carried forward into the risk characterization. This work is currently underway.

Phase 3 will involve making External Review Drafts of the health assessment document and the exposure document available for public review and comment and then for review by the EPA's Science Advisory Board (SAB). These reviews will be announced in the **Federal Register** at the appropriate time.

Dated: August 10, 1993.

Gary J. Foley,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93-19677 Filed 8-12-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4693-1]

Science Advisory Board Public Meetings

Under Public Law 92-463, notice is hereby given of one public meeting and two public teleconference meetings of the Science Advisory Board (SAB).

1. Public Meeting: The Radon Science Initiative Subcommittee (RSIS) of the Radiation Advisory Committee (RAC) will meet September 7-8, 1993, at the Environmental Protection Agency's Facility in Crystal Station, 2800 Crystal Drive, Second Floor Conference Room C, Arlington, Virginia. The meeting will begin at 9 a.m. on Tuesday, September 7 and adjourn no later than 4 p.m. on Wednesday, September 8, 1993. The RSIS will continue its review of the radon science issues, including rewriting the draft SAB report on this topic. This meeting is open to the public, however, seating is limited and is on a first come basis.

2. Teleconference Meetings: The RAC will conduct two teleconferences on September 10 and 17, 1993 from 11 a.m. to 1 p.m. Eastern Time to discuss edits to its draft document on naturally-occurring radioactive materials (NORM). This draft document is currently under preparation and is not yet available to the public. These teleconferences are a continuation of the RAC's discussions and review of the NORM topic from the RAC's July 19-21, 1993 and earlier meetings on this topic. The number of conference lines available is limited, therefore members of the public wishing to participate should telephone Mrs. Diana L. Pozun, Secretary to the SAB's RAC, no later than 2 p.m. Eastern Time on September 2, 1993 at (202) 260-6552.

Copies of the draft NORM document entitled "Diffuse NORM—Waste Characterization and Preliminary Risk Assessment," are available from the Environmental Protection Agency's (EPA's) Air Docket at 401 M Street SW., Washington, DC 20460 (202-260-7548). The Docket Number is R-82-01, and the Item Number is IIA-38. There may be a newer draft document with a different docket and item number. For technical information on the NORM draft document, please contact Mr. William E. Russo of the EPA's Office of Radiation and Indoor Air (ORIA) at (202) 233-9215.

Anyone wishing to provide written public comments for the above meeting or teleconferences should contact Mrs. Diana Pozun at (A-101F), Science Advisory Board, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 at Tel. (202) 260-6552. Copies of any statements (should provide at least thirty-five copies) received in the SAB Staff Office ten days prior to a meeting will be mailed to the Committee or Subcommittee before that meeting; copies received after that date will be provided to the Committee or Subcommittee at the meeting. Commenters should register with Mrs. Pozun at least ten days before the meeting or teleconferences, being sure to specify at which meeting or teleconference they wish to provide comments, the nature of the comments, and audiovisual requirements for the meeting. Commenters will be generally limited to five minutes each, and are requested to not be repetitive of any previously submitted comments made to the Agency or the SAB.

Dated: August 2, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93-19478 Filed 8-12-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4692-9]

Science Advisory Board, Executive Committee, RCRA/RIA Steering Committee and Environmental Futures Committee; Public Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that two ad hoc committees of the Science Advisory Board (SAB) will each conduct a meeting on Monday, August 30, 1993 in Conference Room 1 North of the Washington Information Center at the Environmental Protection Agency Headquarters Building at 401 M Street SW., Washington, DC 20460. The RCRA/RIA Steering Committee will meet in the morning from 8:30 a.m. to noon and the Environmental Futures Committee will meet in the afternoon from 1:30 p.m. until 5 p.m.

The RCRA/RIA Steering Committee provides coordination and technical oversight of four SAB Committees that are reviewing technical aspects of the Regulatory Impact Analysis for the RCRA proposed Corrective Action Regulation. During their meeting in the morning of August 30, the Steering Committee will receive status reports on other SAB Committee reviews and develop an outline and schedule for its overview report.

The Environmental Futures Committee (EFC) was formed by the SAB at the request of Administrator Browner to assist the Agency in anticipating environmental problems, issues and opportunities. The charge to this Committee includes: developing a procedure for short- and long-term forecasting of natural and anthropogenic developments which may affect environmental quality and its protection; develop detailed examinations procedures and apply them to some future developments; and draw implications from the examinations of future developments and recommend actions for EPA to address them. This meeting will focus on defining the charge and developing an approach.

These meetings are both open to the public, but seating is limited and available on a first come basis. Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact the Designated Federal Official for these Committees: Dr. Edward S. Bender, Science Advisory Board (A-101), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone (202) 260-6552; FAX (202) 260-7118.

Dated: July 29, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93-19479 Filed 8-12-93; 8:45 am]

BILLING CODE 6560-50-P

[OPP-42024G; FRL-4180-3]

Notice of Intent to Approve Amendment to Texas Plan for Certification of Applicators of Compound 1080 Livestock Protection Collars

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amended certification plan.

SUMMARY: Texas has submitted to EPA an amended plan for the certification of Compound 1080 Livestock Protection Collar (LPC) applicators. This amended plan will permit pooling of LPC's among certified LPC applicators. Notice is hereby given of the intention of Regional Administrator, EPA Region VI, to approve these plan amendments.

DATES: Written comments must be submitted on or before September 13, 1993.

ADDRESSES: Submitt comments identified by the docket control number OPP-42024G, to Jerry Oglesby, Pesticides and Toxic Substances Branch, Region VI, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, TX 75202-2733.

FOR FURTHER INFORMATION CONTACT: Jerry Oglesby (214-655-7563).

SUPPLEMENTARY INFORMATION: In accordance with the provision of section 11(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 171, the Texas Department of Agriculture has submitted to EPA for approval, revisions to its current plan for certification of LPC applicators. EPA announced its approval of the Texas LPC certification plan in the **Federal Register** of April 20, 1988 (53 FR 12986). The proposed amendment to the Texas LPC certification plan would permit the designation of collar pool agents. Certified LPC applicators would be permitted to participate in a collar pool administered by a collar pool agent. The purpose of the collar pool is to reduce the number of LPCs in circulation by a pooling of LPCs. Certified LPC applicators would check out the LPCs from the collar pool agent immediately prior to use. When no longer needed, a LPC would be returned to the collar pool agent for distribution to another certified LPC applicator. All collar pool agents would be considered agents of the registrant and be required to keep the same records. Further, the collar pool system would not affect the recordkeeping or reporting requirements of LPC users.

Copies of the amendment are available for review at the following locations during normal business hours:

1. Texas Department of Agriculture, Stephen F. Austin Building, Room 1034f, 17th St. and Congress Avenue, Austin, Texas 78711, Telephone: 512-463-0013.
2. Environmental Protection Agency, Region VI, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202, Telephone: 214-655-7239.

Interested persons are invited to submit written comments on the proposed amendment.

Dated: August 3, 1993.

Joe D. Winkle,

Acting Regional Administrator, Region VI.

[FR Doc. 93-19487 Filed 8-12-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4691-2]

Chadbourn Tire Fire; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Chadbourn Tire Fire Site, Chadbourn, NC, with Jerry Stephens, President, C & J Tire Service, Inc. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365. 404/347-5059.

Written comment may be submitted to the person above within thirty (30) days of the date of publication.

Dated: July 27, 1993.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 93-19482 Filed 8-12-93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1000-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA-1000-DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

The counties of Edwards, Ellis, Lane, Lyon, Marion, Ness, Rooks, Stafford, and Washington for Individual Assistance and Public Assistance.

The counties of Doniphan, Douglas, Dickinson, Ellsworth, Lincoln, McPherson, Osborne, Pottawatomie, Rush, Russell, and Saline for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-19551 Filed 8-12-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-998-DR]

Nebraska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–998–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nebraska dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993:

Boone, Burt, Howard, Nuckolls, Thayer, and Webster Counties for Individual Assistance and Public Assistance.

Gage, Jefferson, and Washington Counties for Public Assistance. (Previously designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Robert H. Volland,

Chief, Individual Assistance Division, Disaster Assistance Programs, State and Local Programs and Support.

[FR Doc. 93–19550 Filed 8–12–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Anchor Financial Corporation, et al.; Formations of; Acquisitions By; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 7, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Anchor Financial Corporation, Myrtle Beach, South Carolina; to acquire 100 percent of the voting shares of Topsail State Bank, Hampstead, North Carolina.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Griswold Bancshares, Inc., Griswold, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Griswold State Bancshares, Inc., Griswold, Iowa, and thereby indirectly acquire Griswold State Bank, Griswold, Iowa.

2. Mahaska Investment Company, Oskaloosa, Iowa; to acquire 100 percent of the voting shares of Taintor Savings Bank, New Sharon, Iowa.

3. Peotone Bancorp, Inc., Peotone, Ilinois; Southwest Bancorp, Inc., Worth, Illinois; Terrapin Bancorp, Inc., Elizabeth, Illinois; Rock River Bancorporation, Inc., Oregon, Illinois; Westbanco, Inc., Westville, Illinois; and Minooka Bancorp, Inc., Minooka, Illinois; to acquire 100 percent of the voting shares of Founders Bancorp, Inc., Scottsdale, Arizona, and thereby indirectly acquire Founders Bank of Arizona, Scottsdale, Arizona.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Commerce Bancshares, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of Firstbank Investment Co, Inc., Lawrence, Kansas, and thereby indirectly acquire Bank of Kansas/Lawrence, Lawrence, Kansas. This proposal will be effected through the merger of Firstbank Investment Co., Inc., into CBI-Kansas, Inc., Kansas City, Missouri.

2. First Community Bankshares, Inc., Fort Morgan, Colorado; to acquire 100 percent of the voting shares of Republic National Bank, Englewood, Colorado.

3. Fourth Financial Corporation, Wichita, Kansas; to merge with Western National Bancorporation, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Western National Bank of Tulsa, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, August 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19525 Filed 8-12-93; 8:45 am]

BILLING CODE 6210-01-F

Queens County Savings Bank Employee Stock Ownership Trust and Queens County Savings Bank Incentive Savings Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 31, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Queens County Savings Bank Employee Stock Ownership Trust and Queens County Savings Bank Incentive Savings Trust, to acquire up to 21 percent of the voting shares of Queens County Bancorp, Inc., Flushing, New York.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Joseph S. Cowart, Twin City, Georgia; Peggy Thomas Cowart, Twin City, Georgia; Lawrence Floyd Sherrod, Hephzibah, Georgia; and Martha Bridge Sherrod, Hephzibah, Georgia, to collectively acquire 10.85 percent of the voting shares of Swainsboro Bankshares, Inc., Swainsboro, Georgia, and thereby indirectly acquire Citizens Bank of Swainsboro, Swainsboro, Georgia.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ronald L. Moore, Strasburg, Colorado; to acquire an additional 1.25 percent for a total of 19.98 percent of the voting shares of Rice Insurance Agency, Inc., Strasburg, Colorado, and thereby indirectly acquire First National Bank of Strasburg, Strasburg, Colorado.

Board of Governors of the Federal Reserve System, August 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19530 Filed 8-12-93; 8:45 am]

BILLING CODE 6210-01-F

Thomas and Melinda Rogers; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 2, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Thomas and Melinda Rogers*, Minnetonka, Minnesota; to acquire an additional 4.0 percent of the voting shares of First Minnetonka Bancorporation, Inc., Minnetonka, Minnesota, for a total of 26.7 percent, and thereby indirectly acquire First Minnetonka City Bank, Minnetonka, Minnesota.

Board of Governors of the Federal Reserve System, August 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19526 Filed 8-12-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration Advisory Council

Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1993.

Name: National Advisory Council on The National Health Service Corps.

Date and Time: September 11-14, 1993.

Place: Pooks Hill Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The meeting will begin at 2 p.m. on Saturday, September 11, and adjourn at 7 p.m. On Sunday and Monday, September 12 and 13, the meetings will be from 8 a.m. to 5 p.m. On Tuesday, September 14, the meeting will be from 8 a.m. to 12 noon. The agenda for this meeting shall include Bureau of Primary Health Care and Division of the National Health Service Corps update, Scholarship and Loan Repayment Programs update, and discussion on mandatory service.

Anyone requiring information regarding the subject Council should contact Ms. Nada Schnabel, National Advisory Council on the National Health Service Corps, room 7A-39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2900.

Agenda Items are subject to change as priorities dictate.

Dated: August 9, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93-19528 Filed 8-12-93; 8:45 am]

BILLING CODE 4160-15-P

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the Substance Abuse Prevention Conference Review Committee and the Drug Testing Advisory Board of the Center for Substance Abuse Prevention for September 1993.

The Substance Abuse Prevention Conference Review Committee will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Acting Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The Drug Testing Advisory Board will be performing reviews of National Laboratory Certification Program inspections and operations; therefore portions of this meeting will be closed to the public as determined by the Acting Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c) (2), (4), and (6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. D. Herman, Committee Management Officer, Center for Substance Abuse Prevention, Rockwall II Building, Suite 630, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-4783).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Substance Abuse Prevention Conference Review Committee.

Meeting Date(s): September 20-23, 1993.

Place: Residence Inn—Bethesda, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: September 20, 1993 8:30 a.m.-9 a.m.

Closed: Otherwise.

Contact: Ferdinand W. Hui, Ph.D., Rockwall II Building, Suite 630, Telephone: (301) 443-4952.

Committee Name: Drug Testing Advisory Board.

Meeting Date(s): September 23, 1993.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: September 23, 1993 8:30 a.m.-10:15 a.m.

Closed: Otherwise.

Contact: Donna M. Bush, Ph.D., room 9A-53 Parklawn Building; Telephone: (301) 443-6014.

Dated: August 10, 1993.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93-19527 Filed 8-12-93; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-44]

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: August 13, 1993.

ADDRESS: For further information, contact Mark Johnston, Department of Housing and Urban Development, Room 7262, 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 the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 6, 1993.

Mark C. Gordon,

Deputy Assistant Secretary for Operations/Chief of Staff.

[FR Doc. 93–19249 Filed 8–12–93; 8:45 am]

Billing Code 4210–29–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Group to be held on September 14, 1993, at 9 a.m., in the first floor conference room, 645 "G" Street, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Affairs, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. This meeting will include a discussion and recommendations on projects for the 1994 Annual Work Plan of the Trustee Council.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 93–19524 Filed 8–12–93; 8:45 am]

BILLING CODE 4310–RG–M

Privacy Act of 1974—Deletion of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting from its inventory of Privacy Act systems of records a notice describing records managed by the Office of the Secretary. The system of records notice being abolished is entitled "Committee Management Files—Interior, Office of the Secretary-68." It was previously published in the **Federal Register** on April 11, 1977 (42 FR 19027). Records pertaining to committee management are no longer subject to the Privacy Act.

At one time, the Department's Committee Management Officers maintained a system of records that contained biographies of members of advisory committees and candidates for advisory committee membership and records of committee participation. It was organized in such a way that information pertaining to committee members and candidates for membership was retrieved by name of individual member or candidate. Currently, however, records are not retrievable by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to an individual. Additionally, there is no anticipated future need for such a file structure.

This change shall be effective on publication in the **Federal Register** (August 13, 1993). Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, PMO, 1849 "C" Street NW., Mail Stop 5412–MIB, Washington, DC 20240, telephone (202) 208–6045.

Dated: August 6, 1993.

Albert C. Camacho,

Director, Office of Administrative Services.

[FR Doc. 93–19431 Filed 8–12–93; 8:45 am]

BILLING CODE 4310–10–M

Fish and Wildlife Service

Hart Mountain National Antelope Refuge, or; Environmental Impact Statement

AGENCY: Fish and Wildlife Service, U.S. Department of the Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that the draft Environmental Impact Statement (DEIS) on the proposed comprehensive management plan for Hart Mountain National Antelope Refuge, Lake County, Oregon, is available for public review. Five alternatives are being considered, including the Preferred Alternative. Comments and suggestions are requested. This notice is being furnished pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: Written comments are requested by October 12, 1993. Open-house meetings will be held on August 28, 29, and 30; and September 1, 2 and 8 (see below for details on locations).

ADDRESSES: Written comments should be addressed to: Refuge Complex Manager, Sheldon-Hart Mountain Refuge Complex, P.O. Box 111, Lakeview, OR 97630.

Service representatives also will be available to meet with interested parties on six occasions. The open-house schedule is:

Sheldon-Hart Mountain Refuge Complex, 18 South G Street, Third Floor, Lakeview Oregon 97630: August 28 from 1 to 4 p.m.; August 30 from 6 to 9 p.m.; September 1 from 1 to 4 p.m.; September 2 from 9 a.m. to 12 noon; September 8 from 6 a.m. to 9 p.m.

The Riverhouse Motor Inn, 3075 N. Highway 97, Bend, Oregon 97701: August 29 from 11 a.m. to 4 p.m.

Copies of the draft EIS may be inspected at the following locations:

U.S. Fish and Wildlife Service, Division of Refuges and Wildlife, Eastside Federal Complex, Third Floor, 911 NE. 11th Avenue, Portland Oregon 97232–4181.

Sheldon-Hart Mountain Refuge Complex, 18 South G. Street, Third Floor, Lakeview, Oregon 97630.

Lake County Library, 513 Center Street, Lakeview, Oregon 97630.

Harney County Library, 80 West D Street, Burns, Oregon 97720.

Klamath County Library, 126 South 3rd Street, Klamath Falls, Oregon 97601.

Deschutes County Library, 507 NW. Wall Street, Bend, Oregon 97701.

Kerr Library, Oregon State University, Corvallis, Oregon 97331.

Central Library, Multnomah County Library System, 801 SW. 10th Street, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: Don DeLong, EIS Team Leader, Sheldon-Hart Mountain Refuge Complex, P.O. Box 111, Lakeview, Oregon 97630, (503) 947–3315.

Individuals desiring a copy of the DEIS for review should immediately contact the above individual. Copies have been sent to all agencies and individuals who participated in the scoping process and were added to the mailing list, and to those people that requested to be added to the mailing list.

SUPPLEMENTARY INFORMATION: The Service developed and analyzed five alternatives for the management of wildlife, habitat, and public use of Hart Mountain National Antelope Refuge. The purpose of this DEIS is to recommend a course of action that would best guide the management of the Refuge's resources.

The DEIS analyzes five alternative approaches to resolving the Refuge's core problems, which are: (1) Unnaturally high densities of shrubs and junipers throughout Refuge uplands, and lack of periodic fire in these habitats; (2) eroded stream channels and deficiency of riparian vegetation along a majority of Refuge streams; and (3) insufficient resources and inadequate facilities to manage the increasing number of Refuge visitors. These problems are the underlying factors currently preventing Refuge goals from being achieved, and thus provide a focal point for the proposed comprehensive management plan.

The five alternatives being considered are:

(1) Baseline Management, which continues emphasis on a livestock grazing program as the primary means of managing Refuge vegetation;

(2) Featured Species Management, which combines the uses of livestock grazing, prescribed burning and herbicides to manage vegetation;

(3) Habitat Restoration Alternative, which would emphasize restoration of Refuge habitats, although not to the extent proposed by the Ecosystem Management Alternative;

(4) Ecosystem Management (Preferred Alternative), which proposes an ecosystems management approach to restoration of Refuge habitats and natural processes; and

(5) Custodial Maintenance, which emphasizes the total exclusion of human intervention.

The Preferred Alternative, if implemented, would (1) reduce shrub and juniper cover on 22,000 to 40,000 acres within 15 years following implementation of the comprehensive management plan, primarily through prescribed burning; (2) allow riparian areas to restore passively, except in limited areas where prescribed burning, willow plantings, and check dams would be used; (3) discontinue the use of livestock on Refuge lands during the next 15 years; (4) redesign one of the existing campgrounds and close the other; (5) create three additional camping areas as mitigation; (6) maintain 162 miles of roads open to the public; (7) continue limited quality hunts for pronghorn, mule deer, and bighorn sheep; and (8) recommend 44,604 acres for further study for potential wilderness designation, and 11,276 acres for further study for potential Research Natural Areas designation.

Dated: August 4, 1993.

William E. Martin,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 93–19209 Filed 8–12–93; 8:45 am]

BILLING CODE 4310–55–M

Managing Migratory Bird Subsistence Hunting in Alaska; Proposed Strategy for Regulating the Taking of Migratory Birds in Alaska for Subsistence Purposes

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft environmental assessment.

SUMMARY: This Notice is to inform the public that the U.S. Fish and Wildlife Service (Service) has completed the draft environmental assessment (EA) evaluating alternatives for resolving the problem of ongoing migratory bird subsistence hunting in Alaska during the closed period specified by the 1916 Convention Between the United States and Great Britain for the Protection of Migratory Birds (Convention). This Convention was executed by Great Britain on behalf of Canada, and is referred to in this Notice and the EA as the U.S.-Canada Convention. The draft EA, which tentatively selects a strategy of modifying the Convention to allow a regulated hunt during the closed period, is available from the Service upon request at either of the addresses provided below (See **ADDRESSES:** and/or **FOR FURTHER INFORMATION CONTACT**).

DATES: Comments on this Notice must be received by September 27, 1993.

ADDRESSES: Comments regarding this Notice should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C Street NW., Washington, DC 20240, or Regional Director (MB), Region 7, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503. Comments received on this Notice will be available for public inspection during normal business hours in room 634 Arlington Square Building, 4401 No. Fairfax Drive, Arlington, VA 22203, or, for those comments originating within Alaska, 3rd Floor, room 3387, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Staff Specialist, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C Street NW., Washington, DC 20240 (703/358–1714), or Mr. Robin West, Migratory Bird Coordinator, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503 (907/786–3423).

SUPPLEMENTARY INFORMATION: Subsistence hunting of migratory birds for nutritional purposes occurs in the far northern areas of Alaska and Canada as a customary and traditional activity during what is otherwise the closed period between March 10 and September 1. Currently, this closed period is required by the Convention and the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 et seq.), which implements the terms of the Convention. Apparently, the framers of the Convention were aware of subsistence activity but unaware of the extent to which it was needed and practiced by far northern rural peoples. Thus, the Convention provides inadequately for subsistence use, with the result that much of the current activity is illegal. However, restricting subsistence hunting to a time period outside of that in which birds are available neither provides equitable access to the resource nor accommodates customary and traditional use. Because the Service recognizes the legitimate need for equitable access to the migratory bird resource for subsistence purposes, regulatory strategies have been under evaluation which would bring about successful resolution of the problem.

The Service's completed draft EA addresses the problem of illegal subsistence hunting of migratory birds in Alaska, and tentatively selects a strategy for resolving it. This draft EA evaluates five alternatives for dealing with regulation of migratory bird subsistence hunting, which are: (1) Take no action (status quo); (2) expand the existing base of cooperative agreements; (3) enforce the current terms of the

Convention; (4) modify the Convention to allow subsistence take; and (5) modify the Migratory Bird Treaty Act to allow subsistence take, without modifying the Convention. The Service's preliminarily identified preferred alternative is for a modified Convention that allows a regulated harvest during a portion, but not all of, the currently closed period (Item 4, above). The EA also identifies "action modifiers" which could be used to further specify the course the Service would take in order to bring about a regulated migratory bird subsistence hunt. The "action modifiers" include such factors as who in Alaska would be able to participate, in what areas, what use could be made of birds and byproducts, which bird species' eggs would be eligible for harvest and other management option constraints that would be imposed upon users.

The Service invites comments on the EA. Comments and other information provided as a result of this Notice will enable the Service to make a determination that a full environmental impact assessment (EIS) will or will not be required. Comments will also enable the Service to evaluate its selection of a strategy to resolve the problem. The EIS determination will be provided to the public in the Service's final Notice regarding the strategy to be adopted and advising of the overall status of this issue.

Dated: July 28, 1993.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 93–19503 Filed 8–12–93; 8:45 am]

BILLING CODE 4310–55–P

Geological Survey

Privacy Act of 1974—Revision of System of Records; Correction

This notice is a correction of a notice that was published on July 22, 1993 (58 FR 39230), when, through administrative error, a notice announcing the deletion of two systems of records maintained by the U.S. Geological Survey, previously published on May 27, 1993 (58 FR 30804), was republished as the preamble to a notice announcing the revision of two systems of records maintained by the U.S. Geological Survey. The correct preamble is published below.

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to revise two notices describing records maintained by the U.S. Geological Survey. Except as noted below, all changes are editorial in nature, clarify and update existing statements, and reflect organization, address and other miscellaneous administrative revisions which have occurred since the previous publication of the material in the **Federal Register**. The two notices being revised, which were published in their entirety on July 22, 1993 (58 FR 39230), are:

1. "Computer Registration System—Interior USGS–18," previously published on July 8, 1987 (52 FR 25638).

2. "Employee Work Report Edit and Individual Employee Production Rates—Interior, USGS–24," previously published on October 30, 1990 (55 FR 45661).

In notice USGS–18, the existing system location statement and the existing system manager(s) and address statement are revised to delete one location where system records are no longer stored or maintained. In notice USGS–24, the existing system location statement is revised to reflect the correct address of one of the locations. Additionally, in this notice, the existing categories of records in the system statement is revised to delete one category of record that is no longer maintained in the system, and the storage statement is revised to accurately reflect the current means of data storage.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices were effective on publication in the **Federal Register**. (July 22, 1993). Additional information regarding these actions may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, PMO, 1849 "C" Street NW., Mail Stop 5412 MIB, Washington, DC, 20240, telephone (202) 208–6045.

Dated: August 6, 1993.

Albert C. Camacho,

Director, Office of Administrative Services.

[FR Doc. 93–19432 Filed 8–12–93; 8:45 am]

BILLING CODE 4310–31

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation: Howes Leather Company, 1 Batterymarch Park, Quincy, MA 02169.
2. Wholly owned subsidiary:
   (a) Ashland Hides Company, Inc. (State of Incorporation: DE)
   (b) Columbia Tanning Corp. (State of Incorporation: MA)

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19507 Filed 8–12–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 467X)]

CSX Transportation, Inc.—Abandonment Exemption—in Pike and Letcher Counties, KY

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR Part 1152, Subpart F—Exempt Abandonments to abandon its 5.2-mile rail line between milepost CMN-23.0 at Shelby Gap and milepost CMN-28.2 at Jenkins, in Pike and Letcher Counties, KY.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (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; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 12, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to

[1] A stay will be issued routinely by the Commission in those proceedings where an

file an OFA UNDER 49 CFR 1152.27(c)(2),[2] and trail use/railing banking statements under 49 CFR 1152.29 must be filed by August 23, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 2, 1993 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: Charles M. Rosenberger, 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 the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue and environmental assessment (EA) by August 18, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202§ § 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after th3 EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19505 Filed 8–12–93; 8:45 am]

BILLING CODE 7035–01–M

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informed decision on environmental issues (whether raised by a party or by the Commission's 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 on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987)

[3] The Commission will accept late filed trail use statements as long as it retains jurisdiction to do so.

[Finance Docket No. 32308]

Pioneer Valley Railroad Co., Inc.—Acquisition Exemption—Boston & Maine Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–44 the acquisition by Pioneer Valley Railroad Co., Inc. (PVR), of a rail line owned by Boston and Maine Corporation (B&M) within the City of Holyoke, MA, subject to standard labor protective conditions. The line consists of: (1) An approximate 3,600-foot segment between the point of connection with B&M's yard and the point of connection with PVR known as PS 29+12; and (2) an 870-foot segment beginning at a point along the southeasterly sideline of Canal Street and running southwesterly and northwesterly to a point at or near an extension of the southeasterly sideline of Bridge Street across the canal.

DATES: This exemption will be effective on September 12, 1993. Petitions to stay must be filed by August 23, 1993. Petitions to reopen must be filed by September 2, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32308 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) Robert L. Calhoun, Sullivan & Worcester, suite 1000, 1025 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5271.)

Decided: August 5, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19504 Filed 8–12–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 466)]

CSX Transportation, Inc.—Abandonment—Between Monticello and Delphi in White and Carroll Counties, IN; Findings

The Commission has issued a certificate authorizing CSX Transportation, Inc. (CSXT), to abandon a 14.22-mile line of railroad extending from milepost QA–98.00 near Monticello to Milepost QA–112.22 at the end of the track at Delphi, in White and Carroll Counties, IN. The abandonment certificate will become effective September 13, 1993, unless the Commission 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 CSXT.

Any offers of financial assistance must be filed with the Commission and CSXT no later than 10 days from the date of publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB–OFA." Any offer previously made must be remade within the 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: August 6, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Commissioner Philbin did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19647 Filed 8–12–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–101 (Sub-No. 10)]

Duluth, Missabe & Iron Range Railway Co.—Abandonment in St. Louis County, MN; Findings

The Commission has issued a certificate authorizing a Duluth, Missabe and Iron Range Railway Company (DM&IR) to abandon its line of railroad between milepost 80.2 at Hinsdale and milepost 84.8 at Embarrass, in St. Louis County, MN, a distance of 4.6 miles. The abandonment certificate will become effective September 13, 1993 unless 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 served on the applicant no later than 10 days after 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: "Section of Legal Counsel, 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: August 10, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-19646 Filed 8-12-93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/ reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment and Training Administration

Attestation by Employers for Off-Campus Work Authorization for F-1 Students

1205-0315, ETA 9034

On Occasion

Individuals or households; State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; Small businesses or organizations

10,000 respondents; 1 hour 1 minute per response; 10,013 total hours; 1 form

The information provided on this form by employers seeking to use aliens admitted as students on F-1 visas in off-campus work will permit DOL to meet Federal responsibilities for program administration, management and oversight.

Extension

Pension and Welfare Benefits Administration

ERISA Advisory Opinion Procedure 76-1

1210-0066

On occasion

Businesses or other for-profit; small businesses or organizations 112 responses; 15 hours per response; 1,680 total hours

This procedure is used by plan fiduciaries, administrators and other individuals when requesting a legal interpretation from the Department of Labor Regarding specific facts and circumstances (an Advisory Opinion).

Extension

Occupational Safety and Helath Administration

4-Dimethylaminoazobenzene

1218-0044

On occasion

Businesses or other for-profit; small businesses or organizations

Respondents 0; 0 hours per response; 1 total hour

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to the 4-Dimethylaminoazobenzene (DBA) standard.

This standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Dimethylaminoazobenzene standard. The production of 4-Dimethylaminoazobenzene in the United States is negligible and; therefore, the agency is assuming 1 hour burden.

Extension

Occupational Safety and Health Administration

Beta-Propiolactone

1218-0079

On occasion

Businesses or other for-profit; small businesses or organizations

Respondents 10

	Proposed total burden hours
Notification of Regulated Areas	20
Federal Records Access and Transfer	2
Emergencies/Incident Reports	100
Total hours	122

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to beta-Propiolactone. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the beta-Propiolactone Standard.

Extension

Occupational Safety and Health Administration

Ethyleneimine

1218–0080; OSHA 262
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 10

	Proposed total burden hours
Notification of Regulated Areas	20
Federal Records Access and Transfer	2
Emergencies/Incident Reports	100
Total hours	122

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Ethyleneimine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Ethyleneimine Standard.

Extension

Occupational Safety and Health Administration

N-Nitrosodimethylamine
1218–0081; OSHA 224
On occasion
Businesses or other for-profit; small businesses or organizations
Respondent 0; 0 hours per response; 1 total hour

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to N-Nitrosodimethylamine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the N-Nitrosodimethylamine Standard.

There are no burden hours associated with the requirements of this regulation as there is no indication that N-Nitrosodimethylamine is manufactured or used in the United States at this time. However, in the event manufacturing or use resumes, OSHA has allocated 1 hour of burden to keep the OMB approval current on the information requirements.

Extension

Occupational Safety and Health Administration

Benzidine
1218–0082; OSHA 260
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 0; 0 hours per response; 1 total hour

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Benzidine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Benzidine Standard.

There is no indication that Benzidine is manufactured or used in the United States at this time. However, in the event manufacturing or use resumes, OSHA has allocated 1 hour of burden to keep the OMB approval current on the information requirements.

Extension

Occupational Safety and Health Administration

3,3′-Dichlorobenzidine (and its salts)
1218–0083; OSHA 257
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 12

	Proposed total burden hours
Notification of Regulated Areas	24
Federal Records Access and Transfer	2
Emergencies/Incident Reports	120
Total hours	146

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 3,3′-Dichlorobenzidine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the 3,3′-Dichlorobenzidine Standard.

Extension

Occupational Safety and Health Administration

Alpha-Naphthylamine
1218–0084; OSHA 255
On occasion
Businesses or other for-profit; small business or organizations
Respondents 38

	Proposed total burden hours
Notification of Regulated Areas	76
Federal Records Access and Transfer	2
Emergencies/Incident Reports	380
Total hours	458

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Alpha-Naphthylamine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Alpha-Naphthylamine Standard.

Extension

Occupational Safety and Health Administration

4-Nitrobiphenyl
1218–0085
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 4

	Proposed total burden hours
Notification of Regulated Areas	8
Federal Records Access and Transfer	2
Emergencies/Incident Reports	40
Total hours	50

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 4-Nitrobiphenyl. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the 4-Nitrobiphenyl Standard.

Extension

Occupational Safety and Health Administration

Methyl Chloromethyl Ether
1218–0086
On occasion
Businesses or other for-profit; small businesses or organizations

Respondents 12

	Proposed total burden hours
Notification of Regulated Areas	24
Federal Records Access and Transfer	2
Emergencies/Incident Reports	120
Total hours	146

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Methyl Chloromethyl Ether. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Methyl Chloromethyl Ether Standard.

Extension

Occupational Safety and Health Administration

BIS-Chloromethyl Ether
1218–0087
On occasion
Businesses or other for-profit; small businesses or organizations
Respondent 1

	Proposed total burden hours
Notification of Regulated Areas	2
Federal Records Access and Transfer	2
Emergencies/Incident Reports	10
Total	14

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Bis-Chloromethyl Ether. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Bis-Chloromethyl Ether Standard.

Extension

Occupational Safety and Health Administration

2-Acetylaminofluorene
1218–0088
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 3

	Proposed total burden hours
Notification of Regulated Areas	6
Federal Records Access and Transfer	2
Emergencies/Incident Reports	30
Total hours	38

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 2-Acetylaminofluorene. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the 2-Acetylaminofluorene Standard.

Extension

Occupational Safety and Health Administration

Beta-Naphthylamine
1218–0089
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 7

	Proposed total burden hours
Notification of Regulated Areas	14
Federal Records Access and Transfer	2
Emergencies/Incident Reports	70
Total hours	86

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to Beta-Naphthylamine. The standard requires employers to notify OSHA of regulated areas and of emergencies. The standard also requires that OSHA have access to various records to ensure that employers are complying with disclosure provisions of the Beta-Naphthylamine Standard.

Extension

Occupational Safety and Health Administration

4-Aminobiphenyl
1218–0090
On occasion
Businesses or other for-profit; small businesses or organizations
Respondents 0; 0 hours per response; 1 total hour

The purpose of this standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to 4-Aminobiphenyl.

There is no indication that 4-Aminobiphenyl is manufactured or used in the United States. However, in the event manufacturing or use resumes, OSHA has assumed 1 hour of burden in order to maintain OMB approval on the standard's information requirements.

Revision

Pension and Welfare Benefits Administration

Suspension of Benefits Regulation
1210–0048
Businesses or other for-profit; small businesses or organizations

As the result of the February 21, 1990, Supreme Court Decision 110 S. Ct. 929, 58 U.S.L.W. 4200, PWBA is no longer seeking OMB clearance for those paperwork activities involving the employer and the third party (employee) disclosure requirements contained in 29 CFR 2530.203–3.

Signed at Washington, DC this 10th day of August, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–19510 Filed 5–12–93; 8:45 am]

BILLING CODE 4510–23–P

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix of this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 23, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 23, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of July 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Aluminum Company of America (Wkrs).	Wenatchee, WA	07/26/93	07/07/93	28,882	Ingot of various shapes and forms.
General Motors Corp., Delco Chassis (Co).	Livonia, MI	07/26/93	07/09/93	28,883	Automobile parts.
General Motors Corp., Delco CLCD (Co).	Wentzville, MO	07/26/93	07/09/93	28,884	Passenger cars.
ABB Power (Wkrs)	Bloomington, IN	07/26/93	06/30/93	28,885	Electrical components.
Eveleth Mines (USWA)	Eveleth, MN	07/26/93	07/12/93	28,886	Taconite pellets.
AT&T (Wkrs)	North Andover, MA.	07/26/93	07/12/93	28,887	Telecommunications equipment.
Wagner & Brown, Ltd. (Wkrs)	Midland, TX	07/26/93	07/16/93	28,888	Oil and gas.
Zebulon Manufacturing (Wkrs)	Zebulon, GA	07/26/93	07/16/93	28,889	Ladies dresses.
Sandvik Special Metals Corp. (Wkrs).	Kennewick, WA	07/26/93	07/13/93	28,890	Titanium products.
Iron City Spring (Wkrs)	Pittsburgh, PA	07/26/93	07/12/93	28,891	Leaf springs for vehicles.
Encore Shoe (Wkrs)	Sanford, ME	07/26/93	07/07/93	28,892	Ladies' shoe components.
LaBelle Industries, Inc. (IAMAW)	Oconomowoc, WI	07/26/93	07/12/93	28,893	Stamping, electronics signs and instr.
Restaura TI (Wkrs)	Midland, TX	07/26/93	07/06/93	28,894	Food services.
Keller Supply, Inc. (Wkrs)	Morenci, MI	07/26/93	07/13/93	28,895	Sell John Deere equipment.
Norris/Obannon (Wkrs)	Tulsa, OK	07/26/93	07/06/93	28,896	Parts for oilfield pumps.
Moore Business Forms, Inc. (Co)	Salem, OR	07/26/93	07/09/93	28,897	Manifold & cut sheet forms.
Augat Automotive (Co)	San Antonio, TX	07/26/93	07/19/93	28,898	Electrical connectors, wire harnesses.
Meehan Seaway Service (Wkrs)	Milwaukee, WI	07/26/93	07/16/93	28,899	Steel plates & rolled steel.
Publix Group (ACTWU)	Huntington, TN	07/26/93	07/15/93	28,900	Men's dress and sport shirts.
Amoco Corp. (Wkrs)	Chicago, IL	07/26/93	07/13/93	28,901	Legal services.
S&H Fabricating & Eng., Inc. (UAW)	Walled Lake, MI	07/26/93	06/21/93	28,902	Tubing for auto A/C.
S&H Fabricating & Eng., Inc. (Co)	Brighton, MI	07/26/93	06/21/93	28,903	Tubing for auto A/C.
Oxford of Alma North (Co)	Alma, GA	07/26/93	07/26/93	28,904	Ladies' dresses, pants, shorts, skirts.

[FR Doc. 93–19511 Filed 8–12–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,439]

Enron Liquid Fuels Co., Houston, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Enron Liquid Fuels Company, Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28,439; Enron Liquid Fuels Company, Houston, Texas (July 26, 1993)

Signed at Washington, DC, this 3rd day of August, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93–19512 Filed 8–12–93; 8:45 am]

BILLING CODE 4510–30–M

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 complaints 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

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

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: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires 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 Untied 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 wish 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, D.C., this 5th day of August 1993.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 07/01/93 to 07/31/93

CEO name/facility name/address	Approval date
Mr. William Gamboa, Merced Living Care Center, 510 West 26th Street, Merced, CA 95340, 209–723–2911	07/01/93
Mr. William Gamboa, Auburn Gardens Conval. Hosp., 260 Racetrack Street, Auburn, CA 95604, 916–885–7051	07/01/93
Mr. William Gamboa, La Sierra Care Center, 2424 M Street, Merced, CA 95340, 209–723–4224	07/01/93
Mr. William Gamboa, Colony Park Care Center, 159 E. Orangeburg, Modesto, CA 95350, 209–526–2811	07/01/93
Mr. Keith Goodell, Chapman-Harbor Skilled Nursing Ctr., Garden Grove, CA 92640, 714–971–5517	07/06/93
Mr. George Graham, Torrance Memorial Medical Ctr., 3330 Lomita Boulevard, Torrance, CA 90505, 310–784–4894	07/09/93
Ms. Marlene Xerna Robertson, Golden Cross Health Care of F, Golden Cross Care, Inc. dba, Fresno, CA 93706, 209–268–6317	07/14/93
Mr. Sean O'Neal, Delano Regional Medical Ctr., 1401 Garces Highway, Delano, CA 93216, 805–725–4800	07/15/93
Ms. Nelly A. Jocson, Nursing Care Providers, Inc., 3040 21st Avenue, San Francisco, CA 94132, 415–665–0433	07/19/93
Mr. Alexander S. Vista, Vista Health Care Prof. Inc., 17341 Irvine Blvd. Ste. 210, Tustin, CA 92680, 714–838–8887	07/19/93
Ms. Maxine Cooper, Hollywood Community Hospital, 6245 DeLongpre Avenue, Los Angeles, CA 90028, 213–462–2271	07/19/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 07/01/93 to 07/31/93—Continued

CEO name/facility name/address	Approval date
Ms. Leona Berglund, Crestview Conval. Hospital, 1471 South Riverside Avenue, Rialto, CA 92376, 909–877–1361	07/22/93
Mr. Gerry Garcia, Vermont Care Center, Geri-Care II, Inc., Torrance, CA 90502, 310–328–0812	07/22/93
Mr. Solomon Goldner, Santa Anita Convalescent Hospital, Temple City, CA 91780 818–579–0310	07/22/93
Ms. Janet Parodi, Long Beach Community Hospital, 1720 Termino Avenue, Long Beach, CA 90804, 310–498–1000	07/24/93
Mr. Solomon Goldner, Ocean View Convalescent Ctr., King David Conval. Hosp., Inc., Santa Monica, CA 90404, 310–451–9706	07/28/93
Ms. Ursula S. Durity, Memorial Hospital of Gardena, 1145 West Redondo Beach Blvd., Gardena, CA 90247, 310–532–4200	07/28/93
J.D. Northway, M.D., Valley Children's Hospital, 3151 N Millbrook, Fresno, CA 93703, 209–225–3000	07/28/93
Mr. Solomon Goldner, Georgian Court Nursing and Rehabilitation, San Diego, CA 92123, 619–277–6460	07/28/93
Mr. Bruce Blomstrom, Clinishare, Inc., 20600 Nordhoff Street, Chatsworth, CA 91311, 818–709–4221	07/28/93
Mr. Stephen Lazovitz, Washington Nursing Facility, 2425 25th Street, S.E., Washington, DC 20020, 202–889–3600	07/19/93
Mr. Rex Macklin, Sunrise Rehab. Hospital, Broward Health Corporation, Fort Lauderdale, FL 33511, 305–749–0300	07/01/93
Mr. Richard P. Blinn, Boca Raton Conval. Ctr., The Hillhave Corp., Boca Raton, FL 33487, 407–391–5200	07/01/93
Mr. Richard Blinn, Bay Pointe Nursing Pavilion, The Hillhaven Corporation, St. Petersburg, FL 33712, 813–867–1104	07/09/93
Mr. Richard Blinn, Hillhaven Rehab. Ctr., The Hillhaven Corporation, Tampa, FL 33614, 813–872–2771	07/09/93
Mr. Richard Blinn, Carrollwood Care Center, First Healthcare Corp., Tampa, FL 33625, 813–960–1969	07/15/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 07/01/93 to 07/31/93—Continued

CEO name/facility name/address	Approval date
Mr. Richard P. Blinn, Convalescent Center of the Palm Beaches (The Hillhaven Corp.), West Palm Beach, FL 33401, 407–832–6400	07/19/93
Mr. Robert Scharmann, Abbey Delray South, 1717 Homewood Boulevard, Delray Beach, FL 33445, 407–272–9600	07/22/93
Mr. Richard S. Freeman, West Boca Medical Center, 21644 State Road 7, Boca Raton, FL 33428, 407–488–8000	07/22/93
Mr. Armando Fernandez, North Shore Nursing Home, 9380 N.W. 7 Avenue, Miami, FL 33150, 305–759–8711	07/28/93
Mr. Herbert L. Rogers, Jr., Lake Highlands Retirement And Nursing Ctr., Inc., Clermont, FL 34711, 904–394–2188	07/28/93
Mr. Myers R. Kurtz, Central State Hospital, P.O. Box 325, Milledgeville, GA 31061, 912–453–8441	07/22/93
Mr. J. David Lawrence, Jr., BJC Medical Center, 70 Medical Center Drive, Commerce, GA 30529, 706–335–1000	07/22/93
Mr. Leland M. Yagi, Island Nursing Home, 1205 Alexander Street, Honolulu, HI 96826, 808–946–5027	07/01/93
Mr. W. Alan Stevenson, Wood River Medical Center, Sun Valley Road, Sun Valley, ID 83353, 208–622–3323	07/28/93
Mr. Bryan Barrish, Elmwood Care, Inc., 7733 West Grand Avenue, Elmwood Park, IL 60635, 708–452–9200	07/01/93
Mr. Tali Tzur, Wellington Plaza Nursing Ctr., Inc., Chicago, IL 60657, 312–281–6200	07/01/93
Mr. Romeo Carino, Progressvie Services, Inc., 2600 W. Peterson Ave., Ste. 203, Chicago, IL 60659, 312–338–1170	07/01/93
Mr. Jacob Bakst, Glenwood Care Ctr., Fairfield of Joliet, Joliet, IL 60435, 815–725–0443	07/01/93
Mr. Bradley Alter, Danville Care Ctr., Ltd., 1701 North Bowman, Danville, IL 61832, 217–443–2955	07/01/93
Ms. Frieda Bassman, New York Manor, Inc., 400 E. New York St., Aurora, IL 60505, 708–897–8714	07/01/93
Mr. Bradley Alter, Glenwood Terrace, Ltd., 19330 S. Cottage Grove, Glenwood, IL 60425, 708–758–6200	07/06/93
Mr. Sidney Glenner, Glen Oaks Nursing Home, Inc., 270 Skokie Hwy., Northbrook, IL 60062, 708–498–9320	07/09/93
Mr. Sidney Glenner, Glencrest Nursing & Rehab. Ctr. Ltd., Chicago, IL 60646, 312–338–6800	07/09/93
Mr. Sidney Glenner, Elston Nursing Home, 4340 No. Keyston, Chicago, IL 60641, 312–545–8700	07/15/93
Mr. Sidney Glenner, Glenbridge Nursing and Rehab. Centre, Ltd., Niles, IL 60648 708–966–9190	07/15/93
Mr. Gary L. Callahan, Loretto Hospital, 645 South Central Avenue, Chicago, IL 60644, 312–626–4300	07/19/93
Ms. Elisha Atkin, Imperial of Hazel Crest, Inc., 3300 West 175th Street, Hazel Crest, IL 60429, 708–335–2400	07/22/93
Ms. Elisha Atkin, Hillcrest Healthcare Ctr., Inc., 777 Draper Avenue, Joliet, IL 60432, 815–727–4794	07/22/93
Ms. Flora Sampang, Winston Manor Conval. & Nursing Home, Inc., Chicago, IL 60622, 312–AL2–2066	07/28/93
Mr. Fred Martinez, Jr., St. Charles Parish Hospital, P.O. Box 87, Luling, LA 70070, 504–785–6242	07/07/93
Mr. John J. Burdin, Jr., Lafayette General Medical Ctr, P.O. Box 52009, Lafayette, LA 70505, 318–261–7446	07/19/93
Ms. Nancy Hsu, South Cove Manor Nursing Home, 120 Shawmut Avenue, Boston, MA 02118, 617–423–0590	07/01/93
Mr. Maurice I. May, Hebrew Rehab. Ctr. for Aged, 1200 Centre Street, Roslindale, MA 02131, 617–325–8000	07/28/93
Mr. Ronald R. Peterson, The Francis Scott Key Medical Ctr., Baltimore, MD 21224, 410–550–0100	07/21/93
Mr. Salvatore D. Benisatto, Eastwood Nursing Ctr., 626 E. Grand Blvd, Detroit, MI 48207, 313–923–5816	07/01/93
Mr. Salvatore D. Benisatto, Fr. Solanus Casey Nursing Ctr., 660 E. Grand Boulevard, Detroit, MI 48204, 313–923–5800	07/06/93
Mr. James R. Kaskie, Incarnate Word Hospital, 3545 Lafayette Avenue, St. Louis, MO 63104, 314–865–6775	07/28/93
Mr. Donald L. Ray, Grenada Lake Medical Ctr., 960 Avent Drive, Grenada, MS 38901, 601–226–8111	07/22/93
Ms. Margaret T. Evans, Hillside Nursing Ctr. of Wake Forest, P.O. Box 1826, Wake Forest, NC 27588, 919–556–4082	07/22/93
Ms. Margaret T. Evans, Burnswick Cove, P.O. Box 916, Leland, NC 28451, 919–371–9894	07/22/93
Ms. Florence Johnson, East Carolina Inc., 2462 Stantonsburg Rd., Greenville, NC 27834, 919–830–9100	07/22/93
Ms. Mary T. Lennon, Len Care Nursing Center, P.O. Box 2310, Elizabeth Town, NC 28337, 919–862–8100	07/22/93
Mr. Raymond C. Lemire, Epsom Manor, Inc., Junction Route 4 on 28, Epsom, NH 03234, 603–736–4772	07/01/93
Mr. Richard P. Blinn, Greenbriar Terrace Healthcare, The Hillhaven Corp., Nashua, NH 03062, 603–888–1573	07/06/93
Mr. Paul Cooper, South Jersey Hospital System, 337 Irving Avenue, Bridgeton, NJ 08302, 609–451–6600	07/06/93
Mr. Stephen Lazovitz, Wanaque Convalescent Ctr., 1433 Ringwood Avenue, Haskell, NJ 07420, 201–839–2119	07/06/93
Mr. Lowell Fein, Eagle Rock Conval. Ctr., Inc., T/A/ West Caldwell Care Ctr., West Caldwell, NJ 07006, 201–226–1100	07/06/93
Mr. Enrique D. Melencio, Jr., Aegis Human Resources Mgmt, I, 43 Nicholas Avenue, West Orange, NJ 07052, 201–669–2726	07/09/93
Mr. Warren E. Gager, William B. Kessler Memorial Hospital, Hammonton, NJ 08037, 609–561–6700	07/14/93
Ms. Patricia Peterson, St. Mary's Hospital, 211 Pennington Avenue, Passaic, NJ 07055, 201–470–3000	07/15/93
Mr. William J. Monagle, Somerset Medical Ctr., 110 Rehill Avenue, Somerville, NJ 08876, 908–685–2200	07/19/93
Mr. Stephen Lazovitz, Lakewood of Voorhees Associat, 1302 Laurel Oak Road, Voorhees, NJ 08043, 609–346–1200	07/19/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 07/01/93 to 07/31/93—Continued

CEO name/facility name/address	Approval date
Mr. Niceforo B. Domocol, Prime Human Resources Special, 43 Newkirk Street, Jersey City, NJ 07306, 201–438–6931	07/22/93
Mr. George Cannata, Dover Christian Nursing Ctr., 65 N. Sussex Street, Dover, NJ 07801, 201–361–5200	07/22/93
Ms. Eleanor A. Rivera, Eastern Nursing Services, Inc., 571 Bloomfield Avenue, Verona, NJ 07044, 201–857–5662	07/22/93
Ms. Dolores Turco, Lincoln Park Nursing Ctr., 499–521 Pine Brook Road, Lincoln Park, NJ 07035, 201–696–3300	07/27/93
Ms. Mary Jane Eicke, Northfield Manor Conval. Home, 787 Northfield Avenue, West Orange, NJ 07052, 201–731–4500	07/28/93
Mr. Ulrich J. Rosa, St. Francis Hospital, 25 McWilliams Place, Jersey City, NJ 07302, 201–714–8900	07/28/93
Ms. Linda Moore, Sierra Health Care Center, 1400 Silver, Truth or Consequences, NM 87901, 505–894–7855	07/01/93
Mr. Jeffrey Sicklick, Hebrew Home for the Aged, Fairfield Division, Bronx, NY 10463, 212–549–9400	07/07/93
Ms. Mary Ann Dolak, Hudson Management Consultants, Inc., Rockville, NY 11570, 516–536–8000	07/09/93
Ms. Debra A. Sabato, Cedar Manor Nursing Home, P.O. Box 928, Cedar Lane, Ossining, NY 10562, 914–762–1600	07/09/93
Mr. Gary Horan, Our Lady of Mercy Medical Center (233rd St.), Bronx, NY 10466, 718–920–9000	07/21/93
Ms. Sheila Blutstein, Kings Hwy. Hospital Ctr., Inc., 3201 Kings Highway, Brooklyn, NY 11234, 718–252–3000	07/22/93
Mr. Gary Horan, Our Lady of Mercy Medical Ctr., D'urso Pavilion, Bronx, NY 10461, 718–430–6000	07/22/93
Kenneth Brown, Margaret Tietz Ctr. for Nursing, 164–11 Chapin Pkwy., Jamaica, NY 11432, 718–523–6400	07/28/93
Mr. John S.T. Gallagher, North Shore University Hospital, 300 Community Drive, Manhasset, NY 11030, 516–562–0100	07/28/93
Mr. Stanley F. Hupfeld, Baptist Medical Ctr. of Oklahoma City, OK 73112, 405–949–3112	07/22/93
Mr. Benjamin Astacio, Hospital Bella Vista, P.O. Box 1750, Mayaguez, PR 00681, 809–834–2350	07/09/93
Mr. David L. Henson, Spartanburg Regional Med. Ctr., 101 East Wood St., Spartanburg, SC 29303, 803–591–6000	07/01/93
Sister Annette Crone, St. Joseph Hospital and Health Centers, Memphis, TN 38105, 901–577–2700	07/14/93
Mr. Jerry L. Ivey, Westwood Health Care Center, P.O. Box 190, Decaturville, TN 38329, 901–852–3591	07/20/93
Mr. Jerry L. Ivey, Franklin Manor Nursing Ctr., 1501 Columbia Avenue, Franklin, TN 37064, 615–794–2624	07/20/93
Mr. Jerry L. Ivey, Court Manor Nursing Ctr., 1414 Court, Memphis, TN 38104, 901–272–2492	07/20/93
Mr. Jerry L. Ivey, Cumberland Manor Nursing Ctr., 4343 Hydes Ferry Pike, Nashville, TN 37218, 615–726–0492	07/20/93
Mr. Jerry L. Ivey, Decatur County Manor Nursing, Route 1, Box D–1, Parsons, TN 38363, 901–847–6371	07/20/93
Mr. James Seward, Hillside Hospital, 1265 East College Street, Pulaski, TN 38478, 615–363–7531	07/26/93
Mr. Louis Bremer, Jr., Medical Center Hospital, 504 Medical Center Blvd., Conroe, TN 77304, 409–539–7485	07/01/93
Ms. Joanne Condi, Dallas Rehabilitation Institu, 9713 Harry Hines Blvd., Dallas, TX 75220, 214–358–6000	07/01/93
Dr. George A. Hurst, The University of Texas, Health Center at Tyler, Tyler, TX 75710, 903–877–7740	07/19/93
Mr. George Farr, Children's Medical Ctr. of Dallas, Dallas, TX 75235, 214–640–2000	07/22/93
Mr. Thomas B. Symonds, Mission Hospital, Inc., 900 South Bryan Rd., Mission, TX 78572, 210–580–9400	07/28/93
Mr. Dale Gunnell, University of Utah Hospital, 50 North Medical Drive, Salt Lake City, UT 84132, 801–581–2121	07/01/93
Mr. Richard P. Blinn, Hillhaven Rehabilitation and Convalescent Ctr., Norfolk, VA 23507, 804–623–5602	07/01/93
Mr. Richard P. Blinn, Birchwood Terrace Healthcare, The Hillhaven Corporation, Burlington, VT 05401, 802–863–6384	07/09/93
Total attestations	106

[FR Doc. 93–19509 Filed 8–12–93; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

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 of other Federal statutes referred to in 29 CFR part 1, appendix, 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 supersedeas 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 Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. TN930037, dated Feb. 19, 1993.

Agencies with construction pending projects, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting a SF–308. (See Regulations, 29 CFR part 1, § 1.5.) Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is within ten (10) days of this notice, the contract specifications need not be affected.

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 and State.

Volume III

Colorado:
- CO930017 (Aug. 13, 1993)
- CO930018 (Aug. 13, 1993)

Modification to General Wage Determination Decisions

The number of 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 and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
- CT930001 (Feb. 19, 1993)
- CT930003 (Feb. 19, 1993)
- CT930004 (Feb. 19, 1993)

North Carolina:
- NC930008 (Feb. 19, 1993)

New Hampshire:
- NH930001 (Feb. 19, 1993)
- NH930004 (Feb. 19, 1993)

New Jersey:
- NJ930002 (Feb. 19, 1993)
- NJ930003 (Feb. 19, 1993)
- NJ930004 (Feb. 19, 1993)
- NJ930007 (Feb. 19, 1993)

New York:
- NY930007 (Feb. 19, 1993)
- NY930022 (Feb. 19, 1993)

Pennsylvania:
- PA930003 (Feb. 19, 1993)

Rhode Island:
- RI930001 (Feb. 19, 1993)
- RI930002 (May 14, 1993)
- RI930003 (May 14, 1993)
- RI930004 (May 14, 1993)

Tennessee:
- TN930007 (Feb. 19, 1993)
- TN930008 (Feb. 19, 1993)
- TN930013 (Feb. 19, 1993)
- TN930014 (Feb. 19, 1993)
- TN930038 (Feb. 19, 1993)
- TN930039 (Feb. 19, 1993)
- TN930045 (Jul. 30, 1993)

Volume II

Arkansas:
- AR930001 (Feb. 19, 1993)
- AR930008 (Feb. 19, 1993)

Iowa:
- IA930024 (Apr. 09, 1993)

Illinois:
- IL930001 (Feb. 19, 1993)
- IL930002 (Feb. 19, 1993)
- IL930003 (Feb. 19, 1993)
- IL930004 (Feb. 19, 1993)
- IL930005 (Feb. 19, 1993)
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- IL930011 (Feb. 19, 1993)
- IL930012 (Feb. 19, 1993)
- IL930013 (Feb. 19, 1993)
- IL930014 (Feb. 19, 1993)
- IL930015 (Feb. 19, 1993)
- IL930016 (Feb. 19, 1993)
- IL930017 (Feb. 19, 1993)

Michigan:
- MI930001 (Feb. 19, 1993)
- MI930002 (Feb. 19, 1993)

Missouri:
- MO930002 (Feb. 19, 1993)
- MO930011 (Feb. 19, 1993)
- MO930015 (Feb. 19, 1993)

Nebraska:
- NE930001 (Feb. 19, 1993)

Oklahoma:
- OK930016 (Feb. 19, 1993)

Texas:
- TX930057 (Feb. 19, 1993)
- TX930080 (Jul. 09, 1993)

Wisconsin:
- WI930010 (Feb. 19, 1993)

Volume III

Alaska:
- AK930001 (Feb. 19, 1993)

Arizona:
- AZ930001 (Feb. 19, 1993)
- AZ930005 (Jul. 07, 1993)

Colorado:
- CO930001 (Feb. 19, 1993)
- CO930005 (Feb. 19, 1993)

Hawaii:
- HI930001 (Feb. 19, 1993)

Montana:
- MT930002 (Feb. 19, 1993)
- MT930009 (Aug. 06, 1993)

North Dakota:
- ND930001 (Feb. 19, 1993)
- ND930005 (Feb. 19, 1993)

Nevada:
- NV930005 (Mar. 26, 1993)

Washington:
- WA930002 (Feb. 19, 1993)
- WA930005 (Feb. 19, 1993)
- WA930008 (Feb. 19, 1993)

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 6th day of August 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–19288 Filed 8–12–93; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

[Application No. D–9033, et al.]

Proposed Exemptions; Western Asset Management Co., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state:

(1) The name, address, and telephone number of the person making the comment or request, and

(2) The nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Western Asset Management Co.
Located in Pasadena, CA
[Exemption Application No. D–9033]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1) (A) through (D) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (F) of the Code, shall not apply to a proposed exchange (the Exchange) by employee benefit plans (the Plans) of certain debt securities (Debt Securities) for shares in two open-end mutual fund portfolios: the Western Assets Trust, Inc. Corporate Securities Portfolio (the Corporate Fund) and the Western Assets Trust, Inc. Mortgage Securities Portfolio (the Mortgage Fund) (collectively referred to as the Funds), to which the Western Asset Management Company (the Manager), a fiduciary with respect to the Plans, and its affiliates provide investment advisory and other services, provided that the following conditions are met:

(a) The terms of the transaction are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties.

(b) The Exchange is a one time exchange between a Plan and the respective Fund.

(c) No sales commission or dealer mark-up is paid by the Plan in connection with the Exchange.

(d) The assets of any Plan invested in the Funds will be excluded from the assets on which the investment management fee paid by the Plan to the Manager are determined.

(e) With respect to the Corporate Fund, the Debt Securities to be exchanged consist solely of corporate bonds which are rated not less than Baa/BBB by an independent rating agency, or, if unrated, determined to be of comparable quality by the Manager.

(f) With respect to the Mortgage Fund, the Debt Securities to be exchanged consist of mortgage-related debt securities:

(i) Issued by or guaranteed as to the payment of principal and interest by the U.S. Government or its Agencies or Instrumentalities; or

(ii) Rated not less than A by an independent rating agency; or, if unrated, determined to be of comparable quality by the Manager.

(g) In each case in which the Manager makes a rating determination with respect to an unrated Debt Security, the Manager maintains contemporaneous written records of the analysis of that rating determination.

(h) Prior to the Exchange, a Plan fiduciary who is independent of and unrelated to the Manager or any affiliate thereof will receive in writing:

(1) A current prospectus issued by the investment company, and full and detailed disclosures of the investment advisory and other fees charged to or paid by the Plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the Manager may consider such exchanges to be appropriate for the Plan, and whether there are any limitations on the Manager with respect to which plan assets may be invested in shares of the

investment company and, if so, the nature of such limitations;

(2) A list of Debt Securities held by the Plan that would be accepted by the Manager with respect to the Exchange; and

(3) An explanation of the Manager's procedures that would be followed for valuing the Debt Securities for purposes of the Exchange.

(i) After the independent fiduciary receives and reviews the disclosures required under paragraph (h), such fiduciary independently determines whether to exchange each Debt Security for shares in the Funds, and provides written approval for the Exchange.

(j) For purposes of the Exchange, the price of the Debt Securities will be established by a recognized, independent pricing service at the closing price on the business day specified by the independent fiduciary in its written approval of the Exchange. If no price is available from a recognized, independent pricing service for such date, the Manager will determine the price by averaging the mean of the closing bid and asked quotations from each of two recognized, independent market makers for such Debt Securities on the day specified by the independent fiduciary in its written approval of the Exchange.

(k) For purposes of the Exchange, the Manager determines the value of the Debt Securities and the net asset value of the Funds as of the close of business on the same day.

(l) Within seven (7) days after the authorization of each exchange, the independent Plan fiduciary receives a written confirmation that reflects the price of each of the Debt Securities involved in the Exchange. The confirmation will include a written disclosure of the identity of the pricing service or the market makers consulted in determining the value of the Debt Securities.

(m) The independent fiduciary referred to in paragraph (h), or any successor thereto is notified of any change in the rates of the fees referred to in paragraph (h)(1) and approves in writing the continued holding of any Fund shares acquired by the Plan prior to such change and still held by the Plan.

(n) The Manager shall maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) below to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Manager and/or its affiliates, the records are lost or destroyed prior to the end of the six year period, and (2) no party in interest other than the Manager and /or its affiliates shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not available for examination as required by section (o) below.

(o) (1) Except as provided in section (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (n) above shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan who has the authority to acquire or dispose of the interests of the plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any Plan that has an interest in the Funds or any duly authorized employee or representative of such employer; and

(D) Any participant or beneficiary of any Plan that has an interest in the Funds or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraphs (o)(1)(B) through (D) shall be authorized to examine the trade secrets of the Manager or its affiliates or commercial or financial information which is privileged or confidential.

Definitions

For purposes of this proposed exemption:

(a) An "affiliate" of a person includes:

(1) Any persons directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(d) For purposes of the proposed exemption, a fiduciary will not be deemed to be an independent fiduciary with respect to the Manager and its affiliates if:

(1) The fiduciary directly or indirectly controls, is controlled by, or is under common control with the Manager or any affiliate:

(2) The fiduciary, or any officer, director, partner, employee or relative of such fiduciary, is an officer, director partner, or employee of the Manager or any affiliate (or is a relative of such persons); or

(3) The fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will be effective only for those Exchanges which occur within five years after the date on which the Final Grant of this exemption is published in the **Federal Register**.

Summary of Facts and Representations

1. The Manager, a wholly owned subsidiary of Legg Mason, Inc., is an investment adviser registered under the Investment Advisers Act of 1940 and serves as investment adviser with respect to more than $6 billion, approximately 75% of which are plan assets. The Manager serves as investment manager as defined in section 3(38) of the Act with respect to a separate investment account established for each Plan (Plan Account). Most of the Plans to which the Manager serves as investment manager have assets in excess of $50 million.

2. The Manager states that the Plan Accounts are currently invested in certain corporate bonds and mortgage-related debt securities (Debt Securities). The Manager represents that the pro rata allocation of Debt Securities among the Plan Accounts is impracticable because of the reduced marketability and liquidity of odd lots of Debt Securities. The Manager represents that investments by the Plan Accounts in the Funds will avoid these allocation problems because the Plan Accounts will own a pro rata share of any Debt Securities held by the Funds.

3. The Manager and its affiliates have established Western Assets Trust Inc., a registered no-load, open-end investment company with multiple portfolios. Five portfolios have already been registered with the Securities and Exchange Commission under the Investment Company Act of 1940. The Manager proposes to register three additional portfolios including the Funds. These three additional portfolios will be available only to Plan Accounts.

The two Funds which are the subject of the proposed exemption are the Corporate Fund, which will be a corporate bond portfolio, and the Mortgage Fund, which will be a mortgage-related debt securities portfolio. The Manager proposes to notify each existing Plan Account of the availability of the opportunity to exchange Debt Securities for shares in each Fund. The Manager contemplates that in the future other plans will establish new Plan Accounts with the Manager and will receive the same notice. Only one Exchange per Plan would be permitted with respect to each of the Funds. The Debt Securities exchanged for the shares of a Fund would become part of the Fund's investment portfolio.

4. The Manager represents that the acquisition of shares in the Funds through the Exchange would avoid transaction costs. In this regard, no dealer mark-up or commission will be paid by the Plans in connection with the proposed Exchanges. In addition, potential adverse price concessions by the Plan Accounts with respect to the Debt Securities will be avoided. The sale by a Plan of a large volume of any Debt Securities in a relatively illiquid market could result in the Plan lowering its offering price to attract bids. The Manager represents that by exchanging the Debt Securities for shares in the Funds, instead of selling the Debt Securities for cash and then purchasing shares in the Funds, the Plan Accounts would avoid potential negative price concessions caused by illiquidity in the Debt Security market.

5. The Manager represents that the Funds will accept only Debt Securities that meet the respective Fund's rating requirements and the Funds' South Africa-free policy.[1] Any Debt Security that:

(1) Is part of an issue that was less than $150 million when issued;

(2) Meets the Fund's rating requirements; and

(3) Satisfies the Fund's South Africa-free policy will be accepted for purposes of the Exchange.

With respect to the Corporate Fund, the Manager intends to accept for the Exchange only corporate bonds rated not less than Baa/BBB by a recognized, independent rating agency; or, if unrated, determined to be of comparable quality by the Manager. With respect to the Mortgage Fund, the Manager intends to accept for the Exchange only mortgage-related debt securities:

(i) Issued by or guaranteed as to the payment of principal and interest by the U.S. Government or its Agencies or Instrumentalities; or

(ii) Rated A or better by the relevant agencies; or, if unrated, determined to be of comparable quality by the Manager.

In this regard, the Manager represents that it will maintain and follow internal written guidelines for rating unrated Debt Securities which will require the Manager to follow industry practice for rating such securities. In each case in which the Manager makes a rating determination with respect to an unrated security, the Manager will maintain contemporaneous written records of the analysis including the Manager's best judgment as to the comparable quality rating that would have been assigned to that Debt Security if it had been rated by a recognized, independent rating service.

6. The Manager represents that a fiduciary with respect to each Plan who is independent of and unrelated to the Manager or its affiliates, will receive prior to the Exchange a copy of the Funds' current prospectus, including or supplemented by a full and detailed written disclosure of: (i) The Plan Account's investment management fee schedule, the Funds' investment advisory fee schedule, and the nature of any differential between such fees;[2] (ii) a list of the Debt Securities which would be accepted for exchange for shares in the respective Fund; and (iii) a summary of the Manager's procedures that will be followed for valuing the Debt Securities for purposes of the Exchange.The independent Plan fiduciary will then unilaterally determine whether to engage in the Exchange and which of the Debt Securities deemed acceptable to the Manager will actually be exchanged for shares in the Fund.

7. The Manager represents that only Debt Securities for which there is an objective valuation will be involved in the Exchange. For purposes of the Exchange, the price of the Debt securities will be established by a recognized,[3] independent pricing service at the closing price on the business day designated by the independent fiduciary in its written approval for the Exchange. If no price is available from a recognized, independent pricing service for such date, the Manager will determine the price by averaging the mean of the closing bid and asked quotations from each of two recognized, independent market makers for such Debt Securities on the business day designated by the independent fiduciary in its written approval of the Exchange.

8. The Manager represents that it generally uses the Merrill Lynch Securities Pricing Service (Merrill Lynch) which provides a single market price rather than bid and asked prices. The Manager represents that the use of a pricing source other than Merrill Lynch would be for one of three reasons:

(i) The Manager generally relies on a different pricing service with respect to the Debt Security;

[1] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interests of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries. In order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Investing plan assets based on a South Africa-free criterion would not be prudent if such investment would provide the plan with less return, in comparison to risk, than comparable investments available to the plan or if such investments would invoke greater risk to the security of plan assets than other investments offering a similar return. The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and benefits in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in the Funds, a plan fiduciary must consider only factors relating to the interests of the plan participants and beneficiaries in their retirement income. A decision to make a particular investment may not be influenced by non-economic factors unless the investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the plans.

[2] The Manager represents that assets of any Plan Account invested in the Funds will be excluded from the assets on which the investment management fee paid by the Plan to the Manager are based. In addition, the applicant represents that subsequent cash transactions between the Plan Accounts and the Funds will comply with the terms and conditions of Prohibited Transaction Exemption 77–4 (42 FR 18732, April 8, 1977).

[3] The applicant represents that a pricing service is "recognized" by the securities industry if it is generally deemed to have the qualifications and resources to provide a regular source of reliable price quotation. Similarly, a market maker is "recognized" by the securities industry if it is generally deemed to have the qualifications and resources to provide a regular source of trading in the relevant securities, resulting in a reliable price quotation.

(ii) A price cannot be obtained from Merrill Lynch with respect to a particular Debt Security; or

(iii) The Manager has a well reasoned belief that the fair market value of that particular Debt Security is not reflected in the price available from the previously disclosed pricing source. In this regard, the Manager will include in, or with, its confirmation of the Exchange, the identity of the pricing source the Manager consulted and the reason why it consulted such pricing source.

9. The Manager believes that the use of prices obtained from recognized, independent, objective pricing sources, the pre and post-Exchange disclosures, and the disclosure of the actual market maker or pricing service which values the Debt securities for purposes of the Exchange, will ensure objective valuation of the Debt Securities. In this regard, the Manager represents that its record keeping and its pre and post-Exchange disclosures to the independent Plan fiduciary provide adequate opportunities for the independent Plan fiduciary to monitor the Manager's execution of the valuation procedure with respect to the Exchange.

10. In summary, it is represented that the proposed Exchange satisfies the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Plan Accounts participating in the Exchange will avoid potential price concessions that could occur if the Debt Securities were sold in the market;

(b) The Plan Accounts will avoid allocation problems associated with investing in smaller issues of Debt Securities by owning a pro rata share of all of the Debt Securities held by the Funds;

(c) The independent fiduciary for each Plan unilaterally determines whether to engage in the Exchange;

(d) The payment of any fees by the Funds to the Manager and any affiliates with respect to plan assets invested in the Funds will require written approval by an independent fiduciary for the Plan after full written disclosure to the independent fiduciary, including a current prospectus for each of the Funds and a statement describing the fee structure;

(e) The value of the Debt Securities will be established by a recognized, independent pricing service or two recognized, independent market makers; and

(f) Within seven (7) days after the Exchange, the independent Plan fiduciary will receive a written confirmation that reflects the price of each of the Debt Securities involved in the Exchange and a written disclosure of the identity of the pricing service or the market makers consulted in determining the value of the Debt Securities.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Berger of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

PAMCAH–UA Local 675 Pension Fund (the Pension Plan) and PAMCAH–UA Local 675 Training Fund (the Training Plan; collectively, the Plans) Located in Honolulu, HI [Application Nos. D–9103 and L–9104, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply to the leasing of certain work shop space by the Pension Plan to the Training Plan under the terms of an amended lease (the Amended Lease).

This proposed exemption is conditioned upon the following requirements:

(1) The terms of the Amended Lease remain at least as favorable to the Plans as those obtainable in an arm's length transaction with unrelated parties; (2) Monroe and Friedlander Management, Inc. (MFMI), an independent fiduciary, monitors the Amended Lease on behalf of the Pension Plan as well as the terms and the conditions of the exemption at all times; (3) the rental charged by the Pension Plan to the Training Plan under the Amended Lease always remains at fair market value as determined by an independent appraiser; (4) the fair market value of the leased space is redetermined every three years by an independent appraiser who has been selected by MFMI; and (5) MFMI makes appropriate adjustments to the rental charged for the leased space as required under the Amended Lease.

Summary of Facts and Representations

1. The Pension Plan and the Training Plan are multiemployer plans that have been established and maintained under section 302(c)(5) of the Labor Management Relations Act of 1947, as amended, and in accordance with the terms of a collective bargaining agreement by and between Local Union 675 of the United Association of Journeymen and Apprentice Plumbers and Pipefitters of the United States and Canada AFL–CIO (the Union) and various contributing employers (the Employers). The Plans are jointly-trusteed by six trustees (the Trustees), three of whom have been selected by the Employers and three of whom have been designated by the Union.

2. The Plans are administered by the Administrative Office which is under the control of a committee consisting of one Employer and one Union Trustee. The committee allocates the operating expenses of the Administrative Office to various funds and programs. Investment decisions for the Plans are made by Dodge & Cox of San Francisco, California and The Boston Company of Green Brae, California, which serve as investment advisers.

3. The geographical jurisdiction of the Plans is the entire State of Hawaii. The Plans share common participants who are engaged as plumbers, pipefitters, steamfitters, welders, and air conditioning, refrigeration and fire sprinkler mechanics. As of July 31, 1992, the Training Plan and the Pension Plan had total assets of $1,145,910 and $172,949,691, respectively. As of February 2, 1993, the Pension Plan had approximately 1,468 participants and the Training Plan had an estimated 1,208 participants. The Plans are not parties in interest with respect to each other within the meaning of section 3(14) of the Act.

4. Among the assets of the Pension Plan is certain unencumbered real property consisting of a 19 year old warehouse building (the Building) containing approximately 27,072 square feet of gross building area. The Building is located at 97–731 Kamehameha Highway, Pearl City, Hawaii and it is improved by three warehouse bays. The Pension Plan purchased the Building on February 2, 1990 from Seven-Three-One Associates, a Hawaii limited partnership and an unrelated party. The aggregate purchase price for the Building was $3.07 million. The Pension Plan paid the consideration in cash.

5. The Building was appraised on February 15, 1990 by John F. Yamaguchi, SRPA, RM, IFAS and Lillian T. Izumi, independent appraisers and the President and Vice President, respectively, of Yamaguchi and Yamaguchi, Inc. of Honolulu, Hawaii. In an appraisal report dated March 2, 1990, the appraisers placed the fair market value of the Building at $3.1 million. The appraisers also estimated the annual market rents in the Building to range from $.75 per square foot for warehouse space to $1.00 per square foot for retail space.

5. The Pension Plan has never occupied space in the Building. However, at the time of and subsequent to its acquisition by the Pension Plan, the Building was leased to two unrelated parties and Reliable

Plumbing, Inc. (Reliable), a contributing employer to the Pension Plan.[4] With the exception of Reliable, these leasing arrangements have continued. Reliable, which occupied 4,500 square feet of office space in the Building on a month to month basis, paid the Pension Plan an annual rental of $.75 per square foot of space. On June 30, 1991, Reliable vacated the space it had occupied in the Building.

6. Currently, the Building is not fully leased. It is, however, occupied by two unrelated parties and the Training Plan. Although the Pension Plan previously leased space in the Building to Reliable, no other party in interest has ever occupied space in the Building.

7. On October 1, 1991, the Training Plan began leasing 3,160 square feet of warehouse and classroom space in the Building from the Pension Plan under the provisions of a written lease. The term of the Lease is five years and it permits the Training Plan to occupy additional space in the Building. On January 1, 1992, the Training Plan began leasing 9,480 square feet of new warehouse, classroom and storage space in the Building from the Pension Plan thereby bringing the total amount of rented space to 12,640 square feet. During the first year of the Lease, the Training Plan was required to pay the Pension Plan a monthly rental of $.75 per square foot plus a monthly common area maintenance charge based upon $.13 per square foot. The rental rate was also to be increased by 5 percent for each successive year of the Lease. The monthly and total annual rentals during the first year of the Lease were calculated as follows:

10/1/91–12/31/91

($.75+$.13)×3,160 sq. ft. = $2,780 per month
$2,780.80×3 months = $8,342.40

1/1/92–9/30/92

($.75+$.13)×12,640 sq. ft. = $11,123.20 per month
$11,123.20×9 months = $100,108.80

$100,108.80	Rental between 1/1/92 and 9/30/92
+ 8,342.40	Rental between 10/1/91 and 12/31/91
$108,451.20	Total Rental for Year One of Lease

In addition to paying rent, the Training Plan is required to pay the Pension Plan its pro rata share of all costs related to the operation of the Building. These costs include, but are not limited to, real estate taxes, assessments on all lands and improvements and the cost of operating and maintaining water, electricity and other utilities, public liability, nonstructural repairs and property damage insurance covering all common facilities. The Lease contains no restrictions regarding renewals.

8. The applicants are aware that a prohibited transaction has occurred because of the past leasing arrangement between the Pension Plan and the Training Plan and the fact that the Plans have common Trustees. In support of their application, Ms. Izumi, by letter dated October 28, 1992, confirmed that the original Lease, which provided for a rental rate of $.75 per square foot, was at fair market rental value at its inception and still reflected the fair market rental value for such leased space as of the date of her letter. In requesting prospective relief, the applicants propose to amend the Lease in order that the Pension Plan may continue leasing space in the Building to the Training Plan.[5]

9. The Amended Lease will have an initial term of five years and have the same monthly rental as that charged under the Lease. As noted above, Ms. Izumi has confirmed that $.75 per square foot represents the fair market rental value for such leased space. The Amended Lease will contain two renewal options, each of five years' duration. The Amended Lease will require that MFMI, the independent fiduciary appointed to monitor the terms and conditions of such lease, appoint an independent appraiser who will revalue the Building once every three years to determine the fair market rental value of the space leased. Based upon these independent valuations, MFMI will make appropriate adjustments to the rental being charged.

In addition to paying rent, the Training Plan will still be required to pay the Pension Plan its pro rata share of common area maintenance and operating costs, state general excise taxes, real property taxes and assessments, utility charges, air conditioning costs, refuse collection costs and janitorial service costs. As for renewals, the Amended Lease will provide that there can be no renewal of the lease term unless MFMI determines that such renewal is in the best interest of the Pension Fund and its participants and beneficiaries.

10. As stated above, the Pension Plan has appointed MFMI to serve as the independent fiduciary with respect to the Amended Lease. MFMI is a privately-held property management firm specializing in the management of retail, office and industrial properties. Formed in 1977, MFMI is one of the largest commercial property management firms in Hawaii. MFMI represents that it is completely unrelated to the parties involved in the proposed transaction. In addition, MFMI represents that it has consulted with counsel familiar with the Act regarding the duties, responsibilities and liabilities it will be required to assume in serving as the independent fiduciary on behalf of the Pension Plan. Further, MFMI states that it has acknowleged and accepted such fiduciary duties, responsibilities and liabilities.

MFMI believes the terms of the Amended Lease are indicative of the fair market value for the subject space based upon such factors as the length, rental rate and provisions of the Amended Lease document. MFMI also believes the Amended Lease is in the best interests of the Pension Plan because such plan would be securing a creditworthy tenant whose use is compatible with the Building.

Aside from the independent fiduciary duties noted above, MFMI will collect all rents due and owing from the Training Plan, make fair market adjustments to the rent if required, and take all actions that are necessary and proper to enforce the rights of the Pension Plan and its participants and beneficiaries.

11. In addition to MFMI's review of the transactions, the Trustees, who are also the trustees and the fiduciaries of the Training Plan, represent that they have reviewed the investment needs of the Training Plan, the terms and conditions of the Amended Lease, including the rental rate determined by the independent appraisers. Based upon their consideration of such matters, the Trustees believe the Amended Lease will be in the best interest of the Training Plan. The Trustees also believe that the amount of space leased by the Training Plan is appropriate and necessary for the needs of such plan.

12. In summary, it is represented that the transaction satisfies the criteria for a statutory exemption under section 408(a) of the Act because: (a) The terms of the Amended Lease will remain at least as favorable to the Plans as those obtainable in an arm's length transaction with unrelated parties; (b)

[4] The Department notes that a lease between a plan and a contributing employer, such as Reliable, is a prohibited transaction under section 406(a)(1)(A) of the Act and section 4975(c)(1)(A) of the Code. In this regard, the Department further notes that Reliable has not requested exemptive relief with respect to its leasing of space in the Building from the Pension Plan. Therefore, the Department has not provided any exemptive relief regarding such transaction.

[5] The Department is providing no retroactive exemptive relief herein with respect to the past leasing between the Plans. It notes, in this regard, that there is no excise tax owing under section 4975 of the Code because the Plans are not disqualified persons with respect to each other.

MFMI will monitor the Amended Lease on behalf of the Pension Plan; (c) the rental charged by the Pension Plan to the Training Plan under the Amended Lease will always remain at fair market value as determined by an independent appraiser; (d) the fair market rental value of the leased space will be redetermined every three years by an independent appraiser who has been selected by MFMI; and (e) MFMI will make appropriate adjustments to the rental charged for the leased space as required under the Amended Lease.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

The Stephen B. Swartz 1992 Profit Sharing Plan (the Plan) Located in Minneapolis, MN [Application No. D-9253]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the (1) proposed sale to the Plan, for the total cash consideration of $119,000, of certain improved real property (the Property) by Stephen B. and Harriet K. Swartz who are disqualified persons with respect to the Plan; and (2) the contemporaneous leasing of the Property by the Plan to the Swartzes under the provisions of a written lease (the Lease).[6]

This proposed exemption is conditioned on the following requirements: (1) The terms of the transactions are at least as favorable to the Plan as those obtainable in arm's length transactions with an unrelated party; (2) the acquisition price that is paid by the Plan for the Property is not more than the independently appraised value of the Property; (3) the Property represents less than 25 percent of the Plan's assets; (4) the Plan is not required to pay any real estate fees or commissions in connection with its purchase of the Property; (5) the rental amount under the Lease is based upon the fair market rental value of the Property as determined by a qualified, independent appraiser; (6) the rental amount is adjusted by the Plan trustee (the Trustee) during every third year of the Lease to the higher of the original rental amount or the fair market rental value of the Property as determined by an independent appraiser who has been selected by the Trustee; and (7) the Swartzes incur all real estate taxes and other costs that are associated with the Property and which are incident to the Lease.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with Stephen B. Swartz as its Trustee and sole participant. As of May 10, 1993, the Plan had total assets of approximately $495,049. Investment decisions for the Plan are made jointly by Mr. Swartz in the capacity of Plan Trustee and Mr. Morton D. Silverman, Managing Director of the Minneapolis, Minnesota division of Piper Jaffray, Inc. Mr. Swartz, an attorney, is a principal in McGladrey & Pullen, a national accounting and consulting firm also having offices in Minneapolis, Minnesota.

2. Mr. Swartz, together with his wife, Harriet, own certain improved real property consisting of a single family lakeshore residence and lot located at Route #1, Deerwood, Minnesota. In January 1977, the Swartzes acquired the land which comprises part of the Property from H.J. and Glenna Hutcheson who were unrelated parties for $15,000. In the Spring of 1980, the Swartzes constructed their lakeshore residence for a total cost of $55,000. The Swartzes, who have been using the Property for vacation purposes, own no other real property that is contiguous to the Property.

3. Both the acquisition of the land and the construction of the house were financed by a mortgage loan from the First National Bank of Deerwood. The original land loan was in the amount of $15,000. That loan was replaced with a $60,000 mortgage loan at the time the house was constructed. Subsequently, the mortgage loan was refinanced with the First State Bank of Eden Prairie, an unrelated party, which presently holds a $65,000 first mortgage on the Property. The current outstanding balance of this mortgage loan is $64,000. According to the applicant, the Swartzes have paid all loan payments in a timely manner and they have never been delinquent in repaying such loan. In addition, the applicant states that there are no prepayment penalties associated with the early repayment of the loan.

4. The Property has been appraised by Mr. Gene Foote, IFAS, SRA, CRA, an independent appraiser from Crosby, Minnesota. In an appraisal report dated September 24, 1992, Mr. Foote placed the fair market value of the Property at $119,000. Mr. Foote also placed the fair market rental value of the Property at $450 per month as of the same date.

5. Mr. and Mrs. Swartz wish to sell and then lease the Property from the Plan. By engaging in these transactions, the Swartzes believe the Plan will be able to diversify its investments and realize a higher return through appreciation. The Swartzes note that the Property has appreciated in value by 65 percent over the last 5 years. This rate of growth, they state, has exceeded the rate of growth experienced by the Plan's assets over the same period and it will probably continue. Accordingly, the Swartzes request an administrative exemption from the Department.

6. With respect to the proposed sale transaction, the Swartzes contemplate selling the Property to the Plan free and clear of the existing mortgage. The anticipated sales price for the Property will be $119,000. This amount reflects the fair market value of the Property as determined by Mr. Foote. The Plan will pay the consideration in cash. In addition, the Plan will not be required to pay any real estate fees or commissions in connection therewith.

7. Contemporaneously with the proposed sale, the Plan will lease the Property to the Swartzes under the terms and conditions of a written lease. The Lease will be for a duration of 10 years. It will provide for a rental of $450 per month which is the fair market rental value of the Property as established by Mr. Foote. In addition to paying rent, the Swartzes will pay the Plan for all real estate taxes, assessments, utilities and property and casualty insurance as well as for the costs of maintaining and repairing the Property. During every third year of the Lease, the rental will be adjusted by the Trustee to the higher of (a) $450 or (b) the fair market rental value as determined by a qualified, independent appraiser who has been selected by the Trustee.

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) The terms of the transactions will be at least as favorable to the Plan as those obtainable in arm's length transactions with an unrelated party; (b) the acquisition price that is paid by the Plan for the Property will not be more than the independently appraised value of the Property; (c) the Property represents less than 25 percent of the Plan's assets; (d) the Plan will not be required to pay any real estate fees

[6] Because Mr. Swartz is the Plan sponsor and the sole participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

or commissions in connection with its acquisition of the Property; (e) the rental amount under the Lease is based upon the fair market rental value of the Property as determined by a qualified, independent appraiser; (f) the rental amount will be adjusted by the Trustee during every third year of the Lease to the higher of: (1) The original rental amount or (2) the fair market rental value of the Property as determined by an independent appraiser who has been selected by the Trustee; (g) the Swartzes will incur all real estate taxes and other costs that are associated with the Property and which are incident to the Lease; and (h) Mr. Swartz is the only person in the Plan who will be affected by the proposed transactions and he desires that such transactions be consummated.

Notice to Interested Persons

Because Mr. Swartz is the only participant in the Plan who will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of pendency to interested persons. Therefore, comments and requests for a public hearing are due 30 days from the date of publication of this notice of proposed exemption in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Zero Corporation Pension Plan (the Plan) Located in Los Angeles, California [Application No. D–9379]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of certain real estate limited partnership interests (the Interests) from the Plan to Zero Corporation (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Interests is established by an appraiser independent of the Employer;

2. The Employer pays no less than the greater of the current fair market value of the Interests or the net total Plan expenditures on the Interests as of the date of sale;

3. The sale is a one-time transaction for cash; and

4. The Plan pays no fees or commissions in regard to the sale.

Summary of Facts and Representations

1. The Employer is engaged in the business of engineering, manufacturing and marketing cases, cabinets, cooling equipment and other equipment for the electronics and air transport industries. The Plan is a defined contribution money purchase plan. As of December 31, 1992, the Plan had approximately 1,450 participants and beneficiaries and total assets of $14,482,000.

2. The Interests consist of interests in Balcor Pension Investors I which the Plan purchased in October 1980 and Balcor Pension Investors VII which the Plan acquired in December 1986. The Interests were originally purchased from the Balcor Company (Balcor), an indirect wholly-owned subsidiary of American Express, which sponsors real estate mortgage related partnerships of this kind. The general partners of both partnerships are affiliates of Balcor. The applicant represents that at the time of purchase of the Interests there was no relationship between the Plan or the Employer and either of the two partnerships or the general partner. However, since that time IDS Trust, which also is affiliated with American Express, has become the successor trustee of the Plan. According to the applicant, the selection of IDS as trustee was unrelated to these investments which represent only a small percentage of the assets of the Plan.

3. The Plan initially invested $254,138 in Balcor I and $518,750 in Balcor VII, with the total Plan investments in the two partnerships amounting to $772,888. As of September 30, 1992, the Plan had received returns of capital distributions totaling $177,169 and income distributions totaling $426,598 for the two partnership investments combined. Accordingly, the net total Plan expenditures on the Interests as of September 30, 1992 amounted to $169,121. The applicant represents that the Interests are highly illiquid investments for which there is a very limited secondary market.[7]

4. The partnership agreements provide that quarterly valuations of interests in both partnerships are to be furnished to investors by Valuation Counselors Group, Inc. (the Appraisers) on behalf of Balcor. The Appraisers are in the business of making valuations of this kind in regard to units of partnership investments. The applicant represents that the Appraisers are independent of the Plan and the Employer. Based on the valuation reports from the Appraisers dated November 18, 1992, the value of the Interests for the two partnership investments combined amounted to $502,727 as of September 30, 1992.

5. The Employer has determined to amend the Plan in order to provide that participants will have the opportunity to choose among certain investment funds. In this regard, because the Interests are illiquid and have declined in value, the Employer proposes to purchase the Interests from the Plan. The Employer will pay no less than the greater of the current value of the Interests, based on the latest quarterly valuations, or the net total Plan expenditures on the Interests as of the date of sale. The sale of the Interests will be a one-time transaction for cash. The Plan will pay no commissions or other expenses in regard to the sale.

6. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The Employer will pay no less than the greater of the current value of the Interests or the net total Plan expenditures on the Interests as of the date of sale; (2) the sale of the Interests will be a one-time transaction for cash; (3) the Plan will pay no commissions or other expenses in connection with the transaction; and (4) the sale will remove from the Plan investments which have declined in value and for which there is very little liquidity.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his

[7] The Department expresses no opinion as to whether plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding the Interests. Section 404(a)(1) of the Act requires, among other things, that a plan fiduciary must act prudently and solely in the interest of the participants and beneficiaries of the plan.

duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of August, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–19513 Filed 8–12–93; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meeting of the Challenge and Advancement Advisory Panel (Interdisciplinary Section) to the National Council on the Arts will be held on August 31, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m., for introductions.

The remaining portion of this meeting, from 10 a.m. to 5:30 p.m., is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

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 202/682–5439.

Dated: August 9, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–19489 Filed 8–12–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that meeting of the Dance Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on August 31, 1993 to September 2, 1993, from 9 a.m. to 7 p.m. on August 31 and September 1, 1993, and from 9 a.m. to 5 p.m. on September 2, 1993. This meeting will be held in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2:30 p.m. to 5 p.m. on September 2, 1993 for policy discussion.

The remaining portions of this meeting from 9 a.m. to 7 p.m. on August 31 and September 1, 1993 and from 9 a.m. to 2:30 p.m., on September 2, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of title 5, United States Code.

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 202/682/5439.

Dated: August 9, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–19490 Filed 8–12–93; 8:45 am]

BILLING CODE 7537–01–M

Notice of Meeting

Notice is hereby given that a meeting of the Theater Program Task Force will be held on August 23, 1993 from 10 a.m. to 5 p.m. at the River Inn, 924 25th Street NW., Washington, DC 20037.

A portion of this meeting will be open to the public from 10 a.m. to 10:30 a.m. for introductions.

During the remaining portion of this meeting from 10:30 a.m. to 5 p.m., the Task Force will discuss non-public commercial or financial information of intrinsic value, and will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 522b. Additionally, discussion concerning purely personal information about individuals submitted with grant applications, (e.g., personal biographical and salary data or medical information) as well as discussion of deliberations of specific panels on which Task Force members have served (information which remains confidential even after the final grant decision is made), will be conducted by the Task Force in closed session in accordance with subsection (c)(6) of 5 U.S.C., 522.

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 202/682–5439.

Dated: August 9, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–19488 Filed 8–12–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by September 13, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Survey of Graduate Students and Postdoctorates in Science and Engineering

Affected Public: Non-profit institutions.

Respondents/Reporting Burden: 11,000 respondents: 1.5 hours per response.

Abstract: The survey is the only source of national statistics on graduate students and on support for students and postdoctoral appointees in graduate science and engineering programs. Federal agencies, State Education boards, institutions of higher education and others use the data to monitor S&E education progress and to plan for future S&E personnel needs.

Dated: August 10, 1993.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 93–19520 Filed 8–12–93; 8:45 am]

BILLING CODE 7555–01–M

Permit Application Received Under the Antarctic Conservation Act of 1978

August 10, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 9, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

Dr. Steven D. Emslie, Florida Museum of Natural History, University of Florida, Gainesville, FL 32611.

Activity for Which Permit Requested

Take. Import Into USA—Port of Entry—Miami, FL.

The applicant wishes to salvage carcasses, parts of carcasses, and isolated bones of the species of native seabirds at King George Island and adjacent regions in the Antarctic Peninsula. These materials are needed to obtain skeletal material for scientific study and will be used in comparative osteological analyses and the identification of fossil bird bones. Skeletal series of each species are needed to identify morphological features useful in systematic analyses. Isolated bones will be collected from active and abandoned penguin rookeries for taphonomic studies of bone accumulation in these rookeries, and to identify species of penguins that were present at the rookery in the past.

All specimens will be deposited at the Florida Museum of Natural History where scientific study of the material will be completed by the applicant. Deposition of the material at the Florida Museum will ensure that the specimens are available for study by all interested individuals; the specimens will be available permanently at this museum for scientific study as per the criteria specified by the Antarctic Conservation Act of 1978.

Location

Antarctica Peninsula, King George Island and adjacent regions.

Dates: November 1, 1993–May 1, 1995.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–19521 Filed 8–12–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9024]

Energy Fuels Nuclear, Inc.; Finding of No Significant Impact and Notice of Intent To Issue a Possession Only License to Energy Fuels Nuclear, Inc., for Storage of Source Material in Campbell County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of a finding of no significant impact.

1. Proposed Action

The proposed action is issuance of a possession only license to Energy Fuels Nuclear, Inc., for the storage of a small quantity of source material contained in organic resin to be stored at a secured site in Campbell County, Wyoming.

2. Reason For Finding of No Significant Impact

The proposed action has been determined to have no significant impacts on the environment since the source material is of a small quantity, and has very low specific activity. Further, the source material, which is attached to organic resin, shall be stored in strong tight containers placed in locked trailers which will be parked within a secured compound. No adverse impact on public health and safety will result from storing the source material at the storage site.

3. Action

The Commission action is to issue a source material license for possession only to Energy Fuels Nuclear, Inc., upon publication of this Notice. This action is based on the Finding of No Significant Impact, and an appropriate radiation safety program as described in the Application for Source Material License submitted July 19, 1993.

This Notice, together with the Environmental Assessment which supports the Finding of No Significant Impact, are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555.

Dated at Denver, Colorado, this 6th day of August 1993.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 93–19538 Filed 8–12–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of OFI–10 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the reclearance of an information collection, the Mail Reinterview. OFI Form 10, Mail Reinterview, is completed by individuals who have been interviewed by an OPM investigator during the course of a personnel investigation.

In order to receive equivalent information from subjects of personnel investigations, a supplemental form, OFI Form 10A, Mail Reinterview (Subject), has been added to this information collection. In order to receive equivalent information concerning the performance of other employees involved in the investigative process, OFI Form 10B, Mail Reinterview (FIPC), has been added to this information collection.

It is estimated that 5,700 individuals will respond annually (3,800 to OFI Form 10; 1,500 to OFI Form 10A; and 400 to OFI Form 10B), and that each will require approximately 6 minutes to complete the form, for a total burden of 570 hours. For copies of this proposal call C. Ronald Trueworthy on 703–908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from this publication.

ADDRESS: Send or deliver comments to: Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peter Garcia, 202–376–3800.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–19537 Filed 8–12–93; 8:45 am]

BILLING CODE 6325–01–M

Federal Prevailing Rate Advisory Committee

SUMMARY: The Federal Prevailing Rate Advisory Committee is correcting the notice published in Volume 58, No. 150, Friday, August 6, 1993. The meeting scheduled for August 19, 1993 is cancelled, there is no meeting scheduled for August 16, 1993.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, DC 20415, (202) 606–1500.

Dated: August 6, 1993.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 93–19534 Filed 8–12–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–19614; 812–8352]

The Burnham Fund Inc., et al.; Application

August 6, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Bunham Fund Inc. (the "Fund"), Burnham Asset Management Corporation (the "Adviser"), and Burnham Securities Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) granting an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d), and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting applicants to issue multiple classes of shares representing interests in the same portfolio of securities, and to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares.

FILING DATES: The application was filed on April 15, 1993, and an amendment was filed on June 18, 1993. By supplemental letter dated August 4, 1993, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1345 Avenue of the Americas, New York, New York 10105.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Fund is an open-end management investment company registered under the Act. The Adviser provides investment advisory services to the Fund pursuant to an investment advisory contract. The Distributor acts as the principal underwriter of the Fund's shares pursuant to a distribution agreement with the Fund.

2. Shares of the Fund currently are sold to investors at net asset value plus a sales commission calculated at a percentage of the offering price at the time of purchase. The maximum sales commission is 5.00%. The sales commission is reduced as the aggregate dollar amount invested increases. As set forth in the Fund's prospectus, certain investors may purchase shares of the Fund at net asset value without the imposition of a sales load. The Fund does not currently have a rule 12b–1 plan.

3. Applicants seek an exemptive order that would permit the Fund to offer multiple classes of shares representing interests in the same portfolio of securities (the "Multi-Class Plan"). Each class would be identical in all respects, except for its class designation, the allocation of certain fees and expenses, and voting rights. Applicants also propose to assess a CDSC on certain redemptions of shares of the Fund, and to waive or reduce the CDSC with respect to certain types of redemptions. The Fund may offer classes of shares with terms different from those described in the application from time to time. Any such new classes, however, would comply with all of the conditions set forth in the application.

A. The Multi-Class Plan

1. Under the proposed Multi-Class Plan, existing shares of the Fund would be designated as Class A Shares. Class B Shares would be offered without a front-end sales load, but would be subject to a CDSC, a rule 12b–1 distribution fee equal to 0.75% of average daily net asset value, and a service fee of 0.25% of average daily net asset value pursuant to a non-rule 12b–1 service plan (a "Service Plan"). Class C Shares would be offered without a front-end sales load or CDSC, but would be subject to a rule 12b–1 distribution fee equal to 0.25% of average daily net asset value. Class C Shares would be offered to clients of financial planners and similar institutional intermediaries ("Financial Planners") who together have invested or are reasonably expected to invest an aggregate of not less than $1,000,000 in the Fund. Class D Shares would be offered with a front-end sales load, which may be waived for certain investors, and subject to a rule 12b–1 distribution fee equal to 0.25% of average daily net asset value.[1]

2. Under the Multi-Class Plan, all expenses incurred by the Fund will be allocated among the various classes of shares based upon the net assets of the Fund attributable to each class, except that shares of a particular class will bear any expenses properly allocable to such class ("Class Expenses"). Consequently, the net income of, and the dividends payable with respect to, each particular class would generally differ from the net income of, and the dividends payable with respect to, the other classes of the Fund. Therefore, the net asset value per share of the classes will differ at times. Class Expenses will be borne on a *pro rata* basis by each outstanding share of the particular class, and will be limited to (a) expenses related to a class' rule 12b–1 plan or Service Plan (and any other costs relating to obtaining shareholder approval of the rule 12b–1 plan for that class or an amendment to its rule 12b–1 plan); (b) transfer agency fees as identified by the transfer agent as being attributable to a specific class; (c) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders; (d) Blue Sky registration fees incurred by a class of shares; (e) Commission registration fees incurred by a class of shares; (f) the expense of administrative personnel and services as required to support the shareholders of a specific class; (g) litigation or other legal expenses relating solely to one class of shares; and (h) directors' fees incurred as a result of issues relating to one class of shares.

3. The adoption and implementation of rule 12b–1 plan provisions with respect to any class of shares will be independent of, and not conditioned upon, the adoption or implementation of rule 12b–1 plan provisions with respect to any other class of shares. The provision of promotional and distribution services under a rule 12b–1 plan for a particular class will augment, and not be duplicative of, services otherwise provided under any other rule 12b–1 plan provisions for any other class or the advisory or distribution contracts or any other service contract entered into in connection with the Service Plan. Applicants will comply with the NASD's recently adopted amendment to Section 26 of its Rules of Fair Practice.

B. The CDSC

1. Class B Shares redeemed within eighteen months of purchase would be subject to a CDSC of 1.25 percent of the lesser of the net asset value of the shares at the time of purchase, or the net asset value of the shares at the time of redemption.

2. No CDSC would be imposed on shares derived from the reinvestment of distributions, or on shares representing an increase in the value of the shareholder's account resulting from capital appreciation. In determining whether a CDSC is applicable, it will be assumed that a redemption is made first of shares that are not subject to any CDSC, and then of shares held for the longest period of time. No CDSC will be imposed on shares issued prior to the date of any order granting the requested relief.

3. Applicants propose to waive or reduce the CDSC on redemptions of shares (a) within one year following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986 (the "Code"), of a shareholder, provided that the shares were held at the time of death or initial determination of disability, and provided that the decedent or disabled person is an individual shareholder or owns such shares with his or her spouse as a joint tenant with right of survivorship; (b) in connection with a lump-sum or other distribution following retirement or, in the case of an IRA or Keough Plan or a custodial account maintained pursuant to section 403(b)(7) of the Code, after attaining age 59½; and (c) that result from the tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Code, or from the death or disability of the employee (see Code sections 72(m)(7) and 408(f)(3)).

4. If a Fund waives or reduces the CDSC, such action will be uniformly applied to all offerees in the specified class. If the directors of the Fund determine not to waive or reduce the CDSC any longer, the disclosure in the Fund's prospectus will be appropriately revised. Any shares purchased prior to the termination of the waiver or reduction would be able to have the CDSC waived or reduced as provided in the Fund's prospectus at the time of the purchase of the shares.

[1] Holders of Class A Shares will be asked to approve the adoption of a rule 12b–1 plan. If the Class A shareholders approve the adoption of the rule 12b–1 plan, the Fund will not offer Class D Shares on the terms described above. If the existing shareholders do not approve the adoption of a rule 12b–1 plan, the Fund will cease offering Class A Shares.

Applicants' Legal Analysis

1. Applicants request an exemptive order to the extent that the proposed Multi-Class Plan might be deemed (a) to result in a "senior security" within the meaning of section 18(g) and thus be prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i).

2. Applicants assert that the Multi-Class Plan does not raise any of the legislative concerns that section 18 was designed to ameliorate. The Multi-Class Plan would not involve borrowings, would not affect the Fund's existing assets or reserves, and would not increase the speculative character of the shares of the Fund. No class of shares would have a distribution or liquidation preference with respect to particular assets of the Fund, no class may require that lapsed dividends be paid before dividends are declared on another class, and no class would be protected by any reserve or other account. Applicants assert that the Fund's capital structure under the Multi-Class Plan would not induce shareholders to invest in risky securities to the detriment of other shareholders. Moreover, the Fund's capital structure would not enable insiders to manipulate the expenses and profits among the various classes of shares because the Fund is not organized in a pyramid fashion.

3. Applicants assert that the Multi-Class Plan will both facilitate the distribution of shares by the Fund and provide investors with a broader choice as to the method of purchasing shares.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of the Fund and be identical in all respects, except as set forth below. The only differences among the terms of the various classes of shares will relate solely to (a) the designation of each class of shares of the Fund; (b) expenses assessed to a class as a result of a rule 12b–1 plan providing for a distribution fee or a Service Plan providing for a service fee; (c) different Class Expenses for each class of shares, which are limited to: (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) Directors' fees incurred as a result of issues relating to one class of shares; and (d) the related voting rights as to matters exclusively affecting one class of shares in accordance with the procedures set forth in rule 12b–1. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission.

2. The directors of the Fund, including a majority of the independent directors, will approve the Multi-Class Plan prior to its implementation. The minutes of the meetings of the directors regarding the deliberations of the directors with respect to the approvals necessary to implement the Multi-Class Plan will reflect in detail the reasons for determining that the proposed Multi-Class Plan is in the best interests of the Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of the Fund, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to directors, and the board shall review at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the directors of the Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, will take such action as is reasonably necessary to eliminate any conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser and the Distributor at their own cost will remedy the conflict up to and including establishing a new registered management investment company.

5. The Service Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1.

6. The directors of the Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of one class of shares will be used to support any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing or a specific class of shares will not be presented to the directors to support any fee charged to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

7. Dividends paid by the Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner at the same time, on the same day and will be in the same amount, except that each particular class will bear exclusively its own Class Expenses.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the various classes have been reviewed by an expert, the Independent Examiner. The Independent Examiner has rendered an initial report to applicants which has been provided to the SEC stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Fund (which the Fund agrees to make), will be available for inspection by the Commission's staff upon written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the

Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "Report on Policies and Procedures Placed in Operation," and the ongoing reports will be "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares, and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition 8 above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicants will take immediate corrective measures if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

10. The prospectus of the Fund will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

11. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors with respect to the Multi-Class Plan will be set forth in guidelines that will be furnished to the Directors as part of the materials setting forth the duties and responsibilities of the Directors.

13. The Fund will disclosure the respective expenses, performance data, distribution arrangements, shareholder services, fees, sales loads, and CDSCs applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. The Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of the Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset values and public offering prices will present each class of shares separately.

14. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Fund may make pursuant to its rule 12b–1 plan or Service Plan in reliance on the exemptive order.

15. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19476 Filed 8–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19616; 812–8392]

Maxim Series Fund, Inc., 8–13 et al.

August 6, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Maxim Series Fund, Inc. (the "Fund"), Great-West Life Assurance Company ("GreatWest"), and certain life insurance companies and their separate accounts (the "Accounts") investing now or in the future in the Fund.

RELEVANT 1940 ACT SECTION: Order requested under section 6(c) of the 1940 Act from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (the "Participating Insurance Companies").

FILING DATE: The application was filed on May 13, 1993. An amendment and restatement of the application was filed on July 27, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 11, 1993 and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants: Mr. Michael L. Sapir, Jorden Burt Berenson & Klingensmith, 1025 Thomas Jefferson Street, NW, suite 400 East, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, or Michael V. Wible, Special Counsel, both at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. The Fund, a Maryland corporation, is registered under the 1940 Act as an open-end, diversified management investment company of the series type. The Fund intends to offer its shares to the Accounts of the Participating Insurance Companies for the purpose of funding variable annuity and variable life insurance contracts. The Participating Insurance Companies will establish their own Accounts and design their own variable annuity or variable life insurance products. GreatWest, a life insurance company organized under the laws of Canada and a registered investment adviser under the

Investment Advisers Act of 1940, serves as the investment adviser to the Fund.

2. The Fund currently offers shares in eight separate investment portfolios: the money market portfolio; the bond portfolio; the stock index portfolio; the U.S. government securities portfolio; the zero-coupon treasury portfolio; the total return portfolio; the U.S. government mortgage securities portfolio; and the investment grade corporate bond portfolio. Presently, shares in portfolios of the Fund are sold only to: (a) The separate accounts of the Maxim Series Account, the FutureFunds Series Account, and the Pinnacle Series Account of the Great-West Life & Annuity Insurance Company ("GWL&A") in connection with group and individual variable life insurance policies and variable annuity contracts issued by GWL&A and (b) other separate accounts of GWL&A in connection with certain tax qualified contracts issued by GWL&A.

3. The Fund intends to offer shares of its portfolios to separate accounts of interested insurance companies, including insurance companies not affiliated with GWL&A. Consequently, the Fund would serve as the investment vehicle for various insurance products, including variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts.

4. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common management company as the underlying investment medium for variable annuity and variable life insurance separate accounts of unaffiliated insurance companies is referred to as "shared funding." "Mixed and shared funding" denotes the use of a common management company to fund the variable annuity and variable life separate accounts of other affiliated and unaffiliated insurance companies.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (a "Trust"), Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is available to a separate account's investment adviser, principal underwriter, and sponsor or depositor. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the Trust offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated life insurance company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

2. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares. The exemptions granted to a separate account by Rule 6e–3(T)(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Rule 6e–3(T) permits mixed funding. Rule 6e–3(T), however, does not permit shared funding, because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of a management company that also offers its shares to separate accounts, including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts, of unaffiliated life insurance companies.

3. Applicants therefore request relief from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding.

4. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Rules 6e–2(b)(15) and 6e–3(T)(b)(15) provide exemptions from section 9(a) under certain circumstances, subject to limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under section 9(a) to serve as an officer, director, or employee of the life insurer, or of any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to section 9(a) are participating in the management or administration of the fund.

5. Applicants state that the partial relief from section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within that organization. Applicants state that it is therefore unnecessary to apply section 9(a) to individuals in various unaffiliated Participating Insurance Companies (or affiliated companies of those Participating Insurance Companies) that may utilize the Fund as the funding medium for variable contracts. The application notes that whatever the number or identity of the Participating Insurance Companies, Applicants anticipate that GreatWest will serve as both investment adviser and underwriter to the Fund.

6. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. The application states that pass-through voting privileges will be provided with respect to all contract owners so long as the Commission interprets sections 13(a), 15(a) and 15(b) of the 1940 Act to

require such privileges for variable contract owners.

7. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder.

Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority.

Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment adviser, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii) (B) and (C) of each rule.

8. Applicants represent that the right of the Participating Insurance Companies to disregard voting instructions of contract owners provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under the rules, an insurer can disregard voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be both reasonable and based on specific good faith determinations.

9. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: the cost of organizing and funding an investment medium; the lack of expertise with respect to investment management (particularly with respect to stock and money market investments); and the lack of public name recognition of certain insurers as investment experts. Applicants argue that use of the Fund as a common investment medium for variable contracts would reduce or eliminate these reservations of the insurance companies because the companies would benefit from the investment and administrative expertise of GreatWest and its affiliates as well as from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts which will then increase competition with respect to both the design and the pricing of variable contracts. This can be expected to result in greater product variation and lower charges. Thus, Applicants argue that contract owners would benefit because mixed and shared funding will eliminate a significant amount of the costs of establishing and administering separate funds. Mixed and shared funding would also provide a greater amount of assets available for investment by the Fund, thereby promoting economies of scale, permitting increased safety of investments through greater diversification, and making the addition of new portfolios more feasible.

10. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Applicants state that separate accounts organized as unit investment trusts historically have been employed to accumulate shares of mutual funds not affiliated with the depositor or sponsor of the separate account. Applicants also believe that mixed and shared funding will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions if the requested order is granted:

1. A majority of the Board of Directors of the Fund (the "Board") shall consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that, if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all of the Accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Fund are managed; (e) a difference in voting instructions given by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by an insurer to disregard the voting instructions of contract owners.

3. The Participating Insurance Companies and GreatWest will report any potential or existing conflicts to the Board. Participating Insurance Companies and GreatWest will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised, including, information as to a decision by an insurer to disregard voting instructions of contract owners. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of the Participating Insurance Companies under the agreements governing their participation in the Fund and these responsibilities will be carried out with a view only to the interests of contract owners.

4. If it is determined by a majority of the Board, or by a majority of its disinterested directors, that an irreconcilable material conflict exists, the relevant Participating Insurance Companies shall, at their expense and to the extent reasonably practicable, take steps necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Accounts from the Fund and reinvesting such assets in a different investment medium including another portfolio of the Fund, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners; and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners) that votes in favor of such segregation, or offering to the

affected variable contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account.

If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at the election of the Fund, to withdraw the separate account investment in the Fund and no charge or penalty will be imposed as a result of such a withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund.

The responsibility to take such remedial action shall be carried out with a view only to the interests of contract owners. For purposes of this Condition Four, a majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will the Fund or GreatWest be required to establish a new funding medium for any variable contract. Further, no Participating Insurance Company shall be required by this Condition Four to establish a new funding medium for any variable contract if any offer to do so has been declined by a vote of a majority of the affected contract owners.

5. A Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly and in writing to all Participating Insurance Companies.

6. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners so long as the Commission interprets the 1940 Act to require pass-through voting privileges for variable contract owners. Accordingly, the Participating Insurance Companies will vote shares of the Fund held in their Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of their Accounts calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Accounts will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund. The Participating Insurance Company will vote shares for which it has not received voting instructions as well as shares attributable to it in the same proportion as it votes shares for which it has received instructions.

7. All reports received by the Board of potential or existing conflicts, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participating Insurance Companies of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

8. The Fund will notify all Participating Insurance Companies that separate account prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. The Fund shall disclose in its prospectus that: (a) The Fund is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by affiliated and unaffiliated insurance companies; (b) material irreconcilable conflicts may arise from mixed and shared funding arrangements; and (c) the Board will monitor for the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to such conflicts.

9. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders, and, in particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act, (although the Fund is not within the trusts described in section 16(c) of the 1940 Act), as well as with section 16(a), and, if applicable, section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

10. If and to the extent that Rules 6e-2 and 6e-3(T) are amended (or if Rule 6e-3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Fund and the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), as amended, and Rule 6e-3, as adopted, to the extent applicable.

11. No less than annually, the Participating Insurance Companies and/or GreatWest shall submit to the Board such reports, materials, or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials, and data to the Board shall be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-19474 Filed 8-12-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25865; International Series Release No. 572]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 6, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 30, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central Power and Light Company (70–8053)

Central Power and Light Company ("CPL"), 539 N. Carancahua Street, Corpus Christi, Texas 78401–2431, an electric public-utility subsidiary company of Central and South West Corporation ("CSW"), a registered holding company, has filed a post-effective amendment, under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42(a), 50 and 50(a)(5) thereunder, to its application-declaration filed under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42(a), 50 and 50(a)(5) thereunder. An original notice of the filing of the post-effective amendment was issued by the Commission on July 30, 1993 (HCAR No. 25861) ("Original Notice").

By order dated September 22, 1992 (HCAR No. 25638) ("1992 Order"), CPL was authorized to issue and sell, through December 31, 1994, up to $800 million of new first mortgage bonds ("New Bonds"). As of July 30, 1993, CPL had issued $765 million aggregate principal amount of New Bonds pursuant to the 1992 Order.

CPL now requests authorization to issue and sell up to $360 million of additional first mortgage bonds ("Additional Bonds"), in one or more series, through December 31, 1995. Except as provided below, the Additional Bonds will have the same terms and conditions and be sold in the same manner contemplated by the 1992 Order.

The Additional Bonds will have maturities of not less than three nor more than thirty-five years. CPL estimates that the Additional Bonds will be issued at an interest rate of between 5½% and 8½% depending on market conditions and states that in no event will the interest rate on the Additional Bonds exceed 11%.

CPL proposes to sell the Additional Bonds either pursuant to competitive bidding or in negotiated transactions with underwriters or agents. It, therefore, requests an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. In the Original Notice, CPL also requested authority and was authorized to enter into negotiations with potential underwriters with respect to the interest rate, redemption provisions and other terms and conditions applicable to the Additional Bonds, and to set the terms of the Additional Bonds, subject to the receipt of the order of this Commission, requested hereby, authorizing their issuance and sale.

In addition, CPL seeks authorization to issue the Additional Bonds with terms that deviate from the standards contained in the Commission's Statement of Policy Regarding First Mortgage Bonds, as amended, (HCAR Nos. 13105 and 16369). The Additional Bonds may include terms which (i) limit CPL's ability to redeem or refund the Additional Bonds for a period of up to fifteen years, (ii) do not include a sinking fund or retirement fund requirement, and/or (iii) do not restrict CPL's ability to pay dividends on its common stock.

The proceeds from the sale of the Additional Bonds will be used principally to refund all or a portion of $143 million of 9⅜% Series Z Bonds due December 1, 2019 ("Series Z Bonds"). The Series Z Bonds will become redeemable on December 1, 1994, at a general redemption price of $106.98, plus accrued and unpaid interest to the redemption date. If CPL decides to acquire the Series Z Bonds prior to December 1, 1994, it proposes to do so by means of a tender offer to holders of the Series Z Bonds. The proceeds may also be used to redeem all or a portion of $28 million of 6⅝% Series J Bonds due January 1, 1998 ("Series J Bonds") and $36 million of 7% Series L Bonds due February 1, 2002 ("Series L Bonds"). (Hereafter, the Series Z, Series J and Series L Bonds are collectively referred to as the "Old Bonds".) In addition, CPL proposes that the proceeds may be used to redeem all or a portion of CPL's outstanding 500,000 shares of 8.72% Preferred Stock, par value $100 per share ("Preferred Stock"), at the then current applicable redemption price, currently $102.91 per share, together with all unpaid dividends thereon. Any net proceeds not used for the redemption or repurchase of the Old Bonds and Preferred Stock will be used to repay outstanding short-term borrowings incurred or expected to be incurred primarily to finance construction expenditures, to pay for increased fuel and other costs, to provide working capital and for other general corporate purposes. In the event that the proceeds from the sale of the Additional Bonds are less than the amount required to redeem or repurchase all of the Old Bonds or Preferred Stock, CPL will pay a portion of the redemption or tender price from internally generated funds or available short-term borrowings pursuant to an order of this Commission dated March 31, 1993 (HCAR No. 25777).

CPL states that it will not redeem or repurchase the Old Bonds or Preferred Stock unless the estimated present value savings derived from the net difference between interest or dividend payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, greater than the present value of all redemption, tendering and issuing costs, assuming an appropriate discount rate. Such discount rate would be based on the estimated interest rate of the Additional Bonds issued for refunding purposes.

Northeast Utilities, et al. (70–8084)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, a registered holding company, and its wholly owned direct and indirect nonutility subsidiary companies, Charter Oak Energy, Inc. ("Charter Oak") and COE Development Corporation ("COE Development"), both at 107 Selden Street, Berlin, Connecticut 06037, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b) and 33 of the Act and rules 45(a), 87(b)(1), 90 and 91 thereunder.

Pursuant to two recent orders of the Commission dated December 30, 1992 (HCAR No. 25726) and December 29, 1992 (HCAR No. 25721), Charter Oak is authorized to pursue preliminary development activities with regard to investment and participation in qualifying cogeneration and small power production facilities ("QFs") and independent power facilities. In addition, Charter Oak is authorized to provide consulting services in relation to QFs and IPPs. Northeast is currently authorized to invest up to $10 million annually in Charter Oak, and Charter Oak is authorized to invest up to $9 million in COE Development annually.

The applicants now request authority for Northeast to invest up to an additional $7 million in Charter Oak for the purchase of an interest in two nonutility subsidiaries that will own an interest in a foreign utility company ("Encoe Partners").[1] Northeast's investment in Charter Oak may take the form of additional acquisitions of common stock or capital contributions.

Encoe Partners is a general partnership[2] formed for the sole

[1] Northeast and Charter Oak have, on behalf of Encoe Partners, qualified Encoe Partners as a foreign utility company under section 33 of the Act.

[2] The general partners of Encoe Partners are Enrici Power Marketing Limited ("Enrici") and Enron Europe Liquids Processing Limited

purpose of building, owning and operating a power generating facility in the United Kingdom ("Power Plant") and acquiring a one-third interest in certain rights and obligations under a power contract ("Contract"). The Power Plant is related to the 1875 MW gas-fired combined cycle power plant recently completed in Teesside, Wilton, Cleveland, England ("Teesside Project"). Encoe Partners has contracted for certain rights necessary to build, own and operate the Power Plant, a 2.176 MW plant that will produce power by harnessing the pressure in the natural gas pipeline feeding the Teesside Project. Encoe Partners will invest up to £3,875,000 in constructing the Power Plant.

Charter Oak intends to acquire its interest in Encoe Partners by acquiring interests in two nonutility subsidiary companies for $4,800,000, excluding transaction costs.[3] Charter Oak will directly acquire an interest in one of Encoe Partners' general partners, COE (UK) Corp. ("COE (UK)"), and its parent company, COE (Gencoe) Corp. ("COE (Gencoe)"). COE (UK) presently has one share of Class A voting common stock issued and outstanding, which is held by COE (Gencoe). Charter Oak intends to acquire three shares of Class A voting common stock and 796 shares of Class B non-voting common stock of COE (UK) for £2,663,323. As a result of this acquisition, Charter Oak will be the owner of 79.9% of the outstanding common stock of COE (UK).

COE (Gencoe) presently has 510 shares of Class A common stock issued and outstanding, which are all held by The JFG Encoe Trust ("Trust"). The applicants request authorization for Charter Oak to acquire 490 shares of Class B common stock of COE (Gencoe) for £167,503, after which Charter Oak will hold 49% of the common stock. The remaining 51% of COE (Gencoe)'s common stock will continue to be held by the Trust.

Authority is also requested for COE (Gencoe), which will then be a subsidiary of Charter Oak, to acquire 200 shares of Class B nonvoting common stock in COE (UK) in addition to the one share of Class A voting common stock which it already owns. In consideration for the acquisition of these shares, COE (Gencoe) will pay COE (UK) £670,010. As a result of this acquisition, COE (Gencoe) will be the beneficial owner of 20.1% of the outstanding common stock of COE (UK). The remainder of the common stock will be held directly by Charter Oak, as discussed above.

The applicants also request authorization for Charter Oak to loan £502,505 to COE (Gencoe) pursuant to a loan agreement and to be evidenced by a promissory note. Interest will be determined at the Applicable Federal Rate as determined under section 1274(d) for the Internal Revenue Code of 1986. The loan will have a term of 10 years, and repayment will be made through a cash flow repayment mechanism. To the extent that available cash flow is not sufficient to repay the loan, interest on the note will be added to the principal amount of the note.

COE (UK) has no obligation to make any further capital contributions to Encoe Partners beyond its initial capital contribution of $4,800,000. Northeast, Charter Oak, COE Development and COE (Gencoe) will not be liable for any other Encoe Partner's obligations.

Enron Power Operations Limited, a wholly owned subsidiary of Enron Europe, will manage the operation of the Power Plant and administer the Contract on behalf of Encoe Partners. The applicants represent that Northeast Utilities Service Company will provide only a minimum amount of services to COE (Gencoe) and COE (UK) on an at-cost basis under section 13(b). These services will consist of monitoring the investment and limited ancillary accounting, legal and tax services related to incorporating the financial statements of COE (Gencoe) and COE (UK) into Northeast's financial statements. The cost of these services will not exceed $25,000 per annum. The applicants represent that no other company in the Northeast Utilities system has or will enter into any sales, service or construction agreement with COE (Gencoe), COE (UK) and Encoe Partners.

In connection with the acquisition of 51% of the outstanding common stock of COE (Gencoe) by the Trust, Charter Oak proposes to provide two of the beneficiaries of the Trust with loans of up to $75,000 to cover certain possible tax assessments and an indemnification of up to $75,000 to cover other possible tax liabilities. The interest rate on the loans would be at the Applicable Federal Rate and the term of the loans would be five years.

Allegheny Generating Company (70–8225)

Allegheny Generating Company ("Allegheny Generating"), Tower Forty Nine (36th Floor), 12 East 49th Street, New York, New York 10017, an indirect wholly owned subsidiary company of Allegheny Power System, a registered holding company, has filed a declaration under sections 6, 7, and 12(c) of the Act and Rules 42, 50, and 50(a)(5) thereunder.

Allegheny Generating proposes to issue and sell through December 31, 1994, one or more series of unsecured debentures ("Debentures") in an aggregate principal amount not to exceed $150 million. The Debentures of any such series will mature no later than thirty years from the date of their issuance, and will be issued under an indenture dated December 1, 1986 between Allegheny Generating and Morgan Guaranty Trust Company of New York, as supplemented. The Debentures may include a provision which would preclude Allegheny Generating from redeeming any such Debentures for the first five years after their issuance at a regular redemption price, if such redemption is for the purpose of refunding such Debentures through the use, directly or indirectly, of borrowed funds at an effective interest cost of less than the effective interest cost to Allegheny Generating of the Debentures.

The proceeds from the Debentures' sale, together with other available cash, will be used to refund $100 million of Allegheny Generating's debentures, 9⅛% Series Due 2016 and $50 million of Allegheny Generating's debentures, 8¾% Series Due 2017, in each case with interest accrued to the redemption date. Allegheny Generating states that it will not enter into the proposed refunding transactions unless the estimated present value savings derived from the net difference between interest payments on the new issues of comparable securities and on the securities to be refunded is, on an after tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate.

Allegheny Generating proposes to sell the Debentures either through the alternative competitive bidding procedures authorized by the Commission's Statement of Policy Concerning Application of Rule 50 under the Public Utility Holding Company Act of 1935 (HCAR No. 22623, Sept. 2, 1982), or through an exception from competitive bidding requirements of Rule 50. Allegheny Generating requests authorization to commence

("EELPL"), both subsidiaries of Enron Europe Limited ("Enron Europe"), and COE (UK) Corp.

[3] The applicants state that this figure is an estimate that reflects an investment of £3,333,333 at an exchange rate of $1.44 to the British pound. Charter Oak purchased a currency convertible hedge for $186,120 to allow it to convert $4,752,000 to £3,300,000, at an average rate of $1.44 to the British pound.

negotiations with underwriters. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–19475 Filed 8–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19615; 812–8396]

Technology Funding Medical Partners I, L.P., et al.; Application

August 6, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Technology Funding Medical Partners I, L.P. (the "Fund"), Technology Funding Inc. ("TFI"), and Technology Funding Ltd. ("TFL").

RELEVANT ACT SECTIONS: Conditional order requested under section 17(d) and rule 17d–1 thereunder permitting certain joint transactions otherwise prohibited by section 57(a)(4) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 17(d) and rule 17d–1 permitting the Fund to participate in joint transactions with certain affiliated business development companies sponsored and advised by TFI and/or TFL pursuant to an existing order (the "Prior Order").[1]

FILING DATE: The application was filed on May 12, 1993, and an amendment thereto was filed on August 4, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 31, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 2000 Alameda de las Pulgas, San Mateo, California 94403.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund is a limited partnership organized under Delaware law pursuant to an Amended and Restated Limited Partnership Agreement (the "Partnership Agreement"). The Fund has elected to be regulated as a business development company under the Act. The Fund is designed to provide individuals with the ability to participate in venture capital investments in emerging companies or in unaffiliated venture capital partnerships (the "Portfolio Companies"). The Fund's investment objectives are long-term capital appreciation from venture capital investments in the Portfolio Companies and preservation of limited partner capital through risk management and active involvement with the Portfolio Companies.

2. TFI and TFL serve as the Managing General Partners of the Fund. TFI is a California corporation registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). TFL is a California limited partnership registered as an investment adviser under the Advisers Act. TFL has five individual general partners and 24 limited partners. TFL owns over 90% of the stock of TFI. The remaining stock is owned by outside investors.

3. The Fund has five general partners, three of whom are individuals (the "Individual General Partners"). No Individual General Partner of the Fund serves as an Individual General Partner of any other business development company sponsored or advised by the Managing General Partners. The Partnership Agreement provides that at least a majority of the general partners of the Fund must be individuals who are not "interested persons" of the Fund within the meaning of the Act (the "Independent General Partners"). All Independent General Partners are (and will be) natural persons.

4. Currently, all of the Individual General Partners of the Fund are also Independent General Partners. The Fund has received an exemptive order determining that its Independent General Partners are not "interested persons" of the Fund or of certain other entities specified in the order within the meaning of section 2(a)(19) of the Act solely by reason of being a general partner of the Fund.[2]

5. The Partnership Agreement provides that if at any time the number of Independent General Partners is less than a majority of the general partners, the general partners shall, within 90 days, designate and admit one or more Independent General Partners so as to restore the number of Independent General Partners to a majority of the general partners.

6. Pursuant to the Partnership Agreement, the Individual General Partners have complete and exclusive authority to manage and control the Fund, except for certain specific activities for which the Managing General Partners are responsible under the supervision of the Individual General Partners. The Individual General Partners provide overall guidance and supervision with respect to the Fund's operations, and perform all duties that the Act imposes on the boards of directors of business development companies organized in corporate form. The Managing General Partners are charged with certain responsibilities pursuant to the Fund's Partnership Agreement, including authority to determine and manage the Fund's venture capital investments and performance of the day-to-day management of operations, subject to supervision of the Individual General Partners.

7. Under the Prior Order, three business development companies sponsored by the Managing General Partners are permitted to engage in co-investment transactions. These business development companies are Technology Funding Partners III, L.P.; Technology Funding Venture Partners IV, An Aggressive Growth Fund, L.P.; and Technology Funding Venture Partners V, An Aggressive Growth Fund, L.P. (the "Partnerships"). The Fund and the Partnerships have identical investment objectives.

8. Applicants seek a conditional order under section 17(d) and rule 17d–1 permitting the Fund to participate with the Partnerships (together with the Fund, the "Co-Investing Funds") in transactions which are otherwise prohibited by section 57(a)(4) and rule

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[1] Investment Company Act Release Nos. 17581 (Jul. 11, 1990) (notice) and 17654 (Aug. 7, 1990) (order).

[2] Investment Company Act Release Nos. 19183 (Dec. 28, 1992) (notice) and 19229 (Jan. 25, 1993) (order).

17d–1 (a "co-investment transaction") pursuant to the Prior Order.

Applicant's Legal Analysis

1. Section 17(d) and rule 17d–1 thereunder provide, among other things, that it shall be unlawful for an affiliated person of an investment company, or an affiliated person of such person, acting as principal, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which any such investment company is a participant, unless the Commission has issued an exemptive order regarding such joint enterprise or arrangement. Section 57(a)(4) applies the same prohibitions to affiliated persons of a business development company. Section 57(i) applies the rules adopted under section 17(d) to business development companies.

2. Applicants assert that the fiduciary duties imposed on the general partners provide significant protection for limited partners. In addition, the Managing General Partners will have no financial interest that would serve as a conflict in exercising their fiduciary duties. Specifically, the Managing General Partners will have only their general partner interests in the Co-Investing Funds and their compensation and expense reimbursement arrangements, as described in the application.

3. Applicants contend that the terms of any co-investment transaction will not be less advantageous to any Co-Investing Fund than they are to any other Co-Investing Fund. To the contrary, applicants state that each Co-Investing Fund is offered the opportunity to participate in the co-investment transactions on a *pro rata* basis.

4. Applicants further state that the Fund will participate in co-investment transactions permitted under the Prior Order on the same basis and subject to the same terms and conditions set forth in the Prior Order.

Applicants' Conditions

Applicants have agreed that any relief will be subject to the following conditions:

1. The Co-Investing Funds will not have common Independent General Partners. The general partners of each Co-Investing Fund will approve co-investment transactions in advance. The general partners of each Co-Investing Fund will be provided with periodic information, compiled by the Managing General Partners, listing all venture capital investments made by the other Co-Investing Funds.

2. (a) Before a co-investment transaction will be effected, the Managing General Partners will make an initial determination on behalf of each Co-Investing Fund regarding investment suitability. Following this determination, a written investment presentation respecting the proposed co-investment transaction will be made to the general partners of each Co-Investing Fund, except that such information need not be distributed to the general partners of any Co-Investing Fund that, at that time, does not have funds available for investment. Such information will include the name of each Co-Investing Fund that proposes to make the investment and the amount of each proposed investment. The Managing General Partners will maintain at each Co-Investing Fund's office a copy of the written records detailing the factors considered in any such preliminary determination.

(b) The information regarding the Managing General Partners' preliminary determinations will be reviewed by the Independent General Partners of each Co-Investing Fund. The general partners of each Co-Investing Fund, including a majority of the Independent General Partners, will make an independent decision as to whether and how much to participate in an investment based on what is appropriate under the circumstances. If a majority of the Independent General Partners of any Co-Investing Fund determine that the amount proposed to be invested by the Co-Investing Fund is not sufficient to obtain an investment position that they consider appropriate under the circumstances, that Co-Investing Fund will not participate in the joint investment. Similarly, a Co-Investing Fund will not participate in a joint investment if a majority of its Independent General Partners determine that the amount proposed to be invested is an amount in excess of that which is determined to be appropriate under the circumstances. A Co-Investing Fund will only make a joint investment with another Co-Investing Fund (or Co-Investing Funds) if a majority of the Independent General Partners of that Co-Investing Fund conclude, after consideration of all information deemed relevant, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the Co-Investing Fund and do not involve overreaching of the Co-Investing Fund on the part of any person concerned;

(ii) The transaction is consistent with the interests of the limited partners of the Co-Investing Fund and is consistent with the Co-Investing Fund's investment objectives and policies as recited in filings made by the Co-Investing Fund under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to limited partners; and

(iii) The investment by one or more of the other Co-Investing Funds would not disadvantage the Co-Investing Fund in the making of such investment, maintaining its investment position, or disposing of such investment, and that participation by the Co-Investing Fund would not be on a basis different from or less advantageous than that of other affiliated participants.

(c) The Independent General Partners will, for purposes of reviewing each such recommendation of the Managing General Partners, request such additional information from the Managing General Partners as they deem necessary to the exercise of their reasonable business judgement, and they will also employ such experts, including lawyers and accountants, as they deem appropriate to the reasonable exercise of this oversight function.

3. The general partners of each Co-Investing Fund, including a majority of the Independent General Partners, will make their own decision and have the right to decide not to share a particular investment with another Fund. There will be no consideration paid to the Managing General Partners (or affiliated persons of such affiliated persons), directly or indirectly, including without limitation any type of brokerage commission, in connection with a co-investment transaction. The Managing General Partners will continue, however, their compensation and expense reimbursement arrangements with respect to each Co-Investing Fund and will participate indirectly in a transaction only through their existing general partner interests in each Co-Investing Fund.

4. Each Co-Investing Fund will be entitled to consider purchasing a portion of each co-investment transaction equal to the ratio of the Co-Investing Fund's net assets to the total net assets of all Co-Investing Funds that have determined to participate in the co-investment transaction, provided that each Co-Investing Fund may determine not to take its full allocation where a majority of the Independent General Partners and a majority of the general partners of the Co-Investing Fund determine that to do so would not be in the best interests of the Co-Investing Fund. Once a Co-Investing Fund is fully invested, its net assets will no longer be included in the denominator of this

fraction. All "follow-on" investments, including the exercise of warrants or other rights to purchase securities of the issuer, will be treated in the same manner as the initial co-investment transaction, except that the denominator in the fraction will consist solely of the net assets of those Co-Investing Funds which chose to participate in the initial co-investment transaction.

5. All co-investment transactions will consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, at the same unit consideration, on the same terms and conditions, and the approvals will be made in the same period. If one Co-Investing Fund elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by another Co-Investing Fund, notice will be given to each other Co-Investing Fund at the earliest practical time and each other Co-Investing Fund will be given the opportunity to participate in such disposition at the same time for the same unit consideration and in amounts proportional to its respective holdings of such securities. The Managing General Partners will formulate a recommendation as to participation by such Co-Investing Fund in such a disposition and provide the recommendation to the Independent General Partners of such Co-Investing Fund. Each Co-Investing Fund will participate in any such disposition if a majority of its Independent General Partners determines that such action is fair and reasonable to the Co-Investing Fund, is in the best interests of the Co-Investing Fund and does not involve overreaching of the Co-Investing Fund or its limited partners by the Managing General Partners. Each Co-Investing Fund will bear its own expenses associated with the disposition of a portfolio security. The Independent General Partners of each Co-Investing Fund will record in their records the Managing General Partners' recommendation and their decision as to whether to participate in such disposition, as well as the basis for their decision that such action is fair and reasonable to, and is in the best interest of, the Co-Investing Fund.

6. A decision by a Co-Investing Fund (i) not to participate in a co-investment transaction, (ii) to take less or more than its full allocation, or (iii) not to sell, exchange, or otherwise dispose of a co-investment in the same manner and at the same time as the other Co-Investing Fund electing to participate shall include a finding that such decision is fair and reasonable to the Co-Investing Fund or its limited partners by the Managing General Partners. The Independent General Partners of a Co-Investing Fund will be provided quarterly for review all information concerning co-investment transactions made by the Co-Investing Funds, including co-investment transactions in which a Co-Investing Fund has declined to participate, so that they may determine whether all co-investment transactions made during the preceding quarter, including those co-investment transactions that were declined, complied with the conditions set forth above. In addition, the Independent General Partners of a Co-Investing Fund will consider at least annually the continuing appropriateness of the standards established for co-investment transactions by a Co-Investing Fund, including whether use of the standards continues to be in the best interest of the Co-Investing Fund and its limited partners and does not involve overreaching of the Co-Investing Fund or its limited partners on the part of any party concerned.

7. The Independent General Partners of each Co-Investing Fund will maintain the records required by section 57(f)(3) of the Act and will comply with section 57(h) of the Act, and each Co-Investing Fund will otherwise maintain all records required by the Act. All records referred to or required under these conditions will be available for inspection by the Commission and will be preserved permanently, the first two years in an easily-accessible place.

8. No general partner or affiliated person of any general partner will participate in a transaction with a Co-Investing Fund unless a separate exemptive order with respect to such transaction has been obtained. For this purpose, the term "participate" shall not include either the Managing General Partners' existing general partner interests in, or their normal compensation and expense reimbursement arrangements with, each Co-Investing Fund.

9. No co-investment transaction will be made pursuant to the requested order respecting Portfolio Companies in which any applicant or affiliated person of any applicant has previously acquired an interest, provided that this prohibition shall not be applicable to any previous investment specifically permitted by an order of the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-19477 Filed 8-12-93; 8:45 am]

BILLING CODE 8010-01-M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Regional Advisory Board Meetings for Regions 1-6

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Meetings notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is hereby published for the Series 13 Regional Advisory Board meetings for Regions 1 through 6. The meetings are open to the public.

DATES: The 1993 meetings are scheduled as follows:

1. September 8, 9 a.m. to 12:30 p.m., Philadelphia, Pa., Region 1 Advisory Board.
2. September 9, 9 a.m. to 12:30 p.m., Newport Beach, Calif., Region 6 Advisory Board.
3. September 14, 9 a.m. to 12:30 p.m., Atlanta, Ga., Region 2 Advisory Board.
4. September 21, 9 a.m. to 12:30 p.m., Denver, Colo., Region 5 Advisory Board.
5. September 23, 9 a.m. to 12:30 p.m., Dallas, Texas, Region 4 Advisory Board.
6. September 28, 9 a.m. to 12:30 p.m., Kansas City, Mo., Region 3 Advisory Board.

ADDRESSES: The meetings will be held at the following locations:

1. Philadelphia, Pa.—Warwick Hotel, 1701 Locust Street.
2. Newport Beach, Calif.—Sheraton Newport Beach, 4545 MacArthur Boulevard.
3. Atlanta, Ga.—Westin Peachtree Plaza, 210 Peachtree Street.
4. Denver, Colo.—Executive Tower Inn, 1405 Curtis Street.
5. Dallas, Texas—Plaza of the Americas, 650 N. Pearl Street.
6. Kansas City, Mo.—Westin Crown Center, One Pershing Road.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street NW., Washington, DC 20232, 202/786-9675.

SUPPLEMENTARY INFORMATION: Section 501(a) of the Financial Institutions

Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183, 382–383, directed the Oversight Board to establish one national advisory board and six regional advisory boards.

Purpose: The Regional Advisory Boards provide the Resolution Trust Corporation (RTC) with recommendations on the policies and programs for the sale of RTC owned real property assets.

Agenda: Topics to be addressed at the six meetings will include: local real estate market conditions, an examination of the RTC Small Investor Program and RTC's single- and multi-family affordable housing disposition program. In addition, the vice president from the respective RTC field office will report on Treasury Secretary Lloyd Bentsen's RTC Management Reforms and review RTC's asset sales strategies and business plan.

Statements: Interested persons may submit to an advisory board written statements, data, information, or views on the issues pending before the board prior to or at the meeting. The meeting will include a public forum for oral comments. Oral comments will be limited to approximately five minutes. Interested persons may sign up for the public forum at the meeting. All meetings are open to the public. Seating is available on a first come first served basis.

Dated: August 10, 1993.

Jill Nevius,

Committee Management Officer, Office of Advisory Board Affairs.

[FR Doc. 93–19498 Filed 8–12–93; 8:45 am]

BILLING CODE 2222–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 6, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49068.

Date filed:August 2, 1993

Parties: Members of the International Air Transport Association.

Subject:

Telex TC31 Mail Vote 642

US–Australia/New Zealand Excursion Fares

r–1—071w

r–2—073k

Proposed Effective Date: October 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–19523 Filed 8–12–93; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 6, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49069

Dated filed: August 2, 1993

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 30, 1993

Description: Application of Federal Express Corporation, pursuant to section 401 of the Act and subpart Q of the Regulations, for a certificate of public convenience and necessity authorizing it to operate scheduled all-cargo foreign air transportation between the United States and Uruguay.

Docket Number: 49076

Date filed: August 6, 1993

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 3, 1993

Description: Application of Traslados, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for renewal of its foreign air carrier permit authorizing it to engage in nonscheduled and charter air transportation of property and mail between Guatemala and the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–19522 Filed 8–12–93; 8:45 am]

BILLING CODE 4910–62–P

Aviation Security Advisory Committee

AGENCY: Notice of Aviation Security Advisory Committee Meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held September 21, 1993, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the FBI Headquarters, 10th and Pennsylvania Avenue NW., J. Edgar Hoover Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue SW., Washington, DC 20591, telephone 202–267–7451.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held September 21, 1993, at the Federal Bureau of Investigation, 10th and Pennsylvania Avenue NW., Washington, DC.

The agenda for the meeting will include reports from the Universal Access System, Egress, and Transient Aircrew working groups. Additional topics will include Contingency Plans, Implementation of Cargo and Mail Measures, Aviation Security in the Global Community Conference, and Screener Proficiency Evaluation and Reporting System. Attendance at the September 21, 1993, meeting is open to the public but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue SW., Washington, DC 20591, telephone 202–267–7451.

Issued in Washington, DC, on August 9, 1993.

O.K. Steele,

Assistant Administrator for Civil Aviation Security.

[FR Doc. 93–19514 Filed 8–12–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

National Motor Carrier Advisory Committee Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a public meeting of the National Motor Carrier Advisory Committee. The focus of the meeting is on: (1) the North American Free Trade Agreement; (2) the National Highway System; (3) major regulations; (4) the results of Roadcheck 1993; and (5) findings and next steps for the zero base approach to regulations.

DATES: The meeting will be from 8:30 a.m. to 5 p.m. on September 9, 1993, and from 8 a.m. to 12:00 noon on September 10, 1993.

ADDRESSES: Federal Highway Administration, 400 Seventh Street, SW., room 2201, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas J. McKelvey, HIA–20, room 3104, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1861. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 6, 1993.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 93–19453 Filed 8–12–93; 8:45 am]

BILLING CODE 4910–22–P

U.S. INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2549), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Age of Rubens" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the listed exhibit objects at the Museum of Fine Arts, Boston, Massachusetts, from on or about September 22, 1993, to on or about January 2, 1994, and the Toledo Museum of Art from on or about February 2, 1994 to on or about April 24, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 10, 1993.

Peter Ritenburg,

Acting General Counsel.

[FR Doc. 93–19532 Filed 8–12–93; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: August 6, 1993.

By direction of the Secretary.

Patti Viers,

Chief, Forms, Correspondence and Mail Management Division.

Reinstatement

1. VA Acquisition Regulation Part 809 (48 CFR chapter 8, part 809)
2. The information is used to qualify contractors and/or their products under applicable Federal or interim Federal specifications. The information is necessary to ensure that VA receives quality products and services.
3. Businesses or other for-profit—Small businesses or organizations
4. 75 hours
5. 30 minutes
6. On occasion
7. 150 respondents

Reinstatement

1. VA Acquisition Regulation part 836 (48 CFR chapter 8, part 836)
2. The information is necessary in order to obtain the proposal and supporting cost or pricing data from the contractor and subcontractor in the negotiation of all architect-engineer contracts for the design services when the contract price is estimated to be $50,000 or over.
3. Businesses or other for-profit—Small businesses or organizations
4. 5,735 hours
5. 26.8 hours
6. On occasion
7. 214 respondents.

[FR Doc. 93–19468 Filed 8–12–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: August 6, 1993.

By direction of the Secretary.

Patti Viers,

Chief, Forms, Correspondence and Mail Management Division.

Extension

1. Counseling Record—Personal Information, VA Form 28-1902
2. The form is used to collect information to assist a counseling psychologist in VA to determine the claimant's eligibility for counseling services. The information then becomes the basis for development of approaches to explore the claimant's rehabilitation, training, employment or adjustment needs.
3. Individuals or households
4. 30,000 hours
5. 30 minutes
6. On occasion
7. 60,000 respondents

Revision

1. Monthly Certification of Flight Training, VA Form 22-6553c
2. The form is used by students (veterans, servicemembers and reservists) and flight schools to report the hours and cost of flight training received and the termination of training. The information is used by VA to determine the amount of benefits payable to the student who is pursing flight training.
3. Individuals or households—Businesses or other for-profit—Non-profit institutions—Small businesses or organizations
4. 3,000 hours
5. 30 minutes
6. On occasion—Monthly
7. 1,000 respondents.

[FR Doc. 93-19469 Filed 8-12-93; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 155
Friday, August 13, 1993

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 Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:07 a.m. on Tuesday, August 10, 1993, the Corporation's Board of Directors determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum and resolution regarding payment of claims arising from severance pay or "golden parachute" agreements of failed banks where employment has been terminated after bank failure.

By the same majority vote, the Board further determined that no notice earlier than August 5, 1993, of the change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 10, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–19638 Filed 8–10–93; 4:39 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 18, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed amendments to Regulation S (Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records) regarding enhanced recordkeeping requirements for certain wire transfers by financial institutions.

Discussion Agenda

2. Publication for comment of proposed amendments to Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) regarding: (1) Exceptions to the aggregate insider lending limit; (2) the definition of "extension of credit"; and (3) modifications to the recordkeeping requirements.

3. 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, DC 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19639 Filed 8–11–93; 11:26 am]

BILLING CODE 6210–01–P–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, August 18, 1993, 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, NW., Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19640 Filed 8–11–93; 11:26 am]

BILLING CODE 6210–01–P

federal register

Friday
August 13, 1993

Part II

Department of Health and Human Services

Health Care Financing Administration

16 CFR Parts 433 and 447

Medicaid Program; Limitations on Payments to Disproportionate Share Hospitals; Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 433 and 447

[MB-062-F]

RIN 0938-AF99

Medicaid Program; Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule clarifies HCFA's policies concerning provider related donations and health care related taxes. In addition, this final rule revises regulations with regard to disproportionate share hospital spending limitations. This final rule amends an interim final rule that was published in the **Federal Register** on November 24, 1992. The interim final rule established in Medicaid regulations limitations on Federal financial participation (FFP) in State medical assistance expenditures when States receive funds from provider-related donations and revenues generated by certain health care-related taxes. The interim final rule also added provisions that establish limits on the aggregate amount of payments a State may make to disproportionate share hospitals for which FFP is available.

The provisions of the interim final rule were required by the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991.

EFFECTIVE DATE: This rule is effective September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Bernard Truffer (410) 966-1357.

SUPPLEMENTARY INFORMATION:

I. Provider-Related Donations and Health Care-Related Taxes

A. Summary of Interim Final Regulations

The Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Public Law 102-234), enacted December 12, 1991, amended section 1903 of the Social Security Act (the Act) by adding a new subsection (w) regarding the receipt of provider-related donations and health care-related taxes by a State as the State's share of financial participation under Medicaid. In general, under section 1903(w) of the Act, a reduction in Federal financial participation (FFP) will occur if a State receives donations made by, or on behalf of, health care providers unless the donations are bona fide donations or meet outstationed eligibility worker donation requirements, as specified in the law.

The law specifies the types of health care-related taxes a State is permitted to receive without a reduction in FFP. In general, such taxes are broad-based taxes that apply in a uniform manner to all health care providers in a class, and that do not hold providers harmless for their tax costs. However, the law permits States that have received, by specific dates prior to the enactment of Public Law 102-234, provider-related donations and health care-related taxes that are not permitted by this law, to continue to receive them during the State's transition period without a reduction in FFP.

On November 24, 1992, we published in the **Federal Register** (57 FR 55261) an interim final regulation implementing the limitations on FFP in State medical assistance expenditures when States receive funds from provider-related donations and revenues generated by certain health care-related taxes. In this interim final rule, we provided the following changes to our regulations to implement the new statutory provisions:

- We incorporated the statutory definitions of an entity related to a health care provider, provider-related donations, and health-care related taxes.
- We defined bona fide donations.
- We incorporated the classes of health care items and services and providers, as defined by the Act, for purposes of determining permissible health care-related taxes, and expanded the class that included intermediate care facilities for the mentally retarded (ICF/MR) specified in the statute to include ICF/MR services provided in certain group homes for the mentally retarded. We also incorporated an additional class that includes certain licensing or certification fees on providers of medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law.
- We specified the general rules regarding the reduction in State expenditures by revenues generated from provider-related donations and health care-related taxes received by a State or unit of local government before calculating FFP.
- We established the rules regarding the use of revenues from provider donations and health care-related tax programs during a State's transition period.
- We established rules regarding the calculation of the State base percentage (25-percent cap on taxes and donations) for purposes of determining the maximum amount of total provider-related donations and health care-related taxes that a State may receive without a reduction in FFP during a State fiscal year.
- We established rules regarding the types of donations and health care-related taxes that are permissible after the State's transition period. In particular, revenues from broad-based, health care-related taxes that are applied uniformly to providers, and do not exceed the 25-percent cap or hold providers harmless for the cost of the tax, may be received by States without a reduction in FFP.
- We established the waiver criteria under which we will determine whether a tax that does not meet the statutorily defined broad-based or uniform requirements is generally redistributive.
- We provided circumstances in which a provider is considered to be held harmless from a health care-related tax.
- We established reporting requirements for the State's submission of information to HCFA related to provider-related donations received and health care-related taxes collected by the State or units of local government during the Federal fiscal year.

B. Discussion of Public Comments

In response to the November 24, 1992, interim final rule with comment, we received 98 timely items of correspondence. The comments were submitted by hospitals, hospital associations, various levels of State and local governments, and a number of national health care organizations. Only a few of the commenters supported the taxes and donations provisions of the interim final rule in its entirety. The majority of the commenters urged us to reconsider our positions regarding the hold harmless provisions and the classes of health care items and services that are eligible for inclusion as a permissible health care-related tax.

The specific comments made by the commenters relating to the taxes and donations provisions of the interim final rule and our responses follow.

1. General Comments

Comment: One commenter stated that the interim final rule will significantly erode financial support for Medicaid programs in many States.

Response: Prior to the enactment of Public Law 102-234, some States directly linked donations and other voluntary payment programs to increases in Medicaid payment rates. Other States levied taxes or other mandatory payments on providers and modified Medicaid payment rates in such a way as to reimburse the provider for the cost of the tax. We agree that the statutory provisions and the implementing regulations will affect a State's use of provider-related donations and health care-related taxes, but only to the extent that a State is unable to either comply with the provisions of the law or find alternative sources of State funds to finance the Medicaid program.

Comment: Several commenters indicated that expanding the scope of this rule to tax and donation programs not used to fund the Medicaid program affects intergovernmental transfers and creates an inconsistency between the statute and rule and is not a true reflection of Congressional intent regarding the treatment of intergovernmental transfers. Commenters recommended that we review the statute and revise the regulation to clarify the treatment of intergovernmental transfers. Specifically, commenters requested that we clarify § 433.56 (which defines the separate classes of health care services and providers for purposes of imposing health care-related taxes) to make a State responsible only for taxes and donations received by political subdivisions that, through intergovernmental transfers, contribute to the State's general fund.

Response: These regulations do not interfere with the State's use of intergovernmental transfers unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-Federal share of Medicaid.

Comment: One commenter indicated that we should not attempt to dictate how each State should use their hospital tax levies.

Response: We do not agree that we are attempting to dictate States' use of hospital tax levies. The regulatory requirements address only the consequences on FFP, as delineated in the statute, when States receive provider-related donations and/or health care-related taxes. We believe the statute is consistent with our longstanding policy encouraging State flexibility in administering the Medicaid program. We do not want to dictate to States the permissible uses of particular dollars. The only statutory provision indirectly related to the use of health care-related tax revenue is in section 1903(w)(4) of the Act, which specifies three conditions under which a State or local government is determined to hold taxpayers harmless for their tax costs. If any of these conditions are met, the tax program would be determined to have a hold harmless provision and the tax would be impermissible. This section of the statute also provides that States are not precluded from using a tax to reimburse health care providers for medical assistance expenditures, or precluded from relying on this reimbursement to justify or explain the tax. In our view, we believe States may use revenue from otherwise permissible taxes to increase payment rates to the providers subject to the tax. However, States may not make Medicaid or other payments to providers that result in taxpayers being repaid dollar (or part of a dollar)-for-dollar for their tax costs.

Comment: Numerous commenters indicated that we incorrectly explained in the preamble of the interim final rule that the statutory provisions apply to all provider donations and taxes regardless of the use of the funds. Several other commenters indicated a range of general opinions about the regulation, ranging from those who thought it too expansive to those who found it too restrictive. Many of these comments recommended that we revise the rule to remove its regulatory authority over provider donations and taxes unrelated to Medicaid and give consideration to unique circumstances in each State, particularly when revenue from provider donation and tax programs is used to expand, not supplant, Medicaid. Others indicated that we do not have the authority through this regulatory policy to constrain States' non-Medicaid funding programs solely on the basis that health care providers participate in a program.

Response: We acknowledge that the interim final rule contains several technical provisions. However, we believe that the statute is clear regarding the applicability of its provisions and that the interim final rule does not create an inconsistent regulatory policy. Under section 1903(w) of the Act, effective January 1, 1992, a reduction in FFP will occur if a State either receives provider-related donations made by or on behalf of health care providers that are not bona fide or meet outstationed eligibility worker donation requirements (as specified in the law), or receives health care-related taxes that are not broad based or uniformly imposed, or that hold taxpayers harmless for their tax costs. Nowhere does the statute restrict its applicability to the Medicaid program nor is the designated use of this type of revenue addressed. Further, the use of provider-related donations and health care-related taxes to fund State-operated programs is protected to the extent that the technical requirements of the law are met.

Comment: One commenter indicated that the financial obligation to provide for those who cannot afford their own medical care should be spread as widely and as equitably as possible and not placed solely on one small segment of the community—that is, health care providers.

Response: Nothing in the law or the interim final rule was intended to encourage or sanction taxes on health care providers. Rather, the provisions of the law and implementing regulations merely stipulate the rules governing the availability of FFP when States impose such taxes.

Comment: One commenter indicated that § 433.58(g)(2)(ii) (which specifies that a State may not modify health care-related taxes in existence as of November 22, 1991, without a reduction of FFP, unless the modification only makes technical changes that do not alter the rate of the tax or the base of the tax and do not otherwise increase the proceeds of the tax) prohibits States from modifying its tax base during the transition period and precludes a State from coming into compliance by expanding a tax to all hospitals.

Response: Section 433.58(g)(2)(ii) is intended to provide guidance to States on the allowable changes to impermissible tax programs that would not result in a reduction of FFP. We agree that, as written, the regulatory section could be misconstrued. Therefore, we have modified this section by adding subsection (iv) which now explicitly specifies that modifications necessary to bring an impermissible tax program into compliance with the provisions of the statute will be permissible without a reduction of FFP.

Comment: One commenter asked that the cap on health care-related taxes be based on the best available data, including taxes and donations, as of State fiscal year 1992.

Response: Section 1903(w)(5)(C) (i) and (ii) of the Act (codified at § 433.60) specifies the requirements for the computation of the State base percentage during the State's transition period. Specifically, this provision of the law requires that when computing the State base percentage, the total amount of health care-related taxes must be determined based only on those taxes that were in effect, or for which legislation or regulations imposing such taxes were enacted, as of November 22, 1991. Further, in the case of a tax that is not in effect for the entire State fiscal year 1992, the law requires that the amount of the tax must be projected as if the tax were in effect for the entire year. With regard to donations, the law explicitly provides that the amount of provider-related donations must be determined based on programs in effect on September 30, 1991, and applicable to State fiscal year 1992, as demonstrated by State plan amendments, written agreements, State budget documentation, or other documentary evidence in existence on that date. Further, section 1903(w)(5) of the Act stipulates that the amount of provider-related donations and health care-related taxes applicable to State fiscal year 1992 will be determined based on the best available data as of the enactment of the law. Therefore, any change in the computation requirements must be accomplished through legislation, not regulation.

Comment: One commenter strongly supports the continuation of the limitation on provider taxes after October 1, 1995.

Response: Section 1903(w)(1)(A)(iv) of the Act (codified at § 433.70(a)(2)) specifies the time periods governing the limitations applicable to the receipt of health care-related taxes. Consequently, any extension of the applicable limits must be accomplished through legislation, not regulation.

Comment: One commenter recommended that we implement the regulation prospectively.

Response: Section 2(c)(1) of Public Law 102–234 requires that the provisions of this law be effective January 1, 1992, without regard to whether or not regulations are promulgated. To delay implementation of this rule by applying it prospectively would be in direct violation of the law. However, when the regulations impose new requirements, such as the hold harmless provisions, we have extended the deadline for compliance.

Comment: Several commenters requested that States that enacted new tax programs be given adequate time to revise such programs, without penalty, to comply with the law. Further, the commenters recommended that the length of the "grace period" be contingent on factors such as whether the State legislatures would need to revise these programs and when these legislatures will be in session.

Response: To accommodate States, we have extended the deadline for compliance of the hold harmless requirements to [30 days after publication date of this final rule]. We do not believe an additional grace period is necessary, since we have made minimal changes to the hold harmless provisions and States have been on notice of these requirements since the publication of the interim final rule on November 24, 1992.

Comment: One commenter suggested that compliance reviews be done on a State-by-State basis, and that three criteria be used to determine cases where a State law may not comply with the new requirements: (1) The reasonableness of the difference in interpretation of the law occurring between two parties; (2) the impact on a State's health care system if a retroactive denial occurs; and (3) the overall impact on the State's fiscal solvency and provision of general services to their citizens. The commenter further recommended that FFP not be withheld until the first quarter beginning after the end of the State legislative session following the publication of the final rule.

Response: The statute precludes implementation of the recommended review criteria or disallowance date. Moreover, we do not agree that compliance reviews should be done on the merits of individual State circumstances. Such reviews would be labor-intensive and administratively burdensome. The results of such reviews would be subjective and weaken the consistency and continuity in the national administration of the law.

Comment: One commenter requested that we make clear that no attempt will be made to disallow claims for FFP or adjust claimed expenditures because they were offset by withheld taxes where the withholding was not applicable in any quarter in which the State was not officially on notice at the outset of the quarter of HCFA's policies.

Response: We do not agree that the scope of these regulations applies to the operational aspects of withheld taxes. To the extent that the voluntary withholding of the tax is reported as the provider's income to the Internal Revenue Service (IRS) on Form 1099–MISC, and the IRS recognizes the full amount of the reported payment as income to the provider, the voluntary withholding of the tax amount would be permissible.

Comment: One commenter believes that States should be given the flexibility to raise funds from providers to administer a reasonable indigent care and Medicaid disproportionate share hospital (DSH) program without having to financially penalize non-Medicaid hospitals or hospitals whose indigent care/Medicaid levels do not reach the highest thresholds.

Response: In accordance with section 1903(w) of the Act, we intentionally described in the interim final rule how a State's expenditure for medical assistance is calculated when a State receives provider-related donations and/or health care-related taxes. We believe that neither the statute nor the interim final rule impairs a State's flexibility to raise funds from providers to administer either State or Federal health care programs.

Comment: One commenter indicated that the rules limit a State's ability to generate revenue, and that the effect of these rules limits a State's taxing authority. Another commenter indicated that the evaluation of State tax programs by HCFA sets a dangerous precedent by allowing a Federal agency a significant degree of control over State government funding.

Response: Neither the statute nor interim final rule limits a State's flexibility to impose health care-related taxes or other mandatory payments. Rather, the regulations address only the consequences on FFP when a State receives revenues from donations and health care-related taxes.

Comment: Numerous commenters expressed concern over our authority to reduce FFP for all impermissible donations and taxes. These commenters believed that we are assuming oversight of individual State's rights and that this policy interferes with each State's rights of taxation.

Response: As mentioned previously in this preamble, nothing in the statute limits a State's flexibility to impose health care-related taxes. Further, section 1903(w)(1)(A) of the Act is clear that the total amount expended by a State during a fiscal year as medical assistance will be reduced by the sum of any revenues received by the State or unit of local government in the State from either impermissible provider-related donations or impermissible health care-related taxes.

2. General Definitions (§ 433.52)

Comment: One commenter recommended that the definition of *entity related to a health care provider* exclude a supplier of health care items or services or a supplier to providers of health care items or services since a supplier cannot reasonably be considered "similar" in nature or kind to the close relationship that exists among corporate affiliates, common owners, or employees/spouses/siblings.

Response: We are concerned that if this category is not added, suppliers will have the power to donate money to the State and charge providers for this donation via the sale of supplies. Such a maneuver would be contrary to the intent of Public Law 102–234. Therefore, we have not revised the definition.

3. Bona Fide Donations (§ 433.54)

Comment: Two commenters suggested that the thresholds for presuming that a donation is bona fide—$5,000 for individuals and $50,000 for organizations—be indexed or periodically reviewed to ensure that they remain reasonable in light of current realities.

Response: We do not agree that the thresholds should be adjusted annually for inflation. The presumption of a bona fide donation threshold was established to minimize the administrative burden on the States and HCFA and to detect and effectively control any potential abusive situations. We believe the established thresholds are at a sufficient level to meet these objectives. If subsequent experience indicates a need for revisions of these thresholds, we will consider subsequent rulemaking to make appropriate revisions.

Comment: One commenter expressed concern that the operational definition of a bona fide donation is overly restrictive and prohibits legitimate donations that pose no significant financial risk to the Federal Government.

Response: Nothing in the interim final rule would in any way limit philanthropic provider donations. Moreover, the interim final rule does not preclude health care providers from making donations to Medicaid or other State programs as long as the requirements of the law are met. In the interim final rule, we exercised our authority to specify the types of provider-related donations that will be considered to be bona fide provider-related donations. In making this determination, we attempted to strike a meaningful balance between the explicit statutory provisions applicable to bona fide donations and those donations that can be presumed to be bona fide assuming a hold harmless practice does not exist.

Comment: One commenter suggested that a reasonable limitation on bona fide donations would be to establish a limit on any and all donations up to a maximum aggregate amount equal to 10-percent of the State's total Medicaid administrative expenditures.

Response: The statute neither imposes nor supports limits on the amount of bona fide provider-related donations a State may receive. To impose such limitations would be restrictive to States and would violate the provisions of the law.

Comment: Two commenters suggested that we broaden the definition of a bona fide donation to include donations from charitable organizations made to the State through health care providers, as long as the provider certifies that the source of the donation is bona fide as defined in the regulations.

Response: The statutory provisions of Public Law 102–234 do not apply to the treatment of donations from non-provider entities (that is, charitable organizations not related to providers). Further, both the statute and the interim final rule already sanction donations from health care providers regardless of the source of the funds when such donations satisfy the requirements of a bona fide donation. There is, however, no statutory authority that would permit health care providers to designate the source of the donated funds for purposes of satisfying the bona fide donation criteria.

4. Outstationed Eligibility Workers (§§ 433.58(d)(2) and 433.66(b)(2))

Comment: One commenter suggested that the regulations be amended to provide States flexibility in designing Medicaid eligibility outreach projects financed, in part, with provider donations to cover State administrative costs.

Response: The statutory provisions applicable to the permissible donations for the administrative costs of outstationed eligibility workers are explicit. Section 1903(w)(2)(C) of the Act is applicable to the direct costs of outstationed eligibility workers and does not include donations for outreach projects. However, nothing in this rule precludes States from receiving bona fide provider-related donations.

Comment: Two commenters requested that the rule be amended to make clear that the prorated costs of outreach activities (such as advertising campaigns) are allowable in the 10-percent cap on direct costs. Another commenter indicated that the rule needs clarification to allow for additional direct costs of outstationed eligibility workers not currently listed in the regulation.

One commenter indicated that outreach activities covers more than just activities applicable to the outstationed (State or local) workers at these sites. Therefore, the regulation should be revised to acknowledge more permissible outreach activities that are not directly tied to eligibility activities of the State or local staff. Specifically, section 1902(a)(55) of the Act directs States to provide receipt and initial processing of applications for medical assistance eligibility at locations other than those (welfare offices) used for receipt and processing of applications for Aid for Families with Dependent Children.

Response: We agree that the prorated costs of outreach activities should be allowable in the 10-percent cap. Therefore, we have modified §§ 433.58(d)(2) and 433.66(b)(2) of the regulations to reflect that prorated costs of all outreach activities applicable to the outstationed workers at these sites—not just pamphlets and materials distributed by the outstationed workers—are part of the costs of outstationed eligibility workers and are, therefore, applicable to the 10-percent cap. In addition, we have removed advertising campaigns as a disallowed cost because it is considered an outreach activity.

We also agree that outreach activities include more than just activities applicable to the outstationed (State or local) workers. However, because the law specifically addresses permissible provider donations only for the direct costs of State or local outstationed eligibility workers, we are not making further modifications, other than those described in the previous paragraph, to these regulations.

5. Health Care-Related Taxes Defined (§ 433.55)

Comment: Several commenters indicated that a health care-related tax subject to the provisions of Public Law 102–234 should include only those taxes that were specifically designed to raise revenue for the State's Medicaid program. Two commenters further indicated that a tax specifically used to improve State-funded health care delivery systems should not be subject to the provisions of Public Law 102–234.

Response: We believe the statute is explicit as to the kinds of taxes that are subject to the requirements of Public Law 102–234. Section 1903(w)(3)(A) of the Act defines a health care-related tax as a tax that is related to health care items or services, or to the provision of, the authority to provide, or payment for, such items or services, or is not limited to such items or services but provides for treatment of individuals or entities that are providing or paying for such items or services that is different from the treatment provided to other individuals. The statute does not give the Secretary the authority to provide exceptions to the statutory definition of a health care-related tax.

Comment: Two commenters indicated that licensing fees should not be deemed health care related. Several commenters believed that the regulations should be clarified to specify that discretionary assessments (such as certificates of need or State-supported mortgage loan applications), Clinical Laboratories Improvement Amendments (CLIA) fees, and Federally mandated rebates that States collect from pharmaceutical manufacturers (including parallel State rebating programs) are not health care-related taxes and, therefore, do not count toward the State's cap.

Response: Section 1903(w)(7)(F) of the Act specifies that the term "tax" includes any licensing fee, assessment, or other mandatory payment, but does not include payment of a criminal or civil fine or penalty (other than a fine or penalty imposed in lieu of or instead of a fee, assessment, or other mandatory payment). This includes certificates of need and State-supported mortgage loan applications. If these fees are imposed across the board, they will probably not meet the 85-percent health care-related test.

We recognize that CLIA and Federally mandated drug rebate programs are Federally controlled programs. Therefore, we want to make clear that all Federally mandated assessments, taxes, or fees are not subject to the provisions of Public Law 102–234. However, fees associated with State-only programs, enacted in lieu of CLIA or other Federal programs, are subject to the provisions of Public Law 102–234.

Comment: One commenter indicated that the definition of health care related should be clarified so that only licensing and certification fees for health care providers who participate in the Medicaid program be subject to the statute.

Response: Section 1903(w)(1)(A)(ii) of the Act makes it clear that all health care-related taxes that are not broad based will be subject to the provisions of this law, regardless of whether the provider participates in the Medicaid program.

Comment: One commenter indicated that § 433.55(c) (which specifies that a tax is considered to be health care related if it is not limited to health care items or services, but the treatment of individuals or entities providing or paying for those health care items or services is different than the tax treatment provided to other individuals or entities) should be revised to specify that when determining if the treatment of a tax applicable to health care providers is different from the treatment of other taxpayers, HCFA will only take into account any State credits or rebates that are explicitly stated in the law related to any of the payers of the tax.

Response: Providing credits and/or rebates that are explicitly stated in the law is not the only method a State can use when targeting the tax to health care providers. For example, a State could provide a tax on a unit that is more prevalent in a health care provider setting (such as a tax on bedpans). A tax on a health care-related unit would automatically provide for unequal treatment of health care individuals or entities subject to the tax.

Comment: One commenter believed that our interpretation that a tax that is applied at a different rate on health care providers and non-health care providers may be health care related is not consistent with statutory intent.

Response: This portion of our regulatory definition of health care-related taxes is directly supported by section 1903(w)(3)(A)(ii) of the Act, which specifies that a health care-related tax includes a tax not limited to health care items or services but provides for treatment of individuals or entities that are providing or paying for such items or services that is different from the treatment provided to other individuals or entities. An example of this type of unequal treatment is a tax on non-health care providers at a different rate than a tax on health care providers.

Comment: One commenter indicated that the 85-percent test, whereby a tax is considered to be related to health care items or services if at least 85 percent of the burden of the tax falls on health care providers, will allow States to dilute a health care tax by renaming existing taxes.

Response: Section 1903(w)(3)(A) of the Act defines a health care-related tax as a tax that is (i) related to health care items or services, or to the provision of, the authority to provide, or payment for, such items or services, or (ii) is not limited to such items or services but provides for treatment of individuals or entities that are providing or paying for such items or services that is different from the treatment provided to other individuals. The statutory language further points out that in applying clause (i), a tax is considered to be related to health care items or services if at least 85 percent of the burden of such tax falls on health care providers. The remaining portion of section 1903(w)(3)(A) of the Act further distinguishes a health care-related tax as one that is not limited to health care providers but treat health care providers differently. This portion of the statute is not subject to the 85-percent test. We believe section 1903(w)(3)(A)(ii) prevents the State from implementing a tax that may be masked by an existing non-health care-related tax. However, a State can add health care providers to an already existing non-health care-related tax without penalty as long as it meets the 85-percent test.

Comment: One commenter indicated that the regulation goes beyond the statute by limiting the 85-percent test only to health care-related taxes related to health care items or services (§ 433.55(a)(1)). The commenter believed the 85-percent test should also apply to health care-related taxes related to the provision of, or the authority to provide, the health care items or services (§ 433.55(a)(2)) and the payment for the health care items or services (§ 433.55(a)(3)).

Response: Section 1903(w)(3)(A) of the Act specifies that in applying clause (i) (which defines a health care-related tax as a tax that is related to health care items or services, or to the provision of, the authority to provide, or payment for, the health care items or services), a tax is considered to be related to health care items or services if at least 85 percent of the burden of such tax falls on health care providers. The statute does not address how the tax should be considered when it is related to the provision of, or the authority to provide the health care items or services (§ 433.55(a)(2)) or the payment for the health care items or services (§ 433.55(a)(3)).

Comment: One commenter suggested that the term "revenue" be deleted from § 433.55(b), which states that a tax will be considered to be related to health care items or services if at least 85 percent of the burden of the tax revenue falls on health care providers.

Response: The significance of the term revenue in this paragraph is that revenue is the only equitable measure when applying the 85-percent health care related rule in the statute. Therefore, we have not modified the regulation.

Comment: One commenter indicated that the scope of the regulation, as written, is not limited only to the review of public programs involving health care providers but applies to public programs affecting the payers of health care—patients and insurers. The commenter did not believe HCFA has the authority to do this.

Response: Section 1903(w)(3)(A) of the Act specifies that a health care-related tax is a tax that is related to health care items or services or to the provision of, the authority to provide, or payment for, such items or services. Therefore, the statute provides that a tax on health care payments made by payers (that is, insurance payers or patients) is subject to Public Law 102–234 and the implementing Federal regulations.

6. Classes of Health Care Services and Providers Defined (§ 433.56)

Comment: Several commenters wanted us to expand the classes already listed in the statute and our regulations to include additional classes or State defined classes. Commenters had various suggestions for permissible health care classes, including allowing States to recognize their own health care classes, recognizing all licensed providers of Medicaid services, and recognizing all licensed providers in a State. Further suggestions included incorporating permissible classes as identified in the State plan or Federal law as long as the aggregate Medicaid utilization or revenue within the class is no greater than 90 percent, or extending a permissible tax that is also applicable to one or more of the classes listed in the statute. In the latter case, the terms of the tax on the additional categories of providers would have to be the same as those applicable to a statutorily named class, and the tax would have to cover the entire new category in the same manner as its coverage of the statutorily named class.

Response: We have revised § 433.56 to include 10 additional health care classes based on recommendations received by the commenters. These additional classes provide States further flexibility when imposing health care-related taxes.

Comment: One commenter recommended that additional classes may permit States to adopt narrowly focused, rather than broad-based, health care-related taxes in direct contravention of Congressional intent. This commenter found that those health care classes not represented by lobbyists were at the highest risk of being subject to the tax. Small classes that would be affected are nurses, optometrists, social workers, physical therapists, etc. Accordingly, the commenter requested that § 433.56(a)(9) (which provides for other health care items or services not specified in the regulation on which the State has enacted a licensing or certification fee, subject to certain requirements) be revised to apply when at least three of the other classes specified in the regulation are also subject to the tax.

Response: Neither the statute nor the regulations preclude a State from taxing more than one class of health care items or services of providers. The statute allows the States a certain degree of flexibility in determining which providers will be taxed.

Comment: One commenter requested that we clarify in the regulations whether a tax imposed on inpatient hospital services would need to cover revenues or activities of hospitals not related to inpatient hospital services (such as a separate wing certified as a nursing facility) to be broad based. The commenter believed that such a policy would conflict with both the statute and the regulations, both of which list hospitals and nursing facilities as separate classes.

Response: The commenter is correct that both section 1903(w)(7)(A) of the Act and § 433.56 list inpatient hospital services and nursing facility services as separate classes. In addition, we note that the statute and the regulations clearly state that a tax is imposed on the services of providers—not on the providers themselves. Since the class definition is determined by the type of service provided, only the revenues or activities of the provider pertaining to that class of service need be covered by the tax. Therefore, if a hospital has a separate wing that provides nursing facility services, these services would not be subject to an inpatient hospital services tax because nursing facility services is a separate class. Moreover, if there is a tax on all hospital services, including nursing facility services provided in the hospital, we would consider the tax on inpatient hospital services separate from the tax on nursing facility services.

Comment: One commenter indicated that the regulations are not clear in the instance where a provider falls into more than one class of services. This commenter believes a more explicit exemption from the hospital services class should be added to address the situation where services are provided by a facility that is owned and operated by a health maintenance organization (HMO). Several commenters were concerned that a State could unfairly tax a health care provider twice by imposing a separate tax on two provider classes. For example, a State could tax HMO services and inpatient hospital services, resulting in an unfair tax on hospitals that provide HMO services. One commenter suggested that the State have the discretion to choose which class a tax would fall under (HMO or inpatient hospital service). Another commenter suggested that we specify in the regulation that the HMO services class apply to "services of HMOs not otherwise taxed" to ensure an equitable interpretation of the law.

Response: While the regulations specify classes that can be taxed, the regulations cannot interfere with the State's authority to impose taxes on one or more of the providers or prohibit a State from taxing a provider that would fall under two classes. However, we will consider a tax to be broad based when the tax is imposed on all inpatient hospital services, with the exclusion for HMO owned and operated hospitals if the HMO services are also being taxed. However, if HMO services are not being taxed, the tax on inpatient hospital services would not be broad based unless it is imposed on all hospital services, including HMO inpatient hospital services.

Comment: Three commenters suggested that we grandfather in provider classes that had been subject to such tax programs prior to the implementation of Public Law 102–234. More specifically, the commenters suggested that all services that had been operating under an approved program as of January 1, 1992 (or November 22, 1991) should be grandfathered into an approved provider list. Two commenters suggested that we amend the regulations to grandfather in all existing licensing fees regardless of whether the fee exceeds the cost of operating the licensing or certification program.

Response: Section 1903(w)(1)(C)(ii) of the Act provided for a transition period during which, under certain circumstances, States may receive, without a reduction in FFP, revenues from impermissible health care-related tax programs in effect prior to the enactment of Public Law 102–234. We believe that the transition period provision in section 1903(w)(1)(C)(ii) afforded States ample opportunity to correct any licensing fees or provider classes that did not comport with the requirements of Public Law 102–234. Since licensing and certification was a new class, not listed in the statute, we felt a fiscal responsibility to limit these fees to the cost of operating the program.

Comment: Several commenters indicated that they did not believe the new licensing fee class should be added because it exceeds Federal intent. These commenters also believed that the Secretary does not have the authority to create such qualifying conditions. One commenter indicated that the provision in § 433.56(a)(9)(iii) (which specifies that for all health items or services in which the State has enacted a licensing or certification fee, the aggregate amount of the fee cannot exceed the State's estimated cost of operating these programs) would introduce considerable administrative burden for States.

Response: Section 1903(w)(7)(F) of the Act specifies that the term "tax" includes any licensing fee, assessment, or other mandatory payment. Several States asserted that a licensing fee is most likely broad based, and that the revenue generated from the fee is paying for the administration of the licensing program for the provider on whom the fee is imposed, not for Medicaid services. Therefore, we added to the list of permissible health care classes in the interim final regulations licensing fees that apply to items and services not otherwise listed. This change clarifies that the application of a broad-based and uniform licensing fee on providers of items and services not otherwise listed in the statute is a permissible health care-related tax as long as the revenue generated from the licensing fee does not exceed the estimated costs of operating the licensing program. We believe these conditions are an appropriate exercise of our statutory authority to add additional classes.

Comment: Several commenters indicated that the definition of inpatient hospital services that we presented in the preamble of the interim final rule is not correct. (In that definition, we noted that inpatient hospital services includes all services defined as inpatient hospital services, such as inpatient psychiatric services.) The commenters noted that in both section 1905(a) of the Act and in the Federal Medicaid regulations at § 440.10, inpatient hospital services specifically excludes services furnished in free-standing psychiatric hospitals (referred to under Medicaid as institutions for the mental diseases (IMDs)).

Two commenters requested that the regulations be clarified to state that psychiatric hospital services are included in the inpatient hospital services class. One commenter recommended that the classes be expanded to include psychiatric hospitals, hospitals owned by HMOs, and hospitals that do not charge for care.

Response: We believe inpatient hospital services encompass all services provided in an inpatient hospital setting, including psychiatric services. Consequently, we believe psychiatric hospital services need not be listed as a specific inpatient hospital service. However, we have revised the regulations to add psychiatric hospitals as a favorable exception under the waiver standards for the broad-based and uniform requirements in §§ 433.68(e)(1) and (e)(2).

Comment: A few commenters suggested limits that could be applied to the licensure fee class. The suggestions included limiting the applicability of the regulation to only licensing and certification fees imposed by the State, not local governments, or limiting the applicability to only those fees imposed as a general purpose, revenue-generating mechanism. One commenter recommended that we add a threshold standard (for example $1,000) for licensing fees, below which fees would be deemed to satisfy the statutory requirements.

Response: We have revised the broad-based requirements in § 433.68(c)(3) to allow automatic approval of a waiver when a licensing fee that is not uniformly applied to all providers in a class is under $1,000 annually and the total amount raised by the State from the fee is used in the administration of the licensing or certification program.

Comment: One commenter requested guidance concerning what is considered a licensing fee and questioned if it included initial application fees, examination fees, and reciprocal licensing fees, or only annual, biannual or triennial renewal fees. The commenter also questioned whether licensing fees of athletic trainers, or funeral directors are health care related.

Response: Any mandatory payment by a health care provider associated with the cost of operating the licensing program is considered a licensing fee. Social workers who provide medical or remedial care services in a health care setting would be considered a provider of health care services for the licensing fee class. Since most athletic trainers and funeral directors provide services outside the clinical setting, these groups would not be considered health care related.

Comment: One commenter suggested that the test covering the cost of the licensing program be applied in the aggregate—that is, the test would be met as long as the fees in the aggregate do not exceed aggregate costs of licensing for all licensed groups. Two commenters recommended deleting the test altogether.

Response: We believe that a test in the aggregate does not follow the intent of the statute because such a test would permit States to target Medicaid providers through the licensing fee process.

Comment: One commenter believed that the exclusive list of classes contained in the regulations is too restrictive. This commenter believed that the restrictive definition of classes is inconsistent with the DSH statute's considerable leeway afforded to States in their designation of hospitals to receive DSH payments.

Response: Based on numerous comments concerning the statute's limited list of classes, we have expanded the list of classes in the final regulations. However, we are unclear as to the correlation made by the commenter between the limited list of classes contained in the statute and regulations and the State's limited ability to define hospitals eligible for DSH payments. The State will still have the flexibility to define hospitals as DSH facilities under the eligibility criteria at section 1923 of the Social Security Act.

Comment: Two commenters recommended that we establish an approval process for those States that wish to tax providers in classes not specified in the statute.

Response: We have revised § 433.56 to include 10 additional health care classes based on recommendations received by the commenters. Also, the Secretary will consider adding additional classes if States can demonstrate the need for additional designations and that any class of classes proposed for addition meets the following criteria:

- The revenue of the class is not predominantly from Medicaid and Medicare (not more than 50 percent from Medicaid and not more than 80 percent from Medicaid, Medicare, and other Federal programs combined);
- The class must be clearly identifiable, such as through designation for State licensing purposes, recognition for Federal statutory purposes, or being included as a provider in State plans; and
- The class must be nationally recognized and not be unique to a State.

7. Permissible Health Care-Related Taxes (§ 433.68)

a. General Rule (§ 433.68(a))

Comment: One commenter believes the restrictions on the receipt of tax revenue after a State's transition period ends places severe hardship on States.

Response: In accordance with section 1903(w)(1)(D)(ii) of the Act (codified at § 433.68(a)), the amount of impermissible tax revenue a State may collect during its transition period in State fiscal year 1993 is limited to the amount received, not the amount levied, for that period. Consequently, a reduction in FFP will occur if impermissible tax revenue levied for the transition period is received by the State after that date. Contingent upon the design of a State's tax program and the State's ability to comply with the provisions of Public Law 102–234, a State could experience some degree of difficulty. However, this law was enacted in December 1991 and the statute permitted all States using provider taxes enacted prior to November 22, 1991, to continue such a program through at least September 30, 1992. The purpose of the transition period was to afford States sufficient time to replace health care-related tax and provider-related donation programs that do not meet the requirements of the law with permissible programs. Therefore, we believe the statute was designed to minimize financial hardship that States could incur.

b. Broad Based and Uniformity Requirements (§§ 433.68(c) and (d))

Comment: Several commenters believed it was not necessary that a uniform tax be applied as a single rate (as specified in § 433.68(d)(1)(i)) provided that a multiple tax rate structure (progressive/regressive) is applied in a consistent and uniform manner or a consistent formula is applied to all providers in the class. These commenters believed that a measure of "generally redistributive" may be better met with a tax using some sliding rate scale. Furthermore, one commenter indicated that we should provide additional guidance as to which types of taxes would fall within the catchall category under § 433.68(d)(1)(iv) (which provides for additional taxes on items or services to be considered as uniformly imposed if the State establishes to the Secretary's satisfaction that the amount of the tax is the same for each provider of such items or services in a class).

Response: Public Law 102–234 requires that a tax be applied as a single rate or amount per provider in order for it to be considered uniform. Section 433.68(d)(1)(iv) provides States with the opportunity to demonstrate through the waiver process that a tax using a consistent formula or a regressive/progressive tax can be more redistributive than one that meets the uniformity requirements under § 433.68(d)(1)(i) through (d)(1)(iii).

Comment: One commenter indicated that a tax that is broad based in one State may not be broad based in another State since some States will have more Medicaid providers to be taxed.

Response: The law does not address a provider who provides services solely to Medicaid recipients. We believe the majority of "Medicaid" providers are "Medicaid" providers for only a portion of their practices. Furthermore, we strongly question whether there are existing providers that furnish services only to Medicaid recipients. The law, however, does allow for the exclusion of Medicaid revenues from a tax. Therefore, services furnished by providers under the Medicaid program may be excluded from a tax and the tax would still be considered uniform if those services were the only excluded services.

Comment: One commenter stated that States should be allowed to exempt non-Federal, public organizations when determining if a tax is broad based. The commenter believed that this would be consistent with the existing provision in § 433.68(c)(1), which specifies that a health care-related tax will be considered to be broad based if the tax is imposed on at least all health care items or services in the class or providers of such items or services furnished by all non-Federal, non-public providers in the State, and is imposed uniformly. This commenter believed that it is administratively pointless for the State to tax revenues from its own programs. Several commenters indicated that in addition to excluding Medicaid and Medicare revenue from the tax, States should be allowed to exclude providers who do not charge for services and providers that lack sufficient revenues to pay the tax.

Response: Section 433.68(c)(1) of our regulations is based on section 1903(w)(3)(B) of the Act, which specifies that a tax is broad based when it is imposed with respect to all items or services in the class furnished by all non-Federal, non-public providers in the State or is imposed with respect to all non-Federal, non-public providers in the class. Therefore, we are bound by the statute to retain this requirement in our regulations. In addition, the statute does not give the Secretary the authority to exclude providers from a broad-based tax except under a waiver in accordance with section 1903(w)(3)(E) of the Act.

Comment: One commenter requested clarification of whether a tax on gross revenues that exempts revenues paid to providers by a State program fails to meet the uniformity requirements.

Response: The regulations allow States to provide specific exclusions as long as the tax is found to be generally redistributive in accordance with the waiver requirements in § 433.68(e). Until the State can make this demonstration, the statute provides that expenditures are reduced by the amount of bad taxes collected.

Comment: One commenter believed we should establish a presumption that gross revenue taxes that exempt revenues from Medicaid and Medicare are permissible, even if they do not meet all of the remaining technical requirements of the law.

Response: Section 1903(w)(1)(A)(iii) of the Act specifies that a tax is not permissible, regardless of its exclusions of Medicare or Medicaid revenue, when a hold harmless practice exists. This section further indicates that a tax is not eligible for Federal matching when there is in effect a hold harmless provision with respect to a broad-based health care-related tax. However, a tax that excluded only Medicaid or Medicare would still meet the uniformity standards.

Comment: One commenter stated that we should clarify in the regulations that States may impose health care-related taxes that contain exemptions, credits, deductions, or exclusions without first going through the waiver process. The commenter acknowledged that if a State does not proceed without first seeking a waiver, it takes the risk that the Secretary will challenge its exemption, credit, deduction, or exclusion.

Response: While it is permissible for the State to implement the tax prior to the approval of its waiver, it is to the State's advantage to submit its waiver request prior to the implementation of its tax.

Comment: One commenter indicated that the definition of uniform tax in § 433.68(d) should be illustrative and not restrictive. Furthermore, the commenter did not believe that an admissions tax requires the Secretary's approval.

Response: Section 1903(w)(3)(C) of the Act provides a precise definition of a uniform tax. Under this section, there are three specific types of taxes defined as uniform. The statute also allows for a fourth category of other types of uniform taxes if approved by the Secretary. Moreover, the items specified in the statute are exclusive, not merely illustrative.

Comment: One commenter believed that it is more appropriate to interpret "net operating revenue" (as defined in the uniformity requirements in § 433.68(d)(1)(iii)) to mean "operating margin" because it is a commonly used interpretation of the term, and the alternative definition in the rule makes the term "net operating revenue" redundant with "receipt." The commenter further believed that even if "net operating revenue" is not interpreted to specifically mean "operating margin," operating margin is sufficiently related as an accounting concept to gross revenues and gross receipts that to interpret this more inclusively to include operating margin as an acceptable tax base for a uniform tax would be consistent with the statute. Therefore, we should clarify in the rule that a tax on operating margins of providers may be a broad-based tax.

Response: Operating margin is not synonymous with net operating revenue. In accordance with Medicare cost finding principles, operating margin reflects a provider's revenues after such revenues are reduced by expenses. On the other hand, net operating revenue is defined in § 433.68(d)(1)(iii) as gross charges of facilities, less any amounts for bad debts, charity care, and payer discounts. Gross charges and gross receipts are not reduced by expenses to determine net operating revenue. The statute recognizes a tax on net operating revenue as a uniform tax. However, it does not do so with respect to net operating margins, which is an entirely different accounting concept.

c. Generally Redistributive (§ 433.68(e))

Comment: One commenter suggested we define the term "generally redistributive".

Response: As stated in the preamble in the November 24 interim final rule, our definition of "generally redistributive" is the tendency of a State's tax and payment program to derive revenues from taxes imposed on non-Medicaid services in a class and to use these revenues as the State's share of Medicaid payments.

Comment: Several commenters indicated that the 95 percent generally redistributive test is too restrictive. These commenters proposed a variety of numerical thresholds that were lower than 95 percent.

Response: Section 1903(w)(1)(A)(ii) of the Act specifies that for quarters in any fiscal year, the total amount expended during such fiscal year as medical assistance under the State plan shall be reduced by the sum of any revenues received by the State during the fiscal year from health care-related taxes other than broad-based health care-related taxes. The purpose of this provision was to preclude the use of revenues derived from taxes imposed primarily on Medicaid providers and activities. However, to relieve the restrictive nature of this provision, we believed it was necessary to adopt an alternative for States enacting taxes that were not broad based. Based on Federal review and analysis, we believe the 95-percent test allows States a reasonable degree of flexibility to receive FFP for a tax that is otherwise not broad based or uniform, while continuing to maintain the intent of the statute. However, we have revised the P1/P2 value at § 433.68(e)(1)(iii) to 0.90 for taxes enacted and in effect prior to July 1, 1993.

Comment: Several commenters indicated that we should allow States greater flexibility for waiver requests of the broad-based and uniform requirements. One commenter indicated that we should revise the regulations to remove regulatory authority over provider-related donations and health care-related taxes unrelated to Medicaid to allow this greater flexibility. Some commenters suggested policy-based arguments as an alternative to "statistical" thresholds.

Response: We believe that, as a part of the broad-based and uniform waiver test, health care-related taxes as a whole are an integral part in determining the amount of burden the tax has on Medicaid. We also believe that policy-based arguments do not allow for a reasonable test of the broad-based and uniform requirements. If we allowed a policy-based argument, we would have no specific standards by which a waiver of these requirements could be measured. This subjective analysis would be administratively burdensome and virtually impossible to apply fairly throughout the nation.

Comment: Several commenters requested expansion of the list of providers of items and services excluded in the uniformity waiver if the value of B1/B2 is at least equal to .95 but not greater than 1.

Response: The regulations have been revised to include additional classes of providers of items and services that can be excluded under the uniformity waiver test.

Comment: One commenter indicated that the waiver requirements in § 433.68 (e)(1) and (e)(2) are too restrictive in relation to exemptions for sole community and rural hospitals. This commenter believed that waivers of the broad-based and uniformity provisions should automatically be approved without an additional mathematical test.

Response: The purpose of these requirements is to ensure that the tax burden does not shift to Medicaid by the waiver. We believe that the mathematical tests allow specific standards by which the appropriateness of a waiver of these requirements can be measured.

Comment: A few commenters indicated that the waiver process should be timely and States should be given appropriate guidance in providing adequate information for evaluating the waiver request. Other commenters indicated that a time period should be specified for HCFA to approve a waiver request of the broad-based and uniform requirements.

Response: The statute does not mandate a specified time period for us to approve a waiver of the broad-based and uniformity requirements. Due to the complexity of the tests and the amount of data involved, we did not establish a specified time period. We will, however, review waivers in an expeditious manner and welcome any State questions concerning waivers of the broad-based and uniformity requirements for health care-related tax programs.

Comment: A few commenters indicated that by establishing the threshold of the P1/P2 test at 1, the waiver provisions in § 433.68(e)(1) will allow most taxes that are not broad based to be considered generally redistributive only if such tax is more redistributive than a tax that is applied to all such providers in a class.

Response: We have revised the generally redistributive test to indicate that if the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 1, HCFA will automatically approve the waiver.

Comment: A few commenters indicated that the five specified categories of exceptions under the generally redistributive test in § 433.68(e) should be deleted. These commenters also stated that a waiver should be approved if a State can show a particular exception is consistent with public policy.

Response: If we allowed a policy-based argument, we would have no specific standards by which a waiver of these requirements could be measured. This subjective analysis would be administratively burdensome and virtually impossible to apply fairly throughout the nation.

Comment: A few commenters indicated that we should informally review and provide guidance concerning waivers of the broad-based and uniformity requirements on health care-related taxes that are proposed but not yet enacted.

Response: We welcome any State questions concerning waivers of the broad-based and uniformity requirements for health care-related tax programs not yet enacted.

Comment: A few commenters suggested we define waiver standards to cover pooling arrangements.

Response: We have revised the waiver standards in § 433.68(e)(2)(iii)(B)(*8*) to cover pooling arrangements.

Comment: A few commenters suggested that the broad-based requirement should be separate and apart from the uniformity requirement.

Response: Section 1903(w)(3)(B)(ii) of the Act defines a broad-based health care-related tax as a health care-related tax that is imposed uniformly. Consequently, in applying for a waiver of the broad-based requirement, a State must also meet the uniformity requirements.

Comment: A few commenters suggested that we combine the waiver tests for the broad-based and uniformity requirements and conduct a single test of a tax's redistributive nature utilizing a State's total Medicaid expenditures. These commenters suggested that the test should be whether the waivered tax itself is generally redistributive.

Response: We have designed an efficient test to determine redistributiveness using a comparison of a broad-based, uniform tax against a waivered tax. We do not believe that testing a tax's redistributive nature utilizing total Medicaid expenditures measures anything about the tax itself.

Comment: One commenter indicated we should increase the 90-day limit for States to inventory and analyze taxes and fees that may require a waiver of the broad-based and/or uniformity requirements.

Response: On February 19, 1993, we rescinded the deadline of 90 days in which States were to submit requests for waivers of broad-based and uniform tax requirements for any tax programs in effect before October 22, 1992.

Comment: One commenter requested us to clarify the phrase "applicable to Medicaid," as used in § 433.68(e).

Response: The proportion of the tax revenue applicable to Medicaid means how much of the tax burden shifts to Medicaid.

Comment: One commenter suggested that we not require a provider-by-provider calculation for any class that includes more than 100 providers for a waiver of the uniformity requirement because of the administrative burden. Instead, the commenter suggested that we should use random sampling.

Response: When performing the uniform test, a State must compare the redistributiveness of a broad-based and uniform tax, which is a tax on all providers in the class at the same rate, to the State's proposed tax. Therefore, data from a random sample of providers could not satisfy the requirements of this waiver test.

Comment: One commenter requested that we add "providers of IMD services where the Medicaid State plan prohibits such entities from participating in the Medicaid program" to the defined groups of providers that can be excluded or given a credit/deduction. Two commenters suggested that we eliminate the additional criteria altogether.

Response: We have revised the regulations to include psychiatric hospitals in the list of excluded providers at § 433.68(c)(1)(ii)(B).

Comment: One commenter requested that we revise the regulation to explicitly state that facility costs are an acceptable tax base.

Response: States are given the flexibility to decide what is an acceptable tax base. Using facility costs as a tax base may or may not be uniform.

Comment: One commenter indicated that the statistical test that we have established for waivers will simply serve to deny any waivers. The commenter suggested that there be some burden on HCFA to prove that reasonable waiver requests can and will be approved.

Response: We strongly believe the numerical test is reasonable and that States whose programs meet the waiver tests will have their waiver requests approved.

Comment: One commenter indicated that if a tax program has a tendency to redistribute the funds of a provider tax to those providers with relatively more charity care, and if the program distributes all the provider tax funds that are collected to providers in the affected provider class without using any of the tax funds to claim FFP, the tax would be considered redistributive.

Response: We have defined redistributive as the tendency of a State's tax program to derive revenues from taxes imposed on non-Medicaid services in a class and to use these revenues as the State's share of Medicaid payments. Assuming a State imposes a non-Medicaid tax and uses the funds solely for Medicaid payments, we believe a perfect redistribution would exist. On the other hand, a tax that is broad based and uniform is not a perfect redistribution. The redistribution test is an attempt to demonstrate how a tax compares to a broad-based and uniform tax.

Comment: One commenter indicated that there is nothing in the test for a broad-based requirement that would address a situation in which only the revenues from private payers, VA payers, Medicare payers, and other insurance payers were taxed with no taxes applicable to the Medicaid payers' revenues. The commenter suggested that this appears to provide an unacceptable cost shift to non-Medicaid patients.

Response: The statute does not restrict a State's taxing authority. The statute and regulation were designed to protect Medicaid providers from being disproportionately taxed. Those excluded providers are providing care for low-income patients. It is up to each State, however, to decide who will be assessed.

Comment: One commenter suggested that States be required to include the effect of taxing Medicaid and Medicare when performing tests for waiver calculation purposes, even if Medicaid and Medicare, among other things, are excluded from the tax.

Response: A broad-based tax applies to all items and services within a class. The waiver of this requirement compares a tax containing exclusions against a tax that is broad based. Consequently, Medicare and Medicaid need to be included to satisfy the broad-based portion of the test. Under the broad-based test, the proportion of the tax applicable to Medicaid under a broad-based tax (P1) would include the effect of taxing Medicaid and Medicare. Under the uniformity test, the slope of the linear regression applicable to the hypothetical broad-based uniform tax (B1) would include the effect of taxing Medicaid and Medicare.

Comment: One commenter indicated that States having taxes on more than one class of providers or multiple taxes and fees on the same class should be able to treat taxes separately and seek waivers only for those taxes that are not broad based and uniform.

Response: We have revised § 433.68(e) to specify that the waiver tests will be applied on a per class basis.

Comment: A few commenters suggested that we change the B1/B2 test to "total tax revenues." Since the current dependent variable in the test is a proportion and the independent variable is an absolute magnitude (the Medicaid statistic), the ratio of the regression coefficients can lead to results that are incorrect.

Response: The Medicaid statistic is not an absolute magnitude. The test breaks down the tax per facility. Therefore, in each case, a value for the tax for each facility will be applied to a value for the Medicaid statistic for each facility. This test is looking at a comparison. It is looking at the proportion of the change.

Comment: One commenter suggested that we delete the waiver approval condition that stipulates the waiver will be approved if the tax program does not fall within the hold harmless provisions.

Response: Section 1903(w)(1)(A)(iii) of the Act specifies that for quarters in any fiscal year, the total amount expended during such fiscal year as medical assistance under the State plan shall be reduced by the sum of any revenues received by the State during the fiscal year from a broad-based health care-related tax, if there is a hold harmless provision with respect to the tax. Consequently, by law, this provision may not be removed from the approval condition of a waiver.

Comment: One commenter indicated that using regression to measure redistributiveness is not logical or statistically valid. The commenter indicated that the problem with using slope alone is that it is not unusual to get a high value for the slope of the regression when two variables in the analysis have no real relationship as indicated by a very low correlation. A regression will always generate a value for "slope", and the degree of slope can be determined as often by random errors or outliers as by a real relationship.

Response: The intent of this test is to look at a comparison. We believe a measurable relationship exists when the two variables used are the tax imposed on each provider and the Medicaid activity related to each provider. The test does not look at an absolute value of the slope but, instead, looks at the proportion of the change between a tax that is broad based and a tax that is not broad based.

Comment: One commenter suggested that we revise the regulations to specify that any gross revenues tax that exempts Medicaid and Medicare is automatically redistributive, and States do not need to follow the broad-based and uniform requirements nor go through the waiver process.

Response: The statute permits States to exclude Medicaid and Medicare from an assessment. If the tax excludes Medicaid and Medicare only and is applied at the same rate, the tax is considered broad based and uniform. However, if the tax provides for other exclusions, the State should apply for a waiver.

Comment: One commenter indicated that the regulations apply a very strict test of uniformity to licensing fees based on beds, and that the test is unclear as to how it would apply to this type of fee. The commenter questioned what the Medicaid statistic would be for licensing fees on beds and proposed that we require a reasonable relationship of the licensing fee to the cost of licensing the individual facility.

Response: We have revised § 443.68(c)(3) to waive the broad-based and uniformity requirements in the case of variations in licensing and certification fees for providers where the amount of the fee is not more than $1,000 annually per provider and the total amount raised by the State from the fee is used in the administration of the licensing or certification program.

d. Hold Harmless (§ 433.68(f))

Comment: Several commenters indicated that the numerical values of 75/75 in the second prong of the hold harmless test in § 433.68(f)(3)(i) are too restrictive. These commenters proposed several alternative numerical thresholds and provider exclusions from the test.

Response: We believe that the 75/75 numerical threshold under the second prong of the hold harmless test is a reasonable parameter to ensure that States do not use Medicaid rates to repay providers for tax costs in a way not permitted under the statute, and at the same time, permit States flexibility in the design of their tax and payment programs.

Comment: Several commenters indicated that in § 433.68(f)(3)(i), which states that if the health care-related tax is applied at a rate that is less than or equal to 6 percent of the revenues received by the taxpayer, the tax is presumed to be permissible under the guarantee test, the term "presumed" should be clarified. The commenters proposed alternative language and deletions to revise the regulations.

Response: We have revised the regulations at § 433.68(f)(3)(i) to remove the word "presumed." This should clarify that a tax that is broad-based and uniform, and applied at a rate of 6 percent or less, is considered a permissible health care-related tax under the first prong of the two-prong hold harmless test.

Comment: Several commenters indicated that the 6-percent test is too restrictive and proposed clarifications and deletions to revise the regulations.

Response: As stated in the regulations, the 6-percent threshold is based on the average level of taxes applied to other goods and services in the States. A tax equal to or below the 6-percent level is considered permissible under the first prong of the two-prong hold harmless test.

Comment: Several commenters indicated that in the case of a tax that violates the two-prong hold harmless test, only the portion of the tax over 6 percent should be disallowed.

Response: The intent of the statute was to prevent States from guaranteeing to hold taxpayers harmless for any portion of the costs of the tax. The purpose of the two-prong test is to prevent States from guaranteeing payment of the tax back to the taxpayer, which is prohibited by law. A tax failing this two-prong test is impermissible. We do not believe it reasonable to allow a bad tax to be considered partially good. States do have the option to reduce the rate of the tax and, thus, avoid this situation.

Comment: Several commenters indicated that we should extend the April 1, 1993, compliance deadline to comply with the 6-percent test and proposed alternative dates and contingency factors.

Response: We have extended the deadline for compliance with the 6-percent hold harmless test to September 13, 1993.

Comment: One commenter requested clarification that the 6-percent rate is applied by comparing the amount of the tax imposed to the total revenues applicable to the class of service being taxed. The commenter stated that if the tax is on more than one class, the revenues are applicable to all classes.

Response: The 6-percent rate is applied by comparing the amount of the tax imposed to the total revenues received by the class of service being taxed. In addition, if the tax is on more than one class, the amount of the tax should be compared to the revenues received by each class subject to the tax to determine the 6-percent rate.

Comment: Several commenters indicated that the hold harmless provisions are vague and that the application of the tests must permit States flexibility to improve provider reimbursement without triggering a hold harmless situation and denial of FFP.

Response: We believe the regulations provide clear and specific rules in determining a hold harmless situation. Furthermore, we believe the numerical tests do not prevent States from improving provider reimbursement. Instead, these tests are intended to prevent States from guaranteeing payment of the tax to the taxpayer.

Comment: Several commenters indicated that it is difficult and restrictive to apply the hold harmless test in determining that some portion of the Medicaid payment varies directly with the amount of the tax paid. In any case where a provider receives Medicaid payment that is greater than or equal to the amount of tax paid, it would be shown that there is one-to-one correspondence between some portion of Medicaid payment and the tax.

Response: We have developed a test in the regulation which allows States some degree of "one-to-one" correspondence within certain limitations at § 433.68(f).

Comment: A few commenters indicated that we should revise the regulations to clarify that all grant programs do not violate the hold harmless provisions.

Response: Based on the grant programs we have seen, we believe that certain States are using non-Medicaid funds to indirectly compensate providers for the cost of the tax imposed on private charges. This violates section 1903(w)(4)(A) of the Act. However, it is possible that grant programs could be structured to avoid hold harmless problems.

Comment: One commenter expressed disagreement with the example in the preamble that states that the use of grant payments to third party payers is an example of a hold harmless situation.

Response: We believe that if the tax is considered to be levied on a third party, the State is directly providing for a non-Medicaid payment to a private pay patient that is positively correlated to the amount of the tax.

Comment: A few commenters indicated that pass-through cost associated with health care-related taxes should be excluded from the hold harmless test since they are allowable costs under the Medicaid program.

Response: A tax can be claimed as an allowable cost and included in the establishment of reimbursement rates. This would not necessarily constitute a hold harmless situation. Section 1903(w)(4) of the Act clearly indicates that the hold harmless provisions must not prevent the use of the tax to reimburse health care providers in a class for expenditures under title XIX nor preclude States from relying on such reimbursement to justify or explain the tax in the legislative process. However, pass-through costs associated with health care-related taxes are not excluded from the hold harmless provisions.

Comment: One commenter indicated that we should make clear that provider taxpayers are not held harmless by a provision in a State law that allows the provider to pass the tax incidence through to private sectors.

Response: Pass-through costs associated with health care-related taxes are not excluded from the hold harmless provisions. However, a tax can be claimed as an allowable cost and included in the establishment of reimbursement rates. This, in itself, would not necessarily constitute a hold harmless situation.

Comment: A few commenters requested clarification that a health care-related tax is an allowable cost on a provider's cost report and repayment of the tax as an allowable cost does not create a hold harmless effect in violation of the regulation.

Response: A tax can be claimed as an allowable cost and included in the establishment of reimbursement rates. This would not necessarily constitute a hold harmless situation. Section 1903(w)(4) of the Act clearly indicates that the hold harmless provisions must not prevent the use of the tax to reimburse health care providers in a class for expenditures under title XIX nor preclude States from relying on such reimbursement to justify or explain the tax in the legislative process.

Comment: One commenter stated that the intent of the statute was to prohibit States from excluding non-Medicaid services from taxes, assessments and fees—not to exclude Medicaid from recognizing mandatory taxes as an allowable cost in establishing reimbursement rates.

Response: It is true that it was not the intent of the statute to exclude Medicaid from recognizing mandatory taxes as an allowable cost in establishing reimbursement rates. However, this does not exclude the taxes from the hold harmless provisions.

Comment: A few commenters indicated that the regulation is vague in describing positive correlation.

Response: A positive correlation is the statistical term for a positive relationship between two variables. For example, there could be a positive correlation between the amount of education a person has received and his or her income. The two variables being education and income. The term positive correlation used in § 433.68(f)(1) has the same meaning as the statistical term. Therefore, a hold harmless exists if there is a positive correlation between the tax paid and the non-Medicaid payment, or between the tax paid and the difference between the Medicaid payment and the total tax paid. If a provider is receiving a non-Medicaid payment for its tax cost, there would be positive correlation between these two variables, or a hold harmless would exist.

Comment: One commenter indicated that the term "direct correlation" is not achievable since a direct correlation exists any time the correlation is not random.

Response: The hold harmless test applies to all providers subject to the tax. It does not allow for random statistical data. However, the regulations do allow for a correlation to exist by a certain degree according to the statistical thresholds provided for in the hold harmless tests.

Comment: One commenter stated that we should clarify that the phrase "directly correlated" is understood to embody the hold harmless principle.

Response: The hold harmless provisions mean that while States may use revenue from otherwise permissible taxes to increase payment rates to the providers subject to the tax, States may not make Medicaid or other payments to providers that result in taxpayers automatically being repaid dollar (or part of a dollar)-for-dollar for their tax costs. This is a direct correlation and is the embodiment of the hold harmless principle.

Comment: One commenter suggested that we raise hold harmless as an issue only when the facts demonstrate a compelling case of intention to and effect of relieving nursing homes from any significant impact of the tax.

Response: We believe that subjective analysis does not allow for a reasonable test of the hold harmless provisions. The use of a subjective analysis would result in a lack of specific standards by which hold harmless could be measured. In addition, a subjective analysis would be administratively burdensome and virtually impossible to apply fairly throughout the nation.

Comment: One commenter noted that we do not define when an "explicit guarantee" exists and provided a proposed definition.

Response: We have revised the regulations at § 433.68(f)(3)(i) to remove the term "explicit guarantee" and clarify that an indirect guarantee is determined to exist by applying the two prong hold harmless test.

Comment: One commenter indicated that the hold harmless guarantee test should be eliminated, since the statute does not define the term "guarantee" or contain any test to be used to determine whether or not a guarantee exists.

Response: Since not all hold harmless situations are explicit, we believe that it was necessary to adopt a test to ensure that a State does not violate the hold harmless provision of the statute.

Comment: One commenter requested that we clarify the language "revenues received by the provider" to make clear how this would be done in the case of a bed tax or a revenue tax that excludes Medicare and Medicaid.

Response: The total amount paid by the provider based on the bed tax would be compared to total revenues received by the provider to generate the rate of the tax to total revenue. For example, a $1 per bed per day tax may be equal to 4 percent of the provider's total revenue received.

Comment: One commenter indicated that the hold harmless provisions that apply to State-funded programs need clarification. The commenter believed these provisions should not include programs that provide reimbursement to individuals without public or private health insurance coverage for direct medical expenses, but do not recognize or reimburse any provider-specific taxes, assessments, or fees.

Response: Section 1903(w)(4)(A) of the Act specifies that a hold harmless situation exists if the State provides (directly or indirectly) for a payment to taxpayers and the amount of such payment is positively correlated either to the amount of such tax or to the difference between the amount of the tax and the amount of payment under the State plan.

8. Reporting Requirements (§ 433.74)

Comment: Several commenters indicated that a more systematic and comparable reporting process should be developed to provide explicit guidance to States with respect to donations and health care-related tax programs. Other commenters requested that we provide States with detailed information on the reporting requirements, such as supporting documentation, format, timing, and content. Another commenter asked for more specific guidance in the areas of appeals, waiver approval, and process of the reporting requirements.

Response: We agree with these comments. We will, as part of the State Medicaid Manual (SMM), provide guidance to States with respect to the reporting requirements process for donations and health care-related taxes to ensure accuracy of the data.

Comment: Several commenters indicated that the reporting requirements are extensive and administratively burdensome to States. A few commenters requested that we clarify how non-Medicaid funding programs are to be identified and evaluated.

Response: Section 1903(d)(6)(A) of the Act requires that each State submit all provider-related information related to donations made to the State or units of local government, and all health care-related taxes collected by the State or such units, regardless of its association with funding of the Medicaid program, and information related to the total amount of payment adjustments made and the amount of payment adjustments made to individual providers under section 1923(c) of the Act. We will collect this information on a quarterly basis to monitor the program, and to relieve the State from implementing additional reporting requirements on an annual basis.

Comment: A few commenters indicated that it is unclear what process we will use to reduce FFP when a tax program is found to be impermissible. Another commenter indicated that we should establish timeframes for State receipt of notices of FFP disallowances based on impermissible health care-related taxes.

Response: The process of reducing FFP is the same as the current deferral/disallowance procedure specified in §§ 430.40 and 430.42. Notice of FFP disallowance is also based on current Federal policy at § 430.42.

Comment: A few commenters indicated that there is no specified time period for HCFA to approve programs that either the State believes are permissible or that are submitted for a waiver.

Response: The statute does not mandate a specified time period for us to approve States' waiver requests. However, we will review these waivers in a timely manner.

Comment: One commenter requested that we clarify the appeals processes and guidelines needed to properly administer the law. Another commenter indicated that we should establish a separate appeals process for waiver disallowances under the regulations.

Response: Disputes that pertain to disallowances of FFP in Medicaid expenditures are heard by the Departmental Appeals Board as specified at § 430.3(b). The statute does not require us to establish a separate appeals process for waiver disapprovals. We believe that the appeals process specified in § 430.3(b) is adequate for all disallowances, including those the State believes are related to waiver disapprovals.

Comment: One commenter indicated that there is no appeals process if a non-waivered program is not approved.

Response: If a non-waivered program is not approved, and the total amount expended during a fiscal year is reduced by the sum of the impermissible tax, the State may appeal the resulting disallowance to the Departmental Appeals Board.

C. Summary of Revised Regulations

As a result of our review of the comments we received during the public comment period, as discussed in section I.B. of this preamble, and negotiations with States and the National Governors Association (NGA), we are making, in addition to editorial and typographical changes, the following revisions to the regulations published in the November 24, 1992, interim final rule.

1. Classes of Health Care Items or Services

We are adding to § 433.56(a) the following classes of health care items or services:

- Dental services.
- Podiatric services.
- Chiropractic services.
- Optometric/Optician services.
- Psychological services.
- Therapist services—Defined to include physical therapy, speech therapy, occupational therapy, respiratory therapy, audiological services, and rehabilitative specialist services.
- Nursing services—Defined to include all nursing services, including services of nurse midwives, nurse practitioners, and private duty nurses.
- Laboratory and x-ray services—Defined as services provided in a licensed, freestanding laboratory or x-ray facility. These services would not include laboratory or x-ray services provided in a physician's office, hospital inpatient department, or hospital outpatient department.
- Emergency ambulance services.
- Ambulatory surgical services, as described for purposes of the Medicare program in section 1832(a)(2)(F)(i) of the Act. These services are defined to include facility services only and do not include surgical procedures.

2. Outstationed Eligibility Worker Donations

We have expanded the definition of donations for outstationed eligibility workers by revising §§ 433.58(d)(2) and 433.66(b)(2) to indicate that the direct costs of outstationed eligibility workers now includes the prorated costs of outreach activities applicable to the outstationed workers at these sites.

3. Waiver Standards

To decrease the burden a State may have when imposing a licensing fee that is not uniform or broad based, we have revised § 433.68(c)(3) to specify that a waiver will automatically be granted in the case of variations in licensing and certification fees for providers where the amount of the fee is not more than $1,000 annually per provider and the total amount raised by the State from the fee is used in the administration of the licensing or certification program.

We have revised § 433.68(e)(1) to indicate that the test for waiver of the broad-based requirements is applied to a tax that is imposed on all revenues but excludes certain providers. We have provided an example of a situation in which this test would apply. We have revised § 433.68(e)(2) to indicate that the test of the broad-based and uniformity requirements is applied to all other taxes not provided in § 433.68(e)(1) and not automatically approved.

We have revised §§ 433.68(e)(1)(ii) and 433.68(e)(2)(ii) in the following manner. Under the current regulations, § 433.68(e)(1)(ii) specifies that if the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is greater than 1, HCFA will automatically approve the waiver request. Similarly, § 433.68(e)(2)(ii) indicates that if the State demonstrates to the Secretary's satisfaction that the value of B1/B2 is greater than 1, HCFA will automatically approve the waiver request. Under this scenario, a tax would be generally redistributive only if such tax is more redistributive than a tax that is applied to all providers in a class. Consequently, we have revised § 433.68(e)(1)(ii) to indicate that if the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 1, HCFA will automatically approve the waiver request. Likewise, we have revised § 433.68(e)(2)(ii) to indicate that if the State demonstrates to the Secretary's satisfaction that the value of B1/B2 is at least 1, HCFA will automatically approve the waiver request.

Also, we have added § 433.68(e)(1)(iii) to indicate that if a tax is enacted and in effect prior to [publication date of this final rule], and the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 0.90, HCFA will review the waiver request. We have added § 433.68(e)(1)(iv) to indicate that if a tax is enacted and in effect after [publication date of this final rule], and the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 0.95, HCFA will review the waiver request.

In addition, we have revised §§ 433.68(e)(1)(iii)(B) and 433.68(e)(2)(iii)(B) by adding the following criteria for favorable treatment under the waiver standards. A tax that excludes or provides credits or deductions to the following providers is permissible:

(1) Financially distressed hospitals:

(a) Defined by State statute;

(b) The State's statute has reasonable standards for determining financially distressed hospitals and these standards are applied uniformly to all hospitals in the State; and

(c) No more than 10 percent of non-public hospitals in the State are exempt from the tax;

(2) Psychiatric hospitals; or

(3) Hospitals owned and operated by HMOs.

We have further added to § 433.68(e)(2)(iii)(B)(8) that providers with tax rates that vary based exclusively upon regions, but only if the regional variations are coterminous with preexisting political (and not special purpose) boundaries and enacted and in effect prior to November 24, 1992, will be grandfathered in for special treatment under the uniformity test by applying a B1/B2 value of 0.85 for waivers to permit such variations.

4. Hold Harmless

We have revised § 433.58(g)(2) to specify that the State may modify taxes in existence as of November 22, 1991 in order to comply with the hold harmless rules established at § 433.68(f).

Section 433.68(f)(3)(ii) had indicated that a State must come into compliance with the hold harmless provisions by April 1, 1993. To accommodate the States, we have extended the deadline to September 13.

D. Additional Clarifications

As a result of comments and ongoing discussions and negotiations regarding the interim final rule, we are making the following clarifications to HCFA's policies concerning provider-related donations and health care-related taxes:

1. Additional Health Care Classes

The Secretary will consider adding additional classes by further expedited rulemaking if States can demonstrate the need for additional designations and that any class of classes proposed for addition meets the following criteria:

- The revenue of the class is not predominantly from Medicaid and Medicare (not more than 50 percent from Medicaid and not more than 80 percent from Medicaid, Medicare, and other Federal programs combined);
- The class must be clearly identifiable, such as through designation for State licensing purposes, recognition for Federal statutory purposes, or being included as a provider in State plans; and
- The class must be nationally recognized and not be unique to a State.

2. Withholding Rules

We are restating our existing policy on withholding rules. We recognize a matchable expenditure if the State meets the following criteria:

- The provider voluntarily elects to have the State withhold the funds, or a State or Federal court requires the State to withhold the funds (such as alimony, child support, or debts owed to the State);
- With respect to payees for whom an Internal Revenue Service (IRS) Form 1099–MISC must be submitted, the State must report the total amount claimed as an expenditure (including the withheld amount) as the provider's income to the IRS on Form 1099–MISC; and
- The IRS recognizes the full amount of the reported payment as income to the provider.

3. Formula for Determining State Base Percentage

We are clarifying that, due to an inadvertent editorial error, the formula contained in the preamble of the interim final rule for determining the maximum amount of provider-related donations and health care-related taxes a State may receive without a reduction in FFP is incorrect. The State base percentage is calculated by dividing the amount of the provider-related donations and health care-related taxes to be received in State fiscal year 1992 by the total non-Federal share of medical assistance expenditures (including administrative costs) in that fiscal year based on the best available HCFA data. This percentage is then multiplied by the State's total medical assistance expenditures for the fiscal year to determine the actual dollar limit. This formula is consistent with the statute and § 433.60 of the regulations. The preamble, however, included administrative costs in the multiplication factor and not in the State base percentage determination.

4. Application of the Uniform and Broad-based Test and Hold Harmless Guarantee Test

- We are clarifying that the waiver tests will be applied on a per class basis.
- We are also clarifying that the hold harmless guarantee test will be performed on a per class basis. For the first prong of the guarantee test, the State will compare the amount of all health care taxes applied to one health care class to 6 percent of the revenues received by all providers in the health care class. For example, if the total amount of three separate taxes on the inpatient hospital services class produces revenue greater than 6 percent of the revenues received by the hospitals, the State would proceed to the 75/75 portion of the guarantee test. If 75 percent of the providers in a class receive 75 percent of their total tax costs back, the providers are considered to be held harmless from the cost of their tax.

II. Disproportionate Share Hospitals

A. Summary of Interim Final Regulations

1. Background

Public Law 102–234 established limits on the amount of FFP for medical assistance expenditures made to disproportionate share hospitals (DSHs) that, because of their geographic location or various other reasons, serve a larger number of Medicaid recipients and other low-income individuals than other hospitals. The law deleted the prohibition of an upper payment limit for DSHs from section 1902(h) of the Act and prohibited HCFA from restricting a State's authority to designate hospitals as DSHs. The law also imposed two restrictions on DSH payments.

The first DSH restriction, effective from January 1, 1992, through September 30, 1992, placed a moratorium on DSH State plan amendments. States may receive FFP for DSH payments made during the moratorium period only if the payments were made in accordance with specified criteria.

The second DSH restriction, effective October 1, 1992, establishes both national and State limits on DSH payments. The national limit is established at 12 percent of the total amount of medical assistance expenditures (excluding State administrative costs) under Medicaid State plans during the Federal fiscal year (FFY).

In general, each State's DSH limit is similarly set at 12 percent of the State's medical assistance expenditures (excluding administrative costs) during the FFY. States with DSH payments applicable to FFY 1992 above the 12-percent limit are defined as "high-DSH States." States that are designated as "high-DSH States" will have DSH payment adjustments limited to the State base allotment.

States with DSH payments applicable to FFY 1992 below the 12-percent limit are referred to as "low-DSH States." These States are permitted to increase DSH payments to the extent that their Medicaid programs grow and to the extent that these States are entitled to receive a supplemental amount that does not result in the States' aggregate DSH payments exceeding the national limit.

The preliminary national DSH limit and the preliminary State-specific DSH limits are calculated prospectively, before the beginning of the FFY (that is, October 1).The law requires the Secretary, before the beginning of each fiscal year (beginning with fiscal year 1993), to estimate and publish in the **Federal Register** the national DSH payment limit and each State's DSH allotment within that DSH limit.

2. DSH Provisions Published in the Interim Final Rule.

In the November 24, 1992, interim final rule cited earlier under section II of this preamble, we also implemented the DSH provisions of the Public Law 102–234. We provided the following changes to our regulations to implement the statutory provisions:

- We specified the limitation on aggregate DSH payments for the moratorium period January 1, 1992, through September 30, 1992.
- We specified preliminary national and State DSH limitations on aggregate DSH payments beginning October 1, 1992. We specified that the national payment limit on aggregate DSH payments for any FFY beginning on or after October 1, 1992, is equal to 12 percent of total medical assistance expenditures (excluding administrative costs) that are projected to be made during the FFY under State plans. We specified that HCFA will make and publish a preliminary allotment in the **Federal Register** prior to October 1 of each FFY year, update the projections by April 1 of the FFY, and reconcile actual expenditures to final allotments by April 1 of the following year.
- We specified the method and formula for the calculation of individual State DSH payment limits—referred to as the "State DSH allotment." For FFY 1993, each State's base DSH allotment will be calculated using the greater of:

(1) The State's allowable DSH payments applicable to FFY 1992 (beginning on October 1, 1991); or

(2) $1,000,000.

For FFY 1992, HCFA will derive these DSH amounts from payment plans that meet the requirements for FFP during the period from January 1, 1992, through September 30, 1992.

- We specified a process that HCFA would use to update the preliminary national DSH expenditure limit and State DSH allotments.
- We specified a reconciliation process that HCFA would use to reconcile final allotments to actual expenditures.
- We specified the publication requirements that HCFA will follow when publishing both the preliminary and final national DSH expenditure limit and State DSH allotments.
- We specified how HCFA would calculate each State's percentage of total medical assistance payments (excluding administrative costs) during FFY 1992.
- We specified the requirements for State DSH allotments in FFY 1993, FFY 1994, and subsequent years for both high-DSH and low-DSH States. For a high-DSH State, the dollar amount of DSH payments may not exceed the dollar amount of DSH payments applicable to FFY 1992 until the State's DSH payments equal 12 percent or less of its medical assistance payments. For a low-DSH State, the allotment in FFY 1993 would be calculated by HCFA by increasing the State base allotment by a growth factor based on the State's growth in total medical assistance expenditures, including all administrative expenditures, and (2) a supplemental amount if available under the national limit. The FFY 1994 allotment for low-DSH States would be calculated by increasing each State's prior year DSH allotment by: (1) Its State growth amount, and (2) a supplemental amount from a redistribution pool if such a pool is available under the national limit.

The State growth amount for a State in a fiscal year would be equal to the product of (1) The State growth factor, which is the projected percentage increase in the State's total medical assistance expenditures (including total administrative expenditures) relative to the corresponding State medical assistance expenditures (including total administrative expenditures) in the previous FFY, as adjusted by HCFA, and (2) the State's prior year DSH allotment. If there is no growth, the growth factor would be zero. If the State's growth factor is negative, the amount would be deducted from the State's prior year's DSH allotment. We specifically invited public comments on this approach.

- We specified our method of calculating and distributing a redistribution pool to low-DSH States.
- We specified that States that amend their State plans to meet the minimum DSH payment requirements may not have a State DSH allotment that is less than the minimum DSH payment adjustment.
- We specified that if the aggregate amount of the State DSH allotments for any FFY, beginning October 1, 1992, exceeds 12 percent of the total amount of aggregate national medical assistance expenditures (excluding administrative costs) projected to be made during that fiscal year, each State's DSH allotment will be reduced proportionally to ensure that the 12-percent statutory cap is not exceeded.
- We specified reporting requirements for State DSH payments.

B. Preliminary Notice of Individual State Allotments

On November 24, 1992, we also published a notice in the **Federal Register** (57 FR 55261–55265) announcing the preliminary national aggregate DSH limit and individual State allotments for FFY 1993. This notice was published in accordance with the requirement in § 447.298(c) that we publish preliminary DSH allotments at the beginning of the FFY.

C. Discussion of Comments

A summary of the public comments on the DSH portion of the interim final rule included among the 98 timely items of correspondence received and our responses to these comments follow:

1. Reconciliation Process

Comment: Several commenters objected to HCFA's retroactive adjustment of the DSH allotment. These commenters stated that the reconciliation procedures described in § 447.297(d) are unworkable. In accordance with the interim final rule, a State would not be notified of any allotment reductions until the final allotments are published April 1 of the fiscal year following the fiscal year in which payments are made. The commenters indicated that an allotment reduction at that point in the DSH payment process would confront a State with only two choices: (1) Recoup from hospitals payments in excess of the reduced allotment; or (2) reduce future DSH payments to offset earlier payments in excess of the final allotment. The commenters believed further that the significant lag between payment to a hospital and determination of final State DSH allotments, as envisioned in the interim final rule, makes it almost impossible to recoup payments, given the changing hospital participation in the DSH program from year to year.

Response: As a result of the comments received on this issue and negotiations and consultations with the National Governors' Association and States, we have totally revised the reconciliation process described in § 447.297(d). We will continue to publish preliminary State DSH allotments prior to October 1 of each FFY. However, the final national and State DSH limits for each FFY will be published by April 1 of each FFY. The final limit numbers will be based on our updated estimates of Medicaid expenditures for the FFY. For purposes of determining the final estimated Medicaid expenditures for the FFY, we will use the February Medicaid budget submissions—as reviewed and adjusted, if necessary, by us. However, for purposes of calculating the final FFY 1993 national limits and State DSH allotments, we used FFY 1992 DSH payment adjustment expenditures data reported by the States through March 31, 1993. The data were confirmed and updated, as necessary, by the States in response to an April 1993 letter that was sent to each State Medicaid director.

If we determine that a State has exceeded its final DSH allotment for a FFY, the excess DSH expenditures will be disallowed. If, on the other hand, a State's actual DSH expenditures in a FFY are less than its final State DSH allotment for the year, to the extent permitted by its approved State plan, we will permit the State to make additional DSH expenditures that do not exceed its final DSH allotment for the year.

Comment: Several commenters noted that section 1923(f)(i)(C) of the Act provides for the publishing of the national and State DSH allotments before the beginning of each FFY. The statute requires only one estimate and does not provide for preliminary numbers subject to mid-year updating and final reconciliation. However, the regulation at § 447.297 provides for three different estimates. The commenters believed that three estimates are bound to create chaos by requiring a State to wait 6 months after the close of the fiscal year to learn if it meets the final limit. The commenters are concerned that this requirement will wreck havoc with a State's ability to plan expenses. The commenters interpreted the statute as explicitly providing only one estimate, given prospectively at the beginning of the FFY, that is binding on both the State and the Federal Government.

Response: Because of the normal time lag between a State actually incurring an expense and its submission of a FFP claim, we did not have adequate accurate data available to calculate the FFY 1992 DSH expenditure levels. To be equitable to all States and to satisfy the statutory requirement that we publish a national and State limit at the beginning of each year, we decided to use the latest available data to publish preliminary limit numbers. We believe the issuance of preliminary limit numbers satisfies the statutory publication requirement. We also believe that, while not required by the statute, the publication of mid-year updates is not prohibited by the statute. As we noted above, we have revised the reconciliation process. Final national and State DSH limit numbers will be published by April 1 of each FFY. If a State exceeds its final DSH limit for a FFY, excess expenditures will be disallowed. If, on the other hand, a State's actual DSH expenditures in a FFY are less than its final State DSH allotment, the State is permitted to make additional DSH expenditures that do not exceed its final DSH allotment for the year, if its approved State plan permits these additional payments.

Comment: One commenter noted that the statute requires that estimated DSH limits be published before the beginning of each FFY beginning with FFY 1993. The commenter acknowledged that because of HCFA's lack of existing DSH expenditure data and the need to conduct a special information collection process, these FFY 1993 limits were not published until November 1992. However, the commenter asked if the statutory publication deadlines will be met in the future.

Response: We realize we were late publishing the preliminary FFY 1993 DSH limits. However, as the commenter noted, we needed time to gather and evaluate DSH expenditure data from States via a State survey process before implementing the statutory requirements of section 1923(f) of the Act. We also needed time to consult with the States. This process delayed the publication of the preliminary FFY 1993 DSH limits. (For the same reasons, the publication of the final FFY 1993 limits was delayed beyond the April 1 publication date noted above. These figures are being published as a separate notice in this issue of the **Federal Register**.)

We have subsequently revised the financial reporting requirements contained in the Forms HCFA-37 and HCFA-64 to capture State DSH expenditure data and added specific reporting requirements described in § 447.299. Now that we have these reporting requirements in place, we hope to meet all future publication requirement dates.

Comment: One commenter from a State Medicaid agency stated that HCFA's mid-year revisions could force States to make recoupments after many financially marginal hospitals have been paid their maximum payments and after the public entities have completed their intergovernmental transfers for the year. If HCFA's mid-year revisions indicate that higher DSH payments could be made, State law and the complexity of the administrative process could preclude upward mid-year adjustments to DSH payments.

Response: As we noted above, we eliminated the mid-year revision. The preliminary numbers will be finalized by April 1 of each FFY. We believe the 6-month time lag between publication of the preliminary and final numbers will not be detrimental to States. We recommend that States adopt language within their State plans that would permit them to automatically adjust DSH payments to the published preliminary and final DSH limits. We believe the inclusion of such language within the State plan should help avoid conflicts with State law or other additional administrative complexities.

Comment: One commenter suggested that HCFA indicate how it will advise State Medicaid Directors of the mid-year revisions.

Response: As previously explained, we have eliminated mid-year revisions. We will publish in the **Federal Register** prior to October 1 of each year the preliminary national and State DSH limits for the FFY. Final national and State DSH numbers will be published by April 1 of each FFY.

Comment: One commenter expressed concern that the limits are set based on total DSH spending for only 15 months of actual paid claims activity. The commenter noted that this is too short a period to capture all actual date of service utilization since providers have one year from the service date to actually submit their claim for payment.

Response: As discussed above, due to the elimination of the mid-year update adjustment, there is now only a 6-month time lag between setting of the preliminary national and State DSH limits and the final national and State DSH limit numbers. Both the preliminary and final DSH numbers are determined based on projections of Medicaid expenditures. Based on these revisions, we believe we have addressed the commenter's concerns.

Comment: One commenter recommended that HCFA delete the word "projections" from all references in § 447.297 (d)(2) and (e). The commenter indicated that this will be final allotments and will not be projections.

Response: We have revised §§ 447.297(d) and (e) to provide that final DSH expenditure "allotments" will be published by April 1 of the FFY.

Comment: One commenter noted a typographical error in the fourth sentence of § 447.297(c) in our description of DSHs. Specifically the reference to "low-number patients" should be changed to "low-income patients."

Response: We agree that this was a typographical error. However, we have completely revised § 447.297(c), and the revised language no longer includes the referenced term.

2. DSH Cap

Comment: Numerous commenters believed that the DSH cap should be the 1992 base DSH percentage plus a growth factor. These commenters noted that the statute specifically provides that low-DSH States are entitled to receive increased DSH payments equivalent to State growth.

Response: We have reevaluated our policy enumerated in the interim final rule and determined that the 12-percent national limit is a target rather than an absolute cap. Since we have now decided that the 12-percent national limit is a target, we have included State growth for low-DSH States in the final FFY 1993 State DSH allotments.

Comment: One commenter objected to the requirement that a State submit an assurance that it has not exceeded its DSH cap. The commenter stated that this is needless paperwork since HCFA knows each State's cap and States already regularly report on DSH payments as a distinct category when submitting financial reports on the Forms HCFA–37 and HCFA–64. The commenter suggested that HCFA monitor a State's compliance with its DSH caps through the financial reports.

Response: Although States do provide specific DSH payment information on both the Forms HCFA–37 and HCFA–64, we still believe it appropriate to require States to submit a separate DSH payment limit assurance with the submission of each State plan amendment. We note that the review of the State plans and the review of the financial reports are two separate and distinct functions carried out by different HCFA components. State plan reviews of a State's methods and standards used to set payment rates are performed by the Division of Payment Policy. The financial reports submitted on the Forms HCFA–37 and HCFA–64 are reviewed by the Office of Medicaid Management to determine the amount of FFP monies that are disbursed. Consequently, we believe the DSH payment limit assurances should be submitted with State plan amendments separately from the financial reports. The requirement of specific assurances with each State plan amendment has been an established HCFA policy to ensure a State's compliance with certain statutory requirements. We believe the addition of this new DSH requirement as part of the State plan review process is the proper means to ensure a State's compliance with the statutory DSH payment limit which this rule implements.

Comment: Numerous commenters disputed HCFA's authority in § 447.298(g) to reduce DSH caps to all States on a pro rata basis if the aggregate of Medicaid DSH allotments, as projected by HCFA, exceeds 12 percent. These commenters believed that the statute does not give HCFA the authority to reduce payments. They concluded that the statute only provides authority for HCFA to increase DSH allotments for supplemental growth amounts to low-DSH States. These commenters explained that the statute guarantees high-DSH States a State DSH allotment that exceeds the 12-percent cap and HCFA cannot just arbitrarily reduce or adjust this guaranteed allotment. Further, these commenters noted that HCFA's method of reducing DSH caps to all States on a pro rata basis is extremely onerous for States because they would be required to change their program payments to come into compliance within the 6 months between April and October when many legislatures are not in session.

Response: We initially chose to reduce DSH caps to all States on a pro rata basis if aggregate medical assistance expenditures exceeded the 12-percent national limit because we determined this was the most equitable means to bring DSH expenditures to the required 12-percent level. However, as explained above, we have subsequently determined that the 12-percent national limit was not intended to be an absolute cap but rather a target towards which all States must strive. In light of our revised interpretation, we have revised § 447.298 by deleting paragraph (g), the national limit adjustment. The FFY 1993 State DSH allotment for high-DSH States will be set based on the dollar amount of DSH expenditures applicable to FFY 1992, while low-DSH States will have their final FFY 1993 State DSH allotment set using FFY 1992 DSH expenditures increased by a growth amount.

Comment: One commenter from a low-DSH State stated that its preliminary DSH allotment (an allotment that may be reduced retroactively) is too small. The commenter noted that the allotment does not include any adjustment for growth in the Medicaid program, nor does it reflect any shift of unused growth not provided to high-DSH States via the redistribution pool. Without a factor for State growth and the supplementary amount from the redistribution pool, the State acknowledged that projected DSH payments under its approved State plan will exceed its State DSH allotment. This commenter pointed out that States have three unattractive options available under this scenario. A State can either choose to: (1) Be out of compliance with the State plan requirements, (2) revise its State plan to reduce DSH payments, or (3) make excess DSH payments with 100 percent State funds.

Response: As explained above, we have included State growth in the final FFY 1993 State DSH allotments for low-DSH States. However, because FFY 1992 DSH expenditure levels exceed the 12-percent targeted levels, we have not provided for a redistribution pool. The statute provides for a redistribution pool only to the extent that total DSH expenditures do not exceed the prescribed national limit.

Comment: One commenter noted that although the DSH statutory language (upon which the regulations are based) was negotiated among the National Governors' Association, HCFA, the Office of Management and Budget, and the States, the negotiated language was intended to provide a mechanism for low-DSH States to move toward the national limit of 12 percent. The commenter pointed out that the negotiated language was based on projections of Medicaid expenditures that were incorrect. In this context, low-DSH States did not object to the negotiated language because it appeared to provide for a reasonable rate of growth in their DSH programs.

However, because of the inaccurate 12-percent estimate, low-DSH States are severely disadvantaged by the new regulations and are being treated unfairly. The commenter asked HCFA to take immediate steps to minimize unfair treatment to low-DSH States.

Response: We realize the 12-percent estimates upon which Congress relied when setting the national limits have subsequently proven to be inaccurate. We believe that if estimates of 1992 DSH spending had been accurately projected, Congress would have set the national limit at a higher level to reflect the true current level of DSH expenditures. With this in mind, we have changed our interpretation of the national DSH limit. We are no longer interpreting the national DSH limit as an absolute cap but rather as a target percentage. Under this revised interpretation, we have eliminated the national limit adjustment from § 447.298(g). We are no longer reducing 1992 State DSH expenditures on a proportional basis to reach the 12-percent specified national limit. We are including a growth factor in the calculation of the State DSH allotments for low-DSH States and are calculating high-DSH States DSH allotments using State aggregate 1992 DSH expenditures. We believe that our revised interpretation provides fair treatment to both high-DSH and low-DSH States.

Comment: One commenter stated that the portion of the interim final rule that sets forth the national DSH payment limit of 12 percent and the State DSH allotment of a low-DSH State for 1992 is based on very questionable assumptions. The commenter questioned how the national DSH limit provision can be used to preempt the provisions concerning calculating the DSH allotment for a low-DSH State. The commenter stated that there is no basis in the law for assuming that, if there is a conflict between the national 12-percent limit and the 1992 State DSH allotment for low-DSH States, the national limit would overrule the provisions relating to setting the DSH allotment for low-DSH States.

Response: As we explained above, based on our revised interpretation that the national limit is not an absolute cap but a target percentage, we have included State growth (§ 447.298(d)) for low-DSH States in the final FFY 1993 State DSH allotments.

Comment: One commenter from a State Medicaid agency recommended that instead of proportionally reducing all State DSH allotments based on the States' share of aggregate national DSH payments, the DSH allotment reduction should be calculated based on the extent to which changes in each State's Medicaid program from year to year contribute to the national overage.

Response: As we previously explained, we have eliminated the national payment limit adjustment described in § 447.298(g). Therefore, no State will have its DSH allotment reduced because 1992 aggregate DSH expenditures exceeded the specified 12-percent limit.

Comment: One commenter noted that the language in § 447.298 (c) and (d) appears to make it possible for low-DSH States to receive an amount in excess of the 12-percent limit. The prior year's allotment appears to be increased by the growth factor without regard to the percent limit. HCFA should clarify whether State growth will be allowed to increase a low-DSH State's percentage above the 12-percent limit.

Response: As we previously explained, we have provided a growth factor to all low-DSH States in the final FFY 1993 State DSH allotments. We have determined that the 12-percent national limit is not an aggregate absolute cap, but a target percentage. This change has permitted State growth to low-DSH States. However, the amount of State growth is limited to the extent that in no FFY will a low-DSH State's DSH allotment be allowed to exceed the 12-percent national DSH target percentage.

Comment: One commenter objected to the rule's national DSH payment limit being applied to individual State allotments. The commenter believes a national funding mechanism standard should not be adopted because States cannot predict the impact of other States' expenditures on their revenues.

Response: A national DSH payment limit is required by section 1923(f)(1)(B) of the Act. However, we are now interpreting this provision as a target percentage rather than an absolute cap. Under the target percentage concept, no State's FFY 1992 baseline DSH expenditures are affected by other States' DSH expenditures. Therefore, under this interpretation, no State has been unfairly penalized due to spending experience of other States.

Comment: One commenter expressed concern that HCFA's limitation in § 447.298(a)(2)(ii) that specifically excludes from the base those DSH payments made in FFY 1992 but applicable to another fiscal year, is inappropriate.

Response: As explained above, we believe it was not the Congress' intent to limit DSH payments based on actual cash payments made in FFY 1992. We believe that the Congress chose FFY 1992 as a baseline measuring period. To avoid skewing the measurement of DSH payments for FFY 1992, we purified the base to remove DSH payment adjustments made in FFY 1992 for prior periods. A complete, detailed description of how we determined FFY 1992 DSH payment adjustments is included in the final FFY 1993 DSH notice that is published as a separate document in this issue of the **Federal Register**.

Comment: One commenter asked for clarification of the method used to make the DSH allotment determinations. Specifically, the commenter questioned if HCFA proceeded as required by section 1923(f)(3) of the Act when determining that there were no dollars available for redistribution to low-DSH States for FFY 1993. The commenter asked that we explain this calculation. The commenter questioned whether preliminary high-DSH State base allotments included only 1992 amounts. The commenter believed that holding high-DSH States to 1992 allotment levels should yield redistribution amounts for low-DSH States due simply to the effects of inflation, not to mention Medicaid program growth for many States.

Response: We explained the method used to make the DSH allotment determinations in the notice published in the **Federal Register** (57 FR 55261) on November 24, 1992. Our calculations were made in accordance with our interpretation of the requirements of section 1923(f) of the Act. However, as we previously explained, we have reevaluated our initial interpretation of the national 12-percent limit specified in the statute and now consider this specified 12-percent national limit a target percentage rather than an absolute cap. Consequently, we have revised our calculation of the DSH State allotments in determining FFY 1993 final limits and are publishing a notice in this issue of the **Federal Register** to provide these revised State DSH allotments. That notice contains an explanation of our method of calculating the final FFY 1993 national target percentage and State DSH allotments.

Comment: Numerous commenters questioned the provision that specifies that a negative supplemental amount can be used to reduce or eliminate the growth factor and to reduce the 1992 base DSH allotment. These commenters stated that the law plainly states that the base allotment may be increased by the growth factor and the supplemental amount. They believed that HCFA was wrong to suggest that the law included the possibility of a negative increase to the base allotment, or that the growth factor could be reduced if the redistribution pool is calculated to have a negative amount. The commenters believed that the law guarantees low-DSH States the 1992 base allotment plus the growth factor. One commenter further noted that although the supplemental amount may be zero, it may not be used to reduce other factors. The implementation of the national DSH limit may cause the supplemental amount to be zero for some time but cannot set aside other provisions of the law. Several commenters noted that HCFA's interpretation concerning negative growth not only conflicts with the statute but also creates enormous uncertainty among hospitals and States as to what payment levels will be allowed from year to year.

Response: After further consideration of the negative growth issue, we have revised § 447.298(d) by deleting paragraph (d)(1)(ii)(3), which provided for a reduction of the prior year's DSH allotment for those States that had negative growth. States that have a negative growth factor will be treated the same as States whose growth factor is zero. States with zero or negative growth will have their DSH allotments maintained at the prior period's level. However, we added a new paragraph (d)(2) to § 447.298 that provides that if a low-DSH State experiences a level of negative growth such that its previous FFY State DSH allotment would be more than 12 percent of its current FFY's total unadjusted medical assistance expenditures (excluding administrative costs), then the low-DSH State's previous year's DSH allotment will be reduced to the extent necessary to maintain the individual low-DSH States' 12-percent limit. That amount will become the low-DSH State's DSH allotment for the current FFY. In no FFY will a low-DSH State's DSH allotment be allowed to exceed its individual State 12-percent limit.

Comment: Several commenters expressed concern that the process used to develop the FFY 1993 allotments resulted in the reporting of data that required a $1.5 billion adjustment. One commenter noted that it was expected that some adjustments would be required because States had minimal administrative guidance and no regulatory guidance for reporting DSH expenditures. However, the size and scope of adjustments indicate that the reported information used to set the DSH allotments was inaccurate or unreliable. The commenters raised questions regarding the adjustment process and expressed concern that the process was not made public.

Response: The November 24, 1992, DSH notice explained that we purified the FFY 1992 DSH expenditure data submitted by States in June 1992 as the result of our May 6, 1992, State survey request, updated by States in August 1992. As we explained in that notice, the States had submitted unadjusted FFY 1992 DSH expenditures totalling over $18 billion. We reviewed these DSH expenditures and adjusted the State data to remove DSH expenditures that did not qualify under the provisions of section 1923 of the Act as base allotment expenditures. Specific adjustments totalling over $1.5 billion were made for the following categories: (1) Amounts representing retroactive DSH expenditures that were not applicable to FFY 1992; (2) Non-DSH expenditures incorrectly included as DSH expenditures; (3) One-time DSH expenditures, which are not allowable in the calculation of the base allotments, made under plan amendments effective October 1, 1991, through December 31, 1991; and (4) DSH expenditures for non-approvable DSH plans. The total adjustments resulted in adjusted FFY 1992 DSH expenditures of over $16.5 billion. The adjustments were based on the best data available at the time. However, we have revised the reconciliation process at § 447.297(d) to ensure that the latest available data are used in updating and finalizing the FFY 1992 DSH expenditures that are used in setting the final FFY 1993 limits. In the DSH notice published elsewhere in this issue of the **Federal Register**, we again explain how we determined FFY 1992 DSH payment adjustments.

Comment: One commenter observed that the interim final regulations at § 447.298 provide that each State's base DSH allotment is calculated using the greate of: (1) Allowable DSH payments in FFY 1992 (beginning October 1, 1991), or (2) $1 million. The interim final regulations appear to allow States to count payments earned from October 1 through September 30. For States operating on a July 1 through June 30 fiscal year, this language could be construed to allow payments made for two State DSH periods.

Response: All States, regardless of their fiscal year periods, are having their DSH payments limited based on DSH expenditure levels for FFY 1992 (that is, for the period October 1, 1991, through September 30, 1992.) Only DSH expenditures applicable to FFY 1992 are included in the base used for determining the DSH national and State limits. The State fiscal period does not come into play for the DSH limit calculations.

Comment: One commenter recommended that HCFA rewrite § 447.298(a)(3) to clarify that DSH payments are included in the denominator as part of total medical assistance expenditures.

Response: Section 447.298(a)(3) provides that HCFA will calculate a percentage for each State by dividing the disproportionate share hospital base allotment by the "total" medical assistance expenditures, excluding administrative costs. The phrase "total medical assistance expenditures, excluding administrative costs" does include DSH payments. We believe that, by including the word "total," we have clearly included DSH payments in this calculation. Therefore, we believe it unnecessary to make this clarifying change.

Comment: One commenter pointed out that § 447.298(e)(2)(iv) appears to be worded incorrectly. The commenter noted that this paragraph should say the "* * * total amount of additional disproportionate share * * *" and suggested that the word "additional" be inserted to reflect the language in the statute.

Response: We agree that the word "additional" should be inserted in this section and have revised § 447.298(e)(2)(iv) accordingly.

Comment: One commenter objected to § 447.298(a), which provides that State DSH allotments be calculated on an accrual basis, rather than a cash basis. The commenter believed that this regulation is in direct conflict with Public Law 102–234, which states that State base allotments will be the total amount of payment adjustments made during fiscal year 1992. The commenter added that the regulation bases the State allotment on payments attributable to the fiscal year.

Response: Because of the normal time lag between a State actually incurring an expense and its submission of an expenditure claim for FFP, we determined that to be fair to all States in setting the DSH allotments it was reasonable to use total DSH payments attributable to FFY 1992 instead of payments actually paid in FFY 1992. We believe it was not the Congress' intent to limit DSH payments based on actual cash payments made in FFY 1992. Therefore, we did not narrow our interpretation of the statute by using the literal reading of the statute but adopted the expanded interpretation contained in § 447.298(a) that all DSH payments attributable to FFY 1992 be included in the calculation of the State DSH allotments.

3. Other Comments

Comment: One commenter noted that the statute makes no reference to the exclusion of administrative costs in the determination of Medicaid expenditures for purposes of the calculation of the national 12-percent DSH limit. The commenter believed, therefore, that HCFA exceeded its authority in excluding these costs.

Response: Section 1923(f)(1)(B) of the Act imposes a national DSH payment limit equivalent to 12 percent of the total amount of expenditures under title XIX State plans for medical assistance expenditures incurred during a FFY. Medical assistance expenditures, as described in section 1905(a) of the Act, include payment for part or all of the cost of specific care and services provided. Administrative costs are not included within the section 1905(a) definition of medical assistance expenditures. Sections 1903(a)(2) through (a)(7) of the Act set forth separate FFP matching percentages for State administrative costs, which differ from the FFP matching percentages for medical assistance expenditures. Therefore, in keeping with the statutory distinction between medical assistance expenditures and State administrative costs, we believe we have properly excluded State administrative costs from the calculation of the 12-percent national DSH limit which is tied to medical assistance expenditures.

Comment: One commenter noted that an attempt to limit present DSH payments through new regulations would be devastating and would result in the closure of one particular small rural hospital. The commenter requested that HCFA rethink any planned reductions in DSH payments. The commenter explained that small rural hospitals provide the first and, in many cases, the only medical care to millions of rural citizens living in rural areas.

Response: These regulations do not specifically target rural hospitals. However, section 1923(f) of the Act does not exclude rural hospitals from these new DSH limits. These DSH limits are applied to State aggregate DSH payments to all hospitals. States still have the flexibility to determine which hospitals are designated as DSHs and the amount of DSH payments to be made to qualifying DSHs within the State limits. Under these regulations, States have the flexibility to provide increased DSH payments to rural hospitals by redistributing DSH payments among other hospitals.

Comment: One commenter recommended that the regulations be revised to conform more closely to the law. The commenter explained that there is a significant difference in the definition of State base allotment as contained in section 1923(f)(4)(C) of the Act and the regulation at § 447.298(a)(i). The statute makes it clear that the State base allotment is the greater of $1,000,000 or the total amount of payment adjustments made during fiscal year 1992. The regulation at § 447.298 creates a "State projected disproportionate share hospital payment for FFY 1992." The commenter noted that in the November 24, 1992, **Federal Register** (57 FR 55130–55131), HCFA acknowledges that for a high-DSH State, the State base allotment is the total amount of DSH payment adjustments in 1992. This 1992 limit is guaranteed to the high-DSH States by statute as its share until these payments equal 12 percent of the State's Medicaid budget. The commenter recommended that HCFA change the regulations to reflect the language of the statute.

Response: We used the phrase, "State projected disproportionate share hospital payment for FFY 1992" in § 447.298(a) because the calculation of both the preliminary and final national and State DSH limits are based on estimated Medicaid expenditures. Since these calculations are based on estimated expenditures, we believe the use of the phrase is appropriate.

Comment: One commenter stated that the Secretary should consider publishing regulations on the method that States may employ to determine which hospitals may be "deemed" to be DSHs under 42 U.S.C. 1396r–4(b)(1) (section 1923(b) of the Act) and the method States may use to determine the additional minimum payment under 42 U.S.C. 1396r–4(c). The commenter noted that HCFA omitted addressing these issues out of concern for the proscriptions contained in 42 U.S.C. 1396r–4(b)(4). The commenter expressed his legal opinion that 42 U.S.C. 1396r–4(b)(4) should not be construed to limit the Secretary's authority to publish regulations which assure that States appropriately implement the "deemed" DSH provision of 42 U.S.C. 1396r–4(b)(1). Also the commenter did not construe 42 U.S.C. 1396r–4(b)(4) to prohibit the Secretary from promulgating regulations that interpret the payment provisions of 42 U.S.C. 1396r–4(c), nor did the commenter construe either the now amended or predecessor provision of 42 U.S.C. 1396(h) as imposing such limitations.

Response: We understand the commenter's interest in desiring implementing regulations for the subject areas. However, these issues are outside of the purview of the national and State DSH limits that were the subject of the interim final rule. Although, the commenter advised us that, in his legal opinion, the provisions of 42 U.S.C. 1396r–4 (b) and (c) do not prohibit the issuance of regulations dealing with these issues, we believe that 42 U.S.C. 1396r–4 does limit the Secretary's authority to restrict a State's authority to designate hospitals as disproportionate share hospitals. Therefore, we are not addressing these issues in this final rule. However, should we decide to address these issues at a later date, we will publish a proposed rule.

Comment: One commenter noted that the interim final rule does not provide States any grace period for making changes in their State plans to reflect the necessity to recoup DSH payments that grow directly out of the rule.

Response: We did not provide a grace period for recoupment purposes because States have the flexibility to develop methods and standards for recoupment of overpayments tailored to their particular needs. Many State plans already contain recoupment procedures. If a State plan does not currently contain provisions describing recoupment procedures and the State wishes to develop methods and standards for recoupment purposes, the State may file a State plan amendment to add any necessary recoupment procedures. However, this amendment must comply with all applicable Federal State plan amendment requirements and the State must provide the assurances and related information required in accordance with Federal regulations at §§ 447.253 and 447.255.

Comment: One commenter noted that the prospective reduction of DSH payments raises issues of equity. The commenter observed that the hospital base of a given DSH program may change from year to year as new hospitals qualify and participating hospitals fail to qualify. The rule, as written, could result in payments to hospitals in one fiscal year being reduced to compensate for payments to other hospitals in the preceding fiscal year which necessitated the reduction.

Response: We issued the interim final rules to implement the statutory requirement imposed by Public Law 102–234 that a State's aggregate DSH payments not exceed a specified limit. We did not intend to alter a State's ability to define which hospitals qualify as DSHs or prescribe a State's method for making DSH payments. Under these regulations, States continue to have the flexibility to develop their own methods and standards for complying with the DSH requirements of section 1923 of the Act. As to the commenter's concerns regarding equity, each State has the flexibility to resolve this issue. We hope that each State will be equitable in designing and determining recoupment procedures that it desires. As previously explained, the State plan must contain a description of the methods and standards that will be used to recoup overpayments.

Comment: A few commenters were concerned with HCFA's assertion in the regulatory impact statement that the interim final regulations will not have a direct or indirect affect on recipients since the rule will not preclude providers from receiving Medicaid payments for services that are furnished. The commenters noted that recipients will likely be affected. The commenters explained that individual State Medicaid programs will be uncertain of the allowable FFP for DSH payments since retroactive adjustments can be made. States will deal with the uncertainties brought about by this rule by reducing DSH payment programs and recouping DSH payments already made to hospitals. These commenters noted that the interim final rule provides no certainty in the amount of DSH funds that will be available to States and hospitals to support DSH facilities. The resulting confusion and uncertainty will work to the detriment of the health care system.

Response: The reference in the impact statement in the interim final rule to recipients was intended to mean individual Medicaid recipients. Since DSH payments are supplemental additional payments to hospitals not specifically tied to a specific Medicaid service provided to a specific Medicaid recipient, we concluded that the interim final DSH regulations would not directly or indirectly affect Medicaid services provided to individual Medicaid recipients.

Comment: Several commenters questioned whether States could appeal the determination of their base allotments as they appeared in the November 1992 notice. These commenters recommended that HCFA add appeals procedures to the regulations.

Response: In the November 1992 notice, we provided only preliminary numbers that we stated would be updated and finalized based on the most recent available data. We, therefore, believe it unnecessary to provide an appeals mechanism for the preliminary numbers. However, if a State has FFP disallowed based on these preliminary numbers, that State is entitled to appeal the disallowance using the appeal procedures for Medicaid FFP disallowances in 45 CFR part 16.

Comment: Several commenters requested that HCFA provide more detailed instructions to States on the reporting documentation and potential adjustments that could be made to their DSH expenditures.

Response: HCFA will issue instructions through a State Medicaid Manual transmittal that will provide guidance to States regarding the reporting of DSH payment adjustment expenditures.

Comment: One commenter suggested that it would be more efficient and cost-effective for the Federal Government to limit DSH payments to States' annualized value of approved State plans for DSH payments relative to total State Medicaid expenditures for medical assistance for the same fiscal period. The commenter explained that this method would reduce State/Federal disputes by eliminating the national cap and holding States to the State 12-percent cap and their annual program growth for the same fiscal period. Another commenter suggested that HCFA adopt a more equitable mechanism for limiting DSH payments. This commenter suggested that the caps of all States be equal percentages of their Medicaid budgets.

Response: We believe that the methods specified by the commenter do not comply with the requirements specified in section 1923(f) of the Act for setting the DSH limits. Section 1923(f) of the Act details specific calculations that must be made in determining the new statutory DSH limits. We have followed these requirements in our calculations of the limits and have incorporated these statutory requirements in our DSH regulations.

Comment: One commenter emphasized that the new DSH assurance required by § 447.272 relative to the applicable DSH payment limits will be subject to variables that comprise the preliminary adjusted and final DSH payment limits. Therefore, the commenter observed, States will be unable to absolutely know or control these variables. Consequently, HCFA should consider these variables in its review of the assurances provided by States.

Response: Section 447.272 requires States to assure HCFA only that DSH payments will not exceed the published limit amounts. Since these amounts are published amounts, they are known factors. To avoid problems with this DSH assurance, we strongly recommend that States add language to their State plans that allow them to make DSH payments up to, but not exceeding, the finally determined published limit amount.

Comment: One commenter expressed concern that the DSH policy will have an extremely adverse impact on access to care that is funded through DSH programs and provider institutions. The commenter noted that implementation of the DSH policy will flow inexorably down hill to the most financially strapped institutions and will consequently disadvantage patients in States that were innocent of the abuses leading to the DSH problem. This commenter noted that this DSH policy will undermine the credibility and disrupt the operation of the fledgling State-County partnership program that relies upon DSH and other Medicaid programs. Further, this commenter noted that the DSH policy is extremely disruptive to the overall health care reform strategies upon which some States embark to facilitate universal access and efficient use of all health care dollars, with a minimum of government regulation.

Response: The interim final DSH regulations implement the statutory provisions of section 1923(f) of the Act. The regulations do not eliminate DSH payments but, instead, constrain States' DSH spending to FFY 1992 levels. The regulations permit DSH payments by low-DSH States to increase in proportion to the State's growth of other Medicaid program expenditures. They do not alter the flexibility afforded to States to determine which hospitals qualify as DSHs and to choose the payment method to determine DSH payments. DSH programs that were in existence in FFY 1992 can continue at the FFY 1992 spending level. The intent of the regulations is to prohibit States from increasing DSH spending beyond the allowable FFY 1992 levels. The Congress believed it necessary to pass section 1923(f) of the Act to constrain and control Medicaid health care costs.

Comment: One commenter noted that HCFA recently separated FFP allowances for DSH out of the aggregate FFP allowances. The commenter pointed out that it is unclear at this time how these quarterly allowances will be affected by the multiple estimates, or if they will take into account date of service and date of payment variations (slow start-up lapse period spending).

Response: For purposes of monitoring DSH payment adjustment expenditures, States will be required to report this information on a quarterly basis. Guidance concerning the specific DSH expenditure reporting requirements described in § 447.299 will be provided through instructions in the State Medicaid Manual.

Comment: Many commenters recommended that HCFA provide public access to the data used for the adjustment of State DSH allotments and the State and national DSH caps.

Response: Under the Freedom of Information Act, these data are currently available to the public. To obtain this information, an individual must submit a Freedom of Information Request to HCFA.

Comment: One commenter requested that HCFA provide more information and guidance concerning the DSH State plan amendment requirements that would allow States retroactively to make additional DSH payments if, after the year-end reconciliation process, a State's actual DSH spending was below its allotment level. Further, this commenter requested that HCFA specify the timeframes for the State receipt of notices of FFP disallowances for DSH expenditures exceeding the DSH allotment.

Response: If a State wishes to make additional DSH payments up to the amount of its finally determined DSH allotment, the State must include language in its State plan that would permit higher payments. In other words, the State plan should contain language that authorizes that total DSH payments for a specified FFY can be made up to the allowable amounts permitted in accordance with the finally determined DSH allotment for the period. If the plan contains such language, we would not consider payments made in accordance with this provision to be retroactive payments. Therefore, we recommend that all States review their currently approved plans to determine if the existing language permits DSH payments for a FFY up to the finally determined DSH limit. If a State's plan does not currently permit these payments, we recommend that the State submit a State plan amendment to include DSH payments for a specified FFY up to the amount of the finally determined DSH allotment. If a State plan amendment is necessary to accommodate such language, the State plan amendment should be submitted in compliance with all the Federal State plan amendment requirements described in regulations. FFP disallowances based on exceeding the DSH allotments will be taken once the final DSH allotments are known. This process will follow the normal FFP disallowance procedures that exist in accordance with the current Federal policy.

Comment: One commenter noted that § 447.296 delineates conditions under which States can revise the disproportionate share portion of their State plans for the period January 1, 1992, through September 30, 1992, to meet the minimum payment requirements of the Act. For this purpose, HCFA defined "minimum payment adjustments" as the amount required by the Medicare payment requirements. The commenter pointed out that the Act does not define a minimum payment adjustment. The statute leaves this definition to a State's discretion as long as the payment is reasonably related to the cost, volume, or proportion of services provided to title XIX recipients or low-income patients. The commenter believes that HCFA would establish a dangerous precedent by designating Medicare payment levels as a minimum requirement, even for the limited purposes of this section. The commenter stated that such a suggestion may not go unnoticed by the courts and could eventually be costly to both the States and to the Federal Government. The commenter expressed an opinion that it is both unnecessary and inappropriate to define minimum payment adjustments in the absence of a definition in the Act, and in light of this section having application to a retroactive period.

Response: Section 447.296(b)(5) was added to implement section 1923(f)(1)(A)(i)(II) of the Act, which permitted States to submit a State plan by September 30, 1992, that increased aggregate DSH payments to meet the minimum payment adjustments required by section 1923(c)(1) of the Act. The regulation specifically links the minimum payment adjustment to the amount required to meet the Medicaid payment requirements of section 1923(c)(1) of the Act. Even though this provision applies only to the moratorium period, we included it in the regulations as a record of the requirements for that period.

Comment: One commenter indicated that in § 447.298(a)(1) and (a)(2), the phrases "payments for," "payments during," and "payments made for the FFY" are confusing. The commenter suggests that the regulations state that all timely DSH payments for services rendered during FFY 1992 be included in the calculation of the State base allotment.

Response: We believe that simply stating that the State's base allotment will be based upon "timely" DSH payments would be too vague.

Comment: One commenter was concerned that the regulation provides an overly restrictive interpretation of the statute as it applies to the DSH payment limits applicable to the States. The commenter warned that the regulations limit the ability of States to help finance these providers at a time when they are often the only "safety net" available to serve the low-income population. Furthermore, the restrictions unfairly penalize States that have limited DSH payments to date but now seek to expand their programs and advantage those States that developed DSH payment programs more quickly.

Response: The interim final regulations implement section 1923(f) of the Act. Section 1923(f) of the Act and these regulations do not eliminate DSH payments but instead constrain States' DSH spending to FFY 1992 levels, while permitting DSH payments by a low-DSH State to increase in proportion to the State's growth of other Medicaid program expenditures. These regulations do not alter the flexibility afforded to States to determine which hospitals qualify as DSHs and to choose the payment method that is used to determine DSH payments. DSH programs that were in existence in FFY 1992 can continue at the FFY 1992 spending level. These regulations were issued to prohibit States from increasing DSH spending beyond the allowable FFY 1992 levels to constrain and control Medicaid health care costs.

Comment: One commenter indicated a conflict in the regulations. The commenter pointed out that § 447.298(b)(2) provides that, "for high-DSH States, the dollar amount of DSH payments in FFY 1993 may not exceed the dollar amount of payments made in FFY 1992." This language is repeated in paragraph (c)(2). Similarly, in setting forth the limitation on aggregate payments for DSHs after FFY 1992, the regulations provide for the calculation of the payment limit based on "actual expenditures" and "payments made by a State." (§ 447.297(c)). In the same section, however, the regulations provide that HCFA will revise the preliminary State allotment based on "* * * the information available as of December 31 of each year, "attributable" to the prior FFY for which the limit is being calculated * * *" (§ 447.297(d)(2)). The commenter believed that the use of the term "actual expenditures" is inconsistent with the recognition of payments "attributable to" the FFY and that these inconsistencies could engender many unnecessary controversies. Accordingly, the commenter suggested revised language that HCFA could use to clarify the regulatory language regarding the calculation of the State base allotment. The commenter also suggested that each reference to the "payments" or "expenditures" that will be considered in the determination or application of the State allotment be clarified by adding "for services rendered during the FFY 1992 in the State base allotment, regardless of when payment is made."

Response: We have revised regulations at §§ 447.298(a)(1)(i), (a)(2)(i), and (b)(2) to state that the amounts used in determining the DSH payments made by the States will be based on payments "applicable to" rather than payments "in" a FFY.

We have not made the commenter's second recommended change. Since DSH payments are not necessarily directly tied to services, we believe that including the word "services" would cause considerable confusion.

D. Changes to the Interim Final Rule

As explained in our responses to comments, we have made the following revisions to the DSH regulations published in the November 1992 interim final rule.

1. Publication of Final National DSH Target and Individual State DSH Allotments

We have revised §§ 447.297(b), (c), (d)(1), and (d)(2) in response to comments concerning the time lag between the publication of the "preliminary" national DSH expenditure target and individual State DSH allotments and the publication of "final" national DSH expenditure target and individual State DSH allotments. As required by law, we will continue to publish the preliminary projected national DSH expenditure target and individual State DSH allotments by October 1 of each FFY. These preliminary amounts will be based upon the most current applicable actual and estimated expenditure information reported to HCFA, and adjusted by HCFA as may be necessary, immediately prior to the October 1 publishing date. However, we will publish the final national DSH expenditure target and individual State DSH allotments by April 1 of each FFY. These final amounts will be based upon the most current, applicable actual and estimated expenditure information reported to HCFA, and adjusted by HCFA as may be necessary, immediately prior to the April 1 publication date. Once the final State DSH allotments are published for the FFY, they will not be recalculated for that FFY based upon any subsequent actual or estimated expenditure information reported to HCFA. This notification will provide the States with the certainty of knowing their final FFY DSH allotments by April 1 of each FFY and that their DSH allotments will not change any further for that FFY.

2. HCFA Monitoring of DSH Payments

We have revised the regulations at §§ 447.298(a)(1)(i), (a)(2)(i), and (b)(2) to state that the amounts used in determining the DSH payments made by the States will be based on payments "applicable to" rather than payments "in" a FFY. Once the final State DSH allotments are published each FFY, actual State DSH expenditures applicable to that FFY will be reviewed on an ongoing basis as States submit expenditure reports to HCFA to ensure that no State spends in excess of its FFY DSH allotment for that FFY. Also, additional DSH expenditures reported in subsequent FFYs that are applicable to previous FFYs will be reconciled back to that previous year's final State DSH allotment to ensure that the final State DSH allotment in any FFY is not exceeded. Any DSH expenditures in excess of the final State DSH allotment for a FFY will be disallowed and be subject to the normal Medicaid disallowance procedures. Finally, if a State's actual DSH expenditures in a FFY are less than its final DSH allotment for that FFY, the State may, to the extent permissible under its approved State plan, make additional DSH expenditures up to the amount of its final State DSH allotment for that FFY.

Although not specifically included in the regulations text, we believe that it is important to note here that since we are making such a significant change to the procedures specified in the interim final regulations for establishing the final FFY national DSH expenditure target amount and State DSH allotments, we have added an additional procedure applicable only to FFY 1993. Specifically, we asked each State to confirm the actual and estimated expenditure information that we intended to use in establishing the final FFY State DSH allotments and national DSH expenditure target amounts. We reviewed any changes or updates submitted by the States and made adjustments as we determined necessary and appropriate.

3. DSH 12-Percent Spending Target

We have made the following changes with regard to DSH spending limitations:

- We have revised the regulations at §§ 447.297(b) to state that 12 percent of total medical assistance expenditures (excluding administrative costs) is a target rather than an absolute cap in determining the amount that can be allocated for disproportionate share hospital payments. We have also revised paragraph (b) to state that HCFA will make final projections by April 1 of the current FFY rather than the April 1 following the FFY.
- We have revised paragraph § 447.297(c) to delete statements that provided that a final reconciliation would be made following the end of the FFY. We have added a new paragraph (c) that provides (1) that a preliminary national DSH expenditure target and State DSH allotments will be published prior to October 1 of each FFY, and (2) that a final national DSH expenditure target and State DSH allotments will be published by April 1 of each FFY.
- We have revised paragraph § 447.297(d) to delete statements that described the process for revising preliminary projections by April 1 of the FFY. We have added a new paragraph (d), which describes the process for determining the final national DSH expenditure target and State DSH allotments by April 1 of the FFY. In addition, we have revised paragraph (e)(2) to state that the final national DSH expenditure target and State DSH allotments will be published by April 1 of each FFY.
- We have revised § 447.298 to reflect that the 12-percent national limit is a target rather than an absolute cap. We are making these revisions based upon the comments we received on the interim final rule and our review of Congressional intent. We now believe that it was not the intent of the legislation to achieve the national 12-percent DSH expenditure limit in a FFY by requiring the State DSH allotments in any FFY to fall below the FFY 1992 State base allotments. We furthermore believe that it was not the intent of the legislation that the low-DSH States should not receive their growth amounts consistent with their individual State Medicaid program growth in those FFYs when the State's Medicaid program expenditures did not grow in excess of the national target percentage.

These revisions are further supported by the fact that the original estimates used by the drafters of the legislation appear to have significantly underestimated the FFY 1992 State DSH base allotments upon which future State DSH allotments would be based and significantly overstated projections of future FFY national Medicaid expenditures against which the national limit would be calculated.

- We have deleted paragraph § 447.298(g), which described the process to be used to reduce State DSH allotments in any FFY that the national aggregate limit exceeded 12 percent.

4. States With Negative Growth

We have added new § 447.298 (d)(2) and (d)(3) to include our method of determining State DSH allotments for low-DSH States that experience a certain level of negative growth. If a low-DSH State experiences a certain level of negative growth that results in its previous FFY DSH allotment exceeding 12 percent of its current FFY total unadjusted medical assistance expenditures (excluding administrative costs), we will reduce the low-DSH State's previous FFY's DSH allotment to the extent necessary to maintain the low—DSH State's 12-percent limit. The reduced amount will become the low-DSH State's allotment for the current FFY. In no FFY, will a low-DSH State's DSH allotment be allowed to exceed its individual 12-percent limit.

We have revised § 447.298(d)(1)(ii)(2) to provide that, if a low-DSH State's growth factor is negative in any FFY, the State's growth amount will be zero for that FFY and the State's DSH allotment will not be reduced to account for this negative growth except as provided for in § 447.298(d)(2), as explained above.

5. Typographical Corrections

We have revised § 447.298(e)(2)(iv) by adding the word "additional" in response to a comment.

III. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that is likely to result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• 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.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider States or individuals to be small entities. However, we do consider all providers to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We included a voluntary regulatory flexibility analysis in the November 1992 interim final rule (57 FR 55261) because of the potential controversial nature of the regulations, the number of comments we expected to receive, and the anticipated effect on States' share of FFP. The voluntary analysis attempted to describe the effects the interim final rule would have on States, providers, and Medicaid recipients.

Although we received no comments directly concerned with the impact analysis, many commenters addressed issues that related to costs, such as outstationed eligibility worker donations, compliance with the hold harmless provisions deadline, and low-DSH States' entitlement to increased DSH payments regardless of the 12-percent limit. As a result of these and other comments, we have made changes to the interim final rule in this final rule, which are explained in detail in sections I. and II. of the preamble of this final rule. For example, we have reinterpreted the 12-percent national limit to be a target rather than an absolute cap. As a result of this interpretation, we have allowed for an increase to the FY 1993 DSH allotment of $800 million over our November 24, 1992, projected Federal DSH payments for fiscal year 1993. In light of this increase, we have recalculated our initial State and Federal projected DSH payments published in the interim final rule as follows:

REVISED PROJECTED DSH ALLOTMENTS
[In billions of dollars]

Fiscal year	Federal	State	Total
1993	10.3[a]	7.6	18.0
1994	10.7	7.9	18.6
1995	11.7	8.7	20.4
1996	13.1	9.7	22.8

[a] This is the actual 1993 DSH allotment after an increase of $800 million was added to our initial projection of $9.5 billion.

Our initial projections for State and Federal spending associated with State provider tax and donation programs published in the interim final rule were:

PROJECTED FEDERAL MEDICAID SPENDING ASSOCIATEDWITH STATE PROVIDER TAX AND DONATION PROGRAMS
[in billions of dollars]

FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
$8.7	$11.3	$14.4	$18.0	$22.0

While we believe that the changes we are making are beneficial to the States, we do not believe the changes have a significant impact on the voluntary analysis that was published in the interim final rule. For this reason, we have determined that the threshold criteria under E.O. 12291 are not met, and that an additional regulatory impact analysis for this final rule is not required. Further, we have determined, and the Secretary certifies, that this final rule would not have significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of effects on small rural hospitals.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Chapter IV, Subchapter C is amended as follows:

A. Part 433 is amended as follows:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 is revised to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1902(t), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(i), 1903(o), 1903(p), 1903(r), 1903(w), 1912, 1917, and 1919(e) of the Social Security Act (42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396a(t), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(i), 1396b(o), 1396b(p), 1396b(r), 1396b(w), 1396k and 1396(p)).

2. In § 433.56, the introductory text of paragraph (a) is republished, paragraph (a)(8) is revised, paragraph (a)(9) is redesignated as paragraph (a)(19) and revised, and new paragraphs (a)(9) through (a)(18) are added to read as follows:

§ 433.56 Classes of health care services and providers defined.

(a) For purposes of this subpart, each of the following will be considered as a separate class of health care items or services:

* * * * *

(8) Services of health maintenance organizations and health insuring organizations;

(9) Ambulatory surgical center services, as described for purposes of the Medicare program in section 1832(a)(2)(F)(i) of the Social Security Act. These services are defined to include facility services only and do not include surgical procedures;

(10) Dental services;

(11) Podiatric services;

(12) Chiropractic services;

(13) Optometric/optician services;

(14) Psychological services;

(15) Therapist services, defined to include physical therapy, speech therapy, occupational therapy, respiratory therapy, audiological services, and rehabilitative specialist services;

(16) Nursing services, defined to include all nursing services, including services of nurse midwives, nurse practitioners, and private duty nurses;

(17) Laboratory and x-ray services, defined as services provided in a licensed, free-standing laboratory or x-ray facility. This definition does not include laboratory or x-ray services provided in a physician's office, hospital inpatient department, or hospital outpatient department;

(18) Emergency ambulance services; and

(19) Other health care items or services not listed above on which the State has enacted a licensing or certification fee, subject to the following:

(i) The fee must be broad based and uniform or the State must receive a waiver of these requirements;

(ii) The payer of the fee cannot be held harmless; and

(iii) The aggregate amount of the fee cannot exceed the State's estimated cost of operating the licensing or certification program.

* * * * *

3. In § 433.58, the introductory text of paragraph (d) is republished, paragraph (d)(2) is revised, and paragraph (g)(2) is revised to read as follows:

§ 433.58 Provider-related donations and health care-related taxes during a State's transition period.

* * * * *

(d) *Permissible donations.* To be permissible donations, the donations must be—

* * * * *

(2) Donations made by a hospital, clinic, or similar entity (such as a Federally-qualified health center) for the direct costs of State or local agency personnel who are stationed at that facility to determine the eligibility (including eligibility redeterminations) of individuals for Medicaid and/or to provide outreach services to eligible (or potentially eligible) Medicaid individuals. Direct costs of outstationed eligibility workers refers to the costs of training, salaries and fringe benefits associated with each outstationed worker and similar allocated costs of State or local agency support staff, and a prorated cost of outreach activities applicable to the outstationed workers at these sites. The prorated costs of outreach activities will be calculated taking the percent of State outstationed eligibility workers at a facility to total outstationed eligibility workers in the State, and multiplying the percent by the total cost of outreach activities in the State. Costs for such items as State agency overhead and provider office space are not allowable for this purpose; or

* * * * *

(g) *Health care-related taxes during the transition period.*

* * * * *

(2) A State may not modify health care-related taxes in existence as of November 22, 1991, without a reduction of FFP, unless the modification only—

(i) Extends a tax program that was scheduled to expire before the end of the State's transition period;

(ii) Makes technical changes that do not alter the rate of the tax or the base of the tax (for example, the providers on which the tax is imposed) and do not otherwise increase the proceeds of the tax;

(iii) Decreases the rate of the tax, without altering the base of the tax; or

(iv) Modifies the tax program to bring it into compliance with § 433.68(f).

4. In § 433.66, the introductory text of paragraph (b) is republished and paragraph (b)(2) is revised to read as follows:

§ 433.66 Permissible provider-related donations after the transition period.

* * * * *

(b) *Permissible donations.* Subject to the limitations specified in § 433.67, a State may receive, without a reduction in FFP, provider-related donations that meet at least one of the following requirements:

* * * * *

(2) The donations are made by a hospital, clinic, or similar entity (such as a Federally-qualified health center) for the direct costs of State or local agency personnel who are stationed at the facility to determine the eligibility (including eligibility redeterminations) of individuals for Medicaid or to provide outreach services to eligible (or potentially eligible) Medicaid individuals. Direct costs of outstationed eligibility workers refers to the costs of training, salaries and fringe benefits associated with each outstationed worker and similar allocated costs of State or local agency support staff, and a prorated cost of outreach activities applicable to the outstationed workers at these sites. The prorated costs of outreach activities will be calculated taking the percent of State outstationed eligibility workers at a facility to total outstationed eligibility workers in the State, and multiplying the percent by the total cost of outreach activities in the State. Costs for such items as State agency overhead and provider office space are not allowable for this purpose.

5. In § 433.67, paragraph (b) is revised to read as follows:

§ 433.67 Limitations on level of FFP for permissible provider-related donations.

* * * * *

(b) *Calculation of FFP.* HCFA will deduct from a State's quarterly medical assistance expenditures, before calculating FFP, any provider-related donations received in that quarter that do not meet the requirements of § 433.66(b)(1) and provider donations for outstationed eligibility workers in excess of the limits specified under paragraph (a)(2) of this section.

6. In § 433.68, paragraph (c)(3), the introductory text in paragraph (d), paragraphs (e)(1) and (e)(2), and paragraphs (f)(3)(i) and (f)(3)(ii) are revised to read as follows:

§ 433.68 Permissible health care-related taxes after the transition period.

* * * * *

(c) *Broad based health care-related taxes.*

* * * * *

(3) A State may request a waiver from HCFA of the requirement that a tax program be broad based, in accordance with the procedures specified in §433.72. Waivers from the uniform and broad-based requirements will automatically be granted in cases of variations in licensing and certification fees for providers if the amount of such fees is not more than $1,000 annually per provider and the total amount raised by the State from the fees is used in the administration of the licensing or certification program.

(d) *Uniformly imposed health care-related taxes.* A health care-related tax will be considered to be imposed uniformly even if it excludes Medicaid or Medicare payments (in whole or in part), or both; or, in the case of a health care-related tax based on revenues or receipts with respect to a class of items or services (or providers of items or services), if it excludes either Medicaid or Medicare revenues with respect to a class of items or services, or both. The exclusion of Medicaid revenues must be applied uniformly to all providers being taxed.

* * * * *

(e) *Generally redistributive.* * * *

(1) *Waiver of broad-based requirement only.* This test is applied on a per class basis to a tax that is imposed on all revenues but excludes certain providers. For example, a tax that is imposed on all revenues (including Medicare and Medicaid) but excludes teaching hospitals would have to meet this test. This test cannot be used when a State excludes any or all Medicaid revenue from its tax in addition to the exclusion of providers, since the test compares the proportion of Medicaid revenue being taxed under the proposed tax with the proportion of Medicaid revenue being taxed under a broad-based tax.

(i) A State seeking waiver of the broad-based tax requirement only must demonstrate that its proposed tax plan meets the requirement that its plan is generally redistributive by:

(A) Calculating the proportion of the tax revenue applicable to Medicaid if the tax were broad based and applied to all providers or activities within the class (called P1);

(B) Calculating the proportion of the tax revenue applicable to Medicaid under the tax program for which the State seeks a waiver (called P2); and

(C) Calculating the value of P1/P2.

(ii) If the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 1, HCFA will automatically approve the waiver request.

(iii) If a tax is enacted and in effect prior to [publication of this final rule], and the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 0.90, HCFA will review the waiver request. Such a waiver will be approved only if the following two criteria are met:

(A) The value of P1/P2 is at least 0.90; and

(B) The tax excludes or provides credits or deductions only to one or more of the following providers of items and services within the class to be taxed:

(*1*) Providers that furnish no services within the class in the State;

(*2*) Providers that do not charge for services within the class;

(*3*) Rural hospitals (defined as any hospital located outside of an urban area as defined in §412.62(f)(1)(ii) of this chapter);

(*4*) Sole community hospitals as defined in §412.92(a) of this chapter;

(*5*) Physicians practicing primarily in medically underserved areas as defined in section 1302(7) of the Public Health Service Act;

(*6*) Financially distressed hospitals if:

(*i*) A financially distressed hospital is defined by the State law;

(*ii*) The State law specifies reasonable standards for determining financially distressed hospitals, and these standards are applied uniformly to all hospitals in the State; and

(*iii*) No more than 10 percent of nonpublic hospitals in the State are exempt from the tax;

(*7*) Psychiatric hospitals; or

(*8*) Hospitals owned and operated by HMOs.

(iv) If a tax is enacted and in effect after [publication date of this final rule], and the State demonstrates to the Secretary's satisfaction that the value of P1/P2 is at least 0.95, HCFA will review the waiver request. Such a waiver request will be approved only if the following two criteria are met:

(A) The value of P1/P2 is at least 0.95; and

(B) The tax complies with the provisions of §433.68(e)(1)(iii)(B).

(2) *Waiver of uniform tax requirement.* This test is applied on a per class basis to all taxes that are not uniform. This includes those taxes that are neither broad based (as specified in §433.68(c)) nor uniform (as specified in §433.68(d)).

(i) A State seeking waiver of the uniform tax requirement (whether or not the tax is broad based) must demonstrate that its proposed tax plan meets the requirement that its plan is generally redistributive by:

(A) Calculating, using ordinary least squares, the slope (designated as (*B*) (that is. the value of the x coefficient) of two linear regressions, in which the dependent variable is each provider's percentage share of the total tax paid by all taxpayers during a 12-month period, and the independent variable is the taxpayer's "Medicaid Statistic". The term "Medicaid Statistic" means the number of the provider's taxable units applicable to the Medicaid program during a 12-month period. If, for example, the State imposed a tax based on provider charges, the amount of a provider's Medicaid charges paid during a 12-month period would be its "Medicaid Statistic". If the tax were based on provider inpatient days, the number of the provider's Medicaid days during a 12-month period would be its "Medicaid Statistic". For the purpose of this test, it is not relevant that a tax program exempts Medicaid from the tax.

(B) Calculating the slope (designated as B1) of the linear regression, as described in paragraph (e)(2)(i) of this section, for the State's tax program, if it were broad based and uniform.

(C) Calculating the slope (designated as B2) of the linear regression, as described in paragraph (e)(2)(i) of this section, for the State's tax program, as proposed.

(ii) If the State demonstrates to the Secretary's satisfaction that the value of B1/B2 is at least 1, HCFA will automatically approve the waiver request.

(iii) If the State demonstrates to the Secretary's satisfaction that the value of B1/B2 is at least 0.95, HCFA will review the waiver request. Such a waiver will be approved only if the following two criteria are met:

(A) The value of B1/B2 is at least 0.95; and

(B) The tax excludes or provides credits or deductions only to one or more of the following providers of items and services within the class to be taxes:

(*1*) Providers that furnish no services within the class in the State;

(*2*) Providers that do not charge for services within the class;

(*3*) Rural hospitals (defined as any hospital located outside of an urban area as defined in §412.62(f)(1)(ii) of this chapter;

(*4*) Sole community hospitals as defined in §412.92(a) of this chapter;

(*5*) Physicians practicing primarily in medically underserved areas as defined in section 1302(7) of the Public Health Service Act;

(*6*) Financially distressed hospitals if:

(*i*) A financially distressed hospital is defined by the State law;

(*ii*) The State law specifies reasonable standards for determining financially distressed hospitals, and these standards are applied uniformly to all hospitals in the State; and

(*iii*) No more than 10 percent of nonpublic hospitals in the State are exempt from the tax;

(*7*) Psychiatric hospitals; or

(*8*) Providers or payers with tax rates that vary based exclusively on regions, but only if the regional variations are coterminous with preexisting political (and not special purpose) boundaries. Taxes within each regional boundary must meet the broad-based and uniformity requirements as specified in paragraphs (c) and (d) of this section.

(iv) A B1/B2 value of 0.85 will be applied to taxes that vary based exclusively on regional variations, and enacted and in effect prior to November 24, 1992, to permit such variations.

(f) *Hold harmless.*

* * * * *

(3) * * *

(i) An indirect guarantee will be determined to exist under a two prong "guarantee" test. This specific hold harmless test is effective [30 days after date of publication of this final rule]. In this instance, if the health care-related tax or taxes on each health care class are applied at a rate that produces revenues less than or equal to 6 percent of the revenues received by the taxpayer, the tax or taxes are permissible under this test. When the tax or taxes are applied at a rate that produces revenues in excess of 6 percent of the revenue received by the taxpayer, HCFA will consider a hold harmless provision to exist if 75 percent or more of the taxpayers in the class receive 75 percent or more of their total tax costs back in enhanced Medicaid payments or other State payments. The second prong of the hold harmless test is applied in the aggregate to all health care taxes applied to each class. If this standard is violated, the amount of tax revenue to be offset from medical assistance expenditures is the total amount of the taxpayers' revenues received by the State.

(ii) If, as of [publication date of this final rule], a State has enacted a tax in excess of 6 percent that does not meet the requirements in paragraph (f)(3)(i) of this section, HCFA will not disallow funds received by the State resulting from the tax if the State modifies the tax to comply with this requirement by [30 days after date of publication of this final rule]. If, by [30 days after date of publication of this final rule], the tax is not modified, funds received by States on or after [30 days after date of publication of this final rule] will be disallowed.

7. In § 433.72, paragraph (c) is revised to read as follows:

§ 433.72 Waiver provisions applicable to health care-related taxes.

* * * * *

(c) *Effective date.* A waiver will be effective:

(1) The date of enactment of the tax for programs in existence prior to [publication date of this final rule] or;

(2) For tax programs commencing on or after [publication date of this final rule], on the first day in the quarter in which the waiver is received by HCFA.

B. Part 447 is amended as follows:

PART 447—PAYMENTS FOR SERVICES

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 447.297, paragraphs (b), (c), (d), and (e) are revised to read as follows:

§ 447.297 Limitations on aggregate payments for disproportionate share hospitals beginning October 1, 1992.

* * * * *

(b) *National payment target.* The national payment target for disproportionate share hospital (DSH) payments for any Federal fiscal year is equal to 12 percent of the total medical assistance expenditures that will be made during the Federal fiscal year under State plans, excluding administrative costs. A preliminary national expenditure target will be published by HCFA prior to October 1 of each year. This preliminary national expenditure target will be superseded by a final national expenditure target published by April 1 of each Federal fiscal year, as specified in paragraph (d) of this section.

(c) *State disproportionate share hospital allotments.* Prior to October 1 of each Federal fiscal year, HCFA will publish in the **Federal Register** preliminary State DSH allotments for each State. These preliminary State DSH allotments will be determined using the most current applicable actual and estimated State expenditure information as reported to HCFA and adjusted by HCFA as may be necessary using the methodology described in § 447.298. HCFA will publish final State DSH allotments by April 1 of each Federal fiscal year, as described in paragraph (d) of this section.

(d) *Final national disproportionate share hospitals expenditure target and State disproportionate share hospitals allotments.*

(1) HCFA will revise the preliminary national expenditure target and the preliminary State DSH allotments by April 1 of each Federal fiscal year. The final national DSH expenditure target and State DSH allotments will be based on the most current applicable actual and estimated expenditure information reported to HCFA and adjusted by HCFA as may be necessary immediately prior to the April 1 publication date. The final national expenditure target and State DSH allotments will not be recalculated for that Federal fiscal year based upon any subsequent actual or estimated expenditure information reported to HCFA.

(2) If HCFA determines that at any time a State has exceeded its final DSH allotment for a Federal fiscal year, FFP attributable to the excess DSH expenditures will be disallowed.

(3) If a State's actual DSH expenditures applicable to a Federal fiscal year are less than its final State DSH allotment for that Federal fiscal year, the State is permitted, to the extent allowed by its approved State plan, to make additional DSH expenditures applicable to that Federal fiscal year up to the amount of its final DSH allotment for that Federal fiscal year

(e) *Publication of limits.*

(1) Before the beginning of each Federal fiscal year, HCFA will publish in the **Federal Register**—

(i) A preliminary national DSH expenditure target for the Federal fiscal year; and

(ii) A preliminary DSH allotment for each State for the Federal fiscal year.

(2) The final national DSH expenditure target and State DSH allotments will be published in the **Federal Register** by April 1 of each Federal fiscal year.

3. In § 447.298, paragraphs (a), (b), (c), (d), and (e) are revised, and paragraph (g) is removed to read as follows:

§ 447.298 State disproportionate share hospital allotments.

(a) *Calculation of State's base allotment for Federal fiscal year 1993.*

(1) For Federal fiscal year 1993, HCFA will calculate for each State a DSH allotment, using the State's "base allotment." The State's base allotment is the greater of:

(i) The total amount of the State's projected DSH payments for Federal fiscal year 1992 under the State plan applicable to Federal fiscal year 1992, calculated in accordance with paragraph (a)(2) of this section; or

(ii) $1,000,000.

(2) In calculating the State's DSH payments applicable to Federal fiscal

year 1992, HCFA will derive amounts from payments applicable to the period of October 1, 1991, through September 30, 1992, under State plans or plan amendments that meet the requirements specified in § 447.296(b). The calculation will not include—

(i) DSH payment adjustments made by the State applicable to the period October 1, 1991 through December 31, 1991 under State plans or plan amendments that do not meet the criteria described in § 447.296; and

(ii) Retroactive DSH payments made in 1992 that are not applicable to Federal fiscal year 1992.

(3) HCFA will calculate a percentage for each State by dividing the DSH base allotment by the total unadjusted medical assistance expenditures, excluding administrative costs, made during Federal fiscal year 1992. On the basis of this percentage, HCFA will classify each State as a "high-DSH" or "low-DSH" State.

(i) If the State's base allotment exceeded 12 percent of its total unadjusted medical assistance expenditures made under the State plan in Federal fiscal year 1992, HCFA will classify the State as a "high-DSH" State.

(ii) If the State's base allotment was 12 percent or less of its total unadjusted medical assistance expenditures made under the State plan in Federal fiscal year 1992, HCFA will classify the State as a "low-DSH" State.

(b) *State disproportionate share hospital allotments for Federal fiscal year 1993.* (1) For Federal fiscal year 1993, HCFA will calculate a DSH allotment for each low-DSH State that equals the State's base allotment described under paragraph (a) of this section, increased by State growth, as specified in paragraph (d) of this section.

(2) For high-DSH States, the dollar amount of DSH payments in Federal fiscal year 1993 may not exceed the dollar amount of DSH payments applicable to Federal fiscal year 1992 (that is, the State base allotment).

(c) *State disproportionate share hospital allotment for Federal fiscal years 1994 and after.* For Federal fiscal years 1994 and after—

(1) For low-DSH States, HCFA will calculate the DSH allotment for each Federal fiscal year by increasing the prior year's State DSHs allotment by—

(i) State growth, as specified in paragraph (d) of this section; and

(ii) A supplemental amount, if applicable, as described in paragraph (e) of this section.

(2) For high-DSH States, the dollar amount of DSH payments applicable to any Federal fiscal year may not exceed the dollar amount of payments applicable to Federal fiscal year 1992 (that is, the State base allotment). This payment limitation will apply until the Federal fiscal year in which the State's DSH payments applicable to that Federal fiscal year, expressed as a percentage of the State's total unadjusted medical assistance expenditures in that Federal fiscal year, equal 12 percent or less. When a high-DSH State's percentage equals 12 percent or less, the State will be reclassified as a low-DSH State.

(d) *State growth.* (1) The State growth for a State in a Federal fiscal year is equal to the product of—

(i) The growth factor that is HCFA's projected percentage increase in the State's total unadjusted medical assistance expenditures (including administrative costs) relative to the corresponding amount in the previous year; and

(ii) The State's prior year DSH allotment.

(2) If the growth factor is zero or is negative, the State growth is zero.

(3) If a low-DSH State experiences a level of negative growth to the extent that its previous Federal fiscal year's DSH allotment would be more than 12 percent of its current Federal fiscal year's total unadjusted medical assistance expenditures (excluding administrative costs), the low-DSH State's previous year's DSH allotment will be reduced to the extent necessary to maintain the individual low-DSH State's 12-percent limit and that amount will become the low-DSH State's DSH allotment for the current Federal fiscal year. In no Federal fiscal year will a low-DSH State's DSH allotment be allowed to exceed its individual State 12-percent limit.

(e) *Supplemental amount available for low-DSH States.*

(1) A supplemental amount is the State's share of a pool of money (referred to as a redistribution pool).

(2) HCFA will calculate the redistribution pool for the appropriate Federal fiscal year by subtracting from the projected national DSH expenditure target the following:

(i) The total of the State DSH base allotments for all high-DSH States;

(ii) The total of the previous year's State DSH allotments for all low-DSH States;

(iii) The State growth amount for all low-DSH States; and

(iv) The total amount of additional DSH payment adjustments made in order to meet the minimum payment adjustments required under section 1923(c)(l) of the Act, which are made in accordance with § 447.296(b)(5).

(3) HCFA will determine the percent of the redistribution pool for each low-DSH State on the basis of each State's relative share of the total unadjusted medical assistance expenditures for the Federal fiscal year compared to the total unadjusted medical assistance expenditures for the Federal fiscal year projected to be made by all low-DSH States. The percent of the redistribution pool that each State will receive is equal to the State's total unadjusted medical assistance expenditures divided by the total unadjusted medical assistance expenditures for all low-DSH States.

(4) HCFA will not provide any low-DSH State a supplemental amount that would result in the State's total DSH allotment exceeding 12 percent of its projected total unadjusted medical assistance expenditures. HCFA will reallocate any supplemental amounts not allocated to States because of this 12-percent limitation to other low-DSH States in accordance with the percentage determined in paragraph (e)(3) of this section.

(5) HCFA will not reallocate to low-DSH States the difference between any State's actual DSH expenditures applicable to a Federal fiscal year and its State DSH allotment applicable to that Federal fiscal year. Thus, any unspent DSH allotment may not be reallocated.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 20, 1993.

Bruce C. Vladeck

Administrator, Health Care Financing Administration.

Dated: August 5, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–19246 Filed 8–9–93; 1:57 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[MB–073–N]

RIN 0938–AG11

Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals; Federal Fiscal Year 1993

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the final Federal fiscal year (FFY) 1993 individual State allotments for Medicaid payments made to hospitals that serve a disproportionate number of Medicaid recipients and low-income patients with special needs. The final FFY 1993 State DSH allotments published in this notice supersede the preliminary FFY 1993 DSH allotments that were published in the **Federal Register** (57 FR 55261) on November 24, 1992.

EFFECTIVE DATE: The final DSH payment adjustment expenditure limits included in this notice apply to Medicaid DSH payment adjustments that are applicable to FFY 1993.

FOR FURTHER INFORMATION CONTACT: Bill Lasowski, (410) 966–2003.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902(a)(13)(A) of the Social Security Act (the Act) requires States to ensure that their Medicaid payment rates include payment adjustments for Medicaid-participating hospitals that serve a large number of Medicaid recipients and other low-income individuals with special needs. These hospitals are referred to as disproportionate share hospitals (DSHs). The payment adjustments are calculated on the basis of formulas specified in section 1923 of the Act.

Section 3 of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (Public Law 102–234, enacted on December 12, 1991) amended section 1923 of the Act to establish limits on the amount of Federal financial participation (FFP) available for payment adjustments for Medicaid expenditures made to DSHs. Specifically, section 3(a) of Public Law 102–234 deleted the prohibition on an upper payment limit for DSHs from section 1902(h) of the Act; and section 3(b) added a subsection (f) to section 1923, which imposed national and State limits on aggregate Medicaid payments to DSHs, effective beginning with FFY 1993. The provisions of section 3 of Public Law 102–234 apply to all 50 States and the District of Columbia, but not to any State whose entire Medicaid program is operated under a waiver granted under section 1115 of the Act (Arizona) or to the Territories.

As prescribed in section 1923(f)(1)(B) of the Act, effective beginning October 1, 1992, the national aggregate DSH limit (now "target" as explained later) is equal to 12 percent of the total amount of medical assistance expenditures (excluding total administrative costs) that are projected to be made under approved Medicaid State plans during the FFY.

Note: Whenever the phrases "total medical assistance expenditures" or "total administrative costs" are used in this notice, they mean both the State and Federal share of expenditures or costs.

In addition to the national DSH target, there is a specific State DSH limit for each State for each FFY. As prescribed in section 1923(f)(2)(B) of the Act, the State DSH limit is a specified amount of DSH payment adjustments applicable to a FFY above which FFP will not be available. This is called the "State DSH allotment". Each State's DSH allotment for FFY 1993 is calculated using the State's "base allotment." A State's base allotment is the greater of: (1) The total amount of the State's actual and projected DSH payment adjustments made under the State's approved State plan applicable to FFY 1992, as adjusted by HCFA; or (2) $1,000,000.

Sections 1923(f)(2), (3), and (4) of the Act provide the basic formula for determining the State DSH allotments for a FFY. The FFY 1993 DSH allotment for each State is limited to 12 percent of the State's total medical assistance expenditures for FFY 1993 (excluding administrative costs), unless the State is classified as a high-DSH State. A high-DSH State is a State whose base allotment, that is, the total amount of DSH payment adjustments that were applicable to FFY 1992, exceeded 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1993. High-DSH States will have their FFY 1993 State DSH allotment limited to the State's base allotment. A State whose base allotment is below 12 percent of the State's total medical assistance expenditures (excluding administrative costs) projected to be made in FFY 1993 (referred to as a "low-DSH State") is permitted to increase FFY 1993 DSH payment adjustments over its base allotment through growth amounts and supplemental amounts. The growth amount for FFY 1993 is equal to the projected percentage increase (the growth factor) in a low-DSH State's total Medicaid program expenditures between FFY 1992 and FFY 1993 multiplied by the State's base allotment. There will be no growth factor and no growth amount for any low-DSH State whose Medicaid program did not grow (that is, stayed the same or declined) between FFY 1992 and FFY 1993.

A supplemental amount is equal to a low-DSH State's proportional share of a pool of funds (the redistribution pool) that may be available after subtracting the total amount of all State DSH allotments for the previous FFY (for FFY 1993 this is equal to the total of all State base allotments) plus low-DSH State growth amounts from the national 12 percent DSH target amount. Thus, in FFY 1993 the supplemental amounts for low-DSH States will not be provided, as a distribution pool is not available. A distribution pool is available only when the sum of all State base allotments and all low-DSH State growth amounts is below the national 12-percent aggregate DSH target.

Also, no State will receive below a minimum of $1 million as prescribed in the law and regulations.

On November 24, 1992, we published in the **Federal Register** two documents related to DSH payments. One document, an interim final rule (57 FR 55118), added provisions to Medicaid regulations that established limits on the aggregate amount of payments a State may make to disproportionate share hospitals for which FFP is available. The other document, a notice (57 FR 55261), announced the preliminary FFY 1993 individual State DSH allotments. Elsewhere in today's issue of the **Federal Register**, we are publishing amendments to this November 1992 interim final rule. In summary, these amendments revise the interim final regulations to state that 12 percent of total medical assistance expenditures (excluding administrative costs) is a target rather than an absolute cap in determining the amount that can be allocated for disproportionate share hospital payments. In addition, we have revised the regulations to state that low-DSH States that experience negative program growth will not have their DSH allotments reduced. They simply will not receive any growth amount at all.

We also have changed the required publication date of the final national DSH expenditure target and individual State DSH allotments from April 1 "following" the applicable FFY to April 1 "during" the FFY. In conjunction with this change, we have eliminated the publication of updated preliminary figures by April 1 of the FFY.

We are required by the law and regulations to estimate and publish in the **Federal Register** each State's DSH allotment, which we did on November 24, 1992. We are publishing in this notice the final FFY 1993 State DSH allotments based on the best available data (actual and projected) we have at this time from the States as adjusted by HCFA. States must limit their overall DSH payment adjustments that are applicable to FFY 1993, based on these final FFY 1993 State DSH allotments. These final FFY 1993 State DSH allotments will not be recalculated and republished based upon any additional information received from the States. Thus, each State now has the certainty of knowing that its final FFY 1993 DSH allotment will not change any further. The preliminary FFY 1993 State DSH allotments that were published in the **Federal Register** on November 24, 1992 are superseded by the final DSH State allotments published in this notice.

II. Calculations of the Final FFY 1993 DSH Limits

As explained earlier, sections 1923(f) (2), (3), and (4) of the Act provide the basic formula for determining the State DSH allotments. We have calculated the final FFY 1993 State DSH allotments in this notice in accordance with section 1923(f) of the Act and the applicable regulations as revised elsewhere in today's issue of the **Federal Register**. The results of these calculations are presented in chart format in section III. of this notice.

The total of the final State DSH allotments for FFY 1993 is equal to the sum of the allowable FFY 1992 DSH payment adjustment expenditures made by the States that are applicable to FFY 1992 (that is, the State base allotments) plus growth amounts for all low-DSH States. The State base allotment amounts were determined using the actual FFY 1992 DSH payment adjustment expenditure data reported by the States through March 31, 1993, that were also confirmed and updated, as necessary, by the States in response to a May 18, 1993, letter that was sent to all State Medicaid Directors. The States submitted unadjusted actual and estimated FFY 1992 DSH payment adjustment expenditures of over $18 billion in March 1993. These DSH payment adjustment expenditures were reviewed by us and adjusted to remove DSH payment adjustment expenditures that do not qualify as DSH base allotment payment adjustment expenditures under the provisions of section 1923 of the Act, as amended by Public Law 102–234. Specific adjustments were made for amounts representing retroactive DSH payment adjustment expenditures that were not applicable to FFY 1992, DSH payment adjustment expenditures for non-qualifying DSH plans, and unallowable DSH payment adjustment expenditures. In addition, States have continued to report to us updated actual DSH payment adjustment expenditures applicable to FFY 1992 to adjust their original estimates. The net effect of these adjustments resulted in total adjusted DSH payment adjustment expenditures applicable to FFY 1992 of $17,430,889,000 ($10,018,336,000 Federal share). This amount constitutes the total of all State base allotments.

We classified States as high-DSH or low-DSH States. If a State's base allotment exceeded 12 percent of its total unadjusted medical assistance expenditures (excluding administrative costs) projected to be made under the State's approved plan in FFY 1993, we classified that State as a "high-DSH" State. If a State's base allotment was 12 percent or less of its total unadjusted medical assistance expenditures projected to be made under the State's approved State plan in FFY 1993, we classified that State as a "low-DSH" State. Under both classifications, each State's final base allotment equals the absolute dollar amount of allowable DSH payment adjustments applicable to FFY 1992. There were 32 low-DSH States and 18 high-DSH States for FFY 1993 as a result of this classification made prior to adding the growth amounts for low-DSH States.

We estimated the preliminary FFY 1993 national total medical assistance expenditures for these States to be over $131.1 billion. The expenditures were estimated using the May 1993 State budget projections (Form HCFA–37) for FFY 1993 that were also confirmed and updated as necessary by the States in response to the May 18, 1993, letter.

The overall preliminary national FFY 1993 DSH expenditure target is approximately $15.7 billion (12 percent of $131.1 billion). The final high- and low-DSH States' DSH base allotments total approximately $17.4 billion. Thus, the total of all State DSH allotments for FFY 1993 is approximately $1.7 billion over the FFY 1993 target amount. However, no reductions are being applied to any State DSH allotment to reach the target amount.

In addition, we are providing a total of $521,188,000 ($305,900,000 Federal share) in growth amounts for the 32 low-DSH States. The growth factor percentage for each of the low-DSH States was determined by calculating the Medicaid program growth percentage for each low-DSH State between FFY 1992 and FFY 1993. To compute this percentage, we first ascertained each low-DSH State's total actual unadjusted FFY 1992 medical assistance and administrative expenditures as reported on the State's quarterly expenditure reports (Form HCFA–64) submitted for the period October 1, 1991, through September 30, 1992. Next, we compared those expenditures to each low-DSH State's total estimated unadjusted FFY 1993 medical assistance and administrative expenditures as reported to HCFA on the State's February 1993 Medicaid budget submission (Form HCFA–37). These amounts were also confirmed and updated as necessary by the States in response to a May 18, 1993, letter that we sent to all State Medicaid Directors.

This growth factor percentage was multiplied by the low-DSH State's base allotment amount to establish the State's growth amount for FFY 1993. The State's growth amount was then added to the State's base allotment amount to establish the final total State DSH allotment for FFY 1993. It should be noted that no State can receive a growth amount that, when added to its base allotment amount, would make the total State DSH allotment for FFY 1993 exceed 12 percent of the State's FFY 1993 estimated medical assistance expenditures. In any low-DSH State where this was the case, the State only received a growth amount which, when added to its base allotment, made its total State DSH allotment for FFY 1993 equal to 12 percent of its estimated FFY 1993 medical assistance expenditures.

There were no supplemental pool amounts provided to the low-DSH States for FFY 1993 since the total of all the State base allotments alone exceeded the 12-percent target amount.

In summary, the total of all final State DSH allotments for FFY 1993 is $17,952,077,000 ($10,324,236,000 Federal share). This total is composed of $17,430,889,000 in base allotments for all States plus $521,188,000 in growth amounts for all low-DSH States. The total of all final State DSH allotments is 13.7 percent of the total medical assistance expenditures (excluding administrative costs) projected to be made by these States in FFY 1993. The total of all final DSH allotments for FFY 1993 is $2,212,415,000 over the FFY 1993 target amount of $15,739,662,000. The final State DSH allotments for FFY 1993 result in there being 29 low-DSH States and 21 high-DSH States. (Three of the 21 high-DSH States were low-DSH States whose full growth amount would have caused their DSH allotment to exceed 12 percent. These States thus received partial growth amounts that made their total State DSH allotment for FFY 1993 equal to 12 percent of their estimated FFY 1993 medical assistance expenditures and are now classified as high-DSH States.)

Each State should make any necessary adjustments to its DSH spending during the remainder of FFY 1993 to ensure that its actual FFY 1993 DSH payment adjustment expenditures do not exceed its final State DSH allotment for FFY 1993. Each State is encouraged to amend its plans as may be necessary to make any adjustments to its FFY 1993 DSH payment adjustment expenditure patterns so that the State will not significantly be over its final FFY 1993 DSH allotment as the ongoing reconciliation between actual FFY 1993 DSH payment adjustment expenditures and the final FFY 1993 DSH allotments takes place.

The FFY 1993 reconciliation to actual expenditures will take place on an ongoing basis as States file expenditure reports with HCFA for DSH payment adjustment expenditures applicable to FFY 1993. In addition, additional DSH payment adjustment expenditures made in succeeding FFYs that are applicable to FFY 1993 will continue to be reconciled back to each State's final FFY 1993 DSH allotment as additional expenditure reports are submitted to ensure that the final FFY 1993 DSH allotment is not exceeded. Any DSH payment adjustment expenditures in excess of the final DSH allotment will be disallowed.

Any DSH expenditures that are disallowed will be subject to the normal Medicaid disallowance procedures.

III. Final FFY 1993 DSH Allotments Under Public Law 102–234

Key to Chart:

Column and Description

Column A = Name of State

Column B = The State's base DSH allotment. This is an amount that is the greater of the State's FFY 1992 allowable DSH payment adjustment expenditures applicable to FFY 1992, or $1,000,000.

Column C = The growth amounts for low-DSH States. This is an increase in a low-DSH State's DSH base allotment to the extent that the State's Medicaid program grew between FFY 1992 and FFY 1993.

Column D = The final FFY 1993 DSH allotments for all States. This is equal to the State base allotments plus the growth amounts for low-DSH States.

Column E = Low/high DSH designator for FFY 1993. "High" indicates the State is a high-DSH State and a "Low" indicates the State is a low-DSH State after calculation of the final State DSH allotments.

FINAL FEDERAL FISCAL YEAR 1993 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUB. L. 102–234

[Amounts are state and Federal shares]
[Dollars are in thousands (000)]

A	B	C	D	E
State	Base allotments for all states	Growth amounts for low DSH states	Final FFY 93 state DSH allotments	Final high or low DSH state designation
AL	$417,458	(1)	$417,458	High.
AK	15,611	$2,219	17,830	Low.
AR	2,540	266	2,806	Low.
CA	2,191,451	(1)	2,191,451	High.
CO	302,014	(1)	302,014	High.
CT	408,933	(1)	408,933	High.
DE	4,800	394	5,194	Low.
DC	32,902	5,098	38,000	Low.
FL	191,400	48,293	239,693	Low.
GA	300,528	42,550	343,078	High.
HI	40,354	5,490	45,844	Low.
ID	1,410	249	1,659	Low.
IL	313,791	67,743	381,534	Low.
IN	211,570	108,905	320,475	Low.
IA	4,633	394	5,027	Low.
KS	188,935	(1)	188,935	High.
KY	264,289	(1)	264,289	High.
LA	1,217,636	(1)	1,217,636	High.
ME	139,209	(1)	139,209	High.
MD	112,979	6,402	119,381	Low.
MA	478,337	11,210	489,547	Low.
MI	544,282	15,450	559,732	High.
MN	42,005	6,574	48,579	Low.
MS	153,342	(1)	153,342	High.
MO	731,894	(1)	731,894	High.
MT	1,000	154	1,154	Low.
NE	3,108	622	3,730	Low.
NV	73,560	(1)	73,560	High.
NH	392,006	(1)	392,006	High.
NJ	1,094,113	(1)	1,094,113	High.
NM	11,839	1,673	13,512	Low.
NY	2,784,477	(1)	2,784,477	High.
NC	332,440	13,105	345,545	High.
ND	1,000	86	1,086	Low.
OH	451,834	58,090	509,924	Low.

FINAL FEDERAL FISCAL YEAR 1993 DISPROPORTIONATE SHARE HOSPITAL ALLOTMENTS UNDER PUB. L. 102-234—Continued

[Amounts are state and Federal shares]
[Dollars are in thousands (000)]

A	B	C	D	E
State	Base allotments for all states	Growth amounts for low DSH states	Final FFY 93 state DSH allotments	Final high or low DSH state designation
OK	22,340	1,228	23,568	Low.
OR	17,312	2,967	20,279	Low.
PA	967,407	([1])	967,407	High.
RI	81,264	15,896	97,160	Low.
SC	439,759	([1])	439,759	High.
SD	1,000	163	1,163	Low.
TN	430,611	([1])	430,611	High.
TX	1,513,029	([1])	1,513,029	High.
UT	4,540	463	5,003	Low.
VT	23,097	1,306	24,403	Low.
VA	147,798	26,453	174,251	Low.
WA	230,929	39,445	270,374	Low.
WV	84,440	37,443	121,883	Low.
WI	8,683	642	9,325	Low.
WY	1,000	216	1,216	Low.
Totals	17,430,889	521,188	17,952,077	

[1] Not applicable.

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- 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.

Also, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Administrator certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of a RFA, States and individuals are not considered small entities. However, providers are considered small entities. Additionally, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final notice such as this that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As noted in the final rule (Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals) published elsewhere in today's **Federal Register**, we believe that the publishing of this notice will not have a significant impact on any aspect of the Medicaid program. Consequently, we are not including a separate regulatory impact analysis in this notice. This notice does not contain rules. Rather, it reflects the DSH allotments for each State as determined in accordance with revised regulations published elsewhere in this issue of the **Federal Register**. A complete impact analysis concerning DSH allotments is included in the preamble to the revised regulations.

We have, however, discussed the method of calculating the final FFY 1993 national aggregate DSH target and the final FFY 1993 individual State DSH allotments in the previous sections of this preamble. These calculations should have a positive impact on payments to DSHs. Allotments will not be reduced for High-DSH States since we are now interpreting the 12-percent limit as a target. Low-DSH States will get their base allotments plus their growth amounts. While we believe that the changes we are making are beneficial to the States, we believe that the changes will not have a significant impact on the voluntary analysis published in the interim final rule.

(Catalog of Federal Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 20, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 6, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93-19247 Filed 8-9-93; 1:58 pm]

BILLING CODE 4120-01-P

federal register

Friday
August 13, 1993

Part III

Department of Education

Technology, Educational Media and Materials for Individuals With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.180G]

Technology, Educational Media and Materials for Individuals With Disabilities Program; Notice Inviting Applications for New Awards Under the Technology, Educational Media, and Materials for Individuals With Disabilities Program for Fiscal Year (FY) 1994

Purpose of Program: To support projects and centers for advancing the availability, quality, use, and effectiveness of technology, educational media, and materials in the education of children and youth with disabilities and the provision of related services and early intervention services to infants and toddlers with disabilities.

This notice support the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Institutions of higher education, State and local educational agencies, public agencies, and private nonprofit or for-profit organizations.

Applications Available: September 13, 1993.

Deadline for Transmittal of Applications: November 19, 1993.

Deadline for Intergovernmental Review: January 18, 1994.

Available Funds: $1,400,000.

Estimated Average Size of Awards: $200,000 for the first 12 months of the projects. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

Estimated Number of Awards: 7 grants.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 333.

Priority: Under 34 CFR 75.105(c)(3), 34 CFR 333.1, and 34 CFR 333.3, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this program only applications that meet this absolute priority:

Absolute Priority—Technology, Educational Media, and Materials Research Projects That Promote Literacy (CFDA 84.180G)

This priority provides support for research projects that examine how advancing the availability, quality, use, and effectiveness of technology, educational media, and materials can address the problem of illiteracy among individuals with disabilities.

Invitational Priority

Within the absolute priority specified in this notice the Secretary is particularly interested in applications that meet the following invitational priority. However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

The Secretary is particularly interested in projects that—

(a) Define literacy as: to read, to communicate, to compute, to make judgments and to take appropriate action;

(b) Are of rigorous design and employ clearly explicated quantitative or qualitative methodologies, or both, appropriate to the purpose of the project; and,

(c) Consider learning and psycho-social factors in examining the availability, quality, and use of specified technology, educational media, and materials, and in examining their effectiveness in providing experiences and opportunities that improve the literacy of children and youth with disabilities.

For Technical Information Contact: For technical information please contact Jane Hauser, U.S. Department of Education, 400 Maryland Avenue, SW., room 3521, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8126.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone (202) 205–8953. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1461.

Dated: August 9, 1993.

William L. Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–19452 Filed 8–12–93; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
August 13, 1993

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1993–94 Season

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AB60

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1993–94 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes special migratory bird hunting regulations that would be established for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands for the 1993–94 migratory bird hunting season.

DATES: The comment period for these proposed regulations will end August 30, 1993.

ADDRESSES: Send comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240. Comments received, if any, on these proposed special hunting regulations and tribal proposals will be available for public inspection during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634 ARLSQ, 1849 C St., NW., Washington, DC 20240 (703/358–1714).

SUPPLEMENTARY INFORMATION: In the May 26, 1993 **Federal Register** (58 FR 30138), the Service requested proposals from Indian tribes that wished to establish special migratory bird hunting regulations for the 1993–94 hunting season, under the guidelines described in the June 4, 1985 **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and non-tribal members on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

Because of continuing questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, there is a need to provide clarification here. The Service routinely provides **Federal Register** copies of published proposed and final rulemakings and other documents to all State Directors, tribes and others. It is the responsibility of the States, tribes and others to bring any objectionable feature(s) of any regulations to the attention of the Service. Consultation will be initiated at the point in time at which the Service is made aware of a concern. The Service cannot presume to know beforehand what, if any, concerns will be voiced regarding rulemakings.

The guidelines provide for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it has been a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season defined by the 1916 Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource.

Before developing the guidelines, the Service reviewed available information on the current status of migratory bird populations and the current status of migratory bird hunting on Federal Indian reservations and evaluated the impact that adoption of the guidelines likely would have on migratory birds. The Service has concluded that the size of the migratory bird harvest by tribal members hunting on their reservations is normally too small to have significant impacts on the migratory bird resource when compared with the larger off-reservation sport harvest by non-Indians.

An area of concern relates to hunting seasons for nontribal members on dates that are within Federal frameworks, but that are different from those established by the State(s) in which a Federal Indian reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make such an event unlikely, however, because tribal proposals must include: (a) Details on the harvest anticipated under the requested regulations; (b) methods that will be employed to measure or monitor harvest (bag checks, mail questionnaires, etc.); (c) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact on the migratory bird resource; and (d) tribal capabilities to establish and enforce migratory bird hunting regulations. Based on a review of tribal proposals, the Service may require modifications, and regulations may be established experimentally, pending evaluation and confirmation of harvest information obtained by the tribes.

The Service believes that the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, the Service notes that they have been employed successfully since 1985 to establish special hunting regulations for Indian tribes. Therefore, the Service believes they have been tested adequately and they were made final beginning with the 1988–89 hunting season (53 FR 31612). It should be stressed here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

It has been necessary over the past several years to make a statement in this proposed rule qualifying the Service's intent with regard to approving duck seasons and limits because of the uncertainty of production. The Service must again note that duck numbers last year were not significantly changed from those of the previous few years, largely because of poor reproduction caused by a long period of drought in the Prairie Pothole Region of Canada and the United States. The extended drought has been especially severe in critical production areas. Although ground water conditions have improved somewhat in some local areas, preliminary results of recent breeding population surveys indicate no overall improvement in duck population status. In fact, these preliminary figures show that, overall, there has been a significant decline in both dabbler and diver numbers approximating 11 percent over the past year, which is 18 percent below the long-term average. Thus, for conservation purposes, restrictive hunting regulations can be expected again for the 1993–94 season.

Hunting Season Proposals from Indian Tribes and Organizations

For the 1993–94 hunting season, the Service received requests from twelve tribes and Indian organizations that followed the 1985 proposal guidelines and were appropriate for publication in the **Federal Register** without further and/or alternative actions. In addition, the Service received proposals or other correspondence from the Klamath Tribe (Oregon), Yakima Tribes (Washington) and the Mille Lacs Band of Chippewa Indians (Minnesota). The Klamath and Yakima proposals do not follow the guidelines required and, therefore, are not appropriate for publication as intended regulations. Also, the Lower Brule Sioux Reservation (South Dakota) has contacted the Service with regard to submitting proposed regulations for the 1994–95 migratory bird hunting season. On May 28, 1993, the Mille Lacs Band forwarded a letter expressing the wish to continue with regulations during the upcoming 1993–94 season as per the Memorandum of Understanding between the Service and the tribe with regard to migratory bird hunting. For the past several hunting seasons, 1986–87 through 1992–93, the Service has reached an agreement with the Mille Lacs Band of Chippewa Indians in Minnesota for hunting by tribal members on their lands. Similar agreements have been reached with other tribes in other hunting seasons. Tribes are encouraged to work with the Service in developing agreements for management of migratory bird resources on tribal lands.

The Service intends to seek further dialogue with these and other tribal groups to develop mutually acceptable hunting regulations and/or to formalize Service-tribal agreements for multi-year tribal formulation of regulations and management of the migratory bird resource. The Service actively solicits regulatory proposals from other tribal groups that have an interest in working cooperatively in the interest of waterfowl and other migratory game birds.

It should be noted that this proposed rule includes generalized regulations for both early and late season hunting. There will be a final rule published later in an August 1993 **Federal Register** that will include tribal regulations for early hunting season. The early season begins on September 1 each year and most commonly includes such species as mourning doves and white-winged doves. There will also be a final rule published in a September 1993 **Federal Register** that will include regulations for late season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species. In this current rulemaking, because of the compressed timeframe for establishing regulations for Indian tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length and limits that will be permitted when final Federal frameworks are announced for early and late season regulations. For example, the daily bag and possession limits for ducks on some areas are shown as "Same as permitted Pacific Flyway States under final Federal frameworks," and limits for geese will be shown as the same that will be permitted the State(s) in which the tribal hunting area is located. The proposed frameworks for early-season regulations were published in the **Federal Register** in mid-July; these early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. The Service will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established.

As discussed earlier in this document, no action is required by tribes that wish to observe the migratory bird hunting regulations established by the State in which a reservation is located.

The proposed regulations for the twelve tribes with proposals that meet the Service's criteria are shown below.

1. Penobscot Indian Nation, Old Town, Maine

Since June 1985, the Service has approved a general migratory bird hunting season for both Penobscot tribal members and nonmembers, under regulations adopted by the State, and a sustenance season that applies only to tribal members. At the Service's request, the tribe has monitored black duck and other waterfowl harvest during each sustenance season and has confirmed that it is negligible in size. The waterfowl harvest in the 1992–93 sustenance season was low, and similar to that of the previous seasons.

For the upcoming season, the Penobscot Nation outlined their migratory bird hunting season proposal through the Service's Region 5 Office. The tribe requests special sustenance regulations for tribal members in Penobscot Indian Territory, an area of trust lands that includes but is much larger than the reservation. These additional lands were acquired by the tribe as a result of the 1980 Maine Indian Claims Settlement. The tribe is proposing a 1993–94 sustenance hunting season of 74 days (September 18–November 30), with a daily bag limit of 4 ducks, including no more than 1 black duck and 2 wood ducks. The daily bag limit for geese would include 3 Canada geese or 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members would be only the larger of the two daily bag limits. All other Federal regulations, including those for nontoxic shot, would be observed by tribal members, including that shooting hours this year would be from one-half hour before sunrise to sunset.

Nontribal members hunting within Penobscot Indian Territory would adhere to the seasons and bag limits established by the State of Maine.

The regulations put forward by the Penobscot Nation are more conservative than those established last year and the Service proposes to approve them.

2. Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority. The proposed seasons and bag limits would be more conservative than allowed by the Federal frameworks of last season. As previously stated, Federal frameworks for this current season have not been determined due to the fact that 1993 waterfowl production figures are unknown at present. However, based on existing information they are unlikely to be less conservative than those of the 1992–93 season.

In a May 13, 1993, proposal, the tribe requested the earliest opening date permitted Pacific Flyway States for ducks for the 1993–94 hunting season and a closing date of November 30, 1993. Daily bag and possession limits also would be the same as permitted Pacific Flyway States. However, it is proposed again that no canvasbacks be allowed in the bag. Also, the tribe requested that the goose season continue to be closed. The tribe conducts a harvest survey each year, and the duck harvest has routinely been small compared to the size of the reservation and numbers of waterfowl available. The 1992–93 harvest, however, was the largest since recordkeeping began in 1986. Harvest last year, at about 1,258 ducks, was above the highest harvest years of 1987 and 1990, which were 1057 and 1052, respectively. This is still a negligible figure when compared to flyway-wide and nation-wide harvest. Because water conditions on the reservation are again excellent, another good duck production and harvest year is expected.

The requested regulations are essentially the same as were established last year, and the Service proposes to approve the tribe's request for the 1993–94 hunting season.

3. Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land owned by non-Indians. In the past, the tribe has observed the waterfowl hunting regulations established by the State of South Dakota. However, the tribe is continuing to develop a wildlife management program, and in a proposal postmarked June 7, 1993, requested that it be able to set its own special waterfowl hunting regulations for the 1993–94 hunting season. These regulations would be in accordance with Federal guidelines and independent of the State of South Dakota seasons. The regulations would apply to both tribal members and nonmembers hunting on tribal and trust lands within the external boundaries of the reservation. The tribe requests a continuous duck season, beginning on October 16 and ending on November 28, 1993, and the same daily bag and possession limits permitted by final Federal frameworks, to be announced. The requested hunting season dates would not be within Federal frameworks. The season and bag limit would be essentially the same as last year, and harvest is again expected to be low because of the small number of hunters. Estimated harvest, based on hunter reports, for ducks last season was about 144.

The tribe requested that the goose hunting season begin on October 9, 1993, and extend through January 2, 1994. The daily bag and possession limits would be those permitted by final Federal frameworks, to be announced. Harvest for last season has been estimated at about 446 geese, of which 412 were Canada geese. Harvest for this coming season should be approximately the same as last season.

The Service proposes to approve the tribal requests for duck and goose hunting regulations. In the past, the duck regulations have been continued on an experimental basis; the Service now considers these regulations to be operational. However, as with all other groups, the Service asks that the tribe continue to survey and report the harvest to ensure that hunting activity and harvest stay as low as anticipated.

4. Yankton Sioux Tribe, Marty, South Dakota

On June 2, 1993, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 1993–94 season. The Yankton Sioux tribal waterfowl hunting season is open to both tribal members and nonmembers.

The duck (including mergansers) and coot hunting regulations proposed by the Yankton Sioux Tribe, including seasons and bag limits, are in accordance with those set by the State of South Dakota for the Low Plains Middle and South Zones. The tribe anticipates that seasons would run approximately from October 23 to November 30, 1993, in the South Zone and from October 9 to November 16, 1993, in the Middle Zone. The possession limits for ducks and coots would be twice the daily bag limits; daily limits are expected to be 3 for ducks and 15 for coots.

Swan season and bag limits would be in accordance with those set by the State of South Dakota, for both tribal and nontribal hunters.

The tribe has requested a continuous Canada, snow and white-fronted goose hunting season, beginning approximately October 2, 1993, and ending on December 19, 1993. It is expected that the dark goose daily bag and possession limits would be 1 Canada goose and 1 white-fronted goose (or brant). However, in Canada Goose Unit 2 beginning on November 6, 1993, the daily bag limit may include 2 Canada geese or 1 Canada goose and 1 white-fronted goose (or brant).

A special extended goose season is proposed within the Yankton Sioux Reservation for both tribal and nontribal members. This season would begin at the close of the regular goose season and continue through January 9, 1994. During this extended season, hunting for geese would be allowed only in the special hunting zone established by the Yankton Sioux Tribe in the area commonly known as the Chalk Rock Colony. Bag limit and other regulations information, as well as maps, for this zone will be available at the Bureau of Indian Affairs office in Wagner, South Dakota.

All hunters must be in possession of a valid tribal license while hunting on Yankton Sioux trust lands.

The Service proposes to approve the Yankton Sioux proposal for the 1993–94 hunting season, with a request that the tribe continue to monitor and report the harvest of Canada, snow and white-fronted geese.

5. White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. In a May 24, 1993, letter, the tribe requested regulations that are essentially unchanged from those proposed last hunting year.

The hunting zone for waterfowl continues to be restricted to a more limited area than before the 1991–92 hunting year. The open area is described as: the entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. All other waters of the reservation would be closed to waterfowl hunting for the 1993–94 season.

The tribe is proposing a continuous duck, coot, merganser, gallinule and moorhen hunting season, with an opening date of November 13, 1993, and a closing date of January 2, 1994. The tribe requested a daily duck bag limit of 3, of which: no more than 1 can be a redhead or a canvasback; no more than 1 may be a pintail; and no more than 1 may be a hen mallard. The daily bag limit for coots, gallinules and moorhens would be 25 singly, or in the aggregate.

For geese, the season is proposed to extend from November 13, 1993, through January 2, 1994. Hunting would be limited to Canada geese, and the daily bag limit is 2.

There would be no open season for sandhill cranes, rails and snipe on the White Mountain Apache lands under this proposal. Season dates for band-tailed pigeons and mourning doves would run concurrently from September 3 through September 12, 1993, in Wildlife Management Units 7 and 10, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 8, respectively.

Possession limits for the above referenced species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. A number of special regulations apply to tribal and non-tribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

The regulations requested by the tribe for the 1993–94 seasons are somewhat more conservative than those approved last year, and the Service proposes to approve them. The Service greatly appreciates the sensitivity shown by the White Mountain proposal with regard to band-tailed pigeons seasons and bag limits.

6. Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by nontribal members on reservation lands owned by non-Indians. As a compromise, since 1985, the Service has established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. The Service agreed to the season dates because it seemed likely that they would provide additional protection to mallards and pintails; the State concurred with the zoning arrangement. The Service has no objection to the State's use of this zone again in the 1993–94 hunting season, provided the duck and goose hunting season dates are the same as on the reservation. In a June 2, 1993, proposal, for the 1993–94 hunting season, the Shoshone-Bannock Tribes have requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks to be announced. If 59 days are permitted, as in last year, this could conceivably begin the season on October 23 and conclude it on December 19, 1993, with a later opening and a later closure. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States.

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks. The tribes propose that, if the same number of hunting days (93) are permitted as in previous years, the season would have a later opening (October 9, 1993) and a later closing date (January 9, 1994) than last year.

Non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

The Service notes that the requested regulations are nearly identical to those of last year and proposes to approve the tribes' request for the 1993–94 hunting season.

7. The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie and Skykomish tribes and other tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes government is located on the Tulalip Indian Reservation at Marysville, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to non-member hunting unless opened by Tulalip Tribal regulations.

In a letter dated June 7, 1993, the Tulalip Tribes proposed tribal and non-tribal hunting regulations for the 1993–94 seasons as follows.

For ducks and coot, the proposed season for tribal members would be from September 1, 1993, through February 1, 1994. In the case of non-tribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed for the State of Washington under final Federal frameworks, to be announced. Daily bag and possession limits for Tulalip Tribal members would be 6 and 12 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail and wood duck the bag and possession limits would be the same as those established for the State of Washington in accordance with final Federal frameworks. For non-tribal hunters, bag and possession limits would be the same as those permitted the State of Washington under final Federal frameworks, to be announced. It would be necessary for non-tribal hunters to check with the Tulalip tribal authorities for additional conservation measures which may apply for specific species managed within the "region."

For geese, tribal members are proposed to be allowed to hunt from September 1, 1993, through February 1, 1994. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks, to be announced. For tribal hunters, the goose daily bag and possession limits are proposed to be 6 and 12, respectively, except that the bag limits for brant, cackling Canada geese and dusky Canada geese would be those established for the Pacific Flyway in accordance with final Federal frameworks, to be announced. For non-tribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the State of Washington, to be announced. The Tulalip Tribe also sets a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

For snipe, the proposed open seasons follow those regulations for ducks, coot and geese given above. For both tribal and non-tribal hunters, snipe daily bag and possession limits are proposed to be set at 6 and 12, respectively.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other regulations enforced by the tribe.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, a rough estimate of past harvests indicates a total take by tribal and non-tribal hunters under 1,000 ducks and 500 geese, annually. The Service intends to concur with the Tulalip Tribes request for the above seasons and requests that the harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

8. Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and they have full wildlife management authority. With the exception of the 1992–93 hunting season, the Service, as requested by the tribes, has established the same migratory bird hunting regulations on the reservation as in the Colorado River Zone in California.

In their 1993–94 proposal, the tribes are requesting split dove seasons with regulations as follows. The early season is proposed to begin on September 1 and end on September 15, 1993, with the bag limits being ten (10) mourning or ten (10) white wing doves either singly or in the aggregate. The late season for doves is proposed to open on November 13 and close on December 27, 1993, with the bag limit being ten (10) mourning doves. A possession limit is twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to sunset, and other special tribally set regulations would apply.

The duck regulations proposed are the same as those approved last year. Again this year, as manifested by survey data, the population status of ducks appears to be insecure. Consequently, while the regulations frameworks for ducks have not been announced, it is likely that restrictive regulations will be necessary for the 1993–94 hunting season. Therefore, the Service proposes to establish the same migratory bird hunting regulations on the reservation as will be established for California's Colorado River Zone. As in the past, the regulations would apply both to tribal and non-tribal hunters.

9. Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the Tribes are currently operating under a 4-year cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement will enable all hunters to utilize waterfowl hunting opportunities on the reservation. Reservation proposed special regulations for waterfowl hunting were submitted to the Service in a June 1, 1993, letter and would follow regulations for the Montana area of the Pacific Flyway, included in final Federal frameworks.

As in the past, tribal regulations for non-tribal duck and goose hunters would be at least as restrictive as for the Pacific Flyway portion of the State and, if circumstances warrant, would provide for early closure of goose hunting. Early closure may occur on November 28, 1993, in the special goose management unit that will be described in a later rulemaking. Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset over the dates to be specified in the final regulations.

The requested season dates and bag limits are similar to the regulations of the past five years and it is anticipated there will be no significant changes in harvest levels. A large majority of the harvest is by non-tribal hunters. The Service proposes to approve the tribes' request for special migratory bird regulations for the 1992–93 hunting season.

10. Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona

Since 1985, the Service has established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The tribe owns almost all lands on the reservation and has full wildlife management authority.

In a June 18, 1993, communication, the tribe proposed special migratory bird hunting regulations on the reservation for both tribal and nontribal members for the 1993–94 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For waterfowl, the Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits, permitted Pacific Flyway States under final Federal frameworks, to be announced. For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through 30. The Navajo Nation also proposes daily bag limits of 10 and 5 for mourning dove and band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

In addition, the tribe proposes to require tribal members and nonmembers to comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation. The Service proposes to approve the Navajo Nation request for these special regulations for the 1993–94 migratory bird hunting seasons.

11. Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin

This current hunting season will mark the third year that the Service and the Oneida Tribe have cooperated to establish uniform regulations for migratory bird hunting by tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Conservation Department has enforced their own hunting regulations within those original reservation limits. However, the Oneida Tribes have a good working relationship with the State of Wisconsin and the majority of the seasons and limits have been the same for both.

In a May 3, 1993, letter to the Service, the tribe proposed special waterfowl hunting regulations. For ducks, geese, mourning dove and woodcock, the Tribe described the "outside dates" (seasons) as being September 1 through November 30, inclusive.

Canada goose bag limits would be 2 tribally tagged per day; the tribe will reissue 2 tags as each 2 birds are registered. The possession limit for Canada geese is 4. The Oneida Conservation Department is recommending a season quota of 150 geese taken. If that quota is attained before the season concludes, the Department recommends closing the season early. For ducks, the daily bag limit is 5, which could include: no more than 3 mallards, with only 1 hen; 4 wood ducks; 1 canvasback; 1 redhead; and 1 hooded merganser. The daily bag limits for mourning dove and woodcock would be 10 and 6, respectively. The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin.

12. Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, the Michigan Department of Natural Resources agreed to accommodate a tribal season on ceded lands in the western portion of the State's Upper Peninsula, and the Service has approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87, hunting season. In 1987, the GLIFWC requested and the Service approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. The Service acknowledged the State's concern, but pointed out that the United States Government has recognized the Indian hunting rights decided in the *Voigt* case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the *Voigt* decision did not specifically address ceded land outside Wisconsin. The Service believes that this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, and the fact that tribal harvest has been small, the Service has approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish, although unaddressed by the Federal court system, was pivotal in a decision by the Service to approve a special season for the 1836 ceded area in Michigan for the 1991–92 migratory bird hunting seasons.

In a June 7, 1993, letter, the GLIFWC again requested off-reservation special migratory bird hunting regulations for the 1993–94 seasons. The proposed regulations are shown below. The proposal contains some liberalizations in seasons for ducks (including mergansers), coot and rail from 1992–93 for the areas located in Michigan, Minnesota and Wisconsin. The proposed change of season length for ducks would provide for an opening of June 15. This proposal meets the Service's earliest opening date guidelines for tribes, and our intention is to approve this request. The GLIFWC also proposes an increase in the goose bag limit in the Minnesota/Wisconsin zone to 10 birds daily. To meet our guidelines, as well as set bag limits that roughly correspond with other portions of the Flyway, the Service is proposing to approve the requested increase, provided that the daily bag may not exceed 3 Canada geese or 3 white-fronted geese. The remainder of the daily bag limit may be white geese. This decision results from survey information on the Mississippi Valley Population of Canada geese that indicates a breeding bird decline of 29 percent over the past year. Numbers of this population of Canada geese had declined over the previous 2 years, and it is unknown how successful production will be in the current year.

The season changes for ducks and species other than geese would add a week to both ends of the season. Daily bag limits for ducks are deferred from this proposal pending results of the production surveys carried out each summer. However, the GLIFWC has stated that tribal off-reservation harvest in these areas is not expected to exceed 2,000 ducks and 600 geese, and has great cultural significance as a subsistence activity. Further, the GLIFWC believes the biological impact of this level of harvest to be minimal, "yet as an exercise of culture and as an exercise of treaty-reserved rights, this level of harvest is significant to the tribes."

As stated previously, because of depressed population numbers and drought-related habitat problems that are continuing, the Service believes there is a need to continue to provide protection for duck populations. Preliminary survey results for 1993 indicate that duck numbers will remain at depressed levels, and it is likely that restrictive duck regulations will be necessary again in the 1993–94 season. The Service believes that it is appropriate a final decision on the opening date of the duck season should be deferred until ongoing production surveys of duck populations have been completed.

The Commission and the Service are parties to a Memorandum of Agreement designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. The Memorandum of Agreement is intended to have long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this change in reference.

The GLIFWC's proposed 1993–94 waterfowl hunting season regulations are as follows:

Ducks:

A. *Wisconsin and Minnesota Zones: Season Dates:* Begin September 15 and end November 7, 1993.
Daily Bag Limit: Deferred pending results of breeding ground surveys.

B. *Michigan, 1842 Treaty Zone:* Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

C. *Michigan, 1836 Treaty Zone:* Same dates, season lengths, and daily bag limits permitted the State of Michigan for this area under final Federal frameworks.

Mergansers:

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 15 and end November 7, 1993.
Daily Bag Limit: The daily bag limit would be 5, including no more than 1 hooded merganser.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5, including no more than 1 hooded merganser.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under Federal frameworks. The daily bag limit would be 5, including no more than 1 hooded merganser.

Geese: Canada Geese

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 15 and end December 1, 1993.
Daily Bag Limit: The daily bag limit would be 10, however, only 3 may be Canadas and 3 may be white-fronted geese.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

C. *Michigan, 1836 Treaty Zone:* Same dates, season length and daily bag limit permitted the State of Michigan for this area under final Federal frameworks.

Geese: Blue, Snow and White-fronted Geese

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 15 and end December 1, 1993.
Daily Bag Limit: The daily bag limit would be 10, minus the number of Canada geese taken.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 7, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 7, minus the number of Canada geese taken and including no more than 2 white-fronted geese.

Other Migratory Birds: Coots and Common Moorhens (Common Gallinules)

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 15 and end November 7, 1993.
Daily Bag Limit: The bag limit would be 20, singly or in the aggregate.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 20, singly or in the aggregate.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 20, singly or in the aggregate.

Sora and Virginia Rails

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 15 and end November 7, 1993.
Daily Bag Limit: The daily bag limit is 25 singly, or in the aggregate. The possession limit would be 25.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 25 singly, or in the aggregate. The possession limit would be 25.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 25, singly or in the aggregate. The possession limit would be 25.

Common Snipe

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 15 and end November 7, 1993.
Daily Bag Limit: The daily bag limit would be 8.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 8.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted for the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 8.

Woodcock

A. *Wisconsin and Minnesota Zones:*
Season Dates: Begin September 7 and end November 30, 1993.
Daily Bag Limit: The daily bag limit would be 5.

B. *Michigan, 1842 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

C. *Michigan, 1836 Treaty Zone:* Same dates and season length permitted the State of Michigan for this area under final Federal frameworks. The daily bag limit would be 5.

D. *General Conditions*

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.
2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in *Lac Courte Oreilles* v. *State of Wisconsin* regarding migratory bird hunting. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements, 50 CFR part 20 and shooting hour regulations in 50 CFR part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.
3. Nontoxic shot will be required for all off-reservation hunting by tribal members.
4. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.
5. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State laws. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

6. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan and Minnesota will comply with tribal codes that contain provisions that parallel applicable State laws concerning duck blinds and/or decoys.

Public Comment

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. Therefore, he desires to obtain the comments and suggestions on these proposals from the public, other concerned governmental agencies, tribal and other Indian organizations, and private interests, and he will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

No public comment has been provided to the Service for the Notice of Intent published on May 26, 1993, to promulgate a rulemaking with regard to regulations for migratory bird hunting by American Indian tribal members.

Comment Procedure

Special circumstances in the establishment of these regulations limit the amount of time that the Service can allow for public comment. Two considerations compress the time in which this rulemaking process must operate: The need, on the one hand, for tribes and the Service to establish final regulations before September 1, 1993, and on the other hand, the unavailability until late July of specific reliable data for each year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 30, 1993, is impracticable in terms of publishing timely rulemakings and contrary to the public interest.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, 634 ARLSQ, 1849 C St., NW., Washington, DC. 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Migratory Bird Management in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA 22203. All relevant comments on the proposals received no later than August 30, 1993, will be considered.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, the Service has initiated section 7 consultation under the Endangered Species Act for the proposed migratory bird hunting seasons including those which occur on Federally recognized Indian reservations and ceded lands. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act may be inspected by the public in and/or are available to the public from the Division of Endangered Species and Habitat Conservation and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. Copies of these documents are available from the Service at the address indicated under the caption ADDRESSES.

Regulatory Flexibility Act, Executive Orders 12291, 12612, 12630 and 12778, and the Paperwork Reduction Act

In the April 9 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 12291, "Federal Regulation," of February 17, 1981. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis (FRIA), and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. A Regulatory Flexibility Analysis (RFA), prepared as a part of the FRIA concluded that this rule would have significant effects on small entities. Information contained in that document stated that while the Service believes that its rules for migratory bird hunting are "major," and impact "small entities," particularly small businesses, it has been unable to locate information of the kind needed to complete its analysis on small entities. The FRIA and RFA document the relationships between hunting regulations, and hunter numbers and hunter days, both of which have major economic implications. The Service concluded that the adoption of other regulatory options would have little impact upon hunter expenditures at the national-economy or small-entity levels. Unless migratory bird hunting regulations are established, the national economy stands to lose at least $1 billion annually. Most of this loss would be borne by small entities.

It has been determined that this rule will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240. As noted in the **Federal Register** notice referenced above, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed. This rule does not contain any information collection requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Authorship

The primary author of this proposed rulemaking is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Paul R. Schmidt, Chief.

Based on the results of soon to be completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 1994, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal or for both tribal and nontribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers) and geese.

The rules that eventually will be promulgated for the 1993–94 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Dated: July 28, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–19502 Filed 8–12–93; 8:45 am]

BILLING CODE 4310–55–P

federal register

Friday
August 13, 1993

Part V

Department of Agriculture

Forest Service

36 CFR Part 222

Range Management; Grazing and Livestock Use and Grazing Fees; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 222

Range Management; Grazing and Livestock Use and Grazing Fees

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Agriculture gives notice of its intention to revise Forest Service range management regulations to improve administration of permits, to place greater emphasis on stewardship of the rangeland resource, to manage the rangeland resource using an ecological approach, to change the system used to determine the fees for grazing of privately owned livestock on national forests and grasslands in the west, and to achieve greater consistency between the grazing management regulations of the Forest Service and the Bureau of Land Management. The intended effect is to provide for healthy, sustainable rangeland ecosystems on National Forest System lands. The Forest Service solicits comments and suggestions from the public to assist the agency in drafting a proposed rule. Grazing fees also will be addressed in an environmental impact statement which is being prepared with the Bureau of Land Management as the lead agency and the Forest Service as a cooperating agency.

DATES: Written comments must be received by September 13, 1993.

ADDRESSES: Send written comments to Director, Range Management Staff (2200), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Jerry W. McCormick, Range Management Staff, (202) 205–1746.

SUPPLEMENTARY INFORMATION:

Background

The existing rules governing rangeland management and livestock use on National Forest System lands (36 CFR part 222, subpart A) address management of the range environment, the issuance and modification of grazing and livestock permits, compensation for permittees' interest in authorized permanent improvements, cooperation in management, range improvements, the use of the range betterment fund, and grazing advisory boards. The current rules were adopted October 28, 1977 [42 FR 56732].

As required by Departmental Regulation 1512–1, Forest Service personnel involved with rangeland management at various levels of the agency participated in a 1987 review of the existing grazing regulations. This review identified areas needing revision and clarification, areas requiring new regulations, and outdated sections which need to be removed. The Forest Service published a proposed rule responding to the findings of the review on August 16, 1988 [53 FR 30954]. That proposed rule has not been finalized, but principal features are being considered in the current effort to identify needed changes to the regulations.

The 1990 report The Forest Service Program for Forest and Rangeland Resources (Recommended 1990 RPA Program) stated that although * * * "public rangeland is in better condition than it has been at any time this century," the Forest Service has deep concerns about the 27% of National Forest System rangelands which have been classified as being in unsatisfactory condition. This report further discussed the role of rangelands in providing forage, habitat, water, recreational opportunities, and open space and signaled the agency's commitment to improve rangeland conditions and management. More recently, the Secretary of Agriculture and the Secretary of the Interior sponsored a series of public meetings on livestock grazing on federal lands. Issues and concerns raised at those meetings have provided additional momentum to develop grazing regulations that are more responsive to the current needs for improved management of rangeland resources.

The existing rules governing grazing fees on national forests and grasslands (36 CFR part 222, subpart C) establish general procedures for application of fees and set forth procedures for calculating fees in the national forests in the 16 western states, national grasslands, and in the Eastern States. Subpart C was last amended January 26, 1990 [55 FR 2650], when the fee system for the eastern states was revised.

Revision of the grazing fee system is part of a comprehensive effort of the Forest Service and the Bureau of Land Management to improve the management of federal rangelands. Revision of the grazing fee system is intended to correct the fundamental problems of the present fee—the wide disparity between rates charged for livestock forage on private and Federal lands and the failure to follow the trend of forage value in the private market. The two agencies are proposing to use the same grazing fee system. However, each agency must prepare a separate proposed rule that reflects the differences in statutory authority between the agencies.

This advance notice includes a specific grazing fee option and preliminary regulatory text which has been selected from a range of fee alternatives considered by the Secretary of Agriculture and Secretary of the Interior. A specific fee option is provided to help focus public comment; however, a full range of grazing fee options will be presented and evaluated in the draft environmental impact statement before the Secretaries make a final decision on a proposed grazing fee.

Revisions Under Consideration

1. *Ecosystem Approach to Multiple Use Management of Rangelands*

In his letter of June 4, 1992, the Chief of the Forest Service stated "the Forest Service is committed to using an ecological approach in the future management of the National Forests and Grasslands." He further stated, "An ecological approach will be used to achieve the multiple-use of management of National Forests and Grasslands. It means that we must blend the needs of people and environmental values in such a way that the National Forests and Grasslands represents diverse, healthy, productive and sustainable ecosystems."

An ecosystem approach to management of National Forest System rangelands considers ways to provide for diversity of plant and animal communities, manage dynamic ecological processes (e.g. animal grazing, fire, hydrology), and sustain the health of rangeland ecosystems, including riparian systems and wetlands. The agency is reviewing its regulations to determine needed changes to implement an ecosystem approach to rangeland management. The public is invited to suggest criteria the agency should include in regulations adopting an ecosystem approach to multiple use management of rangelands. Some of the key questions to be considered in the proposed regulation include:

—At what scale(s) should we conduct rangeland ecosystem analysis: landscape, watershed, unique biological community, allotment?

—How do we integrate large-scale rangeland ecosystem analyses (e.g. landscape scale) into the existing decisionmaking framework for National Forest System planning?

2. *NEPA Analysis and Rangeland Management Decisions*

Grazing allotment management plans provide direction for livestock management on National Forest System lands. These plans must be consistent with the programmatic direction in forest plans. The environmental analysis prepared for an allotment management plan is generally used to disclose the site-specific effects of livestock grazing as required by the National Environmental Policy Act (NEPA).

Changing emphasis to a broader scope of analysis may provide opportunities to improve the efficiency of planning for rangeland resources and to correlate the effects of livestock grazing with other activities and resources. This comprehensive analysis might better identify prescriptions to be applied to livestock grazing and also the actions that will achieve other resource objectives over a broader area than individual grazing allotments.

Because of the expenses and workload associated with updating existing allotment management plans, the agency is questioning whether it is advisable to continue to develop an allotment management plan for each allotment on National Forest System lands. The agency invites comments regarding the role of allotment management plans in National Forest System planning. Key questions to be addressed in the proposed rule include, but are not limited to, the following:

—Should the Forest Service prepare an allotment management plan for every allotment?
—Should allotment plans be prepared to cover multiple allotments?
—What alternative methods are available to analyze and disclose the site-specific effects of livestock grazing as required by NEPA?

3. *Permittee Stewardship*

Improved stewardship of rangelands is a key element to be addressed in the proposed rule. Rangeland stewardship is the joint responsibility of the Forest Service and grazing permittees. The Forest Service conducts planning and analysis to determine rangeland resource objectives and conditions to be achieved. The agency, working with the permittee, is also required to develop prescriptions for livestock grazing and grazing permit terms and conditions that are consistent with overall resource objectives and desired conditions. In turn, permittee operations must comply with the terms and conditions of the permit. However, some livestock grazing practices are not achieving resource management objectives established for National Forest System lands. Accordingly, the agency is examining current administrative policy and practice as well as regulatory and statutory authorities to identify new mechanisms for encouraging and achieving improved stewardship of National Forest System rangelands under grazing permits.

A. Linkage Between Forest Plan Direction and Grazing Permit Terms and Conditions

Forest plans provide management direction and resource objectives for National Forest System rangelands. Since forest plan are generally large, complex documents, livestock grazing permittees often find it difficult to understand how the forest plan applies to their grazing permits and livestock grazing practices. It is also difficult for the Forest Service to achieve forest plan objectives if forest plan direction is not clearly tied to the grazing permit. To eliminate uncertainty and to ensure that forest plan direction is clearly linked to terms and conditions of a grazing permit, the agency is considering amending the grazing regulations to specifically require that forest plan management direction and resource objectives applicable to livestock grazing be added to the terms and conditions of the livestock grazing permit.

B. Permit Tenure

The Granger-Thye Act of 1950 (16 U.S.C. 5801) states that "The Secretary of Agriculture in regulating grazing on the national forests and other lands administered by him in connection therewith is authorized, upon such terms and conditions as he may deem proper, to issue permits for the grazing of livestock for periods not exceeding ten years." The Federal Land Policy and Management Act of 1976 (46 U.S.C. 1752(b)) specifies that "permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that * * * it will be in the best interest of sound land management to specify a shorter term * * *." Although these statutes permit shorter terms, the Forest Service has seldom exercised the option of issuing grazing permits for less than ten years.

The Forest Service is considering basing permit tenure on a permittee's record of compliance. For a permit renewal, the permit would be issued for a full ten-year period, if the permittee has been in compliance with the terms and conditions of the previous grazing permit. If a permittee has a record of poor or minimal compliance, the agency could decide not to reissue the permit. Where the authorized officer believes the permittee has potential to operate in compliance, a probationary permit of up to five years would be issued. During the probationary period, the permitee would have the opportunity to show diligence in complying with the terms and conditions of the permit. If the permittee was in compliance during the probationary period, a new ten-year permit would be issued. New applicants would be issued a permit for a shorter period, such as five years, so that a new permittee can satisfactorily demonstrate responsible stewardship of the rangeland resource.

C. Disqualification

Terms and conditions are specified in grazing permits to ensure the proper management, and thus protection, of public resources. Current agency regulations make no provision for the disqualification of a permittee whose permit has been cancelled for violations of regulations or permit terms. The lack of regulatory authority to guide disqualification of livestock operators whose conduct and management practices require continuous agency action has resulted in increased costs to the government and frequent resource damage.

The Forest Service is considering establishing provisions that would disqualify for up to three years any applicant who has had a Forest Service or other Federal grazing permit cancelled for violations within the past 36 calendar months. The agency believes a disqualification rule would serve as an effective inducement for permittees to comply with the terms and conditions of the grazing permit.

4. *Administrative Consistency with the Bureau of Land Management*

In the West, National Forest System lands and Federal lands administered by the Bureau of Land Management (BLM) are often intermingled or adjacent. Many livestock operators hold permits from both agencies. Accordingly, grazing policy and procedures of the two agencies should be as similar as their statutory authorities allow. A key objective of the proposed rule is to identify opportunities to adopt policies and procedures similar to those of BLM.

A. Citizenship Requirements

The Forest Service does not presently issue grazing permits to applicants who are not citizens of the United States. Grazing permits are the only Forest Service permits with this qualification. To achieve consistency with other

Forest Service regulations and be more consistent with the Bureau of Land Management, the Forest Service is considering eliminating the eligibility requirement that an applicant must be a citizen of the United States or have filed a petition for naturalization.

B. Livestock Ownership

Current Forest Service regulations require that applicants for and holders of term permits own the livestock grazed under permit. The Forest Service is reviewing this permit requirement of livestock ownership since the Bureau of Land Management and may State Land Departments do not have this requirement. Eliminating the livestock ownership requirement would increase a permittee's ability to make short-term adjustments in livestock numbers. This flexibility could allow Forest Service managers to be responsive to seasonal or annual changes in forage production and changes in resource management objectives that are affected by livestock. It also would reduce the agency's administrative costs associated with the verification of ownership of livestock.

C. Penalties for Unauthorized Use

The Forest Service currently defines unauthorized use as livestock grazing use that is not related to use authorized by a grazing permit (other than use associated with recreation, camping, wild horses, etc.). Excess use is livestock grazing use related to use authorized by a grazing permit where the grazing period or number of livestock exceeds the amount authorized. The Bureau of Land Management identifies both of these as unauthorized grazing use.

Forest Service financial penalties charged for unauthorized and excess livestock grazing on National Forest System lands have been set by the average monthly rate for pasturing livestock on privately owned non-irrigated land for the eleven western states as determined by the Department of Agriculture. In contrast, the Bureau of Land Management has used a charge system using this same value as a base charge which is assessed for non-willful unauthorized use. For willful unauthorized use, the Bureau of Land Management charges double the base rate, and for repeated willful unauthorized use, three times the base rate.

Forest Service financial penalties have not been effective as a deterrent for preventing unauthorized or excess use. The agency is considering adopting the Bureau of Land Management's definition and financial penalties for unauthorized use as a more effective way of gaining compliance.

5. *Administrative Efficiency*

Temporary grazing permits are currently issued for a period of up to one year to allow livestock grazing on some allotments in non-use status, where excess forage is available after permitted use is achieved, to respond to situations such as drought which affect current permits, and for other purposes. Livestock use permits are issued for periods up to one year for grazing unallocated forage by livestock including commercial transportation livestock, livestock trailing across National Forest System lands, and research livestock. Situations requiring use of these types of permits may continue for more than one year. When this is the case, annual processing of these permits and applications increases administrative costs. Using two types of permits to cover temporary livestock grazing uses is often confusing and requires maintenance and use of two sets of policy and procedures. The Forest Service is considering combining these two types of permits into a single type of permit to cover all temporary livestock grazing where a permit is needed. The agency is also considering allowing the issuance of these permits for periods of up to three years.

6. *Advisory Boards*

Grazing advisory boards were authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1753). This provision of the Act, however, expired on December 31, 1985, and has not been renewed. The Forest Service is planning to remove the provisions for grazing advisory boards from the regulations.

Under the Federal Advisory Committee Act (5 U.S.C. app. 1) and the implementing regulation at 41 CFR part 101–6.10, the National Forest Management Act of 1976 (Sec. 14. (b)), and the Food and Agriculture Act of 1977 (7 U.S.C. 2281), responsible officials will continue to have the authority to establish multiple-use boards reflecting a variety of viewpoints and resource interests to provide input on management of National Forest System rangeland resources.

7. *Grazing Fees*

Preliminary regulatory text representing one option for revising the current grazing fee system is set out at the end of this notice. This option meets the initial criteria established by the Departments of Agriculture and the Interior to guide selection of a new fee formula. Those criteria are:

1. The fee charged for livestock grazing should approximate market value. Using market value assures that the public receives a fair return for the private use of publicly owned resources.
2. The fee will not cause unreasonable impacts on the stability of western ranching communities.
3. The grazing fee should recover some reasonable amount of government administrative costs, thereby reducing the tax burden.
4. The fee system should be understandable and relatively inexpensive to administer.

The option presented for comment in this advance notice would use a base value adjusted annually by the change in the private land lease rate. Under this option, a new base value of $3.96 would be established for 1991. The initial fee methodologies analyzed by the Departments of the Interior and Agriculture would result in a 1993 grazing fee range of $3.51 to $9.39. This range excludes the current fee formula, which has resulted in a fee far below market value. It also excludes a regional fee structure, also evaluated, which would result in fees as high as $11.08 for 1993 in the Northern Great Plains. The analysis clearly points to an appropriate range of $3.51 to $5.05 for a 1993 fee. It is this range which became the focus of further analysis. The mid-point within this range was selected to serve as a basis for establishing a future fee structure.

Under the option presented at the end of this notice, the base value would be adjusted annually by the change in the Forage Value Index (FVI), which is the change in the private grazing land lease rate in the 17 Western States.

The grazing fee charged for 1993 was $1.86 per head month. To change to the new base value from the fee of $1.86, this option suggests that the $2.10 adjustment be phased in over a three-year period, an increase of $0.70 per year. Each year, the fee would also be adjusted by the change in the Forage Value Index. After the three-year phase-in, the grazing fee would be allowed to change by no more than 25 percent annually, plus or minus, from the amount charged during the previous year. The three-year phase-in and the twenty-five percent per year limit are possible ways to reduce the impact of fee increases on ranchers and ranching communities.

This preliminary option also would provide for decreases in fees in recognition of required conservation practices. The use of credit for required conservation practices on the national grasslands would be similar to the use of range betterment funds on national forests for implementing rangeland improvement activities. The use of the range betterment fund is not authorized for national grasslands, under the option presented in this advance notice. In the case of the national grasslands, the costs of doing the conservation practices required by the Forest Service and performed by the local grazing association or individual national grassland permittee would be subtracted before the Forest Service collects the grazing fee. In addition, provision is made for giving credit for administrative costs incurred by a local grazing association that otherwise would be a cost to the Forest Service; for example the cost of issuing individual permits and monitoring the number of livestock grazed.

It should be noted that under this option the grazing fee applied to national forests in the west would apply to all national grasslands. The national grasslands historically have been subject to a different fee system than the one used for national forests. In 1992, following consultation with the Association of National Grasslands, the Secretary of Agriculture reduced the national grasslands grazing fee to an amount commensurate with the national forest grazing fee. The option set out in the advance notice would incorporate this change so that the grazing fee on national grasslands would be the same as the fee charged for livestock grazing on lands designated as national forests and land utilization projects.

Summary

National Forest System rangelands are receiving increased demands from a growing population. Although traditionally the primary use of rangelands has been livestock production, the Forest Service also recognizes the importance of rangelands in providing for biodiversity, productive habitat for wildlife and fisheries, clean air, clean water, quality outdoor recreation opportunities, and long-term ecosystem stability. In addition, agency management of rangelands must be responsive not only to permittees, but also to an environmentally concerned public whose interests are much broader than livestock grazing alone and who are vocal in demanding that the agency improve those rangelands that are in unsatisfactory condition. Achieving rangeland management that is sensitive to the environment while sustaining productivity requires that agency direction allow the best use of technology and provide the flexibility to be responsive to change.

The Forest Service is planning to propose new regulations to incorporate an ecosystem approach for the management of rangelands in the National Forest System, to improve the administration of grazing permits, to emphasize and improve rangeland stewardship, to revise the system for determining grazing fees on western national forests and grasslands, and to achieve greater consistency with the rangeland management policies between the Forest Service and the Bureau of Land Management. Public suggestions on provisions to be included in a proposed rule are invited and will be considered in the development of a proposal.

Dated: August 9, 1993.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

Grazing Fee Revision—Preliminary Text

The following preliminary regulatory text embodies one option for revising grazing fees on federal lands.

36 CFR Part 222, Subpart C

Section 222.50 General Procedures.

(a) Fees shall be charged for all livestock grazing or livestock use of National Forest System lands, except for livestock authorized free of charge pursuant to § 222.3(c)(2)(ii) (B) through (g).

(b) In calculating fees, the agency shall give no consideration for any permit value that may be capitalized into the permit holder's private ranching operation.

(c) A grazing fee shall be charged for each head month of livestock grazing or use. A head month is a month's use and occupancy of range by one cow, bull, steer, heifer, horse, or mule or five sheep and goats. A full head month's fee is charged for a month of grazing by adult animals. An animal is considered to be adult it if is weaned, is 6 months of age or older at the beginning of the permitted period of use, or will become 12 months of age during the permitted period of use.

(d) When sheep grazing is already authorized by a grazing permit, no additional charge shall be made for the privilege of lambing upon National Forest System lands.

(e) The grazing fee described in §§ 222.51, 222.53, and 222.54 may be charged for all livestock grazing or livestock use of National Forest System lands authorized by a temporary grazing permit. However, the authorized officer may waive the fee; lower the fee when the Forest Service imposes limitations or requirements on use that reduce value to the user or increase user costs; or raise fees.

(f) All fees for livestock grazing or livestock use of National Forest System lands or other lands under Forest Service control are payable in advance of the opening date of the grazing period, entry, or livestock use, unless otherwise authorized by the Chief of the Forest Service.

(g) Refunds or credits may be allowed under justifiable conditions and circumstances as the Chief of the Forest Service may specify.

(h) The fee year for the purpose of charging grazing fees will be March 1 through the following February.

Section 222.51 Grazing fees in the West.

(a) A grazing fee shall be established annually for livestock grazing or livestock use of National Forests, National Grasslands, and land utilization projects in the States of Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and on National Grasslands in the States of Kansas, Oklahoma, and Texas. The grazing fee established by this does not apply to grazing or livestock use on the National Forests in the States of Oklahoma and Texas. As used in this section, the term "West" refers to these 17 States.

(b) The annual fee for livestock grazing or livestock use of the National Forests, land utilization projects, and National Grasslands in the West shall be determined by a "base value" which is adjusted annually by the percent change in the rate for grazing livestock on private grazing lands as measured by the forage value index (FVI). The equation is as follows: Grazing fee per head month = Base value times Forage Value Index. The FVI is computed by dividing the current Private Grazing Land Lease Rate (PGLLR) per animal unit month by the 1991 base PGLLR of $8.67.

(c) The base value for 1991 shall be $3.96 per head month.

(d) The 1991 base index value of $8.67 will be used for computing the FVI.

(e) The change from the $1.86 1993 actual fee to the new base value of $3.96 shall be phased in over a three-year period, computed as follows:

(1) The fee for 1994 is ($1.86+$0.70) times FVI.

(2) The fee for 1995 is ($1.86+$0.70+$0.70) times FVI.

(3) The fee for 1996 is ($1.86+$0.70+$0.70+$0.70) or $3.96 times FVI.

(f) Starting with the year 1997 and, thereafter, the annual fee shall be computed, as specified in paragraph (b) of this section, using $3.96 times the FVI, except that the fee charged may not be increased or decreased by more than 25 percent from the fee charged the previous year.

Section 222.52 National Grasslands fee adjustments for conservation practices.

(a) *Computation of grazing fee.* Grazing fees for National Grasslands may be adjusted by giving credit for the implementation of Forest Service required conservation practices. Where livestock grazing is administered by a local grazing association under the terms of a grazing agreement with the Forest Service, credit may also be given for specified administrative costs. The Forest Service shall establish standards in Forest Service Manual Title 2200 (36 CFR 200.1) to guide authorized officers in giving credits for required conservation practices and specified administrative costs.

(b) *Credit for conservation practices.* Requirements for permittee construction or development of conservation practices shall be incorporated into term grazing permits, including grazing agreements, with credits for such improvements to be applied toward the annual grazing fee. Fee credits shall be allowed only for conservation practices which the Forest Service requires the permittee to construct or develop to meet management direction contained in relevant forest land and resource management plans, related implementation plans, and the term grazing permit or grazing agreement. The conservation practices must be used to achieve or maintain vegetative conditions for resource protection, soil productivity, riparian, watershed and wetland values, wildlife and fisheries habitat, and other related values.

(c) *Credit for administrative costs.* In those locations where grazing associations carry out administrative duties as defined in a grazing agreement with the Forest Service, credits for specified reasonable administrative costs of grazing associations may be applied toward the grazing fee. Allowable costs are limited to those activities which the Forest Service would otherwise incur if the grazing association did not perform these tasks. An example, could be a credit to offset the cost of issuing of individual permits and monitoring the number of livestock grazed. Qualifying costs and activities must be identified in each grazing agreement.

[FR Doc. 93–19552 Filed 8–12–93; 8:45 am]

BILLING CODE 3410–11–M

federal register

Friday
August 13, 1993

Part VI

Department of the Interior

Bureau of Land Management

43 CFR Parts 4, 1780, and 4100
Grazing Administration Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 4, 1780, and 4100

[WO-220-4320-02 24 1A]

RIN 1004-AB89

Grazing Administration—Exclusive of Alaska; Department Hearings and Appeals Procedures; Cooperative Relations

AGENCY: Bureau of Land Management, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior gives notice of its intention to revise the grazing administration regulations at 43 CFR part 4100 to improve administration of grazing permits and leases, to place greater emphasis on stewardship of the rangeland resource, to obtain fair and reasonable compensation for the grazing of public lands, to manage the rangeland resource using an ecological approach, and to achieve greater consistency between the grazing administration regulations of the Bureau of Land Management (BLM) and the Forest Service (FS). The amendments to the regulations being considered stem from an effort to reform grazing administration and management of the rangeland ecosystem on the public lands. In addition to the amendment of 43 CFR part 4100, the Department of the Interior is providing notice of its intent to revise 43 CFR part 1780—Cooperative Relations, and 43 CFR part 4—Department Hearings and Appeals Procedures. Amendment to these regulations would be necessary to complement the actions being considered in rangeland reform. This advance notice of proposed rulemaking presents a detailed description of the actions being considered, including preliminary regulatory text. This level of detail is provided to assist the reviewer. Public comment is invited and will be considered in the development of the proposed rule.

DATES: Comments on this advance notice of proposed rulemaking must be submitted in writing by September 13, 1993. Comments received or postmarked after this date may not be considered in the issuance of the proposed rule.

ADDRESSES: Send comments on this advance notice of proposed rulemaking to Director (200), Bureau of Land Management, P.O. Box 65800, Washington, DC 20035-9998.

Comments will be available for public review at the Division of Legislation and Regulatory Management, room 5555-MIB, Bureau of Land Management, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mark W. Stiles, Regulations Analyst, Division of Legislation and Regulatory Affairs, Bureau of Land Management, (202) 208-4256.

SUPPLEMENTARY INFORMATION:

Introduction

This advance notice of proposed rulemaking provides a detailed description of how the Department of the Interior envisions amending pertinent parts of title 43 of the Code of Federal Regulations. The preliminary regulatory text contained in this notice represents a portion of an overall effort titled "Rangeland Reform '94". In addition to the revisions of the current grazing regulations being considered, Rangeland Reform '94 would involve the development of standards and guidelines for livestock grazing in rangeland ecosystems, and the revision of agency manuals and handbooks and other directives to provide procedural guidance to field managers. Proposed national standards and guidelines that would provide policy-level direction for livestock grazing in rangeland ecosystems are presented as an appendix to this advance notice of proposed rulemaking. Requests for copies of the Rangeland Reform '94 summary document which explains the various components of reform should be directed to the address above.

Rangeland Reform '94 is a proposal developed by the Department of the Interior through the BLM, in close cooperation with the U.S. Department of Agriculture and the FS, for effecting fundamental policy changes, including adjustment of the Federal grazing fee, in its rangeland management program. The intent of the proposed changes is to make the BLM's rangeland management program more compatible with ecosystem management, to accelerate restoration and improvement of the public rangelands, to obtain for the public fair and reasonable compensation for the grazing of livestock on public lands, and to streamline certain administrative functions. The proposal has been based on ideas, suggestions and initiatives brought to the agencies in recent years.

In 1991 the BLM Director asked the agency's National Public Lands Advisory Council (NPLAC) to make recommendations that would help guide the BLM's rangeland management program. The NPLAC tasked a small "Blue Ribbon Panel" (Panel) to review the rangeland management program needs and to recommend reform. The Panel produced a report, "Rangeland-Program Initiatives and Strategies", and presented it to the BLM Director and the Secretary of the Interior in March 1992. The report was then distributed to the various rangeland interest groups and individuals. The NPLAC Panel recognized that the report was only the starting point toward the goal of wisely managing resources and meeting human needs. The Panel identified six primary issues for improving rangeland management in the BLM. Foremost among the six issues was the need for well-defined rangeland program goals and objectives embracing the diversity and sustainability of natural resources and the multitude of issues, values and interests associated with the public lands of the West. The Panel also concluded that BLM's primary concern should be the protection of the basic rangeland components of soil, water and vegetation, explaining that, "without assurances for the future well-being of these basic natural resources, there is precious little to squabble about."

Using the Panel report as a springboard, the BLM initiated a major effort to review its overall mission and responsibilities, and to analyze critically how it conducts resource management across the full spectrum of its activities and programs. In the spring and summer of 1993 the Secretary of the Interior held five Town Hall meetings in the West to discuss rangeland management. These meetings gave the livestock industry and other affected or interested parties an opportunity to voice their concerns and provide recommendations about managing public rangelands. From the findings of the Panel and the Town Hall meetings a common theme emerged: the need for reform of the management of public rangelands within the framework of ecosystem management.

Ecosystem management is a process that considers the total environment. It requires the skillful use of ecological, economic, social, and managerial principles in managing ecosystems to produce, restore, or sustain ecosystem integrity and desired conditions, uses, products, values, and services over the long term. Management of individual components of ecological systems for immediate needs is tempered or expanded to responsible management centered on long-term goals and objectives targeted to the entire ecological system. Ecosystem management recognizes that people and their social and economic needs are an integral part of ecological systems. It is consistent with the BLM's mission and direction under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*, FLPMA) and it is supported by other laws guiding the Bureau's mission.

If a fundamental shift toward ensuring that ecological processes function properly is to occur, the BLM's rangeland management program, along with other resource management programs, must undergo major change. This is the focus of this proposal. It is directed toward achieving sustainability of public land resources and attuning management to the needs of all people, present and future.

The Department feels the actions presented in this advance notice of proposed rulemaking represent the type of measures that must be taken to ensure proper administration of livestock grazing on the public rangelands while enhancing reform in the management of rangelands for the improvement, protection and proper functioning of rangeland ecosystems. The suggested actions are generally presented in the format of a proposed rulemaking. By providing the reader with specific preliminary proposed amendments to the regulations, the Department and the BLM hope to make the complex set of reform actions more understandable while at the same time identifying the types of change the Department and the BLM feel must be considered. The Department and the BLM also hope the presentation of preliminary proposed regulatory text will help to focus public comment.

In developing the concepts of Rangeland Reform the BLM is cooperating with several other natural resource agencies, professional organizations, and interest groups at the State and National level. The FS is a major participant in this effort. Rangeland Reform '94 emphasizes greater similarity and compatibility of the regulations and policies of the BLM with those of the FS and each agency is attempting to move closer together in terms of rangeland management policy. There would be differences only when the basic laws governing resource management activities of the respective agencies are different, or where there are significant on-the-ground differences. There are sound reasons for this level of consistency. Both agencies administer immense tracts of Federal rangeland, often within the same ecosystems and watersheds. Both agencies commonly serve the same grazing permittees and lessees and other groups and organizations which have a keen interest in Federal rangeland policies. There have been many public calls and recommendations for greater consistency in the agencies' management of resources.

In conjunction with this advance notice of proposed rulemaking, the Department of the Interior is reissuing a notice of intent to prepare an environmental impact statement (EIS) and reopening the scoping period for the EIS that will assess the effects of Rangeland Reform '94 on the quality of the human environment. The notice of intent to prepare an EIS is published elsewhere in today's **Federal Register**. The 30-day comment period for the notice of intent will coincide with this advance notice of proposed rulemaking. The EIS will examine the entire reform package and alternative courses of action, including actions reflected in this advance notice of proposed rulemaking. The FS will be a cooperating agency in the preparation of the EIS. Although an EIS is typically not prepared for changes in national program guidance or rulemakings, the Department has decided to prepare an EIS for Rangeland Reform '94 in order to fully disclose proposed actions, alternatives to proposed actions, and the resultant environmental consequences.

This advance notice of proposed rulemaking presents preliminary proposals for amending the BLM's regulations pertaining to grazing administration, including a specific grazing fee option which has been selected from a range of fee alternatives considered by the Secretary of the Interior and the Secretary of Agriculture. The specific fee option and other preliminary proposed amendments are presented to permit public comment to be focused on the types of reform measures the Department and BLM believe to be necessary; however, a full range of options will be presented and evaluated in the draft EIS before the Secretaries make a final decision on the grazing fee and other amendments to the regulations.

The Department of the Interior has made a preliminary determination that the proposed rule, if promulgated as presented in this advance notice, would not constitute a major rule under Executive Order 12291 and that no Regulatory Impact Analysis would be required. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or 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. Further, the Department has made the preliminary determination that the proposed rule, if promulgated as presented in this advance notice, may have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*). Reviewers are invited to comment on these preliminary findings and to provide information to be used in conducting the assessment of economic effects.

The following discussion summarizes the preliminary proposed amendments and explains the specific changes being considered. These changes are presented in the format of a proposed rule to assist in generating meaningful public discussion and comment prior to developing a proposed rule. Although the preliminary text uses the term "proposed rule", it should not be confused with the proposed rule to be prepared, after consideration of comments received on this advance notice, and made available for public comment this fall.

Brief Discussion of Major Issues

The general topics of the proposed changes to existing regulation and policy are the Federal grazing fee, affected interests, consideration of applicant history of compliance in the issuance of permits or leases, full force and effect of decisions, grazing advisory boards and district advisory councils, issuing grazing preference, permit or lease tenure, prohibited acts, range improvements and water rights, rangeland standards and guidelines, subleasing, suspended non-use, and unauthorized use.

The Federal Grazing Fee

A particularly controversial issue over the years has been how to devise a fair and reasonable grazing fee. The proposed rule presents a formula that is intended to correct the fundamental problems of the present fee, the wide disparity between rates charged for livestock forage on private and on Federal lands and the failure to follow the trend of forage value in the private market, and to increase the funding available to improve ecological conditions. A major criticism of the current fee formula is that while forage value in the private market has increased substantially over time, the Federal grazing fee formula has produced relatively small increases or even decreases. The proposed formula is essentially a return to the simpler formula that was in effect before 1978 but uses an updated base value. The proposed formula includes a base value which considers the cost differences of operating on public lands as compared to private leases, as well as appraisal data. It would be adjusted annually to reflect the change in the private land lease rate in the 17 Western States (i.e., forage value index). Although no explicit index based on production costs or value of products produced is used, both factors influence the prices paid for forage and so are to some extent implicit in the forage value index.

A base value of $3.96 per animal unit month (AUM) is proposed in this rule. This value represents a midrange between the results obtained through the use of two methods for estimating a fair base value. Explanation of the methodology used in arriving at the $3.96 base value is presented in the discussion of section 4130.7–1. The proposed base value would be phased in over a 3-year period. Thereafter, annual increases or decreases in the grazing fee would be limited to 25 percent of the amount charged the previous year to provide for a measure of stability that will facilitate business planning.

Affected Interests

Public involvement is critical to planning for and managing the uses of the public lands. The levels of public involvement and opportunities for affected interests to participate in the management of public rangelands have lacked consistency among the various offices in the BLM. As the BLM moves toward implementation of ecosystem management, there is an increasing need for broader and more effective public involvement. The proposed rule and policy of the BLM would provide better guidance concerning public participation and would establish criteria for identifying affected interests. The BLM would ensure that the public is afforded reasonable opportunities for participation in rangeland management, particularly in the allotment level planning, monitoring, and evaluation, and in formulating or modifying terms and conditions and standards and guidelines for permits and leases. The BLM will emphasize early public involvement to maximize the benefit of input while reducing the potential for controversy and misunderstanding.

Disqualification Based on Applicants' History

Section 402 of FLPMA (43 U.S.C. 1752) requires that, so long as lands for which the grazing permit or lease are issued remain available for livestock grazing, first priority for renewal of a new permit or lease shall be given to existing permit or lease holders who are in compliance with the Secretary's rules and regulations and the terms and conditions of their permit or lease. The Taylor Grazing Act of 1934 (43 U.S.C. 315b) has a similar provision. Thus, Congress has provided a clear requirement that permittees or lessees must meet if they are to qualify for renewal of a permit or lease. In addition, the Department proposes to consider compliance with all Federal and State laws and regulations pertaining to grazing and terms and conditions of Federal and State grazing permits and leases when determining qualification for renewal or new permits and leases.

The public reasonably expects the public rangeland permittees and lessees to exercise care for the land, just as a private lessor expects due care of private property. Rangeland resources, particularly soil, vegetation and water, are sensitive to misuse and once damaged or altered may require decades to recover. The BLM has experienced instances where noncompliance with the terms and conditions of permits or regulations has placed public rangeland resources at risk. The proposed rule makes clear that an applicant's history of noncompliance with, or violation of, rules and regulations pertaining to grazing and the terms and conditions of BLM or of other Federal or State grazing permits and leases will be reason for the BLM to withhold the renewal of leases or permits and to reject applications for new permits and leases. The finding whether an applicant is in substantial compliance with terms and conditions of grazing permits and related laws and regulations would be made by the authorized officer.

Full Force and Effect of Decisions

The proposed rule would allow most decisions of the authorized officer (BLM field manager) to become effective at the end of the 30-day appeal period as provided in 43 CFR 4.21, as revised (58 FR 4939, Jan. 19, 1993). A decision that is necessary to prevent damage to soil, water, or other resources could be placed in full force and effect, meaning that it could be implemented during the 30-day appeal period. The regulations in 43 CFR parts 4 and 4100 currently allow the authorized officer to place decisions in full force and effect in emergencies to stop resource deterioration, but provide that other decisions that are appealed shall be suspended pending final action on the appeal. This automatic stay of decisions with the filing of an appeal has, in some cases, made it difficult for the BLM to take necessary, responsible action.

Under the proposed rule the decisions of the authorized officer would be issued subject to the provisions of 43 CFR 4.21. The regulations at 43 CFR 4.21 provide that (1) persons adversely affected by a decision shall have 30 days in which to file an appeal and a petition to stay the effect of a decision, (2) the Office of Hearings and Appeals must consider whether to grant a stay within 45 days of the end of the appeal period, and (3) if a stay is granted the decision will not be effective pending final determination of the appeal. Under the proposed rule the authorized officer may provide that the final decision shall be effective on the date of issuance or the date specified in the decision when necessary to protect soil, vegetation and other resources from damage. Decisions made in these circumstances would remain in effect until such time as a stay is granted or until the actions taken are no longer needed to protect resource conditions.

Grazing Advisory Boards and Advisory Councils

To address the broader management focus articulated in the Rangeland Reform '94 package, new advisory committees would be chartered. Grazing Advisory Boards (GABs) and District Advisory Councils (DACs), except for the California Desert District Advisory Council established pursuant to Section 601 of FLPMA, would be discontinued. The provisions for the National Public Lands Advisory Council (NPLAC) would also be removed from the regulations. The BLM intends to establish new committees to be known as "resource advisory councils" under the provisions of Section 309 of FLPMA to provide guidance in the management of public lands. These new committees will conform to the requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix) and, when chartered, will serve many of the same purposes as the GABs and DACs but will generally be organized to advise on management of a broader area delineated according to the commonalities of the public land resources rather than administrative boundaries. Removal of the section of the existing rule pertaining to the NPLAC would not preclude the use of national advisory committees. However, the Department intends that resource advisory councils or other advisory committees would serve the purpose of the NPLAC.

The authority to continue the GABs expired pursuant to FLPMA in December 1985. Through a notice published in the Federal Register, May

14, 1986, the Secretary established 40 district GABs under the Department's general agency authority in Title 5 U.S.C. The function of these boards was to provide advice to the BLM on the development of allotment management plans including related range improvements, related rangeland inventory and monitoring, and the expenditure and use of range improvement funds for range improvements. The reasons for establishing the GABS provided in the 1986 **Federal Register** notice included that the boards would provide necessary advice concerning animal husbandry, managing range livestock operations, understanding range facilities and improvement design, installation and maintenance needs, would provide peer contacts for other permittees concerning allotment management plans (AMPs), and would encourage private contribution in appropriate range improvements.

Grazing advisory boards and district advisory councils have performed dedicated and useful service to BLM field managers over the years, but the increased emphasis by BLM on maintaining or restoring healthy sustainable ecosystems necessitates a more diverse membership and a broader geographic scope. To make this transition, the BLM must rely on both good science and advice, and feedback from a wide array of viewpoints on how to best manage the rangeland ecosystem. Resource advisory councils, representing a broad range of interests, experience, and expertise, would provide focused, consensus-based advice and recommendations for achieving healthy, sustainable ecosystems. Resource advisory councils would serve the purposes for which GABs and DACs were established. The proposed changes in 43 CFR part 1780 are also intended to allow the BLM to cooperate with other Federal land management agencies to jointly charter and share advisory committees.

The proposed rule would require that two or more resource advisory councils be established for the area within the jurisdiction of each BLM State Office to provide guidance on the management of public lands and resources within a specified area. At present, there are three or more GABs and DACs operating within the area administered by each BLM State Office, generally one GAB and one DAC providing advice to the same BLM district manager for the same geographic area. Under the proposed rule there would generally be only one resource advisory council for a given geographic area. Under this rule each committee would have 10 to 15 members including at least one member who is an elected local or State official. Resource advisory councils would also include members possessing knowledge and expertise concerning animal husbandry and managing livestock operations. It is intended that the qualifications and terms of membership would be established in each committee's charter pursuant to Section 9 of the Federal Advisory Committee Act (5 U.S.C. Appendix).

Issuing Grazing Preference

The proposed rule would provide for changes in the definition of grazing preference, minimal qualifications for issuing or renewing permits and leases and allocating excess forage. Grazing preference will be used as a term to designate a priority to obtain or hold a grazing permit or lease for a Federal grazing allotment. Adopting the FS approach, BLM will no longer recognize preference as a specified number of AUMs of forage. Grazing permits and leases issued to holders of preference would specify the total number of AUMs apportioned to livestock use of specific public lands. The permittee or lessee would receive an annual authorization specifying allowed livestock use, conservation use, nonuse and any temporarily suspended use in conformance with the land use plan. The proposed rule would establish a requirement for the authorized officer to assess whether operators are in substantial compliance with the terms and conditions of their Federal and State grazing permits and leases and laws and regulations pertaining to grazing. The same assessment would be undertaken when allocating additional available forage. Thus, the Department is proposing to consider a permittee's or applicant's demonstrated stewardship and compliance with the regulations and terms and conditions of current or previously held Federal and State permits or leases in granting priority to receive permits or leases.

Permit or Lease Tenure

The proposed rule would provide for consideration of a permittee's or lessee's demonstrated performance or stewardship in determining how long the permit or lease will be effective. The BLM believes that tenure awarded on the basis of permittee or lessee performance provides a greater incentive to permittees or lessees to practice stewardship and to comply with the terms and conditions of their permits and leases. Currently, grazing permits and leases are issued for 10 years except when: (1) The land is pending disposal, (2) the land will be devoted to a public purpose which precludes a 10-year period, or (3) it is in the interest of sound land management to specify a shorter term. The proposed rule would provide for the issuance of 10-year permits or leases when the permittees, in the estimation of the authorized officer, have been in substantial compliance with all terms and conditions of Federal and State grazing permits and leases and applicable laws and regulations, and the rangeland is moving toward or maintaining desired ecological conditions. A permit or lease for five years or less would be issued when permittees or lessees have been in substantial compliance with all terms and conditions of Federal and State grazing permits and leases and applicable laws and regulations but are failing to make significant progress toward resource condition objectives. In this case the prospective permittee or lessee would be required to institute an approved plan of action for achieving resource condition objectives. A 5-year permit or lease would also be offered to new permittees or lessees. The use of the term "substantial compliance" reflects the Department's intent that technical or other incidents of noncompliance which do not adversely affect rangeland conditions or the BLM's ability to administer grazing of the public lands will not be cause to disqualify applicants.

Prohibited Acts

The proposed rule would make violations of the Wild Horse and Burro Act, Endangered Species Act and other Federal or State laws concerning conservation, protection of natural or cultural resources, and protection of environmental quality a prohibited act. The proposed rule would adopt language that existed in the regulations prior to 1984 and is compatible with FS regulations. Upon the expiration of appeal or review periods following a conviction for violation or an administrative finding of violation of these laws the authorized officer could consider cancellation or suspension of permits and leases when the violation occurred on public land or is found to be related to authorized grazing of public land.

Range Improvements and Water Rights

The proposed rule would require that the title to all new improvements constructed on, or made to the vegetation resource of, public lands, except temporary improvements, would be in the United States. A permittee's or cooperator's interest for contributed funds, labor, and materials would be documented for proper credit in the event the land is disposed of or the permit or lease is subsequently issued to a different party. The United States would assert its claims and exercise its rights to water developed on the public lands for the benefit of public land resources and uses.

Range Improvement funds are the portion of the grazing receipts that are appropriated by law for range betterment. The proposed rule would provide that one-half of the range improvement funds would be made available to the State and District from which they were derived. The remaining one-half would be allocated by the Secretary or designee on a priority basis for the protection and betterment of the rangeland ecosystem. Range Improvement funds would be used for all forms of on-the-ground rangeland betterment pursuant to FLPMA (43 U.S.C. 1751b) and the Taylor Grazing Act (43 U.S.C. 315i).

Standards and Guidelines

The proposed rule makes reference to applicable standards and guidelines for livestock grazing in rangeland ecosystems. In implementing the Rangeland Reform '94 initiative, the Department intends to develop standards and guidelines for livestock grazing in rangeland ecosystems to be incorporated in land use plans, allotment management plans or other activity plans, range improvement permits, and as terms and conditions of all permits and leases. These standards and guidelines would be developed to reflect the best available science for specific ecosystems or ecoregions, and to provide greater consistency in rangeland management from office to office and agency to agency within each rangeland ecosystem. The standards and guidelines would reflect properly functioning conditions, or those conditions that must be met to ensure sustainability and healthy, productive ecosystems. When data show that properly functioning conditions are not being met, immediate corrective action would be required to be initiated. The BLM and the FS, as well as other agencies, will cooperate in the preparation of appropriate standards and guidelines. Preliminary proposed standards and guidelines for the management of livestock grazing in rangeland ecosystems are presented in an appendix to this advance notice of proposed rulemaking.

Integrating standards and guidelines for the BLM rangeland management program would be a tiered process. The national standards and guidelines would be mandatory. Regional standards and guidelines would be developed when appropriate to ensure that significant values on the local and regional level, which cannot be treated by national direction, would be addressed. Regional standards and guidelines could address values such as waterfowl habitat, essential habitat for bighorn sheep and elk, neotropical migratory bird habitat, critical habitat for endangered species, riparian-wetland conservation areas, salmon spawning areas, and high-use recreation areas such as wild and scenic rivers.

Proposed national standards and guidelines that would provide policy-level direction for livestock grazing in rangeland ecosystems are presented as an appendix to this advance notice of proposed rulemaking. The Department does not intend that these standards and guidelines would be made part of 43 CFR part 4100.

Subleasing

The proposed rule would redefine subleasing as an unauthorized transfer of a grazing permit or lease or an unauthorized grazing use allowed by the permittee. The proposed rule would retain the provision for legal transfer of base leases and permits and the pasturing of livestock owned by persons other than the permittee or lessee. The Department recognizes that a significant amount of the public lands exist as scattered, small, unfenced parcels that are surrounded by private or State-owned land, or are situated in a checkerboard pattern. The fencing of these lands by the BLM in order to provide greater management control makes little economic or environmental sense. Neither does a prohibition against second party leases where the United States is a minority landowner because enforcement would be untenable. At the same time the BLM must be responsive to the fact that the public may not be getting its fair share from a private transaction involving a publicly owned resource. The General Accounting Office (see e.g., RCED–86–168BR), the Office of the Inspector General (see report #92–1–1364) and numerous public interests have expressed concern that permittees and lessees who sublease are unduly benefitting from their permits or leases.

The current and the proposed rule recognize two legitimate types of private leases or agreements affecting public land grazing privileges. The first type is a base property lease and transfer of the Federal grazing permit. One of the requirements for obtaining a grazing authorization is that an applicant must own or control base property to which Federal grazing preference is attached. In a base property lease, a permittee leases base property to another party and the corresponding Federal permit or lease is transferred, if approved by BLM, to the base property lessee who then becomes the new BLM permittee. The second type of lease arrangement is a "management" lease, also referred to as a pasturing contract or agreement. A permittee is authorized by the BLM to allow a second party's livestock to graze on public lands when the livestock are managed by the permittee under the terms and conditions of the existing permit or lease. Permittees must certify that they control the livestock. A key feature of the proposed rule is the provision for levying and collecting a surcharge for Federal grazing use when the BLM approves the transfer of the grazing preference that is attached to a base property, or approves an application to graze unowned livestock to be managed by a permittee or lessee. The surcharges are proposed as a means to collect a "landlord's share" of the lease or management fee. Under the proposed rule the surcharge for a transfer and permit would be an additional 20 percent on all grazing fee billings. The surcharge for pasturing unowned livestock would be 50 percent on grazing fee billings. Where a permittee both leases the base property and grazes unowned livestock, a 70 percent surcharge would be required on grazing fee billings. The Department believes the use of a surcharge is an efficient method for collecting a landlord's share of the lease or management fee without the added costs for accounting, enforcement, and processing associated with other options. Permittees or lessees who knowingly falsify information to avoid paying the surcharge would be subject to penalties including collection of amounts deemed due and possible cancellation of a lease or permit. In addition, the permittee could be prosecuted for fraud.

Suspended Nonuse

The proposed rule would remove reference to suspended nonuse. The AUMs of suspended nonuse that are currently shown in permits and leases would be eliminated as leases and permits are renewed or transferred. Even though the BLM proposes to eliminate suspended nonuse, it will still maintain the authority, as well as a process for increasing active grazing use, if it is consistent with resource management plan decisions and substantiated by monitoring.

Suspended nonuse is a term used to designate AUMs which were once available for active grazing use but were determined to be unavailable and suspended from grazing by a decision or through agreement. The term originated during the 1940's when the BLM initiated range surveys to "adjudicate" or balance grazing demand with the rangeland capability. Where forage demand exceeded the forage production capability, called rangeland "carrying capacity", the over-obligated AUMs were placed in suspended nonuse. Suspended nonuse creates an unnecessary administrative burden for the BLM because of record maintenance. Over the years the BLM's use of the term "suspended nonuse" led to the notion that suspended nonuse establishes a priority for available forage. Additional available forage, however, is to be allocated according to the objectives and guidelines of land use plans.

Suspended nonuse is also confusing to prospective permittees, realtors and brokers who deal in ranch properties, and other persons interested and involved in public rangeland management. The BLM created the suspended nonuse category because of the prevailing belief that suspended AUMs could be restored through improved management or through brush control, reseeding of more productive forage grasses or other restoration practices. However, it has been the policy of the BLM not to grant priority to suspended nonuse in the allocation of available forage when land use plans are prepared or modified. There appears to remain, however, a significant number of permittees who believe, regardless of land use planning allocations, that suspended nonuse establishes a "priority" for any increased forage. There are many reasons why only a small portion of suspended nonuse has been restored to active use: many adjudication settlements continued an over-allocation of livestock forage; historically, insufficient forage was allocated for wildlife, wild horses and burros, soil, and watershed protection; non-forage shrubs and junipers reinvaded seedings and brush control treatment areas; and shrubs, junipers and invasions of rangelands by noxious or poisonous species reduced available forage. A final reason, receiving greater emphasis with improved knowledge and understanding of natural processes, is the valuable role vegetation plays in preventing accelerated erosion, cycling water and nutrients, and in maintaining environmental quality, all factors that must be considered in the allocation of forage.

Unauthorized Use

The proposed rule would provide authority for nonmonetary settlement of unauthorized use where the use is clearly unintentional, incidental in nature, causes no resource damage, and results in no substantial forage consumption. The BLM recognizes that total permittee control of permitted livestock is not always possible. In some cases, livestock control measures are ineffective for reasons outside the permittees' control. For example, gates may be left open by other public land users. Attempts to prevent all unauthorized use often require more restrictive and costly fencing or cattleguards. In many cases, this is incompatible with other resource management objectives. Incidental or "innocent" trespass actions often cause conflict between the BLM and even the most responsible grazing permittees and lessees. The BLM has often settled these cases, for good reason, without a monetary settlement. However, existing regulations do not provide for nonmonetary settlement.

An audit conducted by the General Accounting Office titled "BLM Efforts to Prevent Unauthorized Livestock Grazing Need Strengthening" (GAO/RCED–91–17, December 1990), recommended that the BLM amend the grazing regulations to establish a procedure for resolving small unauthorized use incidents at the local level. The proposed changes would allow BLM field managers to make nonmonetary settlement of incidental, unintentional unauthorized use where no resource damage occurs and no substantial forage is consumed. At the same time, the Department has retained the authority to take decisive punitive action against persons allowing animals to graze or be driven across public lands without authorization or against the terms and conditions of their permit or lease.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Section 4100.0–2 Objectives

The proposed rule would amend the objectives statement for part 4100 by including as objectives the preservation of public land and resources from destruction and unnecessary injury and the enhancement of productivity for multiple use purposes.

Section 4100.0–5 Definitions

The proposed rule would revise 11 definitions in § 4100.0–5 and add three new definitions. Generally these amendments would reduce redundancy and make the definitions more concise, germane, and understandable.

The proposed rule would redefine *Active use* to include conservation use and exclude nonuse or temporary suspended use.

The proposed rule would modify the definition for *Affected interest* to provide expanded criteria that would help the authorized officer determine which parties are affected interests. The broadening of the definition of affected interest better reflects the requirements of sections 202(f) and 309(e) of FLPMA. The proposed definition would establish that a party shall be considered an affected interest when the authorized officer determines:

(1) The grazing administration decisions of the BLM could affect an individual's, group's or organization's legitimate use of the public land, or adjacent owner's land, resources, or use authorizations;

(2) The party is a recognized representative of the community interest in a land use or resource value; or

(3) The party could contribute knowledge, expertise or assistance in planning, monitoring, evaluating and formulating decisions concerning grazing permits, rangeland improvements, or management actions.

The definition of *Allotment management plan* would be modified to better describe the focus and purpose of the plan.

The definition of *Consultation, cooperation and coordination* would be modified to reflect the proposed discontinuance of grazing advisory boards; to clarify that consultation, cooperation and coordination apply to the development, revision or termination of allotment management plans; and to include States having not only lands but also resource management responsibility (e.g., wildlife, water quality) in the subject allotment.

The proposed rule would redefine the terms *Grazing lease* and *Grazing permit* to clarify what forms of use are authorized in leases and permits and to clarify that the documents specify a total number of AUMs apportioned.

The definition of *Grazing preference* would be revised to mean the priority to have a Federal permit or lease for a public land grazing allotment that is attached to base property owned or controlled by a permittee or lessee, or applicant. The proposed revision would better match the language of section 3 of the Taylor Grazing Act of 1934. The definition would drop the reference to a specified quantity of forage, a practice that was adopted by the former Grazing Service during the adjudication of grazing privileges. Like the FS, the BLM would identify the amount of grazing use (AUMs), consistent with land use plans, in grazing use authorizations to be issued under a lease or permit.

The definition of *Land use plan* would be revised to remove the inference that all management framework plans would be replaced by resource management plans.

The definition of *Range improvement* would be expanded to include protection and improvement of rangeland ecosystems as a purpose of range improvements.

The term *Subleasing* would be redefined to mean leases or other agreements that have not been approved by the authorized officer.

The definition of *Suspension* would be revised to reflect the revision of the definition of the term "preference." The term preference would be replaced with "permitted use."

The proposed rule would add a definition of *Activity plan* to mean a plan for managing a use, or resource value or use and would clarify that an AMP is one form of an activity plan.

A new definition of *Affiliate* addresses the controlling interests of a permittee's business relationships. The term is used in determining whether applicants have satisfactory records of performance for receiving or renewing a permit or lease or in receiving additional forage that becomes available for allocation to livestock grazing.

A definition of *Conservation use* would be added to mean an activity for the purpose of protecting the land and its resources from destruction or unnecessary injury. The term would include improving rangeland conditions and the enhancement of resource values or functions.

Section 4100.0–7 Cross-References

This section would be amended to guide the public to the applicable sections of the 43 CFR part 4 when considering an appeal of a decision relating to grazing administration, and 43 CFR part 1780 regarding advisory committees.

Section 4100.0–9 Information Collection

This section would be added to conform to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The section discloses to the public the estimated burden hours needed to comply with the information collection requirements in this proposed rule, why the information is being collected, and what the information will be used for by the BLM.

Subpart 4110—Qualifications and Preference

Sections 4110.1 Mandatory Qualifications

This section would be amended by adding requirements that applicants and any affiliates must be determined by the authorized officer to have a record of substantial compliance with the terms and conditions of any Federal or State grazing permits or leases held and with the rules or regulations applicable to those authorizations. The amendment would deny issuance of a permit or lease or the renewal of permits or leases to those applicants who have had a Federal or State grazing permit or lease canceled due to violations of terms or conditions during the 36 months preceding application. The proposed amendment would also affect the allocation of increased forage under §§ 4110.2–3 and 4110.3–1 and conflicting applications under § 4130.1–2. The amendments are intended to reflect the requirements of section 2 of the Taylor Grazing Act and section 102 of FLPMA that public lands be managed in a way that protects them from destruction or unnecessary injury and provides for orderly use, improvement and development of resources, and to reflect section 3 of the Taylor Grazing Act and section 402 of FLPMA that provide for renewing permits and leases except where violations of rules and regulations and terms and conditions of the permit or lease have occurred.

Section 4110.1–1 Acquired Lands

The proposed rule would provide for disqualification of applicants who do not have a history of substantial compliance with the terms and conditions of Federal or State grazing leases and related laws and regulations.

Section 4110.2–1 Base Property

This section would be amended by clarifying that base property is required to be capable of serving as a base for livestock operations but it need not be used for livestock production at the time the authorized officer finds it to be base property.

Section 4110.2–2 Specifying Grazing Preference

This section would be renamed "Specifying permitted use" to reflect the redefinition of the term "grazing preference", and would be amended to replace the term "grazing preference" with "permitted use" and to eliminate the reference to suspended nonuse.

Section 4110.2–3 Transfer of Grazing Preference

This section would be amended to reflect the new requirements of section 4110.1–1 pertaining to the applicant's history of performance and by adding a new paragraph (f) to require that new permits or leases stemming from transfer of the base property be for a minimum time period of three years. These provisions are necessary to provide for stability in meeting the objectives of these regulations for protection and improvement of the rangelands and resources and to reduce the administrative work in processing transfers. Currently about 1,850 of the BLM leases or permits, that is approximately 10 percent of the total number, involve leased base property.

Section 4110.2–4 Allotments

This section would be amended to clarify that designation and adjustment of allotment boundaries includes the authority for, and the practice of combining or dividing allotments when determined by the authorized officer to be necessary to achieve resource condition objectives or to enhance administrative efficiency.

Section 4110.3 Changes in Permitted Use

This section would be amended by replacing the term "grazing preference" with "permitted use", and by clarifying that changes in permitted use shall be supported by monitoring data, land use planning decisions, or data collected through other studies.

Section 4110.3–1 Increasing Active Use

This section would be amended by removing paragraph (b), redesignating paragraph (c) as (b), and revising newly designated paragraph (b) to include a permittee's or lessee's history of compliance with the terms and conditions of their permit or lease and demonstrated stewardship as considerations in allocating available forage. Existing paragraph (b) would be removed because it refers to allocating forage to satisfy suspended use. The proposed rule would eliminate the concept of suspended use except when temporary suspensions are necessary. The amendment would emphasize an incentive for grazing operators to manage the rangelands so that the lands improve in condition and productivity.

Section 4110.3–2 Decreasing Active Grazing Use

This section would be amended by revising paragraph (b) to expand the list of methods for determining when a reduction in grazing use is necessary, and by deleting paragraph (c), which refers to the concept of suspended use. The amendment would add to monitoring as the method of identifying when use exceeds the livestock carrying capacity of the area considered a reference to applicable standards and guidelines and would also add ecological site inventory and other recognized methods for determining forage production. Under this section the authorized officer would be required to take or approve action when use or patterns of use result in less than properly functioning conditions of the ecosystem, as established by applicable standards and guidelines and identified through monitoring, or when use exceeds the livestock carrying capacity. The BLM Technical Reference 4400–5 (*Rangeland Inventory* and *Monitoring Supplemental Studies*) describes acceptable methodologies for estimating forage production. The revised section would allow the use of other acceptable methods to estimate rangeland carrying capacity to be used as the basis for making initial adjustments in grazing use. Subsequent adjustments could be made as monitoring data are collected and analyzed. The amendment would therefore allow more responsive action when use or patterns of use result in a failure to meet resource condition objectives.

Section 4110.3–3 Implementing Changes in Active Use

The proposed rule would rename the section "Implementing reductions in use", and would amend paragraph (b) to remove the terms "consultation, coordination and cooperation", and "suspension of preference" and add in their place the terms "consultation" and "reductions in grazing use", respectively, and provide for the use of other methods for inventory of forage production in addition to monitoring in making an initial reduction. The change in the heading is intended to describe the section more accurately. The removal of the term "coordination and cooperation" is intended to state more precisely the requirements placed on the authorized officer. The statutory requirement for consultation, coordination and cooperation applies to the development, revision and termination of allotment management plans. The reference to other methods of estimating forage production would allow more responsive initial action to improve the rangeland condition while retaining the safeguard that subsequent adjustments be confirmed through monitoring data. The Department intends that when observed rangeland conditions suggest a need for adjustment in use but data adequate for determining the level of adjustment necessary are not available, the authorized officer will take immediate steps to collect data sufficient for determining the initial adjustment. The Department does not intend that extended monitoring would be necessary to begin needed adjustment of use. Paragraph (c) would be amended to remove the word "temporary" because it implies only one season while the influences of natural events such as drought could significantly affect vegetation health and productivity for several months or years after a drought emergency has passed. Other minor amendments clarify the action of the field manager and retain the special provisions for making emergency decisions effective.

Section 4110.4–2 Decrease in Land Acreage

The proposed rule would amend paragraph (a) by removing the words "suspend" and "suspension". As explained above, reductions in authorized use under preference permits or leases would no longer be recognized as suspended use.

Subpart 4120—Grazing Management

Section 4120.2 Allotment Management and Resource Activity Plans

The proposed rule would amend this section to incorporate other activity plans that may prescribe grazing management. It has been the BLM's policy to develop more integrated activity plans for managing resources of an allotment, such as coordinated resource management plans. These integrated plans have allowed the BLM, the permittee or lessee, and other affected interests to take a broader look at the management needs of an area while still addressing actions specific to the various uses and resource conditions of the area. The proposed rule would clarify that allotment management plans, or other activity plans, may be prepared by other agencies or permittees or lessees. Paragraph (a) would be amended by replacing the reference to district grazing advisory boards with advisory committees and including State resource management agencies in the activity planning process as explained above. The amendment would also provide that plans shall include standards and guidelines that are not included as terms and conditions of the permit or lease. The amendment would provide that flexibility granted to permittees or lessees under a plan shall be determined on the basis of demonstrated stewardship. The requirement for earning flexibility is an incentive for cooperating grazing operators to manage for the improvement of rangeland conditions. The proposed rule would make the inclusion of other than public lands in an allotment management plan or other activity plan a discretionary action. Finally, this section would reference the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq., NEPA) analysis and related public participation that is required for the planning and revision of Allotment or activity plans.

Section 4120.3–1 Conditions for Range Improvements

This section would be amended by inserting a new paragraph (f) addressing NEPA reviews of range improvement projects. The amendment clarifies the process for administering protests and appeals of the NEPA decision documents and directs appeals through the administrative remedies process (43 CFR 4160) provided for in grazing administration. At present, appeals of these decisions regarding range improvements go to the Interior Board of Land Appeals without an opportunity for a local field hearing on the facts of the case as is the practice with other rangeland grazing program decisions.

Section 4120.3–2 Cooperative Agreements

The section heading would be revised to clarify that this section deals with cooperative range improvements. The proposed rule would amend this section to make it clear that the United States would have title to all permanent improvements constructed on public lands. Title to temporary improvements used primarily for livestock handling or water hauling could be retained by the permittee or lessee. Most projects constructed and used in rangeland management facilitate the management of other resources or resource uses. To preserve their availability for multiple use the BLM must retain ownership of the project and have management control of the use. The amendment would not change the agreements currently in effect nor affect ownership of rights granted by a State certificate of water right.

Section 4120.3–3 Range Improvement Permits

This section would be amended to make it clear that range improvement permits are issued for temporary livestock handling facilities and for temporary improvements such as troughs for hauled water or loading chutes. The permittee would own these temporary improvements. The amendment would also clarify that permanent water improvement projects would be authorized through a cooperative range improvement agreement to protect the public interest for multiple use management. The proposed amendment states that the United States shall assert its claims and exercise its rights to water developed on public lands for the benefit of public lands and resources. This would allow the Department to conduct a case-by-case analysis of how it would proceed with asserting individual claims or rights. The proposed amendment would remove the provision that permittees or lessees would control the use of ponds or wells by livestock. Permittees and lessees would be the graziers and, therefore, would control livestock use of water sources. The proposed amendment will not affect ownership or rights currently held in a range improvement permit or a State certificate of water right. The rule would provide for the BLM to mediate disputes about reasonable compensation for the operation and maintenance of facilities when another operator is authorized temporary use of forage that the preference permit holder cannot use.

Section 4120.3–8 Range Improvement Fund

The proposed rule would add a new section to this part that addresses the distribution and use of the "range betterment" funds appropriated by Congress through section 401(b) of FLPMA for range improvement. The range betterment fund has been called the range improvement appropriation by Congress and known by that title in the BLM. The proposed amendment would provide for distribution of the funds by the Secretary or designee. The proposed rule would provide that one-half of the range improvement fund would be made available to the State and District from which they were derived. The remaining one-half would be allocated by the Secretary or designee on a priority basis. All range improvement funds would be used for on-the-ground rehabilitation, protection and improvements of public rangeland ecosystems. Current policy requires the return of all range improvement funds to the District from which they were collected. The BLM has found this not to be in the best interest of the public because it prevents use of the funds in areas where they are most needed and results in some offices experiencing difficulty expending available funds efficiently. The proposed amendment would correct the imbalance by ensuring that the funds are distributed on a priority basis. In addition, the proposed rule would clarify that range improvement includes activities such as planning, design, layout, modification, and monitoring/evaluating the effectiveness of specific range improvements in achieving resource condition and management objectives.

Section 4120.5 Cooperation in Management

The proposed rule would add a new section on cooperation in management to recognize and regulate cooperation with State, county, and Federal agencies.

Section 4120.5–1 Cooperation with State, County, and Federal Agencies

This section would recognize existing cooperation with State cattle and sheep boards, county and local noxious weed control districts, and State agencies involved in environmental, conservation and enforcement roles related to these cooperative relationships. The Taylor Grazing Act, The Noxious Weed Control Act, FLPMA, the Public Rangeland Improvement Act (43 U.S.C 1901 *et seq.*), and other statutes and agreements require cooperation with State, county and local governments and Federal agencies.

Subpart 4130—Authorizing Grazing Use

Section 4130.1 Applications

This section would make it clear that applications must contain both the proposed active grazing use as well as nonuse. This amendment is proposed to end confusion about the "failure to use" provisions of subpart 4170. The inadvertent loss of permitted use or preference due to punitive action in response to failure to make use is easily avoided by applying for nonuse and receiving approval from the authorized officer.

Section 4130.1–1 Changes in Grazing Use

This section would provide for field managers to make temporary changes in authorized use, not to exceed 25 percent of the authorized use or 100 AUMs, whichever is greater, following consultation with the affected permittees or lessees and the State having land or responsibility for resources management within the allotment. This would provide latitude to the authorized officer for authorizing minor or incidental adjustments in grazing use without extensive consultation, simplifying day-to-day administration. The provision for 25 percent or 100 AUMS, whichever is greater, is intended to specify what constitutes minor or incremental adjustments. The Department proposes the 100 AUM limitation to provide sufficient latitude in cases where minor adjustments, in terms of the total amount of forage, would constitute a large percentage of the permitted use (i.e., small permits or leases). Needed changes of a temporary nature could be made in a timely manner when the proposed changes conform with the applicable land use plan and are within the terms and conditions and standards and guidelines of the existing permit or lease. Examples of the types of changes that would be considered under this section are the activation of previously approved nonuse taken for other than conservation reasons, placing permitted use in nonuse for conservation purposes, and shortening seasons of authorized use.

Section 4130.1–2 Conflicting Applications

This section would be amended by adding criteria to be considered in granting a use authorization or permit or lease. The proposed rule would incorporate substantial compliance with Federal and State laws and regulations pertaining to grazing and the terms and conditions of permits and leases as well as good stewardship of the public land and provide a means to deny the allocation of public land grazing use to operators who have a history of noncompliance.

Section 4130.2 Grazing Permits or Leases

The rule proposes several amendments concerning the issuance of permits and leases in a manner that would provide permittees or lessees incentive to be good stewards of the public lands. Section 402(b) of FLPMA provides for issuing permits or leases for less than a 10-year period if it is deemed to be in the best interest of sound land management. The Department believes it to be in the best interest of sound land management to issue permits or leases for 5- or 10-year terms to provide greater focus on improving the conditions of the rangeland as required by Section 3 of the Taylor Grazing Act of 1934, sections 102 and 402 of FLPMA, and sections 2 and 4 of the Public Rangelands Improvement Act. The proposed rule would provide for issuing 10-year permits or leases to those who have substantially complied with Federal and State laws and regulations pertaining to grazing and the terms and conditions of permits and leases, including applicable standards and guidelines, are maintaining range improvements, and have met the objectives of their allotment, within their capability, and have substantially contributed to achievement of or maintenance of the desired resource conditions. The proposed rule would provide for issuing a permit or lease for five years or less when permittees or lessees are in substantial compliance with Federal and State laws and regulations pertaining to grazing and permit or lease terms and conditions, including applicable standards and guidelines, and are maintaining range improvements, where the permittee's or lessee's management has not accomplished resource condition objectives but the permittee or lessee has initiated an approved plan of action plan to meet resource condition objectives. Also, the five year term would apply to new permittees or lessees and in situations where the authorized officer determines a term of five years or less is necessary to protect and conserve the public lands and resources. Permittees and lessees would lose their priority for permit renewal if they fail at the end of five years to meet the terms and conditions of their permits or leases or fail to make substantial progress toward meeting objectives. The proposed rule also provides that permittees or lessees who refuse to accept the terms and conditions of the permit or lease offered would not be granted a permit or lease.

The proposed amendment also clarifies the application for and granting of conservation use and temporary nonuse. Conservation use would be established as one of the allowable uses a permittee or lessee may be granted. The existing regulations grant the authorized officer the discretion to place forage in nonuse for conservation purposes. The change from the term "nonuse for conservation purposes" to "conservation use" is intended to clarify that conservation use is allowable, when in conformance with applicable land use plans, activity plans and standards and guidelines, and will allow the Department to fulfill the requirement of the Taylor Grazing Act to "preserve land and its resources from destruction or unnecessary injury" (43 U.S.C. 315a).

Forage made available as a result of temporary nonuse may be authorized for temporary use by another operator. Forage used for conservation purposes would not be available to other livestock operators. The procedures guiding approval of nonuse are proposed in response to a recommendation from the March 19, 1986, Inspector General's review of the grazing management program.

Section 4130.4–1 Exchange-of-Use Grazing Agreements

This section would include needed requirements that the agreements for exchange of use will be in harmony with management objectives, and will be compatible with existing livestock operations. The agreements would be required to address the fair sharing of maintenance and operation of range improvements and would be approved for the same term as any leased lands that are offered.

Section 4130.4–3 Crossing Permits

This section would provide for terms and conditions for crossing permits, a form of temporary use authorization. The proposed amendments are consistent with the customary practices of BLM field offices.

Section 4130.5 Ownership and Identification of Livestock

This section would be amended to make it clear that, before grazing livestock owned by persons other than the permittee or lessee, the permittee or lessee is required to have an approved use authorization and have submitted a copy of the documented agreement or contract that includes information required for the BLM's administration of permits and leases and management of rangeland resources. This generally does not create a new requirement. Many field offices are currently requiring the information to document the legality of the pasturing of livestock owned by persons other than the permittees.

Section 4130.6–1 Mandatory Terms and Conditions

This section would be amended through minor additions and deletions that clarify that use shall not exceed the livestock carrying capacity of the allotment, and by removing unnecessary references to previous sections. The section would be further amended to add a paragraph (c) that would require the incorporation of applicable standards and guidelines in permits and leases. As explained above, standards and guidelines will establish conditions that must be met to ensure sustainability and healthy, productive ecosystems.

Section 4130.6–2 Other Terms and Conditions

This section would be amended to provide for proper rangeland management and to remove unnecessary language. The proposed amendment would allow terms and conditions to provide for improvement of riparian area functions and for protecting other rangeland resources and values consistent with applicable land use plans. The amendments are consistent with the themes of protection, improvement and restoration of the rangelands to increase overall productivity, and will enhance multiple-use management as required by the applicable laws cited above. The addition of paragraph (h), a provision for affirmatively stating that BLM shall have administrative access across the permittee's or lessee's owned or leased private lands, is intended to address attempts made to prevent the BLM from performing functions such as range use supervision, compliance checks, and trespass abatement.

Section 4130.6–3 Modification

The proposed rule would amend this section to remove redundancy, and clarify consultation requirements in the modification of terms and conditions of permits. Further, the amendment would identify the opportunity to be provided the public for review and comment, or to give input, during the evaluation of monitoring results or other data that provide a basis for decisions regarding grazing use or management. The proposed rule would not diminish the opportunity for involvement by affected interests. The proposed rule would provide an orderly process for public participation by affected interests at a level where input provides the rangeland manager with complete information for consideration in making decisions.

Section 4130.7 Payment of fees

The proposed rule would amend this section by removing all of the language pertaining to calculations of grazing fees in paragraph (a)(1) and the minimum grazing fee contained in (a)(3), and would amend the section to address the proposed fee formula and provide for its phase-in over three years. The section would be further amended to provide for assessing a surcharge for the public landlord's share of the legal leasing associated with Federal land grazing, and to clarify that grazing use that occurs before a bill is paid is an unauthorized use, may be dealt with under the settlement and penalties sections of these regulations, and may result in the limitation of flexibility authorized under an allotment management plan.

Rationale for the Proposed Base Value and Grazing Fee Formula

There are a number of alternative base values and alternative fee formulas that could be used to set fees for grazing Federal lands. There have been numerous studies and much public debate concerning what is a reasonable, fair, and equitable fee for grazing Federal lands. Major considerations in establishing a fee are that market value be charged for livestock forage and that ranchers who lease Federal lands must pay a fee which is comparable to the fee for leasing private lands. Thus the public would receive a fair return for its resources. Other considerations are: a fee should not be so excessive as to cause significant adverse impact to the stability of the dependent western livestock industry and communities; a reasonable portion of the Government administrative costs must be covered; and a fee system must be understandable and reasonably easy to administer.

There are two major sets of data that are reasonable estimates of the market value of Federal forage. The first set of data is the 1966 Western Livestock Grazing Survey (WLGS). Over 10,000 individuals were interviewed to determine the costs of operating on Federal lands versus costs on private land leases, and to collect data on private land lease rates. The WLGS determined that the westwide value for grazing Federal lands equaled $1.23 per AUM during 1966. Updating the $1.23 to 1991 by the change in the private land lease rate index results in a westwide value of $3.25 per AUM. This is one indication of value and is consistent with the concept that public land forage value would have increased at the same rate as the private land forage value.

The second set of data is the 1983 appraisal of the value of grazing on BLM and FS lands in the 16 Western States. Approximately 100,000 persons were interviewed, generating 7,246 useable records of fees paid for livestock grazing. The 16 Western States were divided into six appraisal pricing regions. The appraisers concluded that the value of public land grazing varied from $4.68 per head month in the lowest value region (Southwest) to $8.55 per head month in the highest value region (Northern Plains).

In May 1992, the BLM and FS submitted an update of the 1983 appraisal to Congress. The update, based on additional data for private grazing lease rates gathered during 1991, found no change in the value of grazing in the lowest value region, $4.68 per head month (Southwest) and an increase to $10.26 per head month in the highest value region (Northern Plains).

The Southwest region contains 33 percent of the total AUMs authorized for livestock grazing on BLM and FS lands. Therefore, if a uniform westwide grazing fee is to be charged, a relatively greater weight must be given to the appraised value for the Southwest. A fee higher than the appraised value of $4.68 would, in effect, overprice forage on Federal lands in the Southwest. Thus, based on updated 1991 appraisal data, the most appropriate single westwide grazing fee would appear to be $4.68 per AUM.

The two major fee studies of livestock grazing on public lands were the 1966 fee study and the 1983 grazing value appraisal. Updating the results of the 1966 study and the 1983 appraisal to 1991, the most recent year feasible, is likely to yield the two best estimates of a reasonable grazing fee. An update of the 1966 fee study to 1991, based on changes in private grazing rates —1966 to 1991—yields a grazing fee of $3.25 per AUM. An update of the 1983 grazing value appraisal, based on the new sample collected in 1991, yields an appropriate single westwide value of $4.68 per AUM.

No clear empirical basis exists for choosing between these two fee updates. Thus, the Department has determined that, for the purposes of setting a base value to be employed in establishing future grazing fees, the best approach is to give equal weight to each of the data sets by choosing an average of the two available 1991 updates. The average of $3.25 per AUM and $4.68 per AUM yields a 1991 base value of $3.96 per AUM.

The $3.96 per AUM value is consistent with the findings and recommendations of the 1993 unpublished study conducted by the Grazing Fee Task Group (GFTG) as part of the Incentive Based Grazing Fee Task Force Study. The GFTG included economists from four western Universities, an economist from the FS and three appraisers from the BLM. The GFTG studied several methods for determining public land forage values. The studies were conducted in Wyoming, Idaho, and New Mexico. The major findings of this study include:

1. Total cost valuations yielded inconsistent results. The cost analysis demonstrated that many public land ranchers have paid more in total costs for grazing than the apparent value implied from the private forage market. Forage values estimated using the total cost approach were in the range of $3 to $4 per AUM for cattle grazing on BLM land. The results for FS land suggests a negative value for grazing, which is inconsistent with the observed willingness of livestock operators to pay the current fee.

2. The grazing permit value approach yielded a range of $3 to $5 per AUM in the three test States.

3. Using the Market Appraisal Approach, the estimated 1992 forage value was $3.40 per AUM in New Mexico, and $7.19 per AUM in Wyoming. (An appraisal using this method was not made in Idaho.)

4. A market statistical analysis would not be possible for public lands.

The GFTG concluded that the value of public land forage does not differ in the three test States, with a value of between $3 to $5 per AUM. The GFTG recommended setting a fee in the range of $3 to $5 per AUM. The assessment relied heavily on the values implied from grazing permit values that provide a direct estimate of ranchers' willingness to pay.

In addition, it should be noted that the actual grazing fee in 1980 was $2.36 per AUM on BLM lands and $2.41 per AUM on FS lands. The two agencies did not have the same fee until 1981. Updated for the general rate of inflation in the U.S. economy over the period 1980 to 1993, the 1980 fee, expressed in constant 1991 dollars, was equal to $3.85 per AUM for BLM lands and $3.93 per AUM for FS lands. Therefore, the base fee in 1991 of $3.96 would be almost the same, in real terms, as the fee charged by the BLM and FS in 1980.

The proposed fee formula would index the base value by the private land lease rate. In the future, if the private land lease rate increases in the 17 Western States, the Federal grazing fee would also increase. The fee would be adjusted annually in relationship to the private land lease rate market. The approach of indexing the base value by only the Forage Value Index is also supported by the Incentive Based Grazing Fee Task Group. They concluded that the indices in the Public Rangeland Improvement Act fee formula have caused the grazing fee to fall behind forage value. The private land lease rate for the 17 Western States was chosen because the fee formula would be used to set a westwide fee for grazing on all BLM-administered and National Forest System lands in the 17 Western States. A 1991 General Accounting Office study (GAO/RCED–91–185BR) concluded that the "relatively low fees are an inherent result of the existing formula's design." Using the proposed grazing fee formula the fee for the 1993 grazing season would have been $4.28 per AUM.

Based on the foregoing analysis the Department has determined the following fee formula to be reasonable and equitable to the United States and holders of grazing permits and leases:

The grazing fee shall be equal to the $3.96 base value multiplied by the Forage Value Index computed annually from data supplied by the National Agricultural Statistics Service, as follows:

Grazing Fee per AUM=$3.96 x Forage Value Index

$3.96=The base value per AUM established for 1991 by averaging $3.25, the 1966 value from the Western Livestock Grazing Survey updated to 1991, and $4.68, the lowest appraisal value of the six pricing regions considered in the 1983 appraisal, updated to 1991; and

Forage Value Index (FVI)=the average estimate (weighted by AUMs) of the annual rental charge per AUM for pasturing cattle on private rangelands in the 17 contiguous western States (Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming) divided by $8.67 (average for the years 1990, 1991, and 1992).

The proposed base value for the grazing fee would be phased-in over a 3-year period. The starting point for the base value would be $1.86 per AUM, the actual grazing fee in 1991. Over the years 1994 through 1996, the fee would be calculated as follows:

Grazing Fee per AUM for 1994=$1.86 + $0.70 x FVI

Grazing Fee per AUM for 1995=$1.86 + $0.70 + $0.70 x FVI

Grazing Fee per AUM for 1996 = $1.86 + $0.70 + $0.70 + $0.70 x FVI

Beginning in 1997 and thereafter, the fee would be computed using the proposed formula above.

The proposed fee would retain the 25 percent limit on annual increases or decreases after the base fee is phased in. This limitation would reduce operator uncertainty and allow for effective business planning.

Public Landlord's Share From Leasing Associated with Federal Grazing Use

The proposed rule would provide for collecting a surcharge for leasing activities associated with a Federal permit or lease attached to base property. It would retain the provision for legal transfer of base leases and permits and the pasturing of livestock owned by persons other than the permittee or lessee.

The issue of leasing or pasturing livestock owned by others in connection with public land grazing permits or leases has been controversial and there has been much concern expressed in the West by the livestock industry and conservation organizations, alike. The concern is easily understood when one considers that past Federal grazing fees have been sufficiently low as to present opportunities for substantial profit when a permittee or lessee pastures another party's livestock or leases the base property. Also, the short-term nature of agreements for pasturing livestock owned by persons other than the permittee or lessee presents less incentive for stewardship of the land.

In developing an approach to address these concerns the BLM queried departments responsible for the management of State lands in most of the Western States to determine how they were addressing this issue and if they were collecting a share of the lease or service fees being charged. The BLM found that most of the States that allow subleasing or pasturing of livestock owned by persons other than the permittee or lessee require the payment of a service fee or surcharge, or a portion of the amount in excess of the State's rental fee.

The Department is proposing to charge a surcharge of 20 percent on all grazing fee billings when the base property has been leased. An analysis of the costs and prices indicates that a 20 percent surcharge would be appropriate and is consistent with the approach used by some of the Western States. The Department also proposes to follow the example of the Western States lands departments by charging a higher fee for pasturing livestock owned by persons other than the permittee or lessee. The proposed rule establishes a surcharge of 50 percent for the forage used in pasturing unowned livestock. The surcharge would be 70 percent of the grazing bill when base property is leased and livestock owned by persons other than the permittee or lessee are pastured.

Section 4130.7–3 Service Charge

This section would be amended by adding applications that are made solely for temporary nonuse or conservation use. The service fee would offset the costs of processing such applications.

Section 4130.8 Pledge of Permits or Leases as Security for Loans

This section would be amended to clarify that renewal and the term of the renewal are to the discretion of the authorized officer. Field managers will continue to consider known lien holder interests in their decisionmaking.

Subpart 4140—Prohibited Acts

Section 4140.1 Prohibited Acts on Public Lands

Paragraph (a)(2) of this section would be amended to end misunderstandings about approved temporary nonuse and failure to make substantial use as authorized. Once temporary nonuse is approved, it becomes an authorized action and is therefore not subject to penalty action under § 4170.1. Other proposed amendments for this section would clarify paragraph (b)(1) to establish that the receipt of a grazing fee bill does not authorize grazing use of the range until the bill is paid. Paragraph (b)(9) would be amended to make it clear that the permittee is responsible for controlling livestock so they do not stray on to "closed to range" areas where grazing is prohibited by local laws, such as "no fence agriculture districts" or municipalities. To be consistent with the FS this section would restore two provisions that existed in this subpart until 1984. These provisions make subject to penalty violations of the Wild and Free Roaming Horse and Burro Act of 1971, the Endangered Species Act, and Federal or State laws or regulations concerning pest or animal damage control, and conservation or protection of natural and cultural resources or environmental quality.

Subpart 4150—Unauthorized Grazing Use

Section 4150.1 Violations

This section would be reorganized for readability and to add the requirement that the authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful to clarify subsequent sections.

Section 4150.2 Notice and Order to Remove

This section would be amended to grant the authorized officer authority and provide for determining if a nonwillful violation is incidental in nature, and to clarify actions for expedient resolution of these innocent or unintended trespasses.

Section 4150.3 Settlement

This section would be amended to provide guidelines for considering nonmonetary settlement that waives fees for unintentional incidental trespasses in a fair manner while preventing needless expense in the best interest of the public. Key provisions of determination would be: The operator is not at fault, an insignificant amount of forage is consumed, no damage occurred, and nonmonetary settlement is in the best interest of the United States. The method for determining the settlement amounts would be amended to base the value of forage on the monthly rate per AUM for pasturing livestock on private, nonirrigated land in the 17 Western States.

Subpart 4160—Administrative remedies

Section 4160 Administrative Remedies

The proposed rule would amend this section to improve organization, clarify the process and requirements, and to provide for application of the Departmental rule located at § 4.21 of this title regarding full force and effect decisions and petitions for staying the effect of a decision pending determination on appeal.

Section 4160.1 Proposed Decisions

This section would be amended to provide clarification that a final decision may be issued without first issuing a proposed decision when emergency action under § 4110.3–3 of this part is necessary to stop resource damage or to close an area to unauthorized grazing use, the action to be taken is nondiscretionary, the action merely implements decisions previously issued under 43 CFR part 4100, or the action is within established terms and conditions and has been reviewed through the NEPA process and agreement has been reached with the affected permittees or lessees. This proposed amendment does not limit appeal rights provided in § 4160.3. It would serve to expedite the decision process where immediate action is necessary or where the decision has previously been the subject of appropriate analysis and opportunity for protest.

Section 4160.3 Final Decisions

This section would be amended to clarify the process for filing an appeal and a stay of the decision. When no protest is received on a proposed decision it shall become the final decision and shall be appealable for a period of 30 days. This proposed revision would make 43 CFR part 4100 more consistent with the Department's § 4.21 of this title. This section would allow decisions to be implemented at the end of the 30-day appeal period except where a petition for stay has been filed with the Office of Hearings and Appeals, in which case the Office of Hearings and Appeals has, under § 4.21 of this title, a period of 45 days from the end of the appeal period in which to decide on the petition for stay. A stay, if granted, would suspend the effect of the decision pending final disposition of the appeal. Under the present grazing administration appeals process, decisions other than those pertaining to emergency action are automatically stayed upon the timely filing of an appeal. This has resulted in delays of up to two years before necessary corrective action can be taken. This proposal would protect the public's rights to an appeal and would provide a method for staying decisions where the Office of Hearings and Appeals determines it would be appropriate to do so. At the same time this section would prevent unnecessary delays in action.

The proposed rule also clarifies the amount of grazing use that would be allowable when a decision has been stayed by the Office of Hearings and Appeals or by order of a Federal Court. Where an appellant had no active use the preceding year, the authorized grazing use would be required to be consistent with the decision pending a final determination on appeal. Where a decision proposes to change the amount of authorized grazing use, the active grazing use would remain at no more than the previously determined permitted use during the time an appeal is pending. This amendment would provide for making decisions immediately effective when it is necessary to protect the rangeland resources or to facilitate abatement of unauthorized use by closing an area to grazing use under § 4110.3–3 of this part.

Section 4160.4 Appeals

This section would be amended to make it clear that any party whose interest is adversely affected may appeal the final decision of the authorized officer. The amendment would also provide instructions regarding the filing of appeals and petitions to stay decisions. When a final decision is issued, all parties whose interests have been adversely affected may file within 30 days from the date of receipt of a final decision an appeal and petition to stay the effect of a decision. Under the process of § 4.21 of this title, the Office of Hearings and Appeals would be allowed 45 days from the end of the appeal period to review the petition and issue a determination. A decision will not be in effect during the consideration of a petition for stay unless it was made effective for emergency reasons under § 4110.3–3 of this subpart.

Subpart 4170—Penalties

Section 4170.1–2 Failure to Use

This section would be amended to make it clear that the failure to make substantial grazing use as authorized means the failure to make active grazing use as approved on a grazing use authorization. Permittees and lessees would be required to apply and receive approval for nonuse or conservation use. This section also would include failure to maintain or use water base property in the grazing operation. The failure to make authorized use may result in monitoring studies providing false information which could cause decisions to overobligate the forage resource of the rangeland. The failure to apply for conservation use or nonuse prevents the BLM from having an opportunity to determine if conservation use or nonuse is in conformance with applicable plans and if it will aid in achieving resource condition objectives. Review by the authorized officer of applications for nonuse is also necessary to determine if forage left unused should be allocated to another party through a temporary permit. Finally, water property is crucial to the proper use and operation of livestock grazing in water base areas. If base property waters are not kept in serviceable condition, livestock are forced to over-use the service areas of the remaining waters.

Section 4170.1–3 Bald Eagle Protection Act and Endangered Species Act

The proposed rule would amend this section to include Federal or State predator animal and pest control and environmental protection or resource conservation regulations or laws. These proposed amendments are also made in the section on prohibited acts, section 4140(b) of this part, and discussed earlier. The proposed amendments would adopt language of the grazing administration regulations that existed before 1984.

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

Section 4.477 Effect of Decision Suspended During Appeal

The proposed rule would revise the heading of this section to reflect that grazing decisions would no longer automatically be suspended when an appeal is filed as provided in the proposed revision of 43 CFR subpart 4160. The proposed rule would also remove other references to suspension of the decision of the authorized officer upon appeal.

PART 1780—COOPERATIVE RELATIONS

Section 1784.0–5 Definitions

The proposed rule would remove replace the term "authorized representative" with "designated Federal Officer" to make the terminology of the rule more consistent with the terminology of the Federal Advisory Committee Act and 41 CFR 101–6.1019.

Section 1784.2–1 Composition

This section would be amended to remove the eligibility requirement for GAB members. This requirement would no longer be necessary with the discontinuance of the GABs.

Section 1784.2–2 Avoidance of Conflict of Interest

The proposed rule would provide an explicit exception to allow grazing permittees and lessees to serve on advisory committees. This change is necessary to clarify that permittees and lessees would be eligible for service on resource advisory councils.

Section 1784.3 Member Service

The proposed rule would establish that appointments to advisory committees would be for two-year terms unless otherwise specified in the charter. Specific references to GAB, DAC and NPLAC appointments, terms and election procedures would be removed. Advisory committees are established through individual charters or by statute. Membership requirements, terms of appointments and election procedures must be prescribed in these charters and are, therefore, not necessary in this proposed rule.

Section 1784.6–1 National Public Lands Advisory Council

The proposed rule deletes reference to the NPLAC. The purpose of the NPLAC would generally be served through the use of resource advisory councils. As explained above, these councils would provide advice to BLM managers pertaining to all public land resources over a broader geographic area. The Secretary would retain discretionary authority to organize national councils to advise the BLM.

Section 1784.6–4 District Advisory Councils

The proposed rule would retitle and revise this section to remove reference to DACs and to address resource advisory councils. Although references to the California Desert District Advisory Council would be removed, the Department intends that this council would remain intact as a form of advisory committee to provide advice pursuant to section 601 of FLPMA (43 U.S.C. 1781).

Section 1784.6–5 Grazing Advisory Boards

This section would be removed in its entirety. The required functions of GABs would be replaced by resource advisory councils as explained above.

The collections of information contained in this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* and assigned clearance numbers: 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068.

Public reporting burden for the information collections are as follows: Clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, –0019, –0020, –0041, –0047, –0051, or –0068, Washington, DC 20503.

List of Subjects

43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and record keeping requirements.

43 CFR Part 4

Administrative practice and procedure, Civil rights, Claims, Equal access to justice, Government contracts, Grazing lands, Indians, Interior Department, Lawyers, Mines, Penalties, Public lands, Surface mining.

43 CFR Part 1780

Administrative practice and procedure, Advisory committees, Land Management Bureau, Public lands.

For the reasons stated in the preamble and under the authority of 43 U.S.C. 1201, the Federal Advisory Committee Act (5 U.S.C. appendix 1), section 2 of the Reorganization Plan No. 3 of 1950 (5 U.S.C. appendix, as amended; 64 Stat. 1262), the Taylor Grazing Act of 1934 (43 U.S.C. 315 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*), it is proposed to amend subpart E of part 4 of subtitle A of title 43; subpart 1784 of part 1780, group 1700, subchapter A, chapter II of title 43; and subparts 4100, 4110, 4120, 4130, 4150, 4160 and 4170 of part 4100, group 4100, subchapter D, chapter II of title 43 of the Code of Federal Regulations as set forth below:

PART 4100—GRAZING ADMINISTRATION-EXCLUSIVE OF ALASKA

1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 1901 *et seq.*, 43 U.S.C. 1181d.

2. Section 4100.0–2 is revised to read as follows:

§ 4100.0–2 Objectives.

The objectives of these regulations are orderly use, improvement and development of the public lands, preservation of the land and its resources from destruction and unnecessary injury, enhancement of their productivity for multiple use purposes by prevention of overgrazing and soil deterioration, stabilization of the livestock industry dependent upon the public range, provide for inventory and categorization of public rangelands on the basis of range conditions and trends; consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 43 CFR subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*).

3. Section 4100.0–5 is amended by revising the definitions of the terms *Active use, Affected interest, Allotment management plan (AMP), Consultation, cooperation and coordination, Grazing lease, Grazing permit, Grazing preference, Land use plan, Range improvement, Subleasing,* and *Suspension*; and adding in alphabetical order definitions of the terms *Activity plan, Affiliate,* and *Conservation use* to read as follows:

§ 4100.0–5 Definitions.

Active use means the current authorized use, including livestock grazing and conservation use. Active use does not include temporary nonuse or temporary suspended use of forage.

* * * * *

Affected interest means an individual, group or organization that has submitted written comments to the authorized officer regarding the management of livestock grazing on specific grazing allotments and who has been determined by the authorized officer to be an individual, group or organization (1) whose legitimate use of the public land, or adjacent private land or any other lands, property, resources or use authorization, may be influenced by BLM livestock management actions; (2) who is a bona fide community representative for an interest in a land use or resource value; or (3) who has the capability to contribute substantial knowledge, expertise, or assistance in developing plans, monitoring, evaluating progress in achieving resource objectives, and formulating decisions concerning grazing management actions, improvements, or modifications of terms and conditions or applicable standards and guidelines for permits, leases, or management plans.

* * * * *

Allotment management plan (AMP) means a documented program developed as an activity plan that focuses on the management of livestock grazing on the public lands for the purpose of meeting resource condition, sustained yield, economic and other objectives.

* * * * *

Consultation, cooperation and coordination means an interactive process for obtaining advice, or exchanging opinions on the development, revision or termination of allotment management plans or other activity plans affecting the administration of grazing on public lands, from other agencies and affected permittee(s) or lessee(s), landowners involved, advisory committees where established, any State having lands or responsible for managing resources within the area and other affected interests.

* * * * *

Grazing lease means a document authorizing use of the public lands outside an established grazing district. Grazing leases specify all authorized use including livestock grazing, temporary suspended use, and conservation use. Leases specify the total number of AUMs apportioned.

Grazing permit means a document authorizing use of the public lands within an established grazing district. Grazing permits specify all authorized use including livestock grazing, temporary suspended use, and conservation use. Permits specify the total number of AUMs apportioned.

Grazing preference or *preference means* a superior or priority position against all others in the issuance of a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.

Land use plan means a resource management plan or management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 and establish management direction for resource uses of public lands.

* * * * *

Range improvement means a physical modification or a treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems; and provide habitat for livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means.

* * * * *

Subleasing means the act of a permittee or lessee entering into an agreement that either: (1) Assigns base property and the associated Federal grazing permit or lease to another party without a required transfer approved by the authorized officer, or (2) allows another party to graze on public lands livestock that are not owned or controlled by the permittee or lessee.

* * * * *

Suspension means temporarily withholding from active use part or all of the permitted use in a grazing permit or lease.

* * * * *

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Affiliate means an entity or person that controls or has the power to control a permittee or lessee. The term "control" means any one or a combination of the following relationships:

(1) With regard to an entity, based on instruments of ownership or voting securities, owning of record in excess of 50 percent of the entity, or having any other relationship which gives a person authority directly or indirectly to determine the manner in which the entity conducts grazing operations;

(2) Having any other relationship which gives a person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations; or

(3) Presumptively in the following relationships, unless a person can demonstrate that he does not in fact have the authority directly or indirectly to determine the manner in which the relevant grazing operation is conducted: being an officer, director, or general partner of the entity; having the ability to commit the financial or real property assets or working resources of the entity; or based on instruments of ownership or voting securities, owning of record 10 through 50 percent of an entity.

Conservation use means an activity for purposes of protecting the land and its resources from destruction or unnecessary injury. The term includes improving rangeland conditions and the enhancement of resource values or functions.

4. Section 4100.0–7 is revised to read as follows:

§ 4100.0–7 Cross Reference.

The regulations at part 1600 of this title govern the development of land use plans; the regulations at subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

5. A new § 4100.0–9 is added as follows:

§ 4100.0–9 Information collection.

(a) The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068. The information would be collected to permit the authorized officer to determine whether an application to utilize public lands for grazing or other purposes should be approved. Response is required to obtain a benefit.

(b) Public reporting burden for the information collections are as follows: Clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, –0019, –0020, –0041, –0047, –0051, or –0068, Washington, DC 20503.

Subpart 4110—Qualification and Preference

6. The introductory text of § 4110.1, and paragraphs (a), (b), and (c) are redesignated as paragraphs (a), (a)(1), (a)(2), and (a)(3), respectively, and a new paragraph (b) is added to read as follows:

§ 4110.1 Mandatory qualifications.

(a) Except as provided under §§ 4110.1–1, 4130.3, and 4130.4–3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, and must be:

* * * * *

(b) Any applicant who currently holds or has previously held a Federal grazing permit or lease, either directly or indirectly, must be determined by the authorized officer to have a satisfactory record of performance.

(1) The applicant and any affiliate must at the time of permit or lease issuance be determined by the authorized officer to be in substantial compliance with the terms and conditions of any Federal or State grazing permit or lease presently held and with the rules and regulations applicable to those permits and leases. The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliate, if any, are in compliance with existing permit or lease terms and conditions and applicable rules and regulations.

(2) Any applicant or affiliate who has had any Federal or State grazing permit or lease canceled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application shall be deemed to have an unsatisfactory performance record.

(3) In determining whether affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

(4) Applicants shall submit an application and any other information requested by the authorized officer in order to determine that all qualifications have been met.

7. Section 4110.1–1 is amended by adding a sentence at the end to read as follows:

§ 4110.1–1 Acquired lands.

* * * However, in the context of lands acquired by purchase or exchange, the authorized officer may determine that an existing permittee or lessee does not qualify under this subpart or that the permittee or lessee, including any affiliates, is disqualified from holding a Bureau of Land Management permit or lease for failure to comply with terms and conditions of any Federal or State grazing permit or lease.

10. Section 4110.2–1 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 4110.2–1 Base Property.

(a) * * *

(1) It is capable of serving as a base for livestock use of public lands within a grazing district; or

(2) It is contiguous land, or, when no applicant owns or controls contiguous land, noncontiguous land that is capable of being used in conjunction with a livestock operation which utilizes public lands outside a grazing district.

* * * * *

11. Section 4110.2–2 is amended by revising paragraph (a), and in paragraph (c) removing the term "grazing preference" and adding in its place the term "permitted use" to read as follows:

§ 4110.2–2 Specifying permitted use.

(a) Permitted use shall be specified in all grazing permits and leases. Permitted use shall encompass all authorized use including livestock use, temporary suspended use, and conservation use. Authorized livestock use shall be based upon the amount of forage available for livestock grazing as established in the land use plan. Permitted use is granted to holders of grazing preference.

* * * * *

12. Section 4110.2–3 is amended by redesignating paragraphs (a)(2), (a)(3), (a)(4), and (f) as (a)(3), (a)(4), (a)(5), and (g), respectively, adding a new paragraph (a)(2), removing from paragraph (b) the term "grazing preference" and adding in its place the term "permitted use", and adding a new paragraph (f) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

(a) * * *

(1) * * *

(2) The applicant and any affiliates shall be determined to have a satisfactory record of performance under any grazing permits or leases held (see § 4110.1).

(i) The applicant and any affiliates shall be determined to be in substantial compliance at the time of application and permit or lease issuance with the terms and conditions of any Federal or State grazing permit or lease presently held and with the rules and regulations applicable to those authorizations. The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether an applicant and any affiliates are in compliance with existing permit or lease terms and conditions and applicable rules, regulations, standards and guidelines.

(ii) Any applicant or affiliate, who has had any Federal or State grazing permit or lease canceled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application, shall be deemed to have an unsatisfactory performance record.

(iii) In determining whether or not affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

(iv) Applicants shall submit an application and any other information requested by the authorized officer in order to determine that all qualifications have been satisfied.

* * * * *

(f) Transfers shall be for a period of not less than 3 years unless determined by the authorized officer to be consistent with management and resource condition objectives.

* * * * *

13. Section 4110.2–4 is amended by adding a sentence at the end to read as follows:

§ 4110.2–4 Allotments.

* * * The authorized officer may combine or divide allotments when necessary for the proper and efficient management of public rangelands.

14. Section 4110.3 is revised to read as follows:

§ 4110.3 Changes in permitted use.

The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and may make changes in the permitted use. These changes must be supported by monitoring, as evidenced by rangeland studies conducted over time, unless the change is either specified in an applicable land use plan or found to be necessary through other studies to manage, maintain or improve rangeland productivity or to restore critical ecosystems to properly functioning condition.

15. Section 4110.3–1 is amended by removing paragraph (b), redesignating paragraph (c) as (b), revising newly redesignated paragraphs (b) introductory text and (b)(1), and in newly redesignated paragraph (b)(2) removing the term "grazing preference" and adding in its place the term "permitted use" and removing "and/or" to read as follows:

§ 4110.3–1 Increasing active use.

* * * * *

(b) After consultation, additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be in substantial compliance with the terms and conditions of Federal or State permits or leases held and with the laws and regulations pertaining to those authorizations. Additional forage shall be apportioned in the following priority:

(1) Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production;

* * * * *

16. Section 4110.3–2 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 4110.3–2 Decreasing active use.

* * * * *

(b) When monitoring shows grazing use or patterns of use are not consistent with applicable standards and guidelines or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce authorized grazing use to maintain or improve rangeland productivity, unless the authorized officer determines a change in management practices would achieve resource condition objectives.

17. In § 4110.3–3 the heading and paragraphs (b) and (c) are revised to read as follows:

§ 4110.3–3 Implementing reductions in active use.

* * * * *

(b) After consultation, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. If monitoring, inventory or forage production data acceptable to the authorized officer are available, an initial reduction shall be effective on the date of the agreement or decision and the balance made effective at the start of the third and fifth grazing years following the initial reduction, except when monitoring data show that such an incremental adjustment is inappropriate. When observed rangeland conditions suggest a reduction in use is necessary but available data are insufficient or otherwise inconclusive, additional data shall be collected through monitoring or other methods approved by the Bureau of Land Management. Adjustments based on the additional data shall be implemented by agreement or decision of the authorized officer that will initiate the 5-year implementation period.

(c) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require protection because of conditions such as drought, fire, flood, or insect infestation, or when continued grazing use poses a significant risk of resource damage from these factors, after consultation with, or a reasonable attempt to consult with affected permittees or lessees, other affected interests, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph § 4110.3–3(b) of this section. Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals.

18. Section 4110.4–2 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 4110.4–2 Decrease in land acreage.

(a) * * *

(1) Grazing permits or leases may be canceled or modified as appropriate to reflect the changed area of use.

(2) Permitted use may be canceled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

* * * * *

Subpart 4120—Grazing Management

19. Section 4120.2 is revised to read as follows:

§ 4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans may be developed by permittees or lessees, other Federal or State resource management agencies, and the Bureau of Land Management. When allotment management plans, or other activity plans affecting the administration of grazing allotments, are developed, the following provisions apply:

(a) An allotment management plan or other activity plan intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation and coordination with affected permittees or lessees, landowners involved, any established advisory committees, any State having lands or responsible for managing resources within the area to be covered by such a plan, and other affected interests. The allotment management plan shall include terms and conditions under §§ 4130.6, 4130.6–1, 4130.6–2 and 4130.6–3 of this title, as well as applicable standards and guidelines that have not been included as permit or lease terms and conditions. The plan shall prescribe the livestock grazing practices necessary to meet specific resource condition objectives. The plan shall specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer. The plan shall provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource condition objectives of the plan. The plan shall become effective upon approval by the principal parties.

(b) Private and State lands, Indian allotments and Indian tribal lands held in trust or restricted fee status by the United States Government may be included in allotment management plans or other activity plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

(c) The authorized officer shall provide opportunity for public participation concerning the environmental analysis of proposed allotment management plans to the extent practical, and give public notice concerning the availability of environmental documents prepared as a part of the development of an allotment management plan or other activity plan, prior to implementing the plan.

(d) A requirement to conform with completed allotment management plans or other applicable activity plans shall be incorporated as appropriate into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans may be revised or terminated by the authorized officer after consultation with the permittee or lessee and other affected parties and affected interests.

20. A new paragraph (f) is added to §4120.3–1 as follows:

§4120.3–1 Conditions for range improvements.

* * * * *

(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969, and regulations promulgated thereunder, including requirements relating to categorical exclusions. The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.

21. Section 4120.3–2 is revised as follows:

§4120.3–2 Cooperative range improvement.

(a) The BLM may enter into a cooperative range improvement agreement with any person, organization, Indian tribal government or other government entity for the installation, use, maintenance, and/or modification of range improvements or rangeland developments needed to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) The United States shall have title to permanent structural range improvements.

(c) The permittee or lessee may retain title to temporary structural range improvements such as loading chutes, corrals and water troughs for hauled water if no part of the cost for improvement was borne by the United States.

(d) The United States shall have title to nonstructural range improvements such as seeding, spraying, and chaining.

(e) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

22. Paragraphs (b) and (c) of §4120.3–3 are revised to read as follows:

§4120.3–3 Range improvement permits.

* * * * *

(b) The permittee or lessee may hold the title to all temporary range improvements authorized as livestock handling facilities such as corrals and dipping vats and temporary, readily-removable improvements such as troughs for hauled water. The authorization for permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines shall be through cooperative range improvement agreements to protect the public interest for multiple use of rangeland ecosystems. The United States shall assert its claims and exercise its rights to water developed on public lands to benefit the public lands and resources thereon.

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for nonuse has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).

(1) A permittee(s) or lessee(s) shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use.

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination concerning the fair and reasonable share of operation and maintenance expenses and compensation for use of improvements and facilities.

(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

23. A new §4120.3–8 is added to read as follows:

§4120.3–8 Range improvement fund.

(a) In addition to range developments accomplished through other resources management funds, authorized range improvement may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority basis, by the Secretary or designee for on-the-ground rehabilitation, protection and improvements of public rangeland ecosystems.

(b) Funds appropriated for range improvement are to be used for cost effective investment in improvements that benefit all rangeland resources including riparian area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management, and livestock grazing management. The funds may be used for activities including the planning, design, layout, modification, and monitoring and evaluating the effectiveness of specific range improvement projects.

(c) During the planning of the range development or range improvement programs, authorized officers shall consult affected permittees, lessees, and other affected interests.

24. A new §4120.5 is added to read as follows:

§4120.5 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

25. A new §4120.5–1 is added to read as follows:

§4120.5–1 Cooperation with State, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate with the involved agencies and government entities. The authorized officer shall cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds including:

(a) State cattle and sheep sanitary or brand boards in control of estray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of December 15, 1971; and

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management.

Subpart 4130—Authorizing Grazing Use

26. Section 4130.1 is revised to read as follows:

§ 4130.1 Applications.

Applications for grazing permits or leases (active use and nonuse for conservation or protection purposes), annual grazing authorizations (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

27. Paragraph (b) of § 4130.1–1 is amended by adding a new last sentence to read as follows:

§ 4130.1–1 Changes in grazing use.

* * * * *

(b) * * * Temporary changes, not to exceed the greater of 25 percent of the active use or 100 AUMs, may be authorized or required by the authorized officer following consultation with the affected permittees or lessees and the State having land or responsibility for managing resources within the allotment, provided such changes comply with applicable land use plans and are within the scope of the terms and conditions of the existing permits or leases.

28. Section 4130.1–2 is amended by revising paragraph (b), removing the word "and" from paragraph (e) and adding new paragraphs (g) and (h) to read as follows:

§ 4130.1–2 Conflicting applications.

* * * * *

(b) Proper use of rangeland resources.

* * * * *

(g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and

(h) Applicant's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellation of grazing use for violations of terms and conditions of agency grazing rules (see 43 CFR 4110.1).

29. Section 4130.2 is amended by redesignating paragraph (d) and (e) as paragraphs (e) and (j), respectively, revising paragraphs (a) and (c), and adding new paragraphs (d), (f), (g), (h) and (i) to read as follows:

§ 4130.2 Grazing permits or leases.

(a) Grazing permits or leases shall be issued to authorize use on the public lands and other lands under the administration of the Bureau of Land Management. Such use may include livestock grazing, temporary nonuse and conservation use. These grazing permits and leases shall specify terms and conditions as required by § 4130.6 of this title.

* * * * *

(c) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be:

(1) 10 years where permittees or lessees have a record of substantial compliance with established terms and conditions of Federal and State grazing permits or leases and applicable laws and regulations, and have maintained or made satisfactory progress toward established resource condition objectives;

(2) 5 years or less when permittees or lessees have a record of substantial compliance with the terms and conditions of Federal or State grazing permits or leases and applicable laws and regulations, but their management has not resulted in satisfactory progress toward established resource condition objectives, if a plan of action for achieving these objectives has been prepared and initiated; and

(3) 5 years or less when the permit or lease is issued or transferred to a different permittee or lessee.

(d) Permits or leases may be issued for periods shorter than those established in paragraph (c) of this section when:

(1) The land is pending disposal;

(2) The land will be devoted to a public purpose which precludes grazing prior to the end of the period as determined under paragraph (c) of this section;

(3) The term of the base property lease is less than the period established under paragraph (c), in which case the term of the Federal permit or lease shall coincide with the term of the base property lease; or

(4) When the authorized officer determines that a permit or lease for less than 5 years is necessary or desirable to protect and conserve the public lands and the resources thereon.

* * * * *

(f) Permittees or lessees holding expiring grazing permits or leases who are found to be in repeated noncompliance with the terms and conditions of the expiring permit or lease, or who are in violation of any of the provisions of this part, and those permittees or lessees who refuse to accept the proposed terms and conditions of a permit or lease, shall not be offered or granted a new grazing permit or lease.

(g) Nonuse and conservation use may be approved by the authorized officer if it is in conformance with the applicable land use plan, AMP or other activity plan, and standards and guidelines as follows:

(1) Conservation use may be approved for periods of up to 10 years when, in the determination of the authorized officer, the proposed nonuse will promote resource protection or enhancement, including more rapid progress toward resource condition objectives; or

(2) Temporary nonuse for reasons other than resource conservation or protection, including but not limited to financial conditions or annual fluctuations of livestock, may be approved for no more than 3 consecutive years.

(h) Permittees or lessees must annually apply for any proposed nonuse, excluding use approved for resource conservation or protection of rangeland ecosystems that is included in a grazing permit or lease, or any permitted use suspended under §§ 4110.3–3 and 4170.1 of this title. Permittee(s) or lessee(s) shall state the reason(s) supporting an application for nonuse.

(i) Application for nonrenewable grazing permits and leases under §§ 4110.3–1 and 4130.4–2 of this title for areas for which conservation use has been authorized will not be approved. Forage made available as a result of temporary nonuse may be made available to qualified applicants under § 4130.4–2 of this title.

* * * * *

30. Paragraph (a) of § 4130.4–1 is revised to read as follows:

§ 4130.4–1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands which are unfenced and intermingled with public lands when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under § 4130.6 of this title that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.

* * * * *

31. Section 4130.4–3 is revised to read as follows:

§ 4130.4–3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain such terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part.

32. Paragraph (d) of § 4130.5 is revised to read as follows:

§ 4130.5 Ownership and identification of livestock.

* * * * *

(d) Where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received prior to any grazing use. The document shall describe the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement.

* * * * *

33. Section 4130.6–1 is amended by revising the second sentence of paragraph (a) and adding a new paragraph (c) to read as follows:

§ 4130.6–1 Mandatory terms and conditions.

(a) * * * The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

* * * * *

(c) Permits and leases shall incorporate applicable standards and guidelines for the management of the rangeland ecosystem.

34. Section 4130.6–2 is amended by revising paragraph (f), removing the period from the end of paragraph (g) and adding a "; and" and by adding a new paragraph (h) to read as follows:

§ 4130.6–2 Other terms and conditions.

* * * * *

(f) Provision for livestock grazing to be temporarily delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;

(g) * * *

(h) A statement disclosing the requirement that permittees or lessees shall provide reasonable access across private and leased lands to the Bureau of Land Management for the orderly administration, management and protection of the public lands.

35. Section 4130.6–3 is revised to read as follows:

§ 4130.6–3 Modification.

Following consultation with the lessees, permittees, other landowners involved, and States having lands or responsibility for managing resources within the affected area, the authorized officer may modify terms and conditions of the permit or lease when the present grazing use is not meeting the land use plan, AMP or other activity plan, or management objectives, or applicable standards and guidelines. To the extent practical, the authorized officer shall provide to affected permittees, lessees, parties and other affected interests an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

36. Section 4130.7–1 is amended by revising paragraph (a), redesignating paragraphs (d) and (e) as (e) and (f), respectively, adding a new paragraph (d), and in newly redesignated paragraph (e) adding a new sentence after the second sentence and a sentence to the end of the paragraph to read as follows:

§ 4130.7–1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary.

(1) Except as provided in paragraph (a)(2) and (a)(3) of this section, the grazing fee per AUM shall be equal to the $3.96 base value multiplied by the Forage Value Index computed annually from data supplied by the National Agricultural Statistics Service, as follows:

Grazing Fee per AUM=$3.96×Forage Value Index

$3.96=The base value per AUM established for 1991 by averaging $3.25, the 1966 value from the Western Livestock Grazing Survey updated to 1991, and $4.68, the lowest appraisal value of the 6 pricing regions considered in the 1983 appraisal updated to 1991; and

Forage Value Index (FVI)=the average estimate (weighted by AUMs) of the annual rental charge per AUM for pasturing cattle on private rangelands in the 17 contiguous western States (Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming) divided by $8.67 (average for the years 1990, 1991, and 1992).

(2) The base value for the fee shall be phased in over the years 1994 through 1996 as follows:

Grazing Fee per AUM for 1994=$1.86+$0.70×FVI
Grazing Fee per AUM for 1995=$1.86+$0.70+$0.70×FVI
Grazing Fee per AUM for 1996=$1.86+$0.70+$0.70+$0.70×FVI

Beginning in the year 1997 and thereafter the fee will be computed using the grazing fee formula specified in paragraph (a)(1) of this section.

(3) Any annual increase or decrease in the grazing fee occurring after the 3-year phase-in shall be limited to not more than 25 percent of the fee in the previous year.

* * * * *

(d) A leasing surcharge shall be added to the grazing fee billings for authorized leasing of base property to which public land grazing preference is attached or authorized grazing of livestock owned by persons other than the permittee or lessee. The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use being made as follows:

(1) 20 percent of the grazing bill for the permitted grazing use that is attached to a leased base property by an approved transfer, or that was leased and attached to another party's base property through an approved transfer;

(2) 50 percent of the grazing bill for pasturing livestock owned by persons other than the permittee or lessee under a grazing authorization; and

(3) 70 percent of the grazing bill when base property is leased and a transfer has been approved and livestock owned by persons other than the permittee or lessee are pastured under a grazing authorization.

(e) * * * Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under §§ 4150 and 4170 of this part when permittees or lessees fail to comply with provisions of this section (see 4130.7–1 (f)). * * * Repeated delays in payment of actual use billings shall be cause to revoke provisions for after-the-grazing-season billing.

37. The first sentence of § 4130.7–3 is revised to read as follows:

§ 4130.7–3 Service charge.

A service charge shall be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. * * *

38. Section 4130.8 is amended by removing the word "shall" and adding in its place the word "may".

Subpart 4140—Prohibited Acts (Amended)

39. Section 4140.1 is amended by revising paragraphs (a)(2), (b)(1)(i), and (b)(9); and adding new paragraphs (b)(11) and (b)(12) to read as follows:

§ 4140.1 Acts prohibited on public lands.

* * * * *

(a) * * *

(1) * * *

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years, but not including approved temporary nonuse or use temporarily suspended by the authorized officer.

* * * * *

(b) * * *

(1) * * *

(i) Without a permit or lease, and an annual grazing authorization. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.

* * * * *

(9) Violating State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and laws regarding estray of livestock from permitted public land grazing areas to closed range areas or no-fence agriculture districts;

(10) * * *

(11) Violating any provision of part 4700 of this title concerning the protection and management of wild free-roaming horses and burros;

(12) Violating Federal or State laws or regulations concerning pest or predator control and conservation or protection of natural and cultural resources or the environment including, but not limited to, those relating to air and water quality, protection of fish and wildlife, plants, and the use of chemical toxicants.

Subpart 4150—Unauthorized Grazing Use (Amended)

40. Section 4150.1 is amended by redesignating the second sentence as paragraph (b) and adding a new paragraph (a) following the undesignated first sentence to read as follows:

§ 4150.1 Violations.

* * * * *

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.

* * * * *

41. Section 4150.2 is amended by redesignating paragraphs (a) and (b) as (b) and (c), respectively, and adding a new paragraph (a) to read as follows:

§ 4150.2 Notice and order to remove.

(a) Whenever a violation has been determined to be nonwillful and incidental, and the owner of the unauthorized livestock is known, the authorized officer shall notify the alleged violator that a violation has been reported, that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

* * * * *

42. Section 4150.3 is amended by removing the first sentence and revising the sentence following the new first sentence of the introductory text, revising paragraph (a), and removing ""; and" from paragraph (c) to read as follows:

§ 4150.3 Settlement.

* * * The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. * * *

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) for the 17 Western States as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use when the authorized officer determines that each of the following conditions is met:

(1) evidence shows that the unauthorized use occurred through no fault of the livestock operator,

(2) the forage use is insignificant,

(3) the public lands have not been damaged, and

(4) nonmonetary settlement is in the best interest of the United States.

* * * * *

Subpart 4160—Administrative Remedies

43. Section 4160.1 is revised to read as follows:

§ 4160.1 Proposed decisions.

A proposed decision of the authorized officer will be issued prior to the final decision, except when:

(a) Immediate action is necessary to stop resource deterioration, damage to resource values or uses, or to close an area to unauthorized grazing use in accordance with § 4110.3–3 of this part;

(b) The action taken is nondiscretionary;

(c) The action taken implements decisions previously issued under this subpart; or

(d) The action involves the application of discretion within established terms and conditions of permits and leases, and

(1) Required environmental analysis pursuant to the National Environmental Policy Act of 1969 was previously completed; and

(2) Agreement has been reached with the affected permittee or lessee.

44. In § 4160.3 paragraph (a) and (c) are revised and new paragraphs (d), (e), (f) and (g) are added to read as follows:

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice.

(b) * * *

(c) Any appeal and petition for stay of the decision pending final determination on appeal must be filed within 30 days after receipt of the final decision.

(d) Decisions that are appealed shall remain in effect pending final action except during the period a petition for a stay is being considered by, or has been granted by the Office of Hearings and Appeals as provided under part 4 of this title.

(e) Except where grazing use in the preceding year was authorized on a temporary basis under § 4110.3–1(a) of this title, an applicant who was granted grazing use in the preceding year may continue at that level of authorized active use pending final action on the appeal. Where an applicant had no active grazing use during the previous year, the authorized use shall be consistent with the decision pending final determination on an appeal.

(f) When the Office of Hearings and Appeals stays a final decision of the authorized officer to change the authorized grazing use, the active use authorized to the permittee or lessee shall remain at no more than the previously determined permitted use during appeal.

(g) Notwithstanding the provisions of § 4.21 of this title, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision when necessary to stop resource deterioration or to close an area to unauthorized grazing use in accordance with § 4110.3–3 of this part.

45. Section 4160.4 is revised to read as follows:

§ 4160.4 Appeals.

(a) Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge under § 4.470 of this title by filing a notice of appeal in the office of the authorized officer within 30 days after receipt of the final decision.

(b) A petition for a stay of the decision, if any, shall be filed with the authorized officer together with a notice of appeal. The authorized officer will ensure prompt transmittal of appeals and petitions for stay and the accompanying administrative record to the Office of Hearings and Appeals.

Subpart 4170—Penalties

46. Section 4170.1–2 is revised as follows:

§ 4170.1–2 Failure to use.

After consultation, the authorized officer may cancel permitted use to the extent of failure to use when a permittee or lessee has failed to make substantial use as authorized, or fails to maintain or use water base property in the grazing operation for 2 consecutive grazing fee years.

47. Section 4170.1–3 is amended by revising the section heading, revising the introductory text, and revising paragraph (c) to read as follows:

§ 4170.1–3 Federal or State animal control and environmental protection or resources conservation regulations or laws.

Violation of the Bald Eagle Protection Act, Endangered Species Act, Wild and Free-Roaming Horse and Burro Act, or other Federal and State animal control, conservation or environmental laws or regulations, referenced under § 4140.1 of this title may result in penalty under § 4170.1–1 where:

* * * * *

(c) The permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of animal control, conservation or environmental laws or regulations where no further appeals are outstanding.

48. The heading of § 4170.2–1 is revised to read as follow:

§ 4170.2–1 Penal provisions under the Taylor Grazing Act.

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

49. The authority for 43 CFR part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

50. The authority citation for subpart E, part 4 of title 43 continues to read as follows:

Authority: Sections 4.470 to 4.478 also issued under authority of sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

51. Section 4.477 is amended by revising the heading, removing paragraph (a), removing the paragraph designation from paragraph (b), and revising the first sentence to read as follows:

§ 4.477 Effect of decision during appeal.

Notwithstanding the provisions of § 4.21 of this part and consistent with the provisions of § 4160.3 of this title, the authorized officer may provide in his decision that it shall be in full force and effect pending decision on an appeal therefrom. * * *

PART 1780—COOPERATIVE RELATIONS

52. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. Appendix I, 43 U.S.C. 1701 *et seq.*

Subpart 1784—Advisory Committees

§ 1784.0–5 [Amended]

53. Section 1784.0–5 is amended by removing from paragraph (d) the term "Authorized representative" and add in its place the words "Designated Federal officer".

54. Section 1784.2–1 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and revising the newly redesignated paragraph (b) to read as follows:

§ 1784.2–1 Composition.

* * * * *

(b) Individuals shall qualify to serve on an advisory committee because their education, training, or experience enables them to give informed and objective advice regarding an industry, discipline, or interest specified in the committee's charter.

55. Section 1784.2–2 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 1784.2–2 Avoidance of conflict of interest.

(a) * * *

(1) Holders of grazing permits and leases may serve on advisory committees;

* * * * *

(b) No advisory committee member shall participate in deliberations or vote on any matter in which the member has a direct interest.

56. Section 1784.3 is amended by removing paragraph (a), the introductory language of paragraph (b), paragraphs (b)(3), (b)(4), (b)(5), (c), (d) and (g); redesignating paragraphs (b)(1), (b)(2), (e), and (f) as (a)(1), (a)(2), paragraph (b), and (c), respectively; and adding introductory language to newly redesignated paragraph (a), removing from newly redesignated paragraph (a)(1) the term "district" and adding in its place the term "area", removing the term "his authorized representative" from newly redesignated paragraph (c) and adding in its place the term "the designated Federal officer", and adding a new paragraph (d) to read as follows:

§ 1784.3 Member service.

(a) Appointments to advisory committees shall be for 2-year terms unless otherwise specified in the charter or the appointing document. Terms of service normally coincide with duration of the committee charter. Members may be appointed to additional terms at the discretion of the authorized appointing official.

* * * * *

(d) For purposes of compensation, members of advisory committees shall be reimbursed for travel and per diem expenses when on advisory committee business, as authorized by 5 U.S.C. 5703.

§§ 1784.4–1 and 1784.5–2 [Amended]

57. Sections 1784.5–1 and 1784.5–2 are amended by removing the term "authorized representative" and adding in its place the term "designated Federal officer", and removing the term "his" and adding in its place the term "the".

§ 1784.6–1 [Reserved]

58. Section 1784.6–1 is removed and reserved.

59. Section 1784.6–4 is revised to read as follows:

§ 1784.6–4 Resource advisory councils.

(a) Two or more resource advisory councils shall be established for the area within the jurisdiction of each Bureau of Land Management State Office.

(b) The Secretary or the designated Federal officer shall appoint not less than 10 nor more than 15 members to serve on each resource advisory council. One appointee of each resource advisory council shall be an official elected to a position in State or local government serving the people of the area for which the council is established.

(c) An advisory council advises the Bureau of Land Management official to whom it reports regarding multiple use plans and programs for public lands and resources within its area.

(d) A resource advisory council and its subcommittee(s) shall meet at the call of the designated Federal officer and elect their own officers. The designated Federal officer shall attend all meetings of the council and its subcommittees.

(e) Administrative support for a resource advisory council and its subcommittees shall be provided by the office of the designated Federal officer.

§ 1784.6–5 [Removed]

60. Section 1784.6–5 is removed in its entirety.

Bob Armstrong,

Assistant Secretary of the Interior.

Appendix

Note: The following appendix will not appear in the Code of Federal Regulations.

Proposed National Standards and Guidelines for General Application to All Components of the Rangeland Ecosystem

1. Grazing management practices will be implemented that will ensure the recovery of threatened or endangered species, prevent species listed by the Fish and Wildlife Service or National Marine Fisheries Service as Category 1 or 2 from becoming threatened or endangered, and prevent other special status species from being considered for listing under the Endangered Species Act.

2. Grazing management practices (e.g., best management practices) will be implemented through terms and conditions of permits and leases, that maintain or restore water quality needed to protect and enhance beneficial uses and that meet or exceed State standards for the protection and propagation of fish, shellfish, and wildlife; and provide for recreation in and on the water.

3. Grazing schedules will include period(s) of rest during times of critical plant growth or regrowth. The timing and duration of rest periods will be determined by the local office administering the grazing authorization.

4. Grazing use will be adjusted before the next grazing season where it is visually obvious or where monitoring data reveal that key resources or watershed functional requirements are not being met because of livestock overuse.

5. Continuous season-long grazing will be authorized only when it has been demonstrated to be consistent with achieving properly functioning condition and meeting identified resource objectives.

6. Pesticides will be used on rangeland only when less intensive management practices have not produced the desired results, where target species are well defined, and where there is minimal risk to nontarget species.

7. Terms and conditions of each permit or lease will include season(s) of use, livestock numbers, kinds of livestock, deferment, rest, or other strategies that maintain or restore vegetation communities required to achieve resource objectives.

8. Development of springs and seeps or other projects affecting water and associated resources will be designed to maintain or enhance ecological values of those sites.

9. Mineral, protein, and other supplements will be placed at least ¼ mile from riparian-wetland areas.

10. Wells will either be drilled at least ¼ mile from riparian-wetland areas, or the water from wells will be made available to livestock at least ¼ mile from riparian-wetland areas.

11. Grazing will be authorized on ephemeral (annual and perennial) rangeland only if valid estimates of production have been made, an identified level of annual growth to remain onsite at the end of the grazing season has been established, and adverse affects on perennial species will be avoided.

12. New livestock management and holding facilities (except fences will be located outside riparian-wetland areas.

13. Riparian-wetland management objectives will be met where existing livestock management and holding facilities are located inside riparian-wetland areas. Where objectives are not being met, appropriate action will be taken which may include relocation or removal of the facilities.

14. Utilization or residual vegetation targets will be applied that will:

a. Improve or restore both herbaceous and woody species (where present or potential exists) to a healthy and vigorous condition and facilitate the ability of vegetation to reproduce and maintain different age classes in the desired riparian-wetland and aquatic plant communities.

b. Leave sufficient vegetation biomass and plant residue (including woody debris) to provide for adequate sediment filtering and dissipation of stream energy for bank protection.

Standards and Guidelines for Unhealthy Ecosystems

The following additional Standards and Guidelines apply to situations where the ecosystems are in poor health, not functioning properly, or are susceptible to degradation.

Riparian-Wetland and Aquatic Components

Properly functioning condition is necessary to dissipate stream energy, improve water quality, aid floodplain development, improve water storage, stabilize streambanks, and develop diverse ponding and channel characteristics, thereby providing greater biodiversity.

Upland and riparian-wetland areas influence aquatic resources, therefore management of grazing must be integrated with the management of the entire watershed. Achieving proper functioning condition and desired plant communities in riparian-wetland areas and uplands contributes the physical and biological characteristics necessary to restore and maintain aquatic habitat. The aquatic component serves as a natural link between the different components of the watershed.

Not Functioning Properly

1. Streambank damage by livestock will be limited to less than 25 percent of the linear length of a stream segment, for example, 10 feet on one bank and 15 feet on the other bank of a 100-foot section of stream.

2. Livestock access to the aquatic zone will be prevented in those seasons and areas where continued grazing would damage important resources, such as spawning areas for salmonids.

3. Grazing management structures within the normal high water line causing deterioration of aquatic areas (e.g., dams, diversions, road crossings) will be removed or modified.

Functioning but Susceptible to Degradation

1. Livestock grazing use shall be adjusted and livestock grazing practices implemented to achieve properly functioning condition and desired plant communities.

2. Livestock use will be adjusted to allow aquatic systems to achieve physical parameters necessary for desired biotic communities.

Upland Component

Uplands are commonly the largest component of the watershed. Most precipitation enters the watershed via uplands, so the condition and treatment of uplands directly affect the health and functioning of the rangeland ecosystem.

Not Functioning Properly

1. Livestock grazing will be adjusted, which may include total rest, to ensure proper functioning condition is reached

where key resources or watershed functional requirements are not being met.

2. Range improvement projects will be limited to those that resolve a resource problem and contribute to achieving properly functioning condition.

3. Land treatment solely oriented toward meeting livestock forage requirements will be discontinued.

Functioning but Susceptible to Degradation

1. Grazing management practices that will improve the uplands to properly functioning condition will be implemented.

2. Livestock grazing will be adjusted (season of use, duration, timing, numbers, etc.) when monitoring shows the use is incompatible with reaching properly functioning condition.

3. Range improvement program shall be limited to those that resolve a resource problem and contribute to properly functioning ecosystems.

Implementation Steps for the Clean Water Act

This section outlines the steps necessary to meet the requirements of the Clean Water Act. The seven steps below need to be followed to select appropriate Best Management Practices (BMPs) and to protect water quality in grazing management. They constitute the Federal non-point source water pollution control strategy. If followed, they will ensure compliance with the Clean Water Act and State water quality requirements.

1. Identify the State-designated beneficial uses for the waters on the area to be grazed.

2. List the water quality standards that must be reached or maintained.

3. Establish objectives to reach or maintain the water quality standards.

4. Implement BMPs grazing strategies and actions to reach the objectives.

5. Monitor BMPs and document if they are being implemented.

6. Monitor and determine if BMPs are effective in meeting objectives. 7.

7. Make changes in management and BMPs if objectives are not being met.

It is not possible to monitor water quality on all areas grazed by livestock. Representative areas can be established to monitor turbidity, temperature, dissolved oxygen, fecal coliform, and pH to verify the effectiveness of BMPs.

[FR Doc. 93-19555 Filed 8-12-93; 8:45 am]

BILLING CODE 4310-84-P

federal register

Friday
August 13, 1993

Part VII

Department of the Interior

Bureau of Land Management

Grazing Administration, Rangeland Management; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-220-4320-02-24 1A]

Grazing Administration, Rangeland Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and reopening of scoping.

SUMMARY: The U.S. Department of the Interior through the Bureau of Land Management (BLM) gives notice of its intent to reopen the scoping period for the programmatic environmental impact statement (EIS) that it is developing on rangeland management reform, including future rulemakings. The EIS is being developed pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), with the cooperation of the Forest Service, U.S. Department of Agriculture (USDA—Forest Service).

DATES: Written comments on the scope of the EIS will be accepted until September 13, 1993. Comments postmarked after this date may not be considered in developing the EIS.

ADDRESSES: Scoping comments should be sent to: Michael J. Penfold, Assistant Director, Land and Renewable Resources, Bureau of Land Management, P.O. Box 65800, Washington, DC 20035-9998.

Comments will be available for public review at the Division of Rangeland Management, Bureau of Land Management, U.S. Department of the Interior, 1620 L St. NW., Washington, DC, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Write to the above address or call Jim Fox at (202) 653-9193; facsimile (202) 653-9118.

SUPPLEMENTARY INFORMATION:

I. Introduction

When submitting comments, please identify whether they relate to the BLM's Advance Notice of Proposed Rulemaking (published separately in today's **Federal Register**), or are scoping comments to be considered in developing the Draft EIS. Comments received after the conclusion of the original scoping period through the date of this notice will be considered along with all original scoping comments and comments received in response to this notice. The Advance Notice of Proposed Rulemaking (ANPR) will be followed by a 30-day comment period, during which the public will be able to suggest changes to the proposals, alternatives, and identify other issues that should be covered in the regulations. The opportunity for public comment on the scope of the Environmental Impact Statement (EIS) has also been extended to coincide with the 30-day ANPR comment period. After review of the comments, the BLM will release proposed regulations and a draft EIS. The release of those documents will be followed by a public comment period of at least 45 days. Comments on the Forest Service's Advance Notice of Proposed Rulemaking should be sent to the address listed in the Advance Notice of Proposed Rulemaking, which is published as a separate notice in today's **Federal Register**.

II. Scoping

Rangeland Reform '94 is a proposal being developed by the U.S. Department of the Interior and the Bureau of Land Management (BLM), in cooperation with the U.S. Department of Agriculture and the Forest Service. These agencies administer livestock grazing on approximately 170 million acres and 100 million acres of public rangelands, respectively. The proposal involves policy and regulatory changes in the BLM's and the Forest Service's rangeland management programs, intended to improve ecological conditions on BLM-managed and Forest Service-managed rangelands while providing for sustainable development.

A major policy element of the reform package is expected to be a set of national Standards and Guidelines for livestock grazing on rangeland ecosystems on BLM-administered lands. This new policy would be used to ensure that livestock grazing on BLM-managed lands occurs in a manner compatible with functioning ecosystems and consistent with the principles of ecosystem-based management. Currently, individual National Forest Land and Resource Management Plans contain standards and guidelines for management of rangeland resources.

The BLM and the Forest Service also propose a number of regulatory changes in their rangeland management program. Some of the regulatory changes are of an administrative or clarifying nature and little environmental effect is expected. In addition, the BLM and the Forest Service propose to change the formula used to calculate grazing fees charged by both agencies on the lands that they administer.

The Department of the Interior recognizes a fundamental need to redirect its resources to improve and restore rangeland ecosystems and to improve and maintain biological diversity. At the same time, both Departments recognize the need to support sustainable economic activities on behalf of rural Western communities. The BLM and the Forest Service also propose to make certain changes to improve the efficiency in the administration of grazing programs. Finally, both Departments seek fair and equitable compensation to the Federal Government for the use of public lands and resources. The purpose of the proposed rangeland management initiatives is to reform the Federal rangeland management programs to meet these needs and to improve the consistency between the BLM and the Forest Service.

Overall, the proposed changes in rangeland management may constitute a major Federal action significantly affecting the quality of the natural and human environment. Therefore, the BLM is developing a programmatic EIS, the Draft Rangeland Reform EIS, to address these issues. The USDA-Forest Service will be a cooperating agency in the preparation of this EIS, in accordance with Council on Environmental Quality regulations (40 CFR 1501.6 and 1508.5).

During the spring and summer of 1993, Interior Secretary Bruce Babbitt held five meetings in the West (Bozeman, MT; Reno, NV; Grand Junction, CO; Albuquerque, NM; and Flagstaff, AZ) to obtain public views on rangeland management. James Lyons, Assistant Secretary for Natural Resources, U.S. Department of Agriculture, or his representative attended all of the meetings with Secretary Babbitt. Hundreds of citizens attended these meetings and over 1,300 letters and written comments were received. After reviewing the comments and ideas expressed at these meetings, the Department of the Interior and the Department of Agriculture initiated the formal scoping process for a rangeland reform EIS, to identify issues and alternatives to be addressed in the Draft EIS.

A notice of intent to prepare the EIS was published in the **Federal Register** on July 13, 1993, requesting public comments and suggestions on the scope of the analysis by July 23, 1993. At that time, the Forest Service was a cooperating agency for purposes of analyzing a grazing fee formula. The Forest Service is now a cooperating agency in the preparation of the EIS as it relates to determining a grazing fee and rangeland reform on National Forests and Grasslands.

During the initial scoping period, comments were received from over 800 individuals. Many people submitted comments requesting that the scoping period be extended.

Using the issues raised during the initial scoping period, the information gathered at the five meetings described above, ideas, suggestions and initiatives brought to the agencies in recent years, and agency files, management plans, and experience, the BLM and the Forest Service developed preliminary ideas about issues, alternatives, and levels of analysis that may be appropriate for the Draft Rangeland Reform EIS, as described later in this notice. As a result of the information and comments from the initial scoping process, the Forest Service also decided to become a cooperating agency for the EIS. Because of the changed circumstances, and the request of many submitting comments that the scoping period be extended, the scoping period has been reopened to provide all interested parties with an opportunity to review preliminary concepts for the EIS so that they may provide additional written comments on the scope of the EIS, including any additional information, issues, or alternatives that should be considered.

The purpose of scoping is to provide an early and open process to determine the scope of the issues to be addressed and to identify the significant issues related to the proposed action. The process is intended to identify reasonable alternatives that should be evaluated in the Draft EIS; identify significant issues to be analyzed in the EIS related to the proposed rangeland initiatives; determine the depth of analysis for issues addressed in the Draft EIS; and identify issues that are outside the scope of the EIS or that do not require detailed analysis.

Interested parties should provide to the BLM information they believe will assist the agencies in conducting an accurate and appropriate analysis of the effects of rangeland reform. Types of information requested include, but are not limited to: information, data, or professional opinions that may contribute to identifying issues significantly affecting the human environment; identification of, and information from, any other EIS or similar study (completed, in progress, or planned) relevant to the proposed rangeland reform initiatives; or information and quantified data that would aid in the characterization of baseline or existing environments.

Interested parties will have further opportunities to participate in the decisionmaking process of the Departments with respect to rangeland reform. The Draft EIS will be made available for public review and comment during a formal public comment period. While no scoping meetings are anticipated to solicit additional public response to the grazing reform proposal, the BLM will hold additional public meetings after publication of the draft EIS. Following the comment period, a Final EIS will be developed. The Final EIS will incorporate additional comments received during the review period. Including public participation throughout the process ensures that the views of all interested parties will be considered by the decisionmakers.

Comments and recommendations are now invited on the scope of the analysis, including but not limited to the proposed action, alternatives to the proposed action, issues to be analyzed, and the appropriate level of analysis. This notice invites participation of other Federal agencies, State, and local governments, as well as affected Indian tribes, scientific community, professional organizations, public land users, the livestock industry, conservation organizations, and other interested parties.

III. Description of the Proposed Action

BLM's preliminary approach to rangeland reform would include national Standards and Guidelines designed to increase the rate of improvement in ecological health and conditions on BLM-administered lands. These Standards and Guidelines, are intended to provide a systematic basis on which to make consistent decisions and would lead to immediate and measurable progress in improving ecological conditions. Consistent nationwide BLM Standards and Guidelines would lessen the subjectivity and confusion associated with making sound resource management decisions, which would instead be based on specific goals related to resource conditions. Integrating Standards and Guidelines for the BLM rangeland management program would be a tiered process. The national Standards and Guidelines would be mandatory. Regional Standards and Guidelines would be developed to ensure that significant values on the local and regional level, which cannot be treated by national direction, would be addressed. Regional Standards and Guidelines could address values such as waterfowl habitat, essential habitat for bighorn sheep and elk, neotropical migratory bird habitat, critical habitat for threatened and endangered species, riparian-wetland conservation areas, salmon spawning areas, and high-use recreation areas such as wild and scenic rivers.

In addition, the proposed action would revise the grazing fee formula for both BLM and Forest Service lands and broaden the use of a portion of the Range Improvement Fund, in an effort to provide for increased emphasis on managing the resources and decreased emphasis on managing the program. The final proposal will include a new formula for calculating grazing fees. This formula will be selected from a range of alternatives, including no change from the current formula, which will be considered by the Secretary of the Interior and the Secretary of Agriculture. A full range of grazing fee options will be presented and evaluated in the Draft EIS before the Secretaries make a final decision on the grazing fee.

Furthermore, both BLM and the Forest Service seek greater program administration efficiencies through a revision of the existing regulations. For BLM, the emphasis on ecosystem management and the restructuring of BLM advisory boards, along with early and frequent public participation, would lead to a more collaborative approach to resolving resource management issues.

Several changes in BLM's regulations will be considered as part of the range reform package (see also the BLM's Advance Notice of Proposed Rulemaking). Areas to be addressed include:

Subleasing (base property, permits, and livestock)
Prohibited Acts
Resource Advisory Boards
Elimination of Suspended Non-Use
Unauthorized Use
Affected Interests
Full Force and Effect
Permit Transfer and Issuance of Permits Based on Performance Records (Disqualification)
Priority for Allocation of Unallocated Forage
Grazing Permit and Lease Tenure
Allocation of Range Improvement Funds
Use of Range Improvement Fund Dollars
Non-Use of Grazing Permit
Ownership of Range Improvements and Water Rights

The Forest Service anticipates developing and/or revising rules related to the following areas (see also the Forest Service's Advance Notice of Proposed Rulemaking):

Ecosystem Approach to Multiple Use Management of Rangelands
NEPA Analysis and Rangeland Management Decisions
Permittee Stewardship
Linkage between Forest Plan Direction and Permit Terms and Conditions

Permit Tenure
Disqualification
Citizenship Requirements
Livestock Ownership Requirements
Penalties for Unauthorized Use
Administrative Efficiency
Advisory Boards

In general, rangeland reform is intended to establish a consistent program aimed at improving ecological conditions while encouraging sustainable development over the long term. This would be done through regulations (see the Advance Notices of Proposed Rulemaking by the BLM and the Forest Service in today's **Federal Register**) and policy guidance. The Forest Service and the BLM will issue separate Records of Decision and regulations.

IV. Issues

Initial scoping comments were received from over 800 individuals and organizations, including individual users, livestock organizations, environmental groups, State and local governments and academia. About 60 percent of these raised a concern over the length of the scoping period. In addition, nearly 40 issues and several specific suggestions were identified in the scoping comments. Issues raised fell into one of four categories:

A. Issues Involving Rangeland Conditions and Resource Use Conflicts

Many people voiced concerns about rangeland conditions and perceived conflicts between livestock grazing and other values and uses of rangeland. Opinions expressed included:

Livestock grazing on public lands should be eliminated on sensitive areas (for example, hot desert areas or riparian areas) or greatly reduced to more environmentally acceptable levels.

Livestock grazing should be eliminated entirely from the public lands.

Livestock use levels should be based on actual and potential carrying capacity of public rangelands, impacts on other resources, and social and economic impacts.

Livestock grazing is an important tool in managing rangeland resources and should not be eliminated.

Special focus should be placed upon riparian-wetland areas, hot desert areas, and ephemeral range.

Ecosystem "sustainability" should be addressed.

The BLM needs to find a better way of expressing objectives for the overall conditions of rangelands.

Ranchers have an important stewardship role on the public land, including providing benefits to wildlife.

The BLM should manage rangeland resources to improve and maintain biological diversity.

Conflicts between livestock grazing and recreational use of public lands should be addressed, including problems of vandalism on range improvements.

Conflicts between big game numbers and livestock numbers should be evaluated, based on the carrying capacity of public rangelands, on impacts to riparian-wetland habitat and other ecologically sensitive areas, and on the need to maintain viable big game populations.

Continued use of animal damage control (ADC) should be assessed, including impacts on both wildlife and livestock numbers, impacts on ranching operations, alternative methods of predator control, and appropriateness of predator control.

BLM should develop and enforce grazing (un)suitability criteria.

BLM should define rangeland management objectives based on desired plant communities and desired future conditions, rather than continue its present focus on potential natural vegetation.

BLM lacks adequate data to assess range conditions, and should not make major decisions about rangeland management until more information has been obtained.

If livestock grazing is not allowed on certain grazing allotments, the Federal Government should have the responsibility to fence the public-private land boundaries.

B. Grazing Fee Issues

A fair and equitable fee for the privilege of grazing on public lands should be identified. The BLM and the Forest Service should develop and use a simple formula to reduce the wide gap between rates charged on public and private lands. The fee should help stabilize the dependent Western livestock industry and should ensure fair return from commercial use of public resources.

The Public Rangelands Improvement Act (PRIA) formula should be reevaluated.

The grazing fee formula should differentiate between small (family) and large (corporate) operators, since large operators can spread the cost of doing business over a bigger operation. It was also suggested that the fee should be based on the individual permittee's ability to pay.

The fee should be tied to rangeland condition.

A higher grazing fee will have the effect of improving the ecological condition of the public rangelands.

C. Social and Economic Issues

A variety of concerns were raised about potential social and economic impacts from rangeland reform.

Impacts on jobs, profits of operators, permit and property values, State and county revenues (tax base effects, Payments in Lieu of Taxes), and rural economies, communities, and lifestyles.

Impacts on private lands (subdivisions, changes in public access, other more intensive uses) and lands administered by other agencies, which are frequently intermingled with or adjoin lands within BLM's jurisdiction.

The effect of all reform alternatives, particularly grazing fee increases, on red meat prices.

A site-specific analysis of impacts to the number of ranch operations, the number of livestock use levels, and related matters.

Stabilization of the livestock industry in the West should be the primary goal of the rangeland management program.

D. Program Administration Issues

A number of issues related to the administration of BLM's range management program were raised.

There is a need to simplify regulations and reduce paperwork. This includes making procedures more consistent among different BLM offices and between the BLM and the Forest Service. Current procedures often vary between offices and agencies.

BLM should formally recognize and deal with "subleasing" under BLM grazing permits and leases. This should include fair compensation for allowing a permittee to transfer base property and permit to another party, or to use the Federal range to pasture controlled livestock owned by a third party.

The concept of "suspended non-use" of livestock forage should be modified or eliminated.

BLM should have greater authority and flexibility to allow non-use, particularly where it would benefit rangeland ecosystems.

BLM grazing permits should be issued for shorter, or longer, periods of time.

The length of permits, or permit "tenure," should be tied to performance.

The functions and responsibilities of grazing advisory boards should be reconsidered.

The need for public involvement in all decisions related to rangeland management should be evaluated. The term "affected interests" should be clarified.

The BLM should have greater flexibility when settling incidental unauthorized use where resource damage does not occur. Currently, all unauthorized use falls under trespass regulations. There is no mechanism for nonmonetary settlement.

The BLM should have the authority to bar a permittee from holding a permit or lease for a period of years following cancellation of a permit for violation of laws or regulations.

Inconsistencies between regulations should be eliminated, particularly regarding "full force and effect" grazing decisions. The BLM should have greater latitude to implement decisions for more orderly administration of the public rangelands.

Agency regulations should provide priority for issuing permits and preference to those ranching operations that have proven management ability to improve the condition of rangeland ecosystems.

Range Improvement Funds should be made available for a wider range of uses to benefit rangeland ecosystems.

Rangeland reform should evaluate the fiscal and personnel resources that would be needed to fully implement any changes.

Individual EIS's should be prepared by county to address the BLM's rangeland management program. Other programs (for example, wild horses and burros, wilderness, etc.) should also be considered in developing the EIS's. Separate EIS's should be developed for grazing fees, grazing regulation changes, and Standards and Guidelines.

A NEPA analysis, complete with full public involvement for all actions including annual operating plans, should be required.

The Department of the Interior should analyze any possible interference with the value or use of private property that might effect a taking under the Fifth Amendment to the Constitution.

A grazing permit or lease should establish a property right.

V. Level of Analysis

The Proposed Action is expected to implement a set of broad BLM Standards and Guidelines, a new westwide grazing fee formula applicable to both BLM and Forest Service administered lands in the 17 western states, and several regulatory changes related to program administration. Because the connection between these proposals and subsequent implementing actions must necessarily be variable and because they are to be applied to a very wide range of environmental and social conditions, the BLM and the Forest Service regard the Draft EIS as programmatic rather than site-specific. Both agencies will conduct an appropriate site specific environmental analysis (40 CFR 1500–1508) prior to any irreversible or irretrievable commitment of Federal resources.

VI. Proposed Alternatives

Because the initial Notice of Intent and scoping indicated that the Forest Service would be a cooperating agency for the grazing fee, the initial scoping responses did not lead to the development of alternatives that include Forest Service rangeland reform. However, comments received during the re-opened scoping period will be used to develop alternatives that address Forest Service rangeland reform. These will be presented in the Draft EIS.

A. Initial Alternatives

At least three alternatives are expected to be presented in detail in the Draft EIS: Current Management (No Action), Rangeland Reform (the Proposed Action), and No Grazing.

1. Current Management

Under current management, national policies for resource conditions are often unclear. Decisions related to rangeland management are often subjective and are not based on measurable resource condition standards. Patterns in the levels that ranchers use rangeland are frequently major factors in grazing decisions. The initiation of potential improvement in ecological conditions is delayed while several years of monitoring data are collected. Serious site deterioration may continue unabated while the monitoring data is being gathered and analyzed. Grazing receipts do not generate enough funds to cover the costs of needed project work, not to mention the total costs of program administration. Program efficiencies are impeded by restrictions on the use and distribution of Range Improvement Funds, full force and effect decisions, limitations on public participation, and other administrative aspects.

In general, the current rangeland management program has been moving forward. This progress, however, has been slowed by policies that lead to competitive rather than collaborative decisionmaking, limited funding, and ingrained program inefficiencies.

2. Range Reform

The proposed action is described in Section II of this Notice and in the Advance Notice of Proposed Rulemaking, which is published as a separate notice in today's **Federal Register**. This alternative will include several options for calculating the grazing fee formula.

3. No Grazing

Under this alternative, all grazing privileges would be canceled and all livestock would be removed from public rangelands. Public rangelands would be managed for values other than livestock grazing. No range improvement projects for livestock would be constructed. Existing improvements would be assessed and those whose only benefit is for livestock use would be removed. Fences would be constructed by all adjoining landowners who raise livestock to ensure no trespass occurs. All measures for managing livestock grazing on public rangelands in the other two alternatives would be unnecessary.

B. Other Potential Alternatives

A number of other alternatives were proposed during the initial scoping period. These alternatives include numerous versions of Standards and Guidelines and suitability/unsuitability criteria; fewer, or more, regulatory changes involving many of the regulatory issues identified in Section II of this notice; and many grazing fee options such as market-value-based fees, competitive bidding, incentive-based fees, fees geared to private land lease rates, and fees based on the Public Rangeland Improvement Act (PRIA) formula plus a surcharge.

Several programmatic alternatives were also identified in addition to Current Management, the Proposed Action, and No Grazing. These are: an alternative to enhance and emphasize livestock grazing on public rangelands; an alternative to allow States or counties to manage lands that are currently administered by the BLM and Forest Service; and an alternative requiring both the BLM and the Forest Service to adopt National Grassland-management principles on the public lands and the National Forests.

These alternatives will be considered during the development of the Draft EIS, along with any additional alternatives that may be suggested during this re-opened scoping period.

Denise Meridith,

Deputy Director.

[FR Doc. 93–19554 Filed 8–12–93; 8:45 am]

BILLING CODE 4310–84–P

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Federal Register

Vol. 58, No. 155

Friday, August 13, 1993

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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. 2264/P.L. 103–66

Omnibus Budget Reconciliation Act of 1993 (Aug. 10, 1993; 107 Stat. 312; 374 pages)

Last List August 12, 1993

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