AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

1-11-94
Vol. 59 No. 7

federal register

Tuesday
January 11, 1994

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

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

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

1-11-94
Vol. 59 No. 7
Pages 1447–1616

federal register

Tuesday
January 11, 1994

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

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

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

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

The **Federal Register** is published in paper and 24x microfiche format. The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–783–3238**
Assistance with public subscriptions	**512–2303**
Single copies/back copies:	
Paper or fiche	**783–3238**
Assistance with public single copies	**512–2457**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**523–5243**
Assistance with Federal agency subscriptions	**523–5243**

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

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC
(TWO BRIEFINGS)

WHEN: January 13 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

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 59, No. 7
Tuesday, January 11, 1994

Agency for Health Care Policy and Research
NOTICES
Meetings; advisory committees:
February, 1556–1557

Agricultural Marketing Service
RULES
Marketing orders; expenses and rates of assessment, 1453–1455
Onions grown in—
Texas, 1452–1453
Oranges and grapefruit grown in Texas, 1449–1452
PROPOSED RULES
Apricots; grade standards, 1490–1492

Agricultural Stabilization and Conservation Service
PROPOSED RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Tobacco, 1493–1499

Agriculture Department
See Agricultural Marketing Service
See Agricultural Stabilization and Conservation Service
See Farmers Home Administration
See Food and Nutrition Service
See Food Safety and Inspection Service
See Forest Service

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol; viticultural area designations:
Seiad Valley, CA, 1510–1512

Army Department
NOTICES
Meetings:
Science Board, 1528

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Injury prevention research for violence against women, 1557–1560

Children and Families Administration
NOTICES
Agency information collection activities under OMB review, 1555–1556

Commerce Department
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
PROPOSED RULES
Futures commission merchants, introducing brokers, commodity pool operators, and commodity trading advisors; risk and bankruptcy disclosure to customers, 1506–1509
NOTICES
Trilateral cross-margining programs:
Chicago Mercantile Exchange, Inc., et al., 1524–1526
Commodity Clearing Corp. et al., 1526–1528

Defense Department
See Army Department

Education Department
NOTICES
Postsecondary education:
National direct and Perkins student loan programs; directory of designated low-income schools; availability, 1616

Employment and Training Administration
NOTICES
Adjustment assistance:
Trinity Industries, Inc., et al., 1565–1567

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
University of—
Oregon, 1528
Meetings:
Naval Oil Shale Reserves Numbers 1 and 2; future use, 1528–1529

Energy Information Administration
NOTICES
Agency information collection activities under OMB review, 1529–1532

Environmental Protection Agency
RULES
Air quality implementation plans:
Clean Air Act; discretionary sanctions, criteria, 1476–1485
Air quality implementation plans; approval and promulgation; various States:
North Dakota et al., 1485–1486
PROPOSED RULES
Air programs:
Pulp, paper, and paperboard industry rulemaking; meetings, 1515
Air quality implementation plans; approval and promulgation; various States:
Colorado, 1513–1515
NOTICES
Clean Air Act:
Outer Continental Shelf permit decision; Chevron U.S.A. Production Co., Inc., 1534
Committees; establishment, renewal, termination, etc.:
National Drinking Water Advisory Council, 1534
Meetings:
Environmental Policy and Technology National Advisory Council, 1534–1535
Water pollution control:
Clean Water Act—
State water quality standards; approval and disapproval lists and individual control strategies; availability, 1535

National pollutant discharge elimination system; State programs—
South Dakota, 1535–1546

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 1589

Farmers Home Administration
NOTICES
Organization, functions, and authority delegations:
State Directors; debt settlements and liability releases approval, 1517

Federal Aviation Administration
RULES
Airworthiness directives:
Canadair, 1471–1472
VOR Federal airways; correction, 1472–1473
PROPOSED RULES
Airworthiness directives:
General Electric Co., 1503–1506
Rolls-Royce plc, 1500–1503
NOTICES
Advisory circulars; availability, etc.:
Unsalvageable aeronautical parts and materials; disposition, 1583
Committees; establishment, renewal, termination, etc.:
Aviation Rulemaking Advisory Committee, 1583–1584
Meetings:
Aviation Rulemaking Advisory Committee, 1584–1585

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 1546
Rulemaking proceedings; petitions filed, granted, denied, etc., 1546

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Wisconsin Public Service Corp. et al., 1533
Applications, hearings, determinations, etc.:
Williston Basin Interstate Pipeline Co., 1533–1534

Federal Maritime Commission
PROPOSED RULES
Maritime carriers in foreign commerce:
Coloading practices by non-vessel-operating common carriers; shipper affiliate access to service contracts, 1515–1516
NOTICES
Agreements filed, etc., 1547
Complaints filed:
Ceres Marine Terminal, Inc., 1547
Freight forwarder licenses:
E.R. Hawthorne & Co., Inc., et al., 1547–1548
Investigations, hearings, petitions, etc.:
Effective Tariff Management Corp. et al., 1548

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Kentucky Railway Museum, Inc., 1585
Pecos Valley Southern Railway Co. et al., 1585–1586

Federal Reserve System
NOTICES
Federal banking and thrift agencies; capital and accounting standards differences; report to congressional committees, 1548–1555
Meetings; Sunshine Act, 1589

Federal Trade Commission
RULES
Trade regulation rules:
Funeral industry practices, 1592–1614

Fish and Wildlife Service
NOTICES
Wild Bird Conservation Act; prohibition on import of exotic birds:
Indonesia and Senegal, 1563

Food and Nutrition Service
RULES
Food distribution programs:
Indian tribal household; definition, 1447–1449

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Hazardous analysis and critical control point round table; participation solicitation, 1499–1500

Forest Service
NOTICES
Appealable decisions; legal notice:
Rocky Mountain region, 1517–1519

General Services Administration
NOTICES
Interagency Committee for Medical Records; autopsy authorization (SF 523) and body disposition (SF 523A); form stocking change and revision, 1555

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See Children and Families Administration
See National Institutes of Health
See Public Health Service

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Interior Department
RULES
Hearings and appeals procedures:
Surface coal mining; special rules, 1486–1489

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Coinsurance loans; Government National Mortgage Association requests for full insurance, 1474–1476

Immigration and Naturalization Service
RULES
Immigration:
Aliens—
Legalization benefits; public charge determination, 1470–1471
Immigration benefits; processing procedures for certain applications and petitions, 1455–1466

Nonimmigrant visa or passport waivers due to unforeseen emergency, 1467–1468
Nonimmigrant classes:
Temporary alien workers seeking H–1B classification, 1468–1470

Interior Department
See Fish and Wildlife Service
See Hearings and Appeals Office, Interior Department
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Federal regulatory review; correction, 1476

International Trade Commission
NOTICES
Meetings; Sunshine Act, 1589

Interstate Commerce Commission
NOTICES
Railroad services abandonment:
Consolidated Rail Corp., 1564
Southern Pacific Transportation Co., 1564–1565

Justice Department
See Immigration and Naturalization Service
NOTICES
Agency information collection activities under OMB review, 1565

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Workers' Compensation Programs Office

Land Management Bureau
RULES
Public land orders:
Nevada, 1489
NOTICES
Closure of public lands:
Arizona, 1562–1563

Merit Systems Protection Board
NOTICES
Privacy Act:
Systems of records, 1568

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
New Warwick Mining Co. et al., 1567–1568

National Highway Traffic Safety Administration
NOTICES
New car assessment program; performance correlation with fatality risk in actual head-on collisions; technical report availability, 1586–1587

National Institute of Standards and Technology
NOTICES
Federal Internetworking Requirements Panel (FIRP); report availability, 1519–1520
Information processing standards, Federal:
Cryptographic modules security requirements, 1520–1524

National Institutes of Health
NOTICES
Meetings:
National Institute of Child Health and Human Development, 1560–1561
National Institute of Environmental Health Sciences, 1561
National Institute on Aging, 1560

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Marine mammals, 1524

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 1563–1564

Nuclear Regulatory Commission
NOTICES
Agency information collection activities under OMB review, 1568–1569
Environmental statements; availability, etc.:
Carolina Power & Light Co., 1569
Omaha Public Power District, 1569–1570
Virginia Electric & Power Co., 1570–1571
Reports; availability, etc.:
Safety issues; status, etc.; implementation and verification at licensed power plants, 1571
Applications, hearings, determinations, etc.:
Commonwealth Edison Co.; correction, 1571

Physician Payment Review Commission
NOTICES
Meetings, 1571

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Special bulk third-class eligibility restrictions; meeting, 1512–1513
NOTICES
Meetings; Sunshine Act, 1589–1590

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See National Institutes of Health
NOTICES
National toxicology program:
Toxicology and carcinogenesis studies—
Ethylene glycol, 1561
Mercuric chloride, 1562
p-Nitrophenol, 1562
Organization, functions, and authority delegations:
Centers for Disease Control and Prevention, 1560

Securities and Exchange Commission
PROPOSED RULES
Practice and procedure:
Administrative proceedings; evidentiary hearings before administrative law judges, etc., 1509–1510
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 1573–1579
Government Securities Clearing Corp., 1579–1580
Pacific Stock Exchange, Inc., 1580–1581

Self-regulatory organizations; unlisted trading privileges:
Boston Stock Exchange, Inc., 1581
Chicago Stock Exchange, Inc., 1571–1572
Cincinnati Stock Exchange, Inc., 1572
Pacific Stock Exchange, Inc., 1572–1573
Philadelphia Stock Exchange, Inc., 1573
Applications, hearings, determinations, etc.:
Equity Strategies Fund, Inc., et al., 1581–1583

State Department
RULES
Visas; nonimmigrant documentation:
Passport and/or visa waivers due to unforeseen circumstances, 1473
NOTICES
Meetings:
International Telegraph and Telephone Consultative Committee, 1583

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

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 1587–1588

Veterans Affairs Department
NOTICES
Medical benefits:
Medical care reimbursement rates; 1994 FY; correction, 1588

Workers' Compensation Programs Office
NOTICES
Privacy Act:
Computer matching programs, 1567

Separate Parts In This Issue

Part II
Federal Trade Commission, 1592–1614

Part III
Department of Education, 1616

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

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
253....1447
254....1447
906 (2 documents)....1449, 1450
959....1452
966....1453
984....1453
Proposed Rules:
51....1490
723....1493
8 CFR
103....1455
212....1467
214 (2 documents)....1455, 1468
223....1455
223a....1455
245a....1470
248....1455
264....1455
292....1455
9 CFR
Proposed Rules:
Ch.III....1499
14 CFR
39....1471
71....1472
Proposed Rules:
39 (4 documents)....1500, 1501, 1503, 1505
16 CFR
453....1592
17 CFR
Proposed Rules:
1....1506
30....1506
33....1506
190....1506
201....1509
202....1509
229....1509
240....1509
22 CFR
41....1473
24 CFR
251....1474
252....1474
255....1474
26 CFR
1....1476
27 CFR
Proposed Rules:
9....1510
39 CFR
Proposed Rules:
111....1512
40 CFR
52 (2 documents)....1476, 1485
Proposed Rules:
52....1513
63....1515
430....1515
43 CFR
4....1486
Public Land Order:
7026....1489
46 CFR
Proposed Rules:
514....1515
580....1515
581....1515

Rules and Regulations

Federal Register
Vol. 59, No. 7
Tuesday, January 11, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 253 and 254

RIN Number 0584–AB67

Definition of "Indian Tribal Household"

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule broadens the current regulatory definition of "Indian tribal household" in the Food Distribution Program on Indian Reservations (FDPIR) and the Food Distribution Program for Indian Households in Oklahoma (FDPIHO). First, this change mandates that all households which pass the program means test, reside in designated areas near a reservation where an Indian Tribal Organization (ITO) or State agency provides program services, and include a Native American be eligible to participate in the FDPIR, regardless of the Native American's tribal affiliation or age. Secondly, it also makes such households which lack a Native American adult, but which include Native American children, eligible to participate in the FDPIHO. Finally, this rule clarifies that all households which pass the program means test and live on a reservation where an ITO or State agency administers the FDPIR, are eligible to receive benefits regardless of whether they contain a Native American.

DATES: This interim rule becomes effective February 10, 1994. Comments must be received on or before March 14, 1994.

ADDRESSES: Comments should be sent to Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 502, Alexandria, Virginia 22302–1594, telephone (703) 305–2662.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 502, Alexandria, Virginia 22302–1594, telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This interim rule is issued in conformance with E.O. 12866.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–12). Ellen Haas, Assistant Secretary for Food and Consumer Services, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. Since this rule will not result in significant changes in participation for the Food Distribution Program on Indian Reservations and the Food Distribution Program for Indian Households in Oklahoma, the impact on Indian Tribal Organizations and State agencies which participate in these programs will be minimal.

Executive Order 12372

The programs addressed in this action are listed in the Catalog of Federal Domestic Assistance under 10.550 and 10.570 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Paperwork Reduction Act

This interim rulemaking imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of the preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by state or local governments. For disputes involving procurements by State agencies or Indian Tribal Organizations, this includes any administrative appeal procedures to the extent required by 7 CFR 253.5(l), 7 CFR 254.3(a), and 7 CFR part 3016.

The rule published on October 20, 1987 (52 FR 39158), proposed to authorize ITOs and State agencies to serve income-eligible households residing in near areas which contain an Indian tribal member, regardless of that person's tribal affiliation. This interim rule will mandate that all such households be provided program benefits upon application. Because the Department believes that permitting ITOs and State agencies to exclude these Native Americans from program participation simply because they do not live on a reservation or near their tribe's reservation is inequitable and counter to the intent of FDPIR, the Administrator of FNS has determined that prior notice and comment on this provision of this rule would be unnecessary and contrary to public interest. For this reason, the Administrator has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that good cause exists to waive the solicitation of public comments prior to implementation. However, the Department believes this rule may be improved by public comment based on actual operating experience. Therefore, comments solicited on this rule must be postmarked or submitted on or before March 14, 1994. All comments will be analyzed, and any appropriate changes to the rule will be incorporated in the subsequent publication of a final rule.

Background

The Food Distribution Program on Indian Reservations (FDPIR) was established by section 4(b) of the Food Stamp Act of 1977, as amended (7

U.S.C. 2013(b)), as an alternative to food stamps for low-income Native Americans who, because they live on or near Indian reservations in sparsely populated areas, may not have convenient access to food stamp certification offices or authorized food stamp retailers. However, the current regulatory definition of "Indian tribal household" at 7 CFR 253.2(c) and 254.2(d) renders ineligible certain categories of such Native Americans.

The first category is comprised of households which lack a Native American adult, but which include Native American children. Although such households do not exist in large numbers, they reside in many of the areas adjacent to reservations (i.e., "near areas") which Indian Tribal Organizations or State agencies have chosen to serve. Native American children may be part of a household that lacks a Native American adult due, for example, to death of a parent or divorce. Also, Native American children may be living with non-Native American foster or adoptive parents. These children are not necessarily in any less need of the program than children living with Native American adults in near areas, who may participate. The definition of "Indian tribal household" in the FDPIR at 7 CFR 253.2(c) requires that all households residing in a near area have an adult Indian tribal member in order to participate. The definition in the FDPIHO at 7 CFR 254.2(d) also requires that all households have an adult Indian member in order to participate. Thus, Native American children in otherwise eligible households are denied access to both of these programs.

The second category excluded from participating applies only to FDPIR: Native American households, residing in near areas, which lack a member of a tribe that is represented by the ITO or State agency administering the program on the adjacent reservation. The definition of "Indian tribal household" at 7 CFR 253.2(c) excludes such households, in effect, due to the combination of their tribal affiliation and where they reside. They could be eligible if they lived on the reservation in question, or on or near the reservation of the tribe of which they are a member. The Department believes that exclusion of these Native Americans from program participation simply because they do not live on a reservation or near their tribe's reservation, is inequitable and counter to the intent of FDPIR. Their Native American identity and potential need for the program are in no way diminished by their current residence. In contrast, Native American tribal households residing in any program service area in Oklahoma may participate in FDPIHO regardless of their tribal affiliation.

In § 253.2(e) of the proposed rule published on October 20, 1987 (52 FR 39158), the Department proposed to amend the FDPIR definition of "Indian tribal household" to give ITOs and State agencies the option to serve a household which lacks a member of a tribe they represent, but which includes a member of another recognized Indian tribe. All 16 comments received on this proposed change supported it. During its 1992 annual meeting, the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR) also supported the proposal. In resolution 92–7, NAFDPIR supported the broadening of the current definition of "Indian tribal household" to include "any household in which at least one household member is recognized as an Indian." NAFDPIR believes that all Native Americans in near areas should be eligible to participate regardless of their tribal affiliation as has always been the case in FDPIHO service areas. The language in the proposed rule addressing this issue is therefore implemented in this interim rule with two clarifications.

First, the definition of "Indian tribal household" in § 253.2(c) is revised by changing "recognized by the appropriate ITO as a tribal member" to "recognized as a tribal member by any Indian tribe as defined in this part." This change in definition would make those households containing a member of an "Indian tribe" as defined in Section 253.2(d) eligible to apply for FDPIR without regard to whether the person is a member of a tribe represented by the ITO or State agency administering the program in the near area. Thus, based on the definition of "Indian tribe," any household containing a person belonging to any Indian tribe, band, or other organized Indian group on a reservation which is recognized as eligible for Federal programs and services provided to Indians, or which holds a treaty with a State government, would be eligible to receive FDPIR benefits if he/she also meets the income eligibility requirements. This same amendment is made to the definition of "Indian tribal household" in § 254.2(d) of the FDPIHO regulations. However, in the FDPIHO, income-eligible Native American households residing in any program service area in the State have always been permitted to participate regardless of their tribal affiliation. Therefore, this amendment as applied to FDPIHO constitutes a clarification only and not, as in the case of the FDPIR, a substantive change which affects program eligibility.

Second, § 253.6(b)(1) is changed to clarify that all households which pass the program means test, reside in near areas and include a Native American must be allowed to participate in the FDPIR, regardless of the Native American's specific tribal affiliation. Thus, if a household member can obtain documentation from his/her tribe of origin that he/she is recognized as a member of an "Indian tribe" as defined in § 253.2(d), the ITO or State agency administering the program in the near area must accept that recognition for purposes of program eligibility. The ITO or State agency itself has no discretion to decide which tribes it will recognize in the near area. It should be pointed out that the ITO or State agency also has no discretion to decide issues of tribal membership since each Indian tribe has always been responsible for defining its own members. Thus, for eligibility purposes, the ITO or State agency simply makes a determination as to whether or not an applicant household has official documentation of membership from its tribe of origin. If the tribe of origin is an "Indian tribe," as defined in § 253.2(d), the ITO or State agency must serve the household as long as it meets all other FDPIR eligibility requirements.

The October 20, 1987, proposed rule did not clearly propose to mandate that all households with Indian tribal members be eligible for program benefits in near areas. Rather, its thrust was to remove a regulatory barrier to participation of such households. Thus the language authorized ITOs and State agencies to serve such households. Upon further consideration of the issue, the Department has concluded that ITOs or State agencies themselves should not be in a position to impose barriers to participation based on the tribal affiliation of a member of a household residing in a near area. Therefore, this interim rule mandates that such households be served under the program if they are determined income-eligible, rather than permitting the administering agency to serve them at its discretion. Given the shift from allowing such households to be served in the proposed rule to mandating that they be served, the Department is publishing this rule as an interim regulation with provision for public comment.

Current FDPIR regulations do not clearly state that non-Native American households living on the reservation who meet the program means test are eligible to receive program benefits,

although this has always been the policy under which FDPIR has operated on all participating reservations. While the 1987 proposed rule did not specifically address this issue, this interim rule does so in order to formalize and clarify what has always been household eligibility policy and practice. Therefore, § 253.6(b)(1) is revised to clarify that all households living on the reservation, and meeting the program means test, are eligible to receive program benefits, even if they do not contain a Native American.

The 1987 proposed rule did not specifically propose to remove the FDPIR requirement that households living in a near area must include an adult Native American in order to be eligible for participation in FDPIR. However, in the preamble, the Department indicated that this suggestion had been made, summarized the reason for such a change, and solicited comments to determine how extensive this problem is and whether others believe that a change in the definition is necessary. Nineteen of the 20 comments received in response to this solicitation supported removal of the requirement. Accordingly, the definition of "Indian tribal household" in FDPIR at 7 CFR 253.2(c) in the interim rule reads as follows: "a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in this part." This same amendment is also made to the definition of "Indian tribal household" at 7 CFR 254.2(d). Since the requirement that the household include an adult Native American in order to be eligible also exists in FDPIHO, the change will have the same remedial effect in this program.

List of Subjects

7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 254

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 253 and 254 are amended as follows:

PART 253–ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for part 253 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027).

2. In Section 253.2, paragraph (c) is revised to read as follows:

§ 253.2 Definitions.

* * * * *

(c) *Indian tribal household* means a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in paragraph (d) of this section.

* * * * *

3. In § 253.6, the first sentence of paragraph (b)(1) is removed and four new sentences are added to read as follows:

§ 253.6 Eligibility of households.

* * * * *

(b) * * * (1) All households residing on a reservation on which the FDPIR operates shall be eligible to apply for program benefits on that reservation regardless of whether they include an Indian member. All Indian tribal households as defined in § 253.2(c) of this part which reside in near areas established under § 253.4(d) of this part shall be eligible to apply for program benefits. The ITO or State agency shall serve all income-eligible applicant households residing on reservations who apply for benefits, and all income-eligible applicant Indian tribal households residing in near areas. The ITO or State agency administering the program in a near area shall, for purposes of determining program eligibility, accept documentation from a household member's tribe of origin as proof of tribal membership. * * *

* * * * *

PART 254–ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA

1. The authority citation for part 254 continues to read as follows:

Authority: Pub.L. 97–98, sec. 1338; Pub.L. 95–113.

2. In § 254.2, paragraph (d) is revised to read as follows:

§ 254.2 Definitions.

* * * * *

(d) *Indian tribal household* means a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in § 253.2(d) of this title.

* * * * *

Dated: January 4, 1994.

George Braley,

Acting Administrator.

[FR Doc. 94–574 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV93–906–2 FR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Temporary Relaxation of Minimum Size Requirements for Texas Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes without change an interim final rule that temporarily relaxed the minimum size requirements for certain Texas grapefruit for the entire 1993–94 season. The Texas Valley Citrus Committee (committee) met July 15, 1993, and unanimously recommended this action. This rule is expected to help the Texas citrus industry successfully market the 1993–94 season grapefruit crop.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–2431; or Belinda G. Garza, McAllen Marketing Field Office, USDA/AMS, 1313 East Hackberry, McAllen, Texas 78501; telephone: 210–682–2833.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies,

unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(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 therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her 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 date of the entry of the ruling.

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 action 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. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 15 citrus handlers subject to regulation under the marketing order covering oranges and grapefruit grown in Texas, and about 750 producers of oranges and grapefruit in Texas. 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. The majority of these handlers and producers may be classified as small entities.

The committee, which administers the order locally, meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and other information, to determine whether modification, suspension, or termination of the handling regulation is needed.

The interim final rule was issued on October 18, 1993, with an effective date of October 25, 1993, and published in the **Federal Register** (58 FR 54925, October 25, 1993). The interim final rule provided a 30-day comment period ending November 24, 1993, and no comments were received.

The interim final rule revised paragraph (a)(4) of § 906.365 by temporarily relaxing the minimum size requirement to permit shipment of grapefruit measuring at least 3 5/16 inches in diameter (pack size 112) for the entire 1993–94 season ending July 31, 1994, provided such grapefruit grade at least U.S. No. 1.

This relaxation is expected to help the Texas citrus industry successfully market its 1993–94 season grapefruit crop and have a positive effect on producer returns. Permitting shipment of pack size 112 grapefruit grading at least U.S. No. 1 for the entire 1993–94 season will enable Texas grapefruit handlers to meet market needs and compete with similar sized grapefruit expected to be shipped from Florida. This action is based on the current and prospective crop and market conditions for Texas grapefruit. Fresh Texas grapefruit shipments began in mid-September this season.

The interim final rule also removed paragraph (c) of § 906.365. That paragraph set forth quality requirements for oranges and grapefruit which were in effect through February 15, 1992. Thus, the provisions in that paragraph were obsolete.

Texas grapefruit shipments to fresh markets in the United States, Canada, and Mexico are subject to handling requirements effective under this order. Exempt from such handling requirements are shipments made: (1) Within the production area in Texas; (2) in individually addressed gift packages aggregating not more than 500 pounds which are not for resale; (3) under the 400 pound minimum quantity exemption provision; and (4) for relief, charity, and home use. In addition, fruit shipped to approved processors located outside of the production area may be exempted from the handling requirements.

This final rule reflects the committee's and the Department's appraisal of the need to finalize the relaxed requirements set forth in the interim final rule. The Department believes that this action will have a beneficial impact on producers and handlers because it will permit 1993–94 season grapefruit shipments consistent with anticipated crop and market conditions. The application of handling requirements to Texas grapefruit over the years has been beneficial to the Texas citrus industry in marketing its crops.

Based on the above, 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, the information and recommendations submitted by the committee, and other information, it is found that the relaxation set forth below will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 906.365, which was published in the **Federal Register** at 58 FR 54925, October 25, 1993, is adopted as a final rule without change.

Dated: January 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–606 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Part 906

[Docket No. FV93–906–3FR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Revision of the Handling Requirements for Oranges and Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes without change an interim final rule which revised the handling requirements for Texas oranges and grapefruit to require handlers to ensure that an inspection certificate accompanies each shipment

of fruit when it is transported by motor vehicle, and that such inspection certificates are surrendered upon leaving the production area when requested by Texas Department of Agriculture (TDA) road guard station personnel designated as agents of the Texas Valley Citrus Committee (committee). This revision was designed to help the Texas citrus industry ensure that all fresh oranges and grapefruit are inspected prior to shipment from the production area.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Belinda Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682-2833; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456, telephone: (202) 720-2431.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 906 (7 CFR Part 906) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12788, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may 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 therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her 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 date of the entry of the ruling.

Pursuant to the 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. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 750 orange and grapefruit producers in Texas. 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. The majority of these handlers and producers may be classified as small entities.

The committee met on August 3, 1993, and unanimously recommended revising paragraph (a)(5) of § 906.365 to require handlers to ensure that an inspection certificate accompanies each shipment of fruit when it is transported by motor vehicle, and that such inspection certificates are surrendered upon leaving the production area when requested by Texas Department of Agriculture (TDA) road guard station personnel designated as agents of the committee. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for fruit regulated under the marketing order. Committee meetings are open to the public, and interested persons may express their views at these meetings.

The committee recommended this action after discussions with TDA road guard station personnel on the subject of operating road guard stations located on the major roads leading out of the production area for Texas oranges and grapefruit. TDA informed the committee that, heretofore, TDA road guard station personnel had not been authorized to require handlers to surrender a copy of their inspection certificates to them, when checking fruit being transported from the production area to determine if it had been inspected and certified as meeting order requirements. Requiring handlers to surrender a copy of their inspection certificates to the TDA will enable TDA personnel to determine whether the fruit meets order requirements, thereby helping ensure compliance with order provisions. The Department reviews committee recommendations and information, as well as information from other sources, to determine whether modification, suspension, or termination of the handling regulation is needed.

The interim final rule was issued on October 4, 1993, with an effective date of October 8, 1993, and published in the **Federal Register** (58 FR 52400, October 8, 1993). The interim final rule provided a 30-comment period ending November 8, 1993, and no comments were received.

The interim final rule amended § 906.365 by adding the following sentence at the end of paragraph (a)(5). "No handler may transport by motor vehicle or cause the transportation of any shipment of fruit for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto, and a copy of such inspection certificate is surrendered upon request to Texas Department of Agriculture Road Guard personnel as designated by the committee."

This final rule reflects the committee's and the Department's appraisal of the need to finalize the revision of handling requirements set forth in the interim final rule. The Department's view is that this action will have a beneficial impact on producers and handlers, since it will authorize TDA road guard station personnel to require surrender of inspection certificates upon leaving the production area.

Based on the above 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.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending part 906, which was published in the **Federal Register** at 58 FR 54200, October 8, 1993, is adopted as a final rule without change.

Dated: January 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–605 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Part 959

[Docket No. FV93–959–1IFR; Amendment 1]

South Texas Onions; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized administrative expenses for the South Texas Onion Committee (Committee) under M.O. No. 959. This interim final rule increases the level of authorized expenses and establishes an increased assessment rate to generate funds to pay those expenses. Authorization of this increased budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1993, through July 31, 1994. Comments received by February 10, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: 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, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1993–94 fiscal period, which began August 1, 1993, and ends July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(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 therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her 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.

Pursuant to the 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. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 47 producers of South Texas onions under this marketing order, and approximately 34 handlers. 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. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $80,000 for personnel, office, and compliance expenses were recommended in a mail vote completed August 4, 1993. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $80,000 were published in the **Federal Register** as an interim final rule September 28, 1993 (58 FR 50509). That interim final rule added § 959.234, authorizing expenses for the Committee, and provided that interested persons could file comments through October 28, 1993. No comments were filed.

The Committee subsequently met on November 9, 1993, and unanimously

recommended increases of $2,500 for personnel expenses and $125,000 for compliance activities in the recently approved 1993–94 budget. The compliance increase will provide for funds to operate road guard stations surrounding the production area. The Committee also unanimously recommended $210,000 in market development activities and $105,600 in production research. These expenditures represent increases over last year's budget of $65,000 for market development and $11,412 for production research. Under this amended budget, expense items for the 1993–94 fiscal period are as follows: $37,472 for personnel, $29,028 for office expenses, $141,000 for compliance activities, $210,000 for market development, and $105,600 for production research.

The initial 1994 budget, published on September 28, 1993, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of $0.10 per 50-pound container or equivalent of onions, $0.03 more than last year's assessment rate. This rate, when applied to anticipated shipments of approximately 5 million 50-pound containers or equivalents, will yield $500,000 in assessment income, which, along with $23,100 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of September 30, 1993, were $346,415, which is within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. 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.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to that taken for the 1992–93 fiscal period; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.234 is revised to read as follows:

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

§ 959.234 Expenses and assessment rate.

Expenses of $523,100 by the South Texas Onion Committee are authorized and an assessment rate of $0.10 per 50-pound container or equivalent of onions is established for the fiscal period ending July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: January 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–607 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Parts 966 and 984

[Docket Nos. FV93–966–2FIR, FV93–984–1FIR]

Expenses and Assessment Rates for Specified Marketing Orders (Florida Tomatoes and California Walnuts)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of two interim final rules that authorized expenditures and established assessment rates under Marketing Orders 966 and 984 for the 1993–94 fiscal period. Authorization of these budgets enables the Florida Tomato Committee and the Walnut Marketing Board (Committee and Board) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1993, through July 31, 1994.

FOR FURTHER INFORMATION CONTACT: 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; John R. Toth (M.O. 966), Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770; or Richard P. Van Diest (M.O. 984), California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida; and Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Florida tomatoes and California walnuts are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable tomatoes and walnuts handled during the 1993–94 fiscal period, which began August 1, 1993, and ends July 31, 1994. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(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 therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her 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.

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. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 250 producers of Florida tomatoes under Marketing Order 966, and approximately 50 handlers. Also, there are approximately 5,000 producers of California walnuts under Marketing Order 984, and approximately 65 handlers. 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. The majority of the producers and handlers covered under these orders may be classified as small entities.

The budgets of expenses for the 1993–94 fiscal period were prepared by the Committee and the Board, the agencies responsible for local administration of their respective orders, and submitted to the Department for approval. The members of the Florida Tomato Committee are producers. The members of the California Walnut Board are producers and handlers. They are familiar with the Committee's and Board's needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input into these processes.

The recommended assessment rates were derived by dividing anticipated Committee and Board expenses by expected respective shipments of Florida tomatoes and merchantable California walnuts. Because these rates will be applied to actual shipments of tomatoes and of certified merchantable walnuts, the assessment rates must be established at levels that will provide sufficient income to pay the Committee's and Board's expenses.

The Florida Tomato Committee met September 9, 1993, and unanimously recommended a 1993–94 budget of $2,682,000, which is $4,000 less than the previous year. Increases in expenditures, which include $6,250 for office rent, $200 for miscellaneous, and $4,000 for research expense, will be offset by decreases of $7,000 for office salaries and $7,450 for employees' retirement program. Major expense items include $276,000 for office salaries, $200,000 for research expense, and $2,000,000 for education and promotion expense.

The Committee also unanimously recommended an assessment rate of $0.04 per 25-pound container, the same as last year. This rate, when applied to anticipated shipments of 58,000,000 25-pound containers, will yield $2,320,000 in assessment income. This, along with $20,000 in interest and other income and $342,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1993–94 fiscal period were $1,349,348, which is within the maximum permitted by the order of one fiscal period's expenses.

The Walnut Marketing Board met September 10, 1993, and unanimously recommended a 1993–94 budget of $1,941,647, $69,551 more than the previous year. Increases include $4,511 for administrative salaries, $171 for general insurance, $200 for audit, $7,649 for group life, retirement, and medical plan, $835 for office salaries, $7,904 for office rent, $6,000 for office supplies and miscellaneous, $1,000 for telephone and FAX, $2,000 for equipment maintenance and warranties, $9,000 for furniture, fixtures, and automobiles, $7,450 for production research director, and the addition of a $43,000 acreage survey category. These increases will be partially offset by decreases of $300 for social security and hospital insurance taxes, $5,000 for domestic market research and development, and $14,869 for production research. Major expenses include $101,331 for administrative salaries, $40,771 for office salaries, $875,000 for domestic market research and development, $490,488 for production research, $91,068 for production research director, and $43,000 for a walnut acreage survey. A reserve for contingencies of $50,000 is also included in the 1993–94 budget.

The Board also unanimously recommended an assessment rate of $0.009 per kernelweight pound, $0.001 less than the previous year. This rate, when applied to anticipated shipments of 2,157,386 kernelweight pounds of merchantable walnuts, will yield $1,941,647 in assessment income, which will be adequate to cover budgeted expenses. Unexpended funds may be used temporarily during the first five months of the subsequent marketing year, but must be made available to the handlers from whom collected within that period.

Interim final rules were published in the **Federal Register** in October 27, 1993, for 7 CFR part 966 (58 FR 57719); and on October 28, 1993, for 7 CFR Part 984 (58 FR 57959). Those rules added § 966.231 and § 984.344 which authorized expenses, and established assessment rates for the Committee and Board. Those rules provided that interested persons could file comments through November 26, 1993, for 7 CFR part 966 and through November 29, 1993, for 7 CFR part 984. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing orders. 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.

It is found that the specified expenses for the marketing orders covered in this rulemaking are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses 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 and Board need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1993–94

fiscal periods for the programs began on August 1, 1993. The marketing orders require that the rates of assessment for the fiscal periods apply to all assessable tomatoes and walnuts handled during the fiscal periods. In addition, handlers are aware of these actions which were recommended by the Committee and Board at public meetings and published in the **Federal Register** as interim final rules.

List of Subjects

7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR parts 966 and 984 are amended as follows:

1. The authority citation for 7 CFR parts 966 and 984 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 966—TOMATOES GROWN IN FLORIDA

2. Accordingly, the interim rule adding § 966.231 which was published at 58 FR 57719 on October 27, 1993, is adopted as a final rule without change.

PART 984—WALNUTS GROWN IN CALIFORNIA

3. Accordingly, the interim rule adding § 984.344 which was published at 58 FR 57959 on October 28, 1993, is adopted as a final rule without change.

Dated: January 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–604 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, 223, 223a, 248, 264 and 292

[INS No. 1324–92]

RIN No. 1115–AC20

Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule streamlines evidence rules and the processes by which persons may apply for and receive certain immigration documents and benefits. The rule is necessary to improve service to the public and to streamline operations.

EFFECTIVE DATE: This rule is effective February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Aytes, Director, Service Center Operations, Immigration and Naturalization Service, 425 I Street, NW., room 4014, Washington, DC 20536, telephone (202) 514–3156.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service published a proposed rule on December 2, 1991 at 56 FR 61201 as part of a comprehensive initiative to simplify and streamline the filing and processing of applications and petitions for immigration benefits. This initiative has already led to a number of steps which have begun to significantly improve efficiency and the quality of service provided to the public.

A number of comments were received about this proposal. Many were prepared by a working group of interested organizations. The following sections discuss the comments and explain the revisions adopted.

Representation by Another Person

Several commenters opposed the proposed requirement that an applicant or petitioner sing Form G–28, Notice of Entry of Appearance as Attorney or Representative, to show that he or she authorized the representation. For example, one commenter argued that an attorney's indication that he or she represents someone should be accepted as "absolutely definitive evidence" since submission by an attorney where not so authorized would be a violation of his or her ethical and legal obligations, and would subject him or her to disciplinary action and a malpractice suit.

However, a number of other commenters within the industry supported the new requirement. Some pointed out that the form is not only used by attorneys. Others noted that requiring the signature can help combat the unauthorized practice of law. Still others felt that the signature would address potential Privacy Act concerns.

For the reasons given by those supporting the new requirement, as well a those enumerated in the proposed rule, this proposal has been retained. An applicant or petitioner must sign the Form G–28 to definitively indicate to the Service that he or she has authorized the person to represent him or her in the proceeding. The person submitting the Form G–28 must be authorized under 8 CFR part 292 to represent the applicant or petitioner. Where a Form G–28 is submitted that is not properly signed, the application or petition will be processed as if a Form G–28 had not been submitted.

Notification Procedures

Where an applicant or petitioner has an authorized representative, the Service now mails two copies of each written notice. One goes to the applicant or petitioner, and the other goes to the authorized representative. The proposed rule suggested sending only one notice in such a case, and sending it to the representative. This would have meant that the Service would communicate with the applicant or petitioner through his or her authorized representative if he or she had one.

The commenters pointed to past problems in representatives receiving their copy, and argued that separate notices should be continued as a safeguard. After review, the Service will therefore continue to send separate notices to the applicant or petitioner and his or her authorized representative.

Several commenters also asked that the Service begin sending copies of notices to anyone assisting an applicant or petitioner, and not simply to authorized representatives. However, while the Service cannot limit or control who can assist others in filling out and filing an application or petition, only a person who meets the criteria in 8 CFR parts 1 and 292 can act as the applicant or petitioner's authorized representative and submit a Form G–28. A person who does not meet these criteria cannot represent the applicant or petitioner, and cannot be notified of any action taken on the application or petition.

Several commenters opposed the proposed modification of when the Service would send a notice by certified mail. After review, this proposal has been withdrawn.

Filing

A number of commenters requested that additional filing instructions be included on forms to eliminate confusion about where to file. Last year the Service began to include such specific information on the new generation of application and petition forms. This process will continue as older versions of forms are replaced or eliminated.

Several commenters asked that application and petition forms be published for public comment since the

instructions have the effect of regulation. All form revisions are carefully reviewed to ensure they are consistent with regulations. In addition to informally circulating significant changes to forms for comment, the Service intends to begin to publish form revisions as required and as deemed necessary for effective communications. The Service is committed to revising forms on a more frequent basis to keep up with ever changing immigration laws and changes in procedures. The Service wants to assist people in learning about immigration benefits for which they may be eligible, and help them understand what is required to file a complete application. This will facilitate quicker processing and minimize the delays and additional processing costs associated with requests for more information or evidence.

As suggested by many commenters, language has been added to clarify that a child can file an application or petition for himself or herself, in addition to allowing a parent or legal guardian to file. Other commenters suggested that anyone be allowed to file such a petition, pointing to 8 CFR 101.6(b)(1), which permits such a broad group of persons to file petitions for juveniles dependent on a juvenile court in the United States. However, except for these unique circumstances, there is no valid reason to allow a person who has no legal authority over a child to assume the right to act in the child's behalf before the Service. Therefore, this suggestion has not been adopted.

The proposal to allow the filing of photocopies of documents with applications and petitions instead of originals was universally applauded as a significant step in streamlining filing procedures. However, one commenter asked whether each copy would need to be certified that it is exact and unaltered.

Evidence submitted in the context of an application or petition is part of that application or petition. See 8 CFR 270.1. By signing the application or petition form, the person certifies under penalty of perjury that the application or petition, and all evidence submitted with it, is true and correct. The rule has been clarified to indicate that a separate certification for each copy is not necessary.

Several commenters asked that the rule be revised so that in cases where an applicant or petitioner submits an original when he or she could have submitted a copy, the Service would be required to make the copy and return the original.

The Service recognizes that people need to retain original documents for their records. This was one of the primary reasons why the Service made the decision to accept photocopies. However, the Service processes over 4 million applications and petitions each year. In cases where a person chooses to submit originals instead of copies, the Service is not in a position to make the copies for him or her so the originals can be returned.

The proposed rule provided that where the Service determines a need to review the original of a document, the applicant or petitioner would have 30 days to submit the original document. Several commenters suggested that 30 days does not allow enough time, since people might not have the document and would have to get one from the issuing authority. They suggested a 60 or 90-day period instead.

The idea of allowing copies was proposed so applicants and petitioners can file a copy and keep the original, not so they can file a copy because they don't have an original. By filing a copy as part of their application or petition, they are attesting that the copy is true and correct. This would be problematic if they do not have an original. However, to minimize confusion and to standardize the various response periods provided in this rule, the final rule provides 12 weeks, without extension, for submission of an original document. If an applicant or petitioner does not submit the requested original document within that 12-week period, the application or petition will be denied for failure to provide the original.

Several commenters asked that the Service begin to accept copies and computer-generated versions of application and petition forms, and to allow filing by facsimile. The Service will accept photocopies and computer-generated versions that are *identical* to Service forms in all respects, including placement, perforations and fastener holes. We cannot accept facsimiles because they do not meet these requirements. It is essential that the forms not vary in any way from the original since the Service is introducing imaging systems and other systems to speed processing that depend on exact form specifications. The Service is also very interested in electronic filing as a way of speeding processing and reducing costs, and is researching various technologies that would allow such filing with fee transmittal.

Initial Evidence

Almost every commenter discussed the initial evidence rules, which proposed that an application or petition filed without the evidence required by the instructions on the application or petition form would be denied, but without prejudice to the later filing of a complete application or petition. A number of commenters agreed that the proposal would reduce the percentage of cases in which the Service has to ask for more evidence during the adjudications process, and thus review twice, and that this would help speed overall processing times. Several commenters noted that the additional explanations on the new application and petition forms of what evidence is required will help people to file complete applications and petitions. Others supported threshold standards for filing. However, a number of commenters had serious reservations about the initial evidence requirements described in the proposed rule.

Several commenters suggested that the Service should help applicants and petitioners correct cases that lack the required initial evidence rather than require them to start over and file again. Others suggested the proposed rule did not sufficiently recognize that some people may unintentionally fail to file the required initial evidence. A few suggested that while the Service should deny clearly deficient cases, it should not deny "marginal" cases, but should give those people a chance to correct their cases.

One commenter suggested that the Service continue to add evidence explanations to its new forms, but only monitor the effect and not implement procedures to deny incomplete applications. Another commenter, who opposed the entire concept of threshold requirements, asserted that allowing the Service to deny an application or petition for lack of initial evidence would give it "unbridled" discretion.

Initial evidence is the evidence necessary to establish a basis for filing and to allow the Service to process the average case through to completion the first time. As indicated by many commenters, it is in the best interest of applicants and petitioners, as well as in the interest of the Service, that an application or petition be complete when first filed so a decision can be entered quickly and correctly, without delays caused by having to go back and ask an applicant or petitioner for more evidence.

The initial evidence explanations included in revised application and petition forms are designed to help people know what types of basic evidence they should always submit with their application or petition. The explanations also clarify statutory and

regulatory eligibility criteria by translating them into more concrete terms. The question here is what the Service should do when someone files without the required threshold evidence.

The most basic issues in processing an application or petition for an immigration benefit are determining eligibility for the benefit, and treating all applicants and petitioners fairly and equitably. Among other things, this means using processing systems that ensure that cases are not processed in a way that enables one applicant or petitioner to derive an unfair advantage over another applying for the same benefit. For example, this means ensuring that priority dates for immigration and case processing dates are accorded in ways that do not encourage a person to file an incomplete application as a means of stepping in line in front of someone else who waits to obtain all the necessary evidence before filing. It also means establishing processing parameters to minimize instances where the Service has to handle repeatedly an application because basic documents are missing. This increases average processing time, and raises costs which are transferred to all applicants through filing fees.

However, the Service recognizes that these processes must operate in an environment in which a significant number of applicants and petitioners are unfamiliar with the English language and government requirements. The Service's goal is to recognize the needs of the population we serve while setting processing parameters that allow the agency to process applications quickly, correctly and fairly.

In the past, most applications were submitted in person at a local Service office. This provided an opportunity to review the application, and not accept it at that time if it lacked necessary evidence. However, this has led to occasions where discrepancies in local acceptance standards have been alleged. In order to make filing easier as the volume of applications has grown, and to make processing more consistent, the Service has moved towards a mail-in process. Since advance review is not possible in such a situation, there must be clear guidelines for handling cases filed without necessary evidence.

The Service has revised the initial evidence process as a result of the comments received. In general, the Service will not deny a case for lack of initial evidence. An application or petition will be reviewed after fee receipting. If required initial evidence is missing and there is no evidence of ineligibility in the record, the applicant or petitioner will be notified and given 12 weeks from the date of the notice, without extension, to submit the missing initial evidence. However, if the application is pre-screened by INS prior to its submission, such as in a situation where the person files the application in person, and the person insists on filing the application even though necessary initial evidence is missing, the case shall be denied for lack of required initial evidence.

This rule does require that where the Service requests evidence after filing, it must be submitted in one response. In addition, as requested by a commenter, it clarifies that a case that is missing initial evidence will not result in the loss of its priority date until a final decision is made.

This revised process encourages applicants and petitioners to obtain the necessary threshold evidence before filing so that their case can be processed in order and without delay. However, it also allows people who fail to file this threshold evidence a limited period to submit the missing evidence. A time limit of 12 weeks was set because while the Service wants to afford people an opportunity to correct a filing deficiency, we must balance that with ensuring that the process does not encourage people to file before they have a complete application or petition.

If an applicant or petitioner does not submit the missing initial evidence within the time limit, the application or petition will be automatically denied for lack of initial evidence. While the rule clarifies that an applicant or petitioner may immediately refile after such a denial, it should be noted that if the subsequent case is filed without the required initial evidence, it may be denied without a grace period.

While this process will normally be sufficient, there are situations where a person's immediate status in the United States hinges on the application or petition, or he or she becomes entitled to a benefit because the case is pending. For example, a person who files for adjustment of status would in certain instances be able to obtain an advance parole to travel based on the pending application. An applicant for an employment authorization document may be entitled to interim employment authorization because the Service cannot make a decision within a certain period. Applying the general process outlined above in such situations would allow a person to obtain interim benefits based on an incomplete application or petition while the Service waits for him or her to submit the necessary initial evidence, or because he or she asks that an interview be rescheduled, delaying processing.

The filing of an application or petition without the required initial evidence, or asking that a case be rescheduled, effectively hampers our ability to make a definitive determination of eligibility. An applicant or petitioner may not be allowed to either inadvertently or intentionally hamper the Service's ability to render a decision and as a result gain a potential or actual benefit. Therefore, the Service considers processing time for any application or petition to refer to time unhampered by the applicant or petitioner's action or lack of required action. This means there is nothing under the applicant or petitioner's control that hampers our ability to make a final decision.

Under the process outlined earlier, filing an application or petition without required initial evidence hampers the Service's ability to render a final decision. Similarly, requesting a scheduled interview be rescheduled will delay full adjudication of a request for benefits, and will require the Service to duplicate several processing and review steps. The process must balance the need to ensure that persons do not receive undue interim benefits with the need to ensure that any applicable statutory or regulatory processing timeframes are adhered to once we are no longer hampered from making a decision.

Accordingly, in such circumstances the processing clock will stop with respect to any time limits for adjudicating the request for Service action at the time the Service sends a notice for initial evidence, and it will start over at the time the Service receives the evidence. Similarly, the processing clock will start over when the Service receives a request to reschedule an interview. The clock stops because the lack of required initial evidence or request for rescheduling hampers the Service's ability to make a final decision. It starts over again because to merely have it resume would effectively shorten the Service's processing window because we have to duplicate several processing and review steps because the application or petition was not complete when submitted or because we were asked to reschedule the interview. Having the clock start over also serves to encourage the filing of complete applications, which, as indicated above, is in the legitimate interests of all applicants and petitioners as well as in the legitimate interest of the Service. However, this process also preserves the processing clock concept because it does not

suspend the clock indefinitely until we can resume processing.

Since the Service is hampered from making a final decision, interim benefits will not be granted based on a case held in suspense for the submission of requested initial evidence, except that the Service will normally allow the applicant or person the petition is for to remain in the country while an application or petition to extend or obtain status while it is pending. In addition, employment authorization previously accorded based on the same status and employment as that requested in the current application or petition may continue uninterrupted as provided in 8 CFR 274a.12(b)(20) notwithstanding the case being held in suspense for the submission of necessary initial evidence. The Service of course reserves the right to pursue other actions to seek the removal of persons notwithstanding a pending application where required, such as in cases involving fraud or clearly frivolous applications.

This rule also provides for denial where evidence submitted later does not establish eligibility at the time of filing. The evidence must establish that the applicant or petitioner was eligible for the benefit when the application or petition was filed. As suggested, the Service will monitor the rate of cases in which initial evidence is not submitted at the time of filing as a way of determining how we can further clarify form instructions, and to determine if we need to implement other changes, including those originally proposed in the rule, in order to ensure equity and fairness to all applicants and petitioners.

Additional Evidence, Documents and Translations

At times, an application or petition will meet threshold evidence requirements, but the evidence submitted, or other evidence available, rises additional questions. In such instances the Service usually provides the applicant or petitioner an opportunity to respond or to submit additional evidence about the points in question in support of the claim. Several commenters asked that the Service extend the 60-day period provided for response, as least where good cause was demonstrated.

The rule has been revised to provide 12 weeks for such submissions. However, waiting for the applicant or petitioner to respond hampers the Service's ability to make a final decision. Since the applicant has already met the threshold evidence requirements, the processing clock will merely stop as of the date of the request. It will resume at the point where it stopped when the Service receives the requested evidence or a request for a decision based on the evidence submitted.

One commenter asserted that the Service should eliminate the distinction between primary and secondary evidence, and accept any type of credible document with an application or petition. However, historically there have been serious problems establishing the reliability of many kinds of documents. Further, it is important in judging a claim to know whether documents that should normally exist actually do.

For example, a woman who files a petition claiming someone is her adult son. There is no birth certificate or other civil or religious documents from around the time of the birth to support the claim, but she does have several documents issued years later that suggest that he is her son. After analysis the Service may accept the claim, but the fact the birth certificate and other documents dating from the birth do not exist is important to that analysis. We could not adequately review the case if the record was silent about the types of documents that commonly exist. Without evidentiary guidelines, the Service also would not know whether she merely forgot to attach them or whether they did not exist. This would mean the Service would have to go back and ask, delaying processing.

However, as requested by several commenters, the Service has clarified the distinction between primary evidence, secondary evidence and affidavits. The Service has also clarified the rule to indicate that a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. The Service has also revised the rule as requested to allow a person to file evidence showing that repeated good faith attempts were made to obtain a required document or certification of unavailability along with less definitive evidence.

The above changes will also apply to secondary evidence. However, because secondary evidence and affidavits are inherently less reliable and, consequently, have less probative value than primary evidence, such secondary evidence and affidavits must overcome the fact that more probative primary evidence is unavailable, affidavits must overcome the absence of all other more probative forms of evidence that would normally be available. If the Service concludes that primary or secondary evidence should be available, the applicant or petitioner will be asked to obtain it.

Several commenters requested that the rule be revised to only require a translation of the relevant portion of a foreign language document instead of a full translation. However, only requiring an extract leaves to the applicant or petitioner and the translator the judgment of what is germane. The Service has found that in many instances the applicant or petitioner's determination of what is germane is not consistent with the Service's. A full translation is necessary for us to fully analyze documents submitted.

Withdrawals, Denials, Appeals and Motions

One commenter opposed the proposed bar to retracting a withdrawal, asserting that an applicant or petitioner may have a legitimate reason for again changing his or her mind. The rule does not question the legitimacy of a change of heart or mind, nevertheless, under the rule, a withdrawal is considered definitive. An applicant or petitioner who withdraws a case and later changes his or her mind again may refile a new application or petition. the Service has clarified this in the rule, and has also clarified that a petitioner may withdraw an approved petition until such time as the beneficiary has been admitted or has adjusted status.

The proposed rule would allow a motion to reopen a case denied for lack of initial evidence, but would preclude a subsequent administrative appeal. One commenter suggested that an appeal should be allowed. However, since the issue is simply whether a stipulated document was or was not submitted, the avenue of a motion is a sufficient safeguard.

Several commenters asked that the proposed rule allowing 30 days to file a motion to reopen or a motion to reconsider be extended to 60 days to give applicants and petitioners time to retain legal counsel and file a response. However, the 30-day period provided is equivalent to that for filing an appeal, which itself was extended several years ago, and thus will not be changed.

One commenter suggested that the proposed rule set the level of proof too high for motions to reopen. The provision has accordingly been revised to clarify the facts that must be demonstrated in the motion. Another commenter asked that the Service use this rulemaking to make all decisions of the Board of Immigration Appeals available to the public. The concern will be referred to the Executive Office of

Immigration Review for future consideration.

Change of Status, Extension of Stay and Use of Form I–94

The proposed rule provided that where a person demonstrated eligibility for an extension or change of status, the application could be approved at the discretion of the Service. One commenter asserted that discretion should not enter into the decision. However, sections 214 and 248 of the Immigration and Nationality Act give the Service discretionary authority to approve or deny applications for extension or change of status. In addition, a decision on this type of application, and on most other types of applications and petitions, is rarely a simple matter. An alien is not automatically entitled to these types of benefits. The decision to grant a change of status or extension of stay involves weighing various factors, and a judgement by the deciding official of whether to grant the benefit.

In response to a number of comments, this rule allows a worker's dependents to be included in a company's petition where there is only one worker in the petition. This provision will go into effect at the time the form providing for this process becomes available.

A person was previously required to submit his or her original Form I–94, Nonimmigrant Arrival-Departure Record, with an application to extend or change nonimmigrant status so the Service could annotate the Form I–94 with its decision on the application. The rule proposed altering this process in certain cases to permit the filing of a copy of the Form I–94. The notice of decision would serve as evidence of any decision and alteration to the terms of the person's status.

Several commenters supported this idea, suggesting it will eliminate problems with aliens not having evidence of status while their application is pending, and that it will streamline filing. In fact, several asked why it was not being extended to all such applications. However, several others opposed it, arguing that the change would create yet another document employers would have to deal with, further confusing them as to who is authorized to work.

The Service is moving to limit to two the number of INS documents employers are required to examine when a person applies for employment: (a) Form I–551, Alien Registration Card, issued to permanent residents; and (b) Form I–688B, Employment Authorization Document, also called an EAD, issued to persons who can accept employment in the open labor market.

However, after determining that an alien is not otherwise authorized to work, an employer may file a petition to temporarily employ him or her as a nonimmigrant. If the Service approves the petition, we notify the employer. If the alien is not first required to be admitted in the status, and the Service's approval authorizes immediate employment, we include this in the notice. The approval of such a petition does not authorize the alien to work elsewhere, but only for the employer under the terms and conditions of the approved petition. An EAD is not necessary in such a context since the employer has already determined the alien cannot work unless we approve its petition.

Previously when sending a notice that we had approved such a petition we also made a handwritten notation on the alien's Form I–94. The computer system we are installing to improve service will allow us to replace such handwritten notes with a computer generated notice that can be confirmed by the system. Therefore, the rulemaking proposed simplifying filing requirements and allowing aliens to keep their existing Form I–94 as evidence of their status while their new application is pending.

To eliminate any confusion, we are revising our approval notice to the employer to include a replacement Form I–94 that the employer can review and then give to the employee. In the interim the original Form I–94 must be filed with the petition for annotation. The Service will publish a notice in the **Federal Register** when the revised approval notice is implemented, at which time only a copy of the individual's I–94 will be required.

Reentry permits, refugee travel documents and advance paroles

Several commenters stated that applicants for asylum should be eligible for a refugee travel document. However, an applicant for asylum is an applicant for a benefit, and does not acquire any status or travel authorization merely as a result of having submitted the asylum application. It would be inappropriate to grant a travel document until a decision is made that the person is eligible for asylum. If an asylum applicant chooses to leave the United States, he or she may apply abroad for refugee status to reenter.

A commenter requested clarification that a refugee travel document may be accepted in lieu of a passport as well as a visa. The final rule clearly refers to the document as a travel document issued pursuant to article 28 of the United Nations Convention of July 28, 1951 for the purpose of travel.

The Service received many comments regarding advance parole. Although this subject needs to be addressed, the Service has decided to defer this action to a separate rulemaking.

A number of commenters addressed the reentry permit provisions of the proposed rule. Most suggested that the proposed provision precluding issuance to most aliens who have been abroad for more than 4 of the last 5 years since becoming a permanent resident was too limiting, did not provide for exceptions, and did not recognize the needs of permanent residents who are employed by multi-national companies on extended assignments abroad.

As was explained in the proposed rule, the Service's intent was to minimize the current broad review by the Government of all the circumstances surrounding a person's absence, and instead focus on the simpler issue of how long he or she has been gone. The language of the rule was written in such a way that a person is able to stay abroad for almost 6 years, with only short trips back to the United States every 2 years, before he or she would become ineligible for a reentry permit. This standard would have meant some people would not have received a permit, but, again, this ineligibility in and of itself would not have jeopardized permanent resident status.

We believe a clear standard is preferable to an abstract one in which the Government must look at the person's intent, location of domiciles and assets, employment circumstances, and other circumstances of his or her life and make a discretionary decision of whether to issue a permit.

However, upon further consideration, the Service recognizes that there may be those who will be unable to obtain a travel document other than the reentry permit. Therefore, the rule will be modified so that rather than precluding the issuance of the document, any such further issuance will be limited to a validity of one year. This simply means that a person who remains abroad for more than the specified period will thereafter have to return annually to file an application for a reentry permit instead of every 2 years.

Also, based on the comments received, the Service has revised the list of exceptions to the time limit rule to include permanent residents defined in 8 CFR 211.1(b)(1)(i)(B), 211.1(b)(1)(ii) or 211.1(b)(4), as well as persons employed by a public or national organization of which the United States is a member by treaty or statute, and their dependents. The rule also exempts professional

athletes who compete in the United States and worldwide.

Other issues

Several commenters suggested that the Service issue to any applicant for a replacement alien registration card an interim work authorization document while it considers his or her application. However, this would encourage people to file merely to get a document to enter the labor market. Under such circumstances, it would be inappropriate for the Service to give a benefit before having an opportunity to determine if the person is actually eligible for it. Instead, the Service is taking steps to accelerate the processing of this type of application in order to deliver a replacement card more rapidly to those who are eligible.

Several commenters pointed to the situation of permanent residents in exclusion or deportation proceedings, and suggested that the rule should clearly prohibit the confiscation of the permanent resident alien registration card until a final order of deportation or exclusion is entered. The rule has been clarified to indicate that such a person is entitled to evidence of permanent resident status until a final order of deportation or exclusion is entered.

As requested by several commenters, the Service has modified the proposed rule to clearly allow for the concurrent or subsequent filing of an application for further action on an application or petition, and to provide flexibility to incorporate additional, similar processes by revising the form. The Service has also made minor editorial changes in the rule for clarity.

One commenter suggested that to further streamline processing, the Service should require applicants to mail all adjustment of status applications to the INS Service Centers, and eliminate the mandatory interview requirement. The Service has since addressed this issue in a separate rulemaking, which was published in the **Federal Register** on November 2, 1992 at 57 FR 49374–49375.

It should be noted that most of the § 264 items addressed in the proposed rule were published in the **Federal Register** on September 20, 1993 at 58 FR 48775–48780, and therefore are not included in this rule.

In addressing filing requirements and procedures, this rule also clarifies the effect of a "bounced" check or other filing fee remittance being returned as not payable.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This regulation merely sets forth evidentiary rules and processes by which persons may apply for and receive certain immigration benefits and does not alter substantive requirements. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 223

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 223a

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

Accordingly, under authority 8 U.S.C. 1101, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 522, 522a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In section 103.2 paragraph (a) is revised to read as follows:

§ 103.2 Applications, petitions, and other documents.

(a) *Filing.* (1) *General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7. Such fees are non-refundable and, except as otherwise provided in this chapter, must be paid when the application or petition is filed.

(2) *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

(3) *Representation.* An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter. A beneficiary of a petition is not a recognized party in such a proceeding. An application or petition presented in person by someone who is not the applicant or petitioner, or his or her representative as defined in this paragraph, shall be treated as if received through the mail, and the person advised that the applicant or petitioner, and his or her representative, will be notified of the decision. Where a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted.

(4) *Oath.* Any required oath may be administered by an immigration officer or person generally authorized to administer oaths, including persons so authorized by Article 136 of the Uniform Code of Military Justice.

(5) *Translation of name.* If a document has been executed in an anglicized version of a name, the native form of the name may also be required.

(6) *Where to file.* Except as otherwise provided in this chapter, an application or petition should be filed with the INS office or Service Center with jurisdiction over the application or petition and the place of residence of the applicant or petitioner as indicated in the instructions with the respective form.

(7) *Receipt date.* (i) *General.* An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as filed when so stamped, if it is properly signed and executed and the required fee is attached or a fee waiver is granted. An application which is not properly signed or is submitted with the wrong fee shall be rejected as improperly filed. Rejected applications, and ones in which the check or other financial instrument is returned as not payable, will not retain a filing date. An application or petition taken to a local Service office for the completion of biometric information prior to filing at a Service Center shall be considered received when physically received at the appropriate Service Center.

(ii) *Non-payment.* If a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter shall be notified and requested to immediately pay the filing fee and associated service charge within 14 days, without extension. If the application or petition is pending and these charges are not paid, it shall be rejected as improperly filed. If it was already approved, and these charges are not paid, it shall be automatically revoked because it was improperly filed. If it was already denied, revoked, or abandoned, that decision will not be affected by the non-payment of the filing fee. A new fee will be required with any new application or petition. Any fee and service charges collected as the result of collection activities or legal action on the prior application or petition shall be used to cover the cost of the previous rejection, revocation, or other action.

* * * * *

3. Section 103.2 is amended by:

a. Revising the heading for paragraph (b) and paragraph (b)(1);

b. Redesignating existing paragraph (b)(2) as paragraph (b)(18), and revising the paragraph heading to read "*Withholding adjudication.*";

c. Redesignating paragraph (b)(3) as paragraph (b)(16), and revising in paragraph (b)(16)(i), the reference "(b)(3)(ii), (iii) and (iv)" to read: "(b)(16) (ii), (iii) and (iv)"; and revising in paragraph (b)(16)(ii), the reference "(b)(3)(iv)" to read: "(b)(16)(iv)"; and by

d. Adding new paragraphs (b)(2) through (b)(15), (b)(17), and (b)(19), to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) *Evidence and processing.* (1) *General.* An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form. Any evidence submitted is considered part of the relating application or petition.

(2) *Submitting secondary evidence and affidavits.* (i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where the Service finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

(3) *Translations.* Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

(4) *Submitting copies of documents.* Application and petition forms must be submitted in the original. Forms and documents issued to support an application or petition, such as labor certifications, Form IAP–66, medical examinations, affidavits, formal consultations, and other statements, must be submitted in the original unless previously filed with the Service. When submission is required, expired Service documents must be submitted in the original, as must Service documents required to be annotated to indicate the decision. In all other instances, unless the relevant regulations or instructions specifically require that an original document be filed with an application or petition, an ordinary legible photocopy may be submitted. Original documents submitted when not required will remain a part of the record, even if the submission was not required.

(5) *Request for an original document.* Where a copy of a document is submitted with an application or petition, the Service may at any time require that the original document be submitted for review. If the requested original, other than one issued by the Service, is not submitted within 12 weeks, the petition or application shall be denied or revoked. There shall be no appeal from a denial or revocation based on the failure to submit an original document upon the request of the Service to substantiate a previously submitted copy. Further, an applicant or petitioner may not move to reopen or reconsider the proceeding based on the subsequent availability of the document. An original document submitted pursuant to a Service request shall be returned to the petitioner or applicant when no longer required.

(6) *Withdrawal.* An applicant or petitioner may withdraw an application

or petition at any time until a decision is issued by the Service or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.

(7) *Testimony.* The Service may require the taking of testimony, and may direct any necessary investigation. When a statement is taken from and signed by a person, he or she shall, upon request, be given a copy without fee. Any allegations made subsequent to filing an application or petition which are in addition to, or in substitution for, those originally made, shall be filed in the same manner as the original application, petition, or document, and acknowledged under oath thereon.

(8) *Request for evidence.* If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence. If the application or petition was pre-screened by the Service prior to filing and was filed even though the applicant or petitioner was informed that the required initial evidence was missing, the application or petition shall be denied for failure to contain the necessary evidence. Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence, including blood tests. In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted. Within this period the applicant or petitioner may:

(i) Submit all the requested initial or additional evidence;

(ii) Submit some or none of the requested additional evidence and ask for a decision based on the record; or

(iii) Withdraw the application or petition.

(9) *Request for appearance.* An applicant, a petitioner, and/or a beneficiary may be required to appear for an interview. A petitioner shall also be notified when an interview notice is mailed or issued to a beneficiary. The person may appear as requested by the Service or, prior to the date and time of the interview:

(i) The person to be interviewed may, for good cause, request that the interview be rescheduled; or

(ii) The applicant or petitioner may withdraw the application or petition.

(10) *Effect of a request for initial or additional evidence or for interview rescheduling.* (i) *Effect on processing.* The priority date of a properly filed petition shall not be affected by a request for missing initial evidence or request for other evidence. If an application or petition is missing required initial evidence, or an applicant, petitioner, or beneficiary requests that an interview be rescheduled, any time period imposed on Service processing will start over from the date of receipt of the required initial evidence or request for interview rescheduling. If the Service requests that the applicant or petitioner submit additional evidence or respond to other than a request for initial evidence, any time limitation imposed on the Service for processing will be suspended as of the date of the request. It will resume at the same point where it stopped when the Service receives the requested evidence or response, or a request for a decision based on the evidence submitted.

(ii) *Effect on interim benefits.* Interim benefits will not be granted based on an application or petition held in suspense for the submission of requested initial evidence, except that the applicant or beneficiary will normally be allowed to remain while an application or petition to extend or obtain status while in the United States is pending. The Service may choose to pursue other actions to seek removal of a person notwithstanding the pending application. Employment authorization previously accorded based on the same status and employment as that requested in the current application or petition may continue uninterrupted as provided in 8 CFR 274a.12(b)(20) during the suspense period.

(11) *Submission of evidence in response to a Service request.* All evidence submitted in response to a Service request must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record.

(12) *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. An application or petition shall be denied where any application or petition upon which it was based was filed subsequently.

(13) *Effect of failure to respond to a request for evidence or appearance.* If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. Except as provided in § 335.6 of this chapter, if a person requested to appear for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied.

(14) *Effect of request for decision.* When an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. Failure to appear for a required interview, or to give required testimony, shall result in the denial of any related application or petition.

(15) *Effect of withdrawal or denial due to abandonment.* The Service's acknowledgement of a withdrawal may not be appealed. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of a withdrawn or abandoned application or petition may not be applied to a later application petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.

* * * * *

(17) *Verifying claimed permanent resident status.* The status of an applicant or petitioner who claims that he or she is a permanent resident of the United States will be verified from official records of the Service. The term official records, as used herein, includes Service files, arrival manifests, arrival records, Service index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1, 1929, Alien Registration Receipt Cards Forms AR–3, AR–103, I–151 or I–551), passports, and

reentry permits. To constitute an official record a Service index card must bear a designated immigrant visa symbol and must have been prepared by an authorized official of the Service in the course of processing immigrant admissions or adjustments to permanent resident status. Other cards, certificates, declarations, permits, and passports must have been issued or endorsed by the Service to show admission for permanent residence. Except as otherwise provided in 8 CFR part 101, and in the absence of countervailing evidence, such official records shall be regarded as establishing lawful admission for permanent residence.

* * * * *

(19) *Notification.* An applicant or petitioner shall be sent a written decision on his or her application, petition, motion, or appeal. Where the applicant or petitioner has authorized representation pursuant to § 103.2(a), that representative shall also be notified. Documents produced after an approval notice is sent, such as an alien registration card, shall be mailed directly to the applicant or petitioner.

* * * * *

4. Section 103.5 is amended by:

a. Revising, in paragraph (a)(1)(i), the reference to "part 242 of this chapter", to read: "8 CFR parts 210, 242, or 245a";

b. Adding, to the end of paragraph (a)(1)(i), a new sentence;

c. Revising the first sentence in paragraph (a)(1)(iii) introductory text;

d. Revising paragraph (a)(1)(iii)(C);

e. Revising paragraphs (a)(2), (a)(3), and (a)(4); and by

f. Adding a new paragraph (a)(8), to read as follows:

§ 103.5 Reopening or reconsideration.

(a) * * *

(1) * * *

(i) * * * Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

* * * * *

(iii) *Filing Requirements*—A motion shall be submitted on Form I–290A, and may be accompanied by a brief. * * *

* * * * *

(C) Accompanied by a nonrefundable fee as set forth in § 103.7:

* * * * *

(2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

(i) The requested evidence was not material to the issue of eligibility;

(ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or

(iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

(3) *Requirements for motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed. Where a motion to reopen is granted, the proceeding shall be reopened. The notice and any favorable decision may be combined.

* * * * *

(8) *Treating an appeal as a motion.* The official who denied an application or petition may treat the appeal from that decision as a motion for the purpose of granting the motion.

* * * * *

5. A new § 103.5b is added to read as follows:

§ 103.5b Application for further action on an approved application or petition.

(a) *General.* An application for further action on an approved application or petition must be filed on Form I–824 by the applicant or petitioner who filed the original application or petition. It must be filed with the fee required in § 103.7 and the initial evidence required on the application form. Form I–824 may accompany the original application or petition, or may be filed after the approval of the original application or petition.

(b) *Requested actions.* A person whose application was approved may, during its validity period, apply for a duplicate approval notice or any other action specifically provided for on the form. A petitioner whose petition was approved may, during the validity of the petition, request that the Service:

(1) Issue a duplicate approval notice;

(2) Notify another consulate of the approved petition;

(3) Notify a consulate of the person's adjustment of status for the purpose of visa issuance to dependents; or

(4) Take any other action specifically provided for on the form.

(c) *Processing.* The application shall be approved if the Service determines the applicant has fully demonstrated eligibility for the requested action. There is no appeal from the denial of an application filed on Form I–824.

PART 214—NONIMMIGRANT CLASSES

6. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

7. Section 214.1 is amended by:

a. Redesignating the text of paragraph (a) as paragraph (a)(3) and adding the paragraph heading;

b. Adding paragraphs (a)(1) and (a)(2);

c. Revising paragraph (c); and by

d. Revising paragraph (d), to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) *General.* (1) *Nonimmigrant classes.* For the purpose of administering the nonimmigrant provisions of the Act, the following administrative subclassifications of nonimmigrant classifications as defined in section 101(a)(15) of the Act are established:

(i) Section 101(a)(15)(B) is divided into (B)(i) for visitors for business and (B)(ii) for visitors for pleasure;

(ii) Section 101(a)(15)(C) is divided into (C)(i) for aliens who are not diplomats and are in transit through the United States; (C)(ii) for aliens in transit to and from the United Nations Headquarters District; and (C)(iii) for alien diplomats in transit through the United States;

(iii) Section 101(a)(15)(H) is divided to create an (H)(iv) subclassification for the spouse and children of a nonimmigrant classified under section 101(a)(15) (H) (i), (ii), or (iii);

(iv) Section 101(a)(15)(J) is divided into (J)(i) for principal aliens and (J)(ii) for such alien's spouse and children;

(v) Section 101(a)(15)(K) is divided into (K)(i) for the fiance(e) and (K)(ii) for the fiance(e)'s children; and

(vi) Section 101(a)(15)(L) is divided into (L)(i) for principal aliens and (L)(ii) for such alien's spouse and children.

(2) *Classification designations.* For the purpose of this chapter the following nonimmigrant designations are established. The designation in the second column may be used to refer to the appropriate nonimmigrant classification.

Section	Designation
101(a)(15)(A)(i)	A–1.
101(a)(15)(A)(ii)	A–2.
101(a)(15)(A)(iii)	A–3.
101(a)(15)(B)(i)	B–1.
101(a)(15)(B)(ii)	B–2.
101(a)(15)(C)(i)	C–1.
101(a)(15)(C)(ii)	C–2.
101(a)(15)(C)(iii)	C–3.
101(a)(15)(D)(i)	D–1.
101(a)(15)(D)(ii)	D–2.
101(a)(15)(E)(i)	E–1.
101(a)(15)(E)(ii)	E–2.
101(a)(15)(F)(i)	F–1.
101(a)(15)(F)(ii)	F–2.
101(a)(15)(G)(i)	G–1.
101(a)(15)(G)(ii)	G–2.
101(a)(15)(G)(iii)	G–3.
101(a)(15)(G)(iv)	G–4.
101(a)(15)(g)(v)	G–5.
101(a)(15)(H)(i)(A)	H–1A.
101(a)(15)(H)(i)(B)	H–1B.
101(a)(15)(H)(ii)(A)	H–2A.
101(a)(15)(H)(ii)(B)	H–2B.
101(a)(15)(H)(iii)	H–3.
101(a)(15)(H)(iv)	H–4.
101(a)(15)(I)	I.
101(a)(15)(J)(i)	J–1.
101(a)(15)(J)(ii)	J–2.
101(a)(15)(K)(i)	K–1.
101(a)(15)(K)(ii)	K–2.
101(a)(15)(L)(i)	L–1.
101(a)(15)(L)(ii)	L–2.
101(a)(15)(M)(i)	M–1.
101(a)(15)(M)(ii)	M–2.
101(a)(15)(N)(i)	N–8.
101(a)(15)(N)(ii)	N–9.
101(a)(15)(O)(i)	O–1.
101(a)(15)(O)(ii)	O–2.
101(a)(15)(O)(iii)	O–3.
101(a)(15)(P)(i)	P–1.
101(a)(15)(P)(ii)	P–2.
101(a)(15)(P)(iii)	P–3.
101(a)(15)(P)(iv)	P–4.
101(a)(15)(Q)	Q.
101(a)(15)(R)(i)	R–1.
101(a)(15)(R)(ii)	R–2.
Cdn FTA, Professional	TC.
NAFTA, Principal	TN.
NAFTA, Dependent	TD.
Visa Waiver, Business	WB.
Visa Waiver, Tourist	WT.

(3) *General requirements.* * * *

* * * * *

(c) *Extensions of stay.* (1) *Filing on Form I–129.* An employer seeking the services of an E–1, E–2, H–1A, H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q, R–1, or TC nonimmigrant beyond the period previously granted, must petition for an extension of stay on Form I–129. The petition must be filed with the fee required in § 103.7 of this chapter, and the initial evidence specified in § 214.2, and on the petition form. Dependents holding derivative status may be included in the petition if it is for only one worker and the form version specifically provides for their inclusion. In all other cases dependents of the worker should file on Form I–539.

(2) *Filing on Form I–539.* Any other nonimmigrant alien, except an alien in F or J status who has been granted duration of status, who seeks to extend his or her stay beyond the currently authorized period of admission, must apply for an extension of stay on Form I–539 with the fee required in § 103.7 of this chapter together with any initial evidence specified in the applicable provisions of § 214.2, and on the application form. More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the other co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on his or her status. Extensions granted to members of a family group must be for the same period of time. The shortest period granted to any member of the family shall be granted to all members of the family.

(3) *Ineligible for extension of stay.* A nonimmigrant in any of the following classes is ineligible for an extension of stay:

(i) B–1 or B–2 where admission was pursuant to the Visa Waiver Pilot Program;

(ii) C–1, C–2, C–3;

(iii) D–1, D–2;

(iv) K–1, K–2; or

(v) Any nonimmigrant admitted for duration of status, other than as provided in § 214.2(f)(7).

(4) *Timely filing and maintenance of status.* An extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service and without separate application, with any extension granted from the date the previously authorized stay expired, where it is demonstrated at the time of filing that:

(i) The delay was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances;

(ii) The alien has not otherwise violated his or her nonimmigrant status;

(iii) The alien remains a bona fide nonimmigrant; and

(iv) The alien is not the subject of deportation proceedings under 8 CFR part 242.

(5) *Decision in Form I–129 or I–539 extension proceedings.* Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of the Service. There is no appeal from the denial of an application for extension of stay filed on Form I–129 or I–539.

(d) *Termination of status.* Within the period of initial admission or extension of stay, the nonimmigrant status of an alien shall be terminated by the revocation of a waiver authorized on his or her behalf under section 212(d) (3) or (4) of the Act; by the introduction of a private bill to confer permanent resident status on such alien; or, pursuant to notification in the **Federal Register**, on the basis of national security, diplomatic, or public safety reasons.

* * * * *

8.–9. Part 223 is revised to read as follows:

PART 223—REENTRY PERMITS, REFUGEE TRAVEL DOCUMENTS, AND ADVANCE PAROLE DOCUMENTS

Sec.
223.1 Purpose of documents.
223.2 Processing.
223.3 Validity and effect on admissibility.

Authority: 8 U.S.C. 1103, 1181, 1182, 1186a, 1203, 1225, 1226, 1227, 1251; Protocol Relating to the Status of Refugees, November 1, 1968, 19 U.S.T. 6223 (TIAS 6577).

§ 223.1 Purpose of documents.

(a) *Reentry permit.* A reentry permit allows a permanent resident to apply for admission to the United States upon return from abroad during the period of the permit's validity without the necessity of obtaining a returning resident visa.

(b) *Refugee travel document.* A refugee travel document is issued pursuant to this part and article 28 of the United Nations Convention of July 28, 1951, for the purpose of travel. A person who holds refugee status pursuant to section 207 of the Act, or asylee status pursuant to section 208 of the Act, must have a refugee travel document to return to the United States after temporary travel abroad unless he

or she is in possession of a valid advance parole document.

§ 223.2 Processing.

(a) *General.* An application for a reentry permit, refugee travel document, or advance parole document must be filed on Form I–131, with the fee required in § 103.7 of this chapter and with the initial evidence required on the application form.

(b) *Eligibility.* (1) *Reentry permit.* Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application and is a lawful permanent resident or conditional permanent resident.

(2) *Refugee travel document.* Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application, and either holds valid refugee status under section 207 of the Act, valid asylee status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylee or refugee status.

(c) *Ineligibility.* (1) *Prior document still valid.* An application for a reentry permit or refugee travel document shall be denied if the applicant was previously issued a reentry permit or refugee travel document which is still valid, unless it was returned to the Service or it is demonstrated that it was lost.

(2) *Extended absences.* A reentry permit issued to a person who, since becoming a permanent resident, or during the last 5 years, whichever is less, has been outside the United States for more than 4 years in the aggregate, shall be limited to a validity of one year, except that a permit with a validity of two years may be issued to:

(i) A permanent resident as defined in 8 CFR 211.1(b)(1)(ii) or 211.1(b)(4);

(ii) A permanent resident employed by a public international organization of which the United States is a member by treaty or statute, and his or her permanent resident spouse and children; or

(iii) A permanent resident who is a professional athlete who regularly competes in the United States and worldwide.

(3) *Permanent resident entitled to nonimmigrant diplomatic or treaty status.* A permanent resident entitled to nonimmigrant status under section 101(a)(15) (A), (E), or (G) of the Act because of occupational status may only be issued a reentry permit if the applicant executes and submits with the application, or has previously executed and submitted, a written waiver on Form I–508 required by section 247(b) of the Act and part 247 of this chapter and, if applicable, Form I–508F (election as to tax exemption under the Convention between the United States and the French Republic) required by part 247 of this chapter.

(d) *Effect of travel before a decision is made.* Departure from the United States before a decision is made on an application for a reentry permit or refugee travel document shall not affect the application.

(e) *Processing.* Approval of an application is solely at the discretion of the Service. If the application is approved, the requested document shall be issued as provided in this part.

(f) *Issuance.* A reentry permit or refugee travel document may be sent in care of a United States Consulate or an overseas office of the Service if the applicant so requests at the time of filing. Issuance of a reentry permit or refugee travel document to a person in exclusion or deportation proceedings shall not affect those proceedings.

(g) *Appeal.* Denial of an application for a reentry permit or refugee travel document may be appealed to the Service's Administrative Appeals Unit.

§ 223.3 Validity and effect on admissibility.

(a) *Validity.* (1) *Reentry permit.* Except as provided in § 223.2(c)(2), a reentry permit issued to a permanent resident shall be valid for 2 years from the date of issuance. A reentry permit issued to a conditional permanent resident shall be valid for 2 years from the date of issuance, or to the date the conditional permanent resident must apply for removal of the conditions on his or her status, whichever comes first.

(2) *Refugee travel document.* A refugee travel document shall be valid for 1 year, or to the date the refugee or asylee status expires, whichever comes first.

(b) *Invalidation.* A document issued under this part is invalid if obtained through material false representation or concealment, or if the person is ordered excluded or deported. A refugee travel document is also invalid if the United Nations Convention of July 28, 1951, ceases to apply or does not apply to the person as provided in Article 1C, D, E, or F of the convention.

(c) *Extension.* A reentry permit or refugee travel document may not be extended.

(d) *Effect on admissibility.* (1) *Reentry permit.* A permanent resident or conditional permanent resident in possession of a valid reentry permit who is otherwise admissible shall not be deemed to have abandoned status based solely on the duration of an absence or absences while the permit is valid.

(2) *Refugee travel document.* (i) *General.* Every alien returning to the United States who presents a valid unexpired refugee travel document shall be permitted to come physically within the territory of the United States to receive consideration of his or her application for admission in conformity with paragraphs (d)(2)(ii) and (d)(2)(iii) of this section.

(ii) *Inspection and immigration status.* Upon arrival, an alien who presents a valid unexpired refugee travel document shall be examined as to his or her admissibility under the Act. An alien shall be accorded the immigration status endorsed in his or her refugee travel document unless he or she is no longer eligible therefor, or he or she applies for and is found eligible for some other immigration status.

(iii) *Exclusion.* If an alien who presents a valid unexpired refugee travel document appears to the examining immigration officer to be excludable as provided in § 236.5(c) of this chapter, he or she shall be referred for proceedings under section 236 and 237 of the Act. Section 235(c) of the Act shall not be applicable.

PART 223a—REFUGEE TRAVEL DOCUMENTS [REMOVED]

10. Part 223a is removed.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

11. The authority citation for part 248 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

12. In § 248.1, paragraph (a) is amended by removing the "." and adding ", or as an alien in transit under section 101(a)(15)(C) of the Act."

13. In section 248.1, paragraph (b) is revised to read as follows:

§ 248.1 Eligibility.

* * * * *

(b) *Timely filing and maintenance of status.* A change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service, and without separate application, where it is demonstrated at the time of filing that:

(1) The failure to file a timely application was due to extraordinary

circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances;

(2) The alien has not otherwise violated his or her nonimmigrant status;

(3) The alien remains a bona fide nonimmigrant; and

(4) The alien is not the subject of deportation proceedings under 8 CFR part 242.

* * * * *

14. Section 248.3 is amended by:

a. Removing and reserving paragraph (d), and

b. Revising paragraphs (a), (b), and (c), to read as follows:

§ 248.3 Application.

(a) *Change of status on Form I–129.* An employer seeking the services of an alien as an E–1, E–2, H–1A, H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q, R–1, or TC nonimmigrant, must, where the alien is already in the U.S. and does not currently hold such status, apply for a change of status on Form I–129. The form must be filed with the fee required in § 103.7 of this chapter and the initial evidence specified in § 214.2 of this chapter and on the petition form. Dependents holding derivative status may be included in the petition if the form is for only one worker. In all other cases, dependents of the worker should file on Form I–539.

(b) *Change of status on Form I–539.* Any nonimmigrant who desires a change of status to any nonimmigrant classification, other than those listed in paragraph (a) of this section, or to E–1 or E–2 classification as the spouse or child of a principal E–1 or E–2, must apply for a change of status on Form I–539. The application must be filed with the fee required in § 103.7 of this chapter and any initial evidence specified in the applicable provisions of § 214.2 of this chapter, and on the application form. More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on the principal's nonimmigrant status.

(c) *Special provisions for change of nonimmigrant classification to, or from, a position classified under section 101(a)(15) (A) or (G) of the Act.* Each application for change of nonimmigrant classification to, or from, a position classified under section 101(a)(15)(A) or (G) must be filed on Form I–539 and be accompanied by a Form I–566, completed and endorsed in accordance with the instructions on that form. If the Department of State recommends against the change, the application shall be denied. An application for a change of classification by a principal alien in a position classified A–1, A–2, G–1, G–2, G–3, or G–4 shall be processed without fee. Members of the principal alien's immediate family who are included on the principal alien's application shall also be processed without fee.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

15. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305

§ 264.1 [Amended]

16. In § 264.1, paragraph (b), is amended by removing the Form No. and Class references for form "I–90".

17. Section 264.1 is amended by:

a. Removing paragraph (c)(1); and

b. Redesignating paragraph (c)(2) as paragraph (c)(1).

18. Part 264 is further amended by adding §§ 264.4 and 264.6, to read as follows:

§ 264.4 Application to replace a Non-resident Border Crossing Card.

An application for a replacement Non-Resident Border Crossing Card must be filed pursuant to § 212.6(e) of this chapter. An application for a replacement Non-resident Alien Canadian Border Crossing Card must be filed on Form I–175. An application for a replacement Non-resident Mexican Border Crossing Card must be filed on Form I–190.

§ 264.6 Application for an initial or replacement Form I–94, Nonimmigrant Arrival-Departure Document, or Form I–95, Crewmen's Landing Permit.

(a) *General.* An application for a new or replacement Form I–94 or replacement Form I–95 must be made on Form I–102. The application must be filed with the fee required in § 103.7 of this chapter and the initial evidence required on the application form.

(b) *Filing.* An application may be approved if filed by an alien in the United States who:

(1) Applies to replace a lost or stolen Form I–94 or Form I–95 that had been issued to him or her;

(2) Applies to replace a mutilated Form I–94 or Form I–95 issued to him or her; or

(3) Was not issued a Form I–94 pursuant to § 235.1(f)(1)(i), (iii), (iv), (v), or (vi) of this chapter, when last admitted as a nonimmigrant, has not since been issued a Form I–94, and now requires a Form I–94.

(c) *Processing.* A pending application filed under paragraph (a) of this section shall be considered temporary evidence of registration. If the application is approved, the document shall be issued. There is no appeal from the denial of an application filed on Form I–102.

19. In § 264.5, a new paragraph (g) is added to read as follows:

§ 264.5 Application for a replacement Alien Registration Card.

* * * * *

(g) *Eligibility for a card while in deportation or exclusion proceedings.* A person in exclusion proceedings shall be entitled to evidence of permanent resident status until ordered excluded. Such evidence shall be in the form of a temporary Form I–551 issued for a period sufficient to accomplish the exclusion proceedings. A person in deportation proceedings shall be entitled to evidence of permanent resident status until ordered deported or excluded. Issuance of an alien registration card to a person in exclusion or deportation proceedings, provided the person had status as a lawful permanent resident when the proceeding commenced, shall not affect those proceedings.

PART 292—REPRESENTATION AND APPEARANCES

20. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

21. In § 292.4, paragraph (a), is amended by adding a new sentence at the end of the paragraph, to read as follows:

§ 292.4 Appearances.

(a) * * * A notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service.

* * * * *

Dated: November 16, 1993.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–392 Filed 1–10–94; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 212

[INS No. 1225-92]

RIN 1115-AB40

Waiver of Certain Types of Visas

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations to permit district directors, acting alone, to waive a nonimmigrant visa or passport under section 212(d)(4)(A) of the Immigration and Nationality Act in individual cases, if satisfied that a nonimmigrant alien is unable to present these documents because of an unforeseen emergency. Formerly, in such circumstances the district director was required to seek concurrence of the Department of State Visa Office to grant a waiver of the nonimmigrant visa or passport. In eliminating the step of seeking concurrence on each waiver, this amendment will save resources for both agencies and reduce the time it takes to admit certain nonimmigrant aliens.

EFFECTIVE DATE: January 11, 1994.

FOR FURTHER INFORMATION CONTACT: Diane Hinckley, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7228, Washington, DC 20536, telephone number (202) 616–7493.

SUPPLEMENTARY INFORMATION: Section 212(d)(4)(A) of the Immigration and Nationality Act allows the Secretary of State and the Attorney General, acting jointly, to waive a nonimmigrant alien's visa or passport when an alien is unable to present the required documents due to an unforeseen emergency. Previously, when such a nonimmigrant appeared at a port of entry, the Immigration and Naturalization Service district director was required to seek the concurrence of the Department of State Visa Office prior to granting the waiver. Pursuant to the authority delegated to the Commissioner of the Immigration and Naturalization Service by title 8 U.S.C. section 103 and to the Director of the Visa Office of the Department of State by title 8 U.S.C. section 104, the Commissioner and the Director of the Visa Office, acting jointly, determined that the previous procedure was unnecessarily burdensome. Officers of the Department of State concurred with the recommendations from the ports of entry in over 95% of the cases presented. Having the district director exercise the function of the Department of State Visa Office simultaneously with the function assigned to the Immigration and Naturalization Service will save resources for both agencies and result in a quicker admission of the alien. If the district director is satisfied that the alien failed to present a passport or a visa because of an unforeseen emergency and that the alien should be granted the waiver, then the procedure at the ports of entry will remain the same. The alien will fill out an application for the waiver, the information will be checked, and a fee will be charged. The Department of State is promulgating a similar regulation that amends § 41.2 of title 22, Code of Federal Regulations.

The Immigration and Naturalization Service (The Service) published a proposed rule, with a request for comments, in the **Federal Register** on July 30, 1991, at 56 FR 36028, amending 8 CFR 212.1(g). The comment period ended on August 29, 1991. The Service received three comments. One commentor endorsed the rule's practicality but recommended a change in language in the phrase "unable to obtain the required documents" so that it reads "unable to present the required documents". The Service agrees that the change improves the rule by allowing waivers to be granted in cases where the alien possesses the required documents but cannot produce them at the port of entry. This change is incorporated in the final rule.

Another commentor expressed concern that language in the proposed regulation might mislead a reader to think that the Service will seek concurrence from the Visa Office without first determining that the alien is entitled to a waiver of documents. Such a procedure would be a deviation from the Service's past practice rather than a continuation of it, as the Service intends, except for eliminating the step of seeking concurrence from the Department of State Visa Office. Language in the final rule has been changed to clarify this point.

Another commentor noted that transportation companies cannot board an alien passenger traveling in emergency circumstances who lacks the required documents without incurring a fine at the port of entry. The commentor recommended adding a provision to the rule which would specify the steps a carrier must take to board such a passenger without incurring a fine. This rule is not intended to expand the circumstances under which an alien may apply for a waiver of documents, only to simplify the administrative procedure for granting a waiver, and therefore the recommendation will not be incorporated into the final rule.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule merely reflects an agreement reached between the Department of State and the Immigration and Naturalization Service that results in a less burdensome administrative procedure. In addition, members of the public are serviced in a more expeditious manner as a result of the effect of this rule.

This rule is not significant within the meaning of section 3(f) of E.O. 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 212

Aliens, Documentation, Nonimmigrant, Passport and visas, Waivers.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

2. In § 212.1, the first two sentences in paragraph (g) are revised to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(g) *Unforeseen emergency.* A visa and a passport are not required of a nonimmigrant who, either prior to his or her embarkation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director at the port of entry that, because of an unforeseen emergency, he or she is unable to present the required documents, in which case a waiver application shall be made on Form I–193. The district director may approve a waiver of documents in each case in which he or she is satisfied that the nonimmigrant cannot present the required documents

because of an unforeseen emergency and the waiver would be appropriate in the circumstances. * * *

* * * * *

Dated: January 5, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94-646 Filed 1-10-94; 8:45 am]

BILLING CODE 4410-10-M

---

8 CFR Part 214

[INS 1452-92]

RIN 1115-AC72

Temporary Alien Workers Seeking H-1B Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule implements certain provisions of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA) by establishing petitioning procedures for H-1B nonimmigrants and new eligibility criteria for foreign physicians seeking employment in the medical professions in the United States. This rule contains the new procedures required by the legislation and makes Service policy consistent with the intent of Congress. This rule sets forth the new filing procedures and eligibility standards and clarifies for businesses, academic institutions, and the general public the requirements for classification and admission under section 101(a)(15)(H) of the Immigration and Nationality Act (ACT).

EFFECTIVE DATE: January 11, 1994.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7215, Washington, DC 20536, telephone (202) 514-3240.

SUPPLEMENTARY INFORMATION: The Immigration Act of 1990 (IMMACT), Public Law 101-649, November 29, 1990, dramatically altered the H-1B nonimmigrant classification. IMMACT, among other things, removed prominent aliens from the H-1B nonimmigrant classification and required prospective employers to obtain an approved labor condition application from the Department of Labor prior to the admission of the H-1B nonimmigrant into the United States.

In response to concerns raised by a number of interested parties, Congress incorporated numerous provisions in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102-232, December 12, 1991, which amended some of the provisions created by IMMACT. Specifically, Public Law 102-232 amended the definition of an H-1B nonimmigrant alien by removing the requirement that the intending employer obtain an approved labor condition application prior to the alien's admission into the United States, amended the criteria which the Secretary of Labor could use in invoking the penalty provisions relating to misrepresentations and omissions on the labor condition application, and, lastly, addressed the issue of foreign physicians coming to the United States to perform services in the medical profession.

On April 9, 1992, the Service published in the **Federal Register** at 57 FR 12177, an interim rule with requests for comments to incorporate the changes contained in Public Law 102-232. Interested persons were invited to submit written comments on or before June 8, 1992.

Discussion of Comments on the Interim Regulations

The Service received comments from sixteen individuals on the interim rule. Some of the commenters addressed more than one issue in their comments. A number of commenters offered suggestions and improvements for the final rule, many of which have been adopted in the final rule. The following discussion addresses the issues raised, provides the Service's position on the issues, and, indicates the revisions adopted in the final rule based on the public's comments.

Labor Condition Application—§ 214.2(h)(4)(i)(B)(1)

Prior to the passage of Public Law 102-232, petitioners in H-1B cases were required to submit a copy of an approved labor condition application with the petition. Public Law 102-232 amended this language by requiring only that petitioners attach a certification from the Secretary of Labor indicating that the petitioner has filed a labor condition application with the Secretary of Labor. The interim rule contained language reflecting this amendment to the statute.

One commenter suggested that a petitioner could meet this statutory requirement by merely submitting a copy of the labor condition application without waiting for the Department of Labor to certify the labor condition application. However, submitting a copy of the labor condition application is not sufficient to show that the application has been filed. Only when the application has been certified can the Service be assured that the petitioner has complied with the filing requirement. Therefore, the Service did not adopt this recommendation.

One commenter noted that IMMACT imposed a number of penalties on employers who failed to meet certain conditions of the labor condition application process. Section 212(n)(2)(C)(ii) of the Act states that in those situations the Attorney General shall not approve petitions filed by the offending employer under section 204 or 214(c) of the Act for a period of one year. The commenter noted that § 214.2(h)(4)(i)(B)(5) of the interim regulation indicated only that the Attorney General shall not approve petitions under the H-1B category. In response to this comment the final rule will be amended to indicate that this provision applies to petitions filed under both sections 204 and 214(c) of the Act as required by statute.

Return Transportation Provision—§ 214.2(h)(4)(iii)(E) and § 214.2(h)(6)(vi)(E)

One commenter suggested that petitioners in H-1B and H-2B cases should be required to post a bond in order to prove to the Service that the return transportation requirement will be met. It is the opinion of the Service that the statute and regulations clearly state the requirement that a petitioner in these instances is responsible for the alien beneficiary's return transportation. The filing of the petition is sufficient assurance to the Service that the petitioner will comply with this requirement.

Criteria and Documentary Requirements for Physicians—§ 214.2(h)(4)(viii)

Prior to the passage of IMMACT, alien graduates of foreign medical schools were excluded from classification as H-1B nonimmigrants unless they were coming to the United States pursuant to an invitation from a public or nonprofit private educational or research institution or agency to teach or conduct research, or both, at or for such institution or agency. These physicians were not authorized to perform direct patient care unless it was incidental to the teaching or research. This restriction, however, was not contained in IMMACT, thereby allowing graduates of foreign medical schools to perform direct patient care in the United States.

Public Law 102-232 addressed the issue of foreign physicians coming to the United States to perform services in

the medical profession. The legislation provided that these aliens could obtain H-1B classification in either of two ways.

First (mirroring the pre-IMMACT statutory language), an alien may be accorded H-1B classification if the alien is coming to the United States pursuant to an invitation from a public or nonprofit private educational or research institution or agency to teach or conduct research, or both, at or for such institution or agency.

Second, an alien may be accorded H-1B classification if he or she has passed the Federation Licensing Examination (FLEX) or an equivalent examination as determined by the Secretary of Health and Human Services. Eligibility under this criterion also requires a demonstration that the alien has competency in oral and written English or that the alien has graduated from a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education.

In the preamble to the interim rule, it was stated that there was no distinction between alien physicians educated in the United States and those educated abroad and that both had to pass the Federation Licensing Examination (FLEX) in order to be classified as an H-1B nonimmigrant in order to perform direct patient care.

Three commenters stated that the FLEX requirement should not be applicable to alien graduates of United States medical schools since, over the previous decade, the Service has consistently permitted these aliens to engage in direct patient care under the H-1B classification. These commenters also noted that graduates of United States medical schools are not normally required to take the FLEX examination as part of their training and licensing requirements.

Subsequent to the publication of the interim rule, the Service altered its position on this issue, reaffirming that the FLEX requirement did not apply to aliens educated at United States medical schools. This position now will be codified in the final rule. It should be noted, however, that the FLEX requirement does apply to aliens educated in foreign medical schools, including schools in Canada. The final rule will be amended to reflect the Service's present position.

Two commenters noted that aliens of national or international renown in the field of medicine, pursuant to section 101(a)(41) of the Act, are not considered graduates of a medical school and should be exempt for the FLEX requirement. The Service agrees with this comment and the final rule will be amended to indicate that aliens of national or international renown in the field of medicine are exempt from the FLEX requirement as well as the other requirements set forth in section 212(j)(2) of the Act. They are, however, required to meet the licensure requirements for the state of intended employment.

Equivalency to the FLEX

Public Law 102-232 provides that alien physicians who wish to perform patient care in the United States must, among other things, pass the FLEX examination or an equivalent examination as determined by the Secretary of Health and Human Services. By notice published on September 16, 1992 at 57 FR 42755, the Secretary of Health and Human Services designated Parts I, II, and III of the National Board of Medical Examiners certifying examinations and the Steps 1, 2, and 3 examinations of the United States Medical Licensing Examinations program as equivalent to the FLEX.

Six commenters suggested that the Licentiate of the Medical Council of Canada (LMCC), the Canadian medical licensing procedure, or a State license should also be determined to be equivalent to the FLEX. A determination that the LMCC or a state license is equivalent to the FLEX is outside the scope of the Service's authority.

Competency in the English Language

Public Law 102-232 also requires that graduates of medical schools coming to the United States to perform services in the medical professions must demonstrate competency in oral and written English or be a graduate of a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education. The interim rule contains the requirement that a petitioner may demonstrate English competency by submitting evidence that the alien has passed the English test given by the Educational Commission for Foreign Medical Graduates (ECFMG). The interim regulation did not contain any additional tests or mechanisms to establish competency in the English language but it was stated in the preamble to the interim rule that the Service would consider other suggestions to demonstrate competency.

Two commenters suggested that the Test of English as a Foreign Language (TOEFL) should be recognized as an alternate test to establish English competency. Since the results of the TOEFL are reported as a raw score which must be interpreted by the entity reviewing the score, and the administrators of the test have not established a passing grade for the test, the Service cannot adopt this suggestion since it does not have the expertise or resources to interpret this test.

Two commenters also suggested that the Service recognize that graduates of medical schools located in an English-speaking country in which the language of instruction is also English have competency in the English language. Since the statutory language already addresses the issue of language competency in relation to graduation from certain universities, the adoption of this suggestion would be in conflict with the statutory language.

Licensure

The interim rule requires that a petition for a physician coming to the United States to perform services in the medical profession must be accompanied by evidence that the physician has a license or authorization required by the State of intended employment, if the state requires such license or authorization. This language was adopted to ensure that at the time the petition was filed the physician and met the regulatory requirements relating to the practice of medicine in the state of intended employment. The regulation also recognizes that, in certain instances, a state may not require a physician to obtain an actual medical license in order to perform the duties of a particular position.

Two commenters suggested that the regulations of the state of intended employment should dictate which type of license, if any, should be required by the Service. This suggested regulatory change is unnecessary since it is already provided for in the language of the interim rule at § 214.2(h)(4)(viii)(A)(*1*).

One commenter also noted that certain physicians employer by the United States government, such as the Veterans Administration, are not required to possess a license issued by the state of intended employment but merely require a license from any state. The final rule has been amended to accommodate this situation.

One commenter suggested that an alien physician should not be required to obtain a medical license if the alien is not coming to the United States to perform patient care. As written, the interim rule requires that licensure must be obtained only in those situations where the alien beneficiary will be performing clinical care. An alien physician coming to fill a position which does not normally require licensure, e.g., medical research, would not be required to obtain a license. Thus, this suggestion need not be adopted.

Approval and Validity of Petitions—§ 214.2(h)(9)(iii)(B)

The initial approval of an H–1B petition is currently limited to three years. One commenter suggested that H–1B petitions should be approved for the validity period of the supporting labor condition application, not to exceed six years. The Service does not deem it appropriate to consider extending the initial validity period of H–1B petitions without first soliciting public comment on the issue. This issue will be addressed in a future proposed rule.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule merely clarifies provisions of the MTINA which establish certain new petitioning procedures for H–1B nonimmigrants and new eligibility criteria for foreign physicians seeking employment in the medical profession in this country, and therefore has a *de minimus* economic impact on small entities. This rule is not considered to be significant within section 3(f) of E.O. 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Organization and functions (Government agencies).

Accordingly, the Interim Rule amending 8 CFR part 214 which was published at 57 FR 12177–12179 on April 9, 1992, is adopted as a final rule with the following changes:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:

a. Revising paragraph (h)(1)(ii)(B)(*1*);

b. Revising paragraph (h)(4)(i)(B)(*5*);

c. Revising paragraph (h)(4)(viii)(A)(*1*);

d. Revising paragraph (h)(4)(viii)(B)(*2*); and

e. Adding paragraph (h)(4)(viii)(C) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(B) * * *

(*1*) To perform services in a specialty occupation (except registered nurses, agricultural workers, and aliens described in section 101(a) (15) (O) and (P) of the Act) described in section 214(i)(1) of the Act, that meets the requirements of section 214(i)(2) of the Act, and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act;

* * * * *

(4) * * *

(i) * * *

(B) * * *

(*5*) If the Secretary of Labor notifies the Service that the petitioning employer has failed to meet a condition of paragraph (B) of section 212(n)(1) of the Act, has substantially failed to meet a condition of paragraphs (C) or (D) of section 212(n)(1) of the Act, has willfully failed to meet a condition of paragraph (A) of section 212(n)(1) of the Act, or has misrepresented any material fact in the application, the Service shall not approve petitions filed with respect to that employer under section 204 or 214(c) of the Act for a period of at least one year from the date of receipt of such notice.

* * * * *

(viii) * * *

(A) * * *

(*1*) Has a license or other authorization required by the state of intended employment to practice medicine, or is exempt by law therefrom, if the physician will perform direct patient care and the state requires the license or authorization, and

* * * * *

(B) * * *

(*2*) The alien has passed the Federation Licensing Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) or is a graduate of a United States medical school; and

(*i*) Has competency in oral and written English which shall be demonstrated by the passage of the English language proficiency test given by the Educational Commission for Foreign Medical Graduates; or

(*ii*) Is a graduate of a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education.

(C) *Exception for physicians of national or international renown.* A physician who is a graduate of a medical school in a foreign state and who is of national or international renown in the field of medicine is exempt from the requirements of paragraph (h)(4)(viii)(B) of this section.

* * * * *

§ 214.2 [Amended]

3. In § 214.2, paragraph (h)(2)(i)(B) is amended by removing the last sentence.

Dated: January 6, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–569 Filed 1–10–94; 8:45 am]

BILLING CODE 4410–10–M

---

8 CFR Part 245a

[INS No. 1618–93]

RIN 1115–AD44

Determination of Public Charges for Legalization Benefits, Amendment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of the Immigration and Naturalization Service (Service) relating to applications for lawful temporary residence under section 245A of the Immigration and Nationality Act. Specifically, this rule amends the special rule for determination of public charge to provide that aliens who are self-supporting despite earning income below the poverty level may be admissible without having to apply for a waiver of inadmissibility under 8 CFR 245a.2(k) (2).

EFFECTIVE DATE: January 11, 1994.

FOR FURTHER INFORMATION CONTACT: Jane Gomez, Senior Immigration Examiner, Immigration and Naturalization Service, room 7223, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION: On August 27, 1993, the Immigration and Naturalization Service published in the **Federal Register** at 58 FR 45235–45236, an interim rule with request for comments to amend 8 CFR part 245a. The interim rule was issued to remove language that had been inadvertently added in a previous final rule which was published in the **Federal Register** on July 12, 1989, at 54 FR 29449. Specifically, the interim rule clarified that persons described in the special rule for determination of public charge are in fact admissible without having to apply for a waiver of inadmissibility. The Service received two comments on the interim rule, both of which viewed the amendment favorably, noting that the amendment brought the regulation

in conformity with section 245A of the Immigration and Nationality Act.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule provides a benefit for individual aliens. It does not affect small entities. This rule is not significant within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 8 CFR Part 245a

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending part 245a of chapter I of title 8 of the Code of Federal Regulations which was published at 58 FR 45235–45236 on August 27, 1993, is adopted as a final rule without change.

Dated: Decmeber 30, 1993.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–540 Filed 1–10–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–230–AD; Amendment 39–8791; AD 94–01–09]

Airworthiness Directives; Canadair Model CL–600–2B19 "Regional Jet" Series 100 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Canadair Model CL–600–2B19 "Regional Jet" Series 100 airplanes. This action requires a revision to the Airplane Flight Manual (AFM) to limit altitude and airspeed operations of the airplane under certain conditions of hydraulic system failure. This amendment is prompted by a report of sheared-off shear pins found on one airplane's elevator dampers. The actions specified in this AD are intended to prevent undampened vibration of the elevators in normal cruise conditions when combined with hydraulic system failures, a condition which could result in reduced controllability of the airplane.

DATES: Effective January 26, 1994.

Comments for inclusion in the Rules Docket must be received on or before March 14, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–230–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe Branch, ANE–172, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6221; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Canadair Model CL–600–2B19 "Regional Jet" Series 100 airplanes. Transport Canada Aviation advises that one operator of these airplanes found that the shear pins on the airplane elevator dampers had sheared off. This finding was made during a routine check of the airplane. The cause of the pin failure has not been determined. Failure of the shear pins on the elevator damper, if not detected and corrected, may lead to undampened vibration of the elevators during normal cruise conditions when combined with hydraulic system failures. This situation could result in reduced controllability of the airplane.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above.

In order to assure the continued airworthiness of these airplanes in Canada, Transport Canada Aviation issued a Canadian airworthiness directive on December 17, 1993, that restricts operation of these airplanes to certain altitude and airspeed limits under various conditions of hydraulic system failure. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent undampened vibration of the elevators during normal cruise conditions in the event of hydraulic system failures, which could result in reduced controllability of the airplane. This AD requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to restrict altitude and airspeed operations under conditions of single or double hydraulic failure.

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

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–230–AD." The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–01–09 Canadair: Amendment 39–8791. Docket 93–NM–230–AD.

Applicability: Model CL–600–2B19 "Regional Jet" Series 100 airplanes; serial numbers 7003 and subsequent; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent undampened vibration of the elevators during normal cruise conditions in the event of hydraulic system failures, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following restrictions of altitude and airspeed operations under conditions of single or double hydraulic system failure; and advise the flight crew of these revised limits. Revision of the AFM may be accomplished by inserting a copy of this AD in the AFM.

Note 1: The restrictions described in the AFM Temporary Revision (TR) RJ/30 meet the requirements of this paragraph. Therefore, inserting a copy of TR RJ/30 in lieu of this AD in the AFM is considered an acceptable means of compliance with this paragraph.

Altitude limit (maximum)	Airspeed limit (maximum)
Single Hydraulic System Failure:	
31,000 feet	0.55 Mach (199 KIAS).
30,000 feet	0.55 Mach (204 KIAS).
28,000 feet	0.55 Mach (213 KIAS).
26,000 feet	0.55 Mach (222 KIAS).
24,000 feet	0.55 Mach (232 KIAS).
22,000 feet	0.55 Mach (241 KIAS).
20,000 feet and below.	252 KIAS.
Double Hydraulic System Failure:	
10,000 feet	200 KIAS.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

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

(d) This amendment becomes effective on January 26, 1994.

Issued in Renton, Washington, on January 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–344 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 91–ANM–14]

Alteration of VOR Federal Airway V–220

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on September 10, 1993. This final rule alters the description of VOR Federal Airway V–220, located in Colorado and Nebraska, to coincide with the scheduled opening date of the new Denver International Airport. This action is necessary to incorporate a recent amendment to V–220 between Grand Junction, CO, and Meeker, CO, which became effective on November 11, 1993.

EFFECTIVE DATE: 0701 UTC, March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On September 10, 1993, the Federal Aviation Administration (FAA) published a final rule that alters VOR Federal Airway V–220, located in Colorado and Nebraska, to coincide with the scheduled opening date of the new Denver International Airport (58 FR 47631). This action is necessary to incorporate a recent amendment to V–220 between Grand Junction, CO, and Meeker, CO, which became effective on November 11, 1993 (58 FR 51010).

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on September 10, 1993 (58 FR 47631) and the description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 47633, in the first column, the description for V–220 is corrected to read as follows:

V–220 [Corrected]

From Grand Junction, CO; INT Grand Junction 075° and Rifle, CO, 163° radials; Rifle; Meeker, CO; Hayden, CO; Kremmling, CO; INT Kremmling 081° and Gill, CO, 234° radials; Gill; Akron, CO; INT Akron 094° and

McCook, NE, 264° radials; McCook; INT McCook 072° and Grand Island, NE, 241° radials; Kearney, NE; Hastings, NE; Columbus, NE. From Norfolk, NE; Yankton, SD; INT Yankton 015° and Sioux Falls, SD, 231° radials; Sioux Falls; INT Sioux Falls 004° and Watertown, SD, 154° radials; Watertown; INT Watertown 021° and Fargo, ND, 172° radials; Fargo; INT Fargo 004° and Grand Forks, ND, 152° radials; to Grand Forks.

Issued in Washington, DC, on December 29, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–627 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 1931]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act; Waiver by Secretary of State and Attorney General of Passport and/or Visa Requirements for Certain Categories of Nonimmigrants

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule authorizes the District Director of the Immigration and Naturalization Service to exercise the Department of State's function with respect to the waiver of the passport and/or visa requirement under the provisions of section 212(d)(4)(A) of the Immigration and Nationality Act (INA). The rule eliminates time consuming procedures for obtaining the concurrence of passport and/or visa waivers, and benefits certain nonimmigrant aliens who, because of unforeseen circumstances, are subjected to delays when seeking admission to the United States without the required documents.

EFFECTIVE DATE: January 11, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Washington, DC, (202) 663–1204.

SUPPLEMENTARY INFORMATION: On July 30, 1991, the Department of State published a Notice of Proposed Rulemaking (NPRM) at 56 FR 36029. The rule proposed to amend part 41, § 41.2(j), which provided for the waiver of the passport and/or visa requirement by the District Director of the Immigration and Naturalization Service (INS) at the port of entry, with the concurrence of the designated State Department official, if such officials were satisfied that the nonimmigrant alien was unable to obtain the required documentation because of an unforeseen emergency. This final rule authorizes the District Director of the Immigration and Naturalization Service at the port of entry to exercise the Department of State's function with respect to the waiver of the passport and/or visa requirement under the provisions of INA 212(d)(4)(A).

Comment

During the comment period the Department received only one comment. The commenting organization noted that under the proposed regulations nonimmigrants who are "unable to obtain" the required documents may benefit from such a waiver. The commenter suggested that the proposed language be amended to read "unable to present" the required documents.

A review of the historical files reveals that the language in question has been in use since at least 1958. The focus at that time was on fact patterns in which the alien indeed could not for geographical, political, and other reasons obtain the required documents. Circumstances have changed radically since that time. The Department believes that the recommendation to change the word "obtain" to read "present" has merit as it more accurately reflects current world circumstances and the intent of the statute. In order to gain admission to the United States an alien must present the required pertinent documentation, whether one has the ability or not to obtain such. Absent such documentation, the immigration officer in charge at the port of entry must decide whether the applicant for admission is indeed qualified for the desired nonimmigrant visa classification and whether the inability to present the required documentation was due to an unforeseen emergency.

Furthermore, the Department wishes to clarify the limited extent of the authority delegated to the Immigration and Naturalization Service. Although the proposed rule permits the District Director to waive the documentary requirements of INA 212(a)(7)(B), the Department of State will continue to exercise the authority vested in the Secretary of State and the Attorney General under the provisions of INA 212(d)(4)(A) relating to the joint concurrence in documentary waivers, except in the circumstances described in § 41.2(j) of this final rule.

Consequently, this final rule makes minor modifications to the text of the regulation as discussed in the preamble.

This final rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been revised as required by E.O. 12778 and certified to be in compliance therewith.

List of Subjects in 22 CFR Part 41

Aliens, Documentation, Nonimmigrants, Passport and visas, Waivers.

Accordingly, 22 CFR part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847.

2. In § 41.2, paragraph (j) is revised to read as follows:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(j) *Individual cases of unforeseen emergencies.* A visa and passport are not required of an alien if, either prior to the alien's embarkation abroad or upon arrival at a port of entry, the responsible district director of the Immigration and Naturalization Service in charge of the port of entry concludes that the alien is unable to present the required documents because of an unforeseen emergency. Any waiver of the visa or passport requirement may be granted by the INS district director pursuant to INA 212(d)(4)(A) without the prior concurrence of the Department of State in each case in which the district director concludes that the alien's claim of emergency circumstances is legitimate and bona fide and that approval of the waiver would be appropriate under all of the attendant facts and circumstances.

* * * * *

Dated: January 5, 1994.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94–645 Filed 1–10–94; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 251, 252 and 255

[Docket No. R-934-1589; FR-2951-F-02]

RIN 2502-AF09

GNMA Requests for Full Insurance on Coinsurance Loans

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

ACTION: Final rule.

SUMMARY: This rule revises currently applicable multifamily and health facility coinsurance regulations to eliminate the requirement that the Government National Mortgage Association (GNMA), in every case, first attempt to assign issuer-servicer responsibility on current coinsured mortgages held by a defaulting lender-issuer before requesting full insurance endorsement by the Federal Housing Administration (FHA). The purpose of the rule is to eliminate a current regulatory requirement which has proved to be time-consuming and, in most cases, unnecessary.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Albert B. Sullivan, Director, Office of Multifamily Housing Management, room 6160, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, voice (202) 708-3730, TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department's former regulations concerning GNMA's right to assignment of coinsured mortgages were found at 24 CFR 251.827 (Multifamily Coinsurance—New Construction and Substantial Rehabilitation), § 252.827 (Coinsurance of Nursing Homes and Related Facilities), and § 255.827 (Coinsurance of Mortgages Covering Existing Multifamily Projects), before their recent removal as part of the termination of the Coinsurance program sections on right to assignment provided that, for any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will first attempt to have the Mortgage assigned to another eligible coinsuring lender by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are indicated on a periodically updated listing furnished to GNMA by the Commissioner and that are also GNMA issuers. If GNMA rejects all offers or no offers are received, GNMA will then have the right to perfect an assignment of the Mortgage to itself. The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance effective as of the date of assignment in accordance with the appropriate provisions of title 24 of the Code of Federal Regulations.

On October 10, 1990, a final rule was published (55 FR 41312) terminating the FHA multifamily coinsurance programs and revising parts 251, 252 and 255. As a result of the final rule, parts 251, 252 and 255 each now consist of a single section dealing with the program phase-out process. However, while the former rule's provisions are no longer included in the Code of Federal Regulations, those regulations in effect before November 12, 1990 continue to govern the rights and obligations of mortgagors, coinsuring lenders and HUD in existence before the termination of the coinsurance programs. The effect of this rule is to revise those regulations as they relate to the handling of mortgage assignments to GNMA.

On December 15, 1992 the Department published a proposed rule (57 FR 59314) identical in text to this final rule. No comments were received from the public concerning this proposed rule.

In lieu of the above-quoted paragraphs (a)(1) and (a)(2), this rule provides that "For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However, before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless it determines, with the agreement of the Commissioner, that the attempt would prove ineffectual because of market or other conditions). The assignment will be attempted by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner."

Given the facts that (a) the authority to coinsure mortgages has been terminated; (b) for the most part, no market exists for the purchase of coinsurance servicing rights; and (c) none of the few remaining approved coinsuring lenders has shown any interest to date in assuming additional coinsuring risk by assignment of loans from GNMA, implementation of the regulatory requirement earlier set forth in paragraphs (a)(1) and (a)(2) has proved to be a time-consuming, burdensome and fruitless process. Therefore, this rule amends parts 251, 252 and 255 to eliminate the requirement that GNMA, in every case, first attempt to assign issuer-servicer responsibility on current coinsured mortgages before perfecting assignment of the Coinsured Mortgage to itself and requesting full insurance endorsement by FHA.

Procedural Matters

Executive Order 12866

This final rule was reviewed and approved by the Office of Management and Budget as a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, which was signed by the President on September 30, 1993. Any changes made to the rule as a result of that review are a part of the public docket file in the office of the Rules Docket Clerk listed at the beginning of this preamble.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is procedural in nature. It effects no substantive changes in HUD programs or policies.

This rule was listed as item number 1540 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56431) under Executive order 12291 and the Regulatory Flexibility Act.

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 do not have Federalism implications and, thus, are not subject to review under the Order. No programmatic or policy changes result from this rule's promulgation which would affect existing relationships between the Federal Government and State and local governments.

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. The rule is procedural in nature and no

significant change in existing HUD policies or programs impacting on the family result from promulgation of this rule.

Environment

An environmental assessment is unnecessary, since internal administrative procedures whose content does not constitute a development decision affecting the physical condition of specific project areas or building sites are categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(k).

List of Subjects

24 CFR Part 251

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

24 CFR Part 252

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

24 CFR Part 255

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

Accordingly, 24 CFR parts 251, 252 and 255 are amended to read as follows:

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 251 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9; 42 U.S.C. 3535(d).

2. Section 251.2 is added to read as follows:

§ 251.2 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer, or to GNMA itself.

(a) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However, before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless GNMA determines, with the agreement of the Commissioner, that the attempt would prove ineffectual because of market conditions or other factors). This attempt will be undertaken by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice, within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance, effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR part 221. Any future claim by GNMA, or any assignment of the fully insured Mortgage, will be governed by the appropriate provisions of 24 CFR part 221, except that any payment will be made in cash instead of debentures.

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES AND BOARD AND CARE HOMES

3. The authority citation for 24 CFR part 252 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9; 42 U.S.C. 3535(d).

4. Section 252.2 is added to read as follows:

§ 252.2 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer, or to GNMA itself.

(a) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However, before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless GNMA determines, with the agreement of the Commissioner, that the attempt would prove ineffectual because of market conditions or other factors). This attempt will be undertaken by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice, within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance, effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR part 232. Any future claim by GNMA, or any assignment of the fully insured Mortgage, will be governed by the appropriate provisions of 24 CFR part 232, except that any payment will be made in cash instead of debentures.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

5. The authority citation for 24 CFR part 255 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–9 (42 U.S.C. 3535(d).

6. Section 255.2 is added to read as follows:

§ 255.2 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer, or to GNMA itself.

(a) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However,

before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless GNMA determines, with the agreement of the Commissioner, that the attempt would prove ineffectual because of market conditions or other factors). This attempt will be undertaken by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice, within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance, effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR part 207. Any future claim by GNMA, or any assignment of the fully insured Mortgage, will be governed by the appropriate provisions of 24 CFR part 207, except that any payment will be made in cash instead of debentures.

Dated: December 16, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94-35 Filed 1-10-94; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8474]

RIN 1545-AQ99

Removal of Final and Temporary Regulations Relating Primarily to Provisions of Prior Law; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to the removal of final regulations.

SUMMARY: This document contains a correction to the final and temporary regulations (T.D. 8474) which was published in the **Federal Register** for Tuesday, April 27, 1993 (58 FR 25556). The regulations relate primarily to provisions of prior law for which action is taken in response to the Regulatory Burden Reduction Initiative.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Paul C. Feinberg, (202) 622-3325 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction amended the Code of Federal Regulations by removing regulations under parts 1, 5, 5c, 12, 54 and 602.

Need for Correction

As published, T.D. 8474 contains an error which is misleading and is in need of correction.

Correction of Publication

Accordingly, the publication of the removal of final and temporary regulations (T.D. 8474), which was the subject of FR Doc. 93-9694, is corrected as follows:

PART 1—[CORRECTED]

On page 25557, column 2, in part 1, in the table at the end of the column, third entry following the column headings, the language

Section	Description of amendment
* * *	* *
1.48-1(e)	Removed and Reserved.
* * *	* *

is corrected to read

Section	Description of amendment
* * *	* *
1.48-1(l)	Removed and Reserved.
* * *	* *

Jacquelyn B. Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94-454 Filed 1-10-94; 8:45 am]

BILLING CODE 4830-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-4822-4]

RIN 2060-AD10

Criteria for Exercising Discretionary Sanctions Under Title I of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking sets forth criteria that EPA must consider when exercising its discretionary authority to impose sanctions on a statewide basis pursuant to the Clean Air Act as amended in 1990 (Act). If EPA makes one of the findings of State implementation plan (SIP) deficiency described in the Act, EPA may impose an emissions offset or highway funding sanction on any portion of the State that the Administrator determines is reasonable and appropriate for the purpose of ensuring that the requirements of the Act relating to plans are met. This rulemaking establishes the criteria EPA shall use in exercising its discretionary authority during the 24-month period following a finding of a plan deficiency to ensure that these sanctions are not applied on a statewide basis when one or more political subdivisions are principally responsible for such deficiency. In addition, EPA describes the discretionary sanctions provision and EPA's anticipated application of these sanctions "at any time" after the Agency makes a finding.

EFFECTIVE DATE: This rule will be effective February 10, 1994.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A-91-66. A reasonable fee may be charged for copying docket materials. The Docket is located at the following address and may be inspected from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m., Monday through Friday: Room M-1500 (LE-131), Waterside Mall, 401 M Street SW., Washington, DC 20640.

FOR FURTHER INFORMATION CONTACT: Ted Creekmore, U.S. EPA, MD-15, Research Triangle Park, North Carolina 27711, (919) 541-5699.

SUPPLEMENTARY INFORMATION:

I. Overview

The EPA is promulgating criteria under section 110(m) of the Act to ensure that, during the 24-month period following a finding, disapproval, or

determination (hereinafter "finding") referred to in section 179(a), sanctions pursuant to section 110(m) are not applied on a statewide basis where one or more political subdivisions are principally responsible for such deficiency. Thus, these criteria apply only in the limited circumstance in which EPA is considering the imposition of statewide sanctions under section 110(m) within 24 months after the Agency makes a section 179(a) finding.

On September 28, 1992 (57 FR 44534), EPA proposed criteria that EPA will use to determine if sanctions imposed pursuant to section 110(m) of the Act may not be applied statewide. The preamble to the proposed rule contains a detailed discussion of the background of the Act, of the proposed criteria, and of the provisions of section 179 and section 110(m) (see 57 FR 44534–44535).

New § 52.30(c) of the rule provides five criteria that EPA will use to determine if sanctions imposed pursuant to section 110(m) may not be imposed statewide. If at least one political subdivision meets all five of the criteria, then that political subdivision will be considered principally responsible, and EPA will not impose sanctions on a statewide basis. Rather, EPA will impose sanctions only on the areas of the State for which EPA determines it is reasonable and appropriate to impose sanctions. If all of the criteria are not met by at least one political subdivision, then no political subdivision is principally responsible, and EPA will use its discretion to determine whether to apply statewide sanctions. However, if EPA, using its discretion, initially determines that less-than-statewide sanctions should be applied, the Agency will not need to consider the criteria; EPA will impose sanctions on those political subdivisions the Agency has determined to be reasonable and appropriate. Such decisions will be made on a case-by-case basis and each action will be subject to the notice-and-comment rulemaking procedures of the Administrative Procedure Act.[1]

In the final rule, EPA has changed four provisions from the proposal based on comments received regarding specific details of the regulatory text. They are as follows:

1. In § 52.30(a)(2), the definition of "required activity" was revised in two ways. First, the phrase "may include, but is not limited to" was deleted from the definition. Second, the phrase "adequate SIP or SIP element" is replaced by the phrase "plan or plan item." These two changes were made in order to follow more clearly the language of section 110(m). Since section 110(m) refers only to actions required with respect to a "plan or plan item," EPA agrees that the phrase "may include, but is not limited to" is unnecessary because it appears to imply EPA has authority to impose sanctions with respect to findings other than those for a plan or plan item. Furthermore, since section 110(m) uses the phrase "plan or plan item," EPA believes it would be more consistent to use that phrase in the regulatory language rather than the phrase "adequate SIP or SIP element."

2. The terms "plan or plan items" are added to the definitions section of the rule, § 52.30(a)(4), and are defined as follows: "For purposes of § 52.30, the terms 'plan' or 'plan item' mean an implementation plan or portion of an implementation plan or action needed to prepare such plan required by the Act, as amended in 1990, or in response to a SIP Call under section 110(k)(5) of the amended Act."

3. In § 52.30(c), "criteria," as defined in the proposal, provides: "The EPA will use the following five criteria, all of which must be met, to determine whether a political subdivision is principally responsible for the deficiency." This section is clarified by revising it to read as follows: "For the purposes of this provision, EPA will consider a political subdivision to be principally responsible for the deficiency on which a section 179(a) finding is based, if all five of the following criteria are met." Thus, the rule clarifies that all five criteria are to be met, not merely used by EPA to determine how sanctions will be imposed.

4. In its proposed rule, § 52.30(d)(1), EPA provides: "If all of the criteria in paragraph (c) of this section have been met through the action or inaction of the 'same' political subdivision, EPA will not impose sanctions on a statewide basis." Although no comments were received from the public on this language, a review by the Agency suggested that the phrase "same political subdivision" may be confusing. By including that language in the rule, EPA was attempting to indicate that one political subdivision must meet all five of the criteria before EPA's authority to impose sanctions on a statewide basis would be constrained (see 57 FR 44536). For example, if a State has two nonattainment areas and a rule, which was past due under the Act, was not yet adopted and submitted to EPA for either area, EPA would look at each nonattainment area independently to determine whether the five criteria were met. If the first three criteria were met by one nonattainment area and the last two by the second nonattainment area, then EPA's authority to impose statewide sanctions would not be constrained. However, if one nonattainment area met all five of the criteria, EPA could not impose statewide sanctions based on the finding for that area. The EPA is replacing the word same with the word one in the rule in order to alleviate any confusion. This provision will be implemented in accordance with the interpretation above.

II. Background

In general, the preamble to the proposed rule notes that the Act contains two sanctions provisions:

1. Section 110(m),[2] provides the Administrator with discretion to impose sanctions at any time on any portion of the State that she determines is reasonable and appropriate;

2. Section 179(a)[3] requires the Administrator to impose sanctions after specific timeframes if the deficiencies on which the sanctions are based are not corrected.[4]

This rulemaking considers the application of sanctions under section 110(m). However, because section 110(m) and section 179 are interrelated, the preamble to the proposed rulemaking discussed sanctions under section 179 (a) and (b) in order to clarify what is required by section 110(m).

The specific types of sanctions which may be imposed under section 110(m), or must be imposed under section 179(a), are listed in section 179(b). The two sanctions provided are a highway

[1] As noted in EPA's proposed rule, the Agency will follow notice-and-comment rulemaking in every instance that EPA anticipates imposing section 110(m) sanctions (57 FR 44534, September 28, 1992). In each rulemaking action, the public will have an opportunity to comment on the proposed geographic scope of the sanctions, the timing of the sanctions, and the order in which the two available sanctions will be imposed. To the extent the public has commented on these issues as a general matter in this rulemaking action, EPA has responded by suggesting that the issue is more appropriately raised in independent rulemaking actions in which section 110(m) sanctions are proposed.

[2] 42 U.S.C. section 7410(m).

[3] 42 U.S.C. section 7509(a).

[4] It is necessary, for clarity's sake, to understand that section 179(a) performs two very distinct functions: it defines several types of findings, and requires EPA to impose sanctions if one of these findings has been made. Section 179(a) (1) through (4) sets forth the four types of findings which may lead to the imposition of a sanction. The introduction and latter part of section 179(a) mandate that at least one sanction must be imposed 18 months after a finding has been made with respect to certain types of plans if the deficiency is not corrected.

funding sanction and a 2:1 offset sanction. These two sanctions are described in more detail in the preamble to the proposed rule (see 57 FR 44535).

Section 179(b) sanctions may be applied pursuant to section 110(m) when the Administrator makes a finding under section 179(a) (1) through (4), provided that the Agency has followed all procedural requirements for imposing a sanction. The Administrator has no authority under section 110(m), nor any mandatory duty under section 179(a), to impose sanctions until she has made a finding. The types of findings provided under section 179(a) are discussed in more detail in the preamble to the proposed rule (see 57 FR 44535).

Section 110(m) may be divided into two distinct parts (see 57 FR 44535). The first part of section 110(m) contains four distinct elements:

1. The timing of the imposition of section 110(m) sanctions;
2. The availability under section 110(m) of the sanctions listed in section 179(b);
3. The reference to a finding, disapproval, or determination under section 179(a) (1) through (4); and
4. The geographic scope of application of sanctions under section 110(m).

The second part requires the Administrator to propose criteria to be used when considering the application of sanctions on a statewide basis under section 110(m) within 24 months of a section 179(a) finding. Although not central to the purpose of this rulemaking, EPA presented a detailed discussion of the four elements referred to in the first part of section 110(m) in the proposed rule. The purpose was to explain how sections 110(m) and 179 provisions are interrelated. As shall be evident in the "Response to Comments" section, the preamble language discussing these four elements was the basis for numerous comments. The criteria, which are the basis of this action, seemed to generate significantly fewer comments.

III. Development of Criteria

The second sentence of section 110(m) requires the Agency to establish criteria that EPA must apply if the Agency considers applying sanctions under section 110(m) on a statewide basis within 24 months of a section 179(a) finding. These criteria should enable EPA to determine when a political subdivision,[5] rather than the entire State, is principally responsible for a section 179(a) deficiency. Where the political subdivision is principally responsible, EPA may not impose sanctions on a statewide basis.

The EPA recognizes that an understanding of the term "principal responsibility" was integral to the development of the criteria. The preamble to the proposed rule contains a detailed discussion on how a political subdivision may be held "principally responsible" for a section 179(a) failure when the EPA recognizes that the States have primary responsibility for meeting the requirements of the Act (see 57 FR 44535–36). The EPA believes that the criteria promulgated today will clearly indicate when the political subdivision carries the principal burden of carrying out an activity.

The EPA is promulgating five criteria (summarized below) that it believes will enable a determination of when a State has relinquished its primary control over an activity to a political subdivision and the political subdivision has failed to perform that required activity. The EPA believes that the political subdivision is principally responsible when the political subdivision:

1. Has the legal authority to perform the required activity;
2. Has traditionally performed, or has been delegated the responsibility to perform, the required activity;
3. Has received, where appropriate, adequate funding or authority to obtain funding from the State to perform the required activity;
4. Has agreed to perform (and has not revoked that agreement) or is required to accept responsibility for performing the required activity; and
5. Has failed to perform the required activity.

If one or more political subdivisions each meet all five of the criteria, EPA will consider those subdivisions principally responsible, and EPA may impose sanctions only on those political subdivisions and on other areas (short of the entire State) for which the Agency determines reasonable and appropriate. The EPA would not impose sanctions statewide. However, if all of the criteria have not been met by at least one political subdivision, EPA will use its discretion to determine whether to apply sanctions on a statewide basis.

These five criteria are intended to be applicable to SIP failures relating to stationary, area, and mobile sources. The EPA believes that the criteria developed here will enable it to successfully determine when a political subdivision is principally responsible for a deficiency.

IV. Limits of This Rulemaking

Nothing in the Act precludes EPA from applying sanctions pursuant to section 110(m), without examining the criteria, if the Agency elects to impose a sanction on a less-than-statewide basis or where EPA imposes statewide sanctions more than 24 months after a finding. Furthermore, this rulemaking does not affect the situation where each of a group of political subdivisions, whose combined area comprises the entire State, suffer a deficiency. The EPA could impose a sanction on each of those political subdivisions as an independent area without applying the criteria, even though this may appear to be a statewide sanction. All decisions to impose section 110(m) sanctions will be made on a case-by-case basis, and will be subject to notice-and-comment rulemaking.

This rule is not intended to identify which sanction EPA will apply in a particular circumstance, nor the type of deficiency for which EPA might use its discretion to apply sanctions. Furthermore, it is not intended to describe the notice and comment procedures EPA will ultimately use to impose a sanction pursuant to section 110(m).

V. Response to Comments

The EPA received comments from 15 sources including business associations, and Federal, State and local government entities. The following section provides a summary of the responses to major comments.

A. The EPA's Interpretation of the Statutory Requirements of Section 110(m)

Under this category, the commenters expressed concern with respect to the timing of sanctions and the application of sanctions beyond a nonattainment area. Although, as stated before, these issues are not central to the criteria being promulgated, EPA has responded to these comments below.

1. Imposition of Sanctions Earlier Than 18 Months

Comment. The Illinois EPA (IEPA) and the Virginia Department of Transportation (DOT) believe section 110(m) does not give EPA the authority to impose sanctions earlier than 18

[5] In § 52.30(a)(1), EPA defines the term *political subdivision* as "* * * the representative body that is responsible for adopting and/or implementing air pollution controls for one, or any combination of one or more of the following: city, town, borough, county, parish, district, or any other geographical subdivision created by, or pursuant to, Federal or State law. This will include any agency designated under section 174, 42 U.S.C., section 7504, by the State to carry out the air planning responsibilities under part D."

months after a finding under section 179. These commenters believe it is incorrect to impose any sanctions during the 18-month period immediately following a finding because section 179 clearly states that EPA may not impose sanctions if the deficiency is corrected within 18 months. The IEPA believes Congress included this 18-month period in recognition of the magnitude of the State's responsibilities under the Act as well as the time involved in the legislative and rulemaking processes. Also, the Illinois DOT states that because section 179 is the more detailed sanctions provision, under established principles of statutory construction and interpretation, it must prevail over section 110(m).

The IEPA suggests that if EPA determined to impose sanctions earlier than the 18-month period specified in section 179, EPA should develop specific criteria for when these early sanctions will be imposed, and provide notice and opportunity for potentially affected parties to comment prior to imposing sanctions. The IEPA also indicates that these criteria are necessary to avoid placing industries that are located in States that meet deadlines in a timely manner at a competitive disadvantage.

Response. Section 110(m) provides that the Administrator "* * * may apply any of the sanctions listed in section 179(b) (at any time or at any time after) the Administrator makes a finding. * * *" under section 179(a). This language plainly authorizes sanctions without regard to a waiting period after a finding is made.

The EPA believes that section 179 is phrased to require sanctions after 18 months not, as the commenters say, to prohibit sanctions before 18 months. Section 179 states "for any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in section 110(k)(5)), if the Administrator [makes a finding], unless such deficiency has been corrected within 18 months after the finding * * * one of the sanctions referred to in subparagraph (b) shall apply. * * *" This provision mandatorily imposes sanctions at 18 months if the deficiency has not been corrected, but does not prohibit sanctions earlier. Because section 179 does not prohibit the earlier application of sanctions, it does not conflict with section 110(m), which provides that sanctions may be imposed earlier than 18 months. Therefore, there is not a statutory construction issue of whether section 179 needs to prevail over section 110(m).

Regarding the request by the IEPA that EPA develop specific criteria for when an early sanction will be imposed, the EPA does not believe such criteria are statutorily required; however, since EPA will provide the public with an opportunity to comment on any sanction action under section 110(m) through notice-and-comment rulemaking prior to imposition of the sanctions, the public will have the opportunity to comment on EPA's rationale for the application of sanctions earlier than 18-months following the finding. Although EPA does not intend to develop specific criteria, Section A(4) of this preamble provides further discussion on application of sanctions earlier than 18-months following a finding.

As to IEPA's concern about competitive disadvantage, imposition of sanctions under section 110(m) should benefit sources located in those areas that make timely submittal of plans and plan revisions. Rather than delaying sanctions until 18 months after a finding, under section 110(m) sanctions may be applied much earlier than 18 months. Therefore, delinquent areas may be burdened much sooner than the 18-month period under section 179. Imposition of section 110(m) sanctions should inhibit any advantage achieved through delayed submittal of required plans and revisions.

2. Application of Sanctions Beyond Nonattainment Areas Comment

Five commenters believe highway sanctions should not be imposed outside of a nonattainment area. The Texas DOT, New York DOT, Illinois DOT and IEPA are concerned that EPA has not extended the nonattainment limitations of section 179 (a) and (b) to the imposition of sanctions under section 110(m). These commenters indicate that sanctions should apply only to nonattainment areas. The Virginia DOT believes that section 110(m) sanctions should not extend beyond a nonattainment area, except in extreme cases (such as where lack of good faith exists) and after a 24-month correction period has passed.

The New York DOT and IEPA believe that EPA's position regarding the geographic applicability of offset and highway sanctions is inconsistent, and that the reasoning that is applied to make the offset sanction applicable to a specific area should benefit the highway sanction as well. The IEPA feels that section 110(m) refers to the section 179(b) sanctions without exempting the Administrator from complying with the geographic limitations specified in section 179(b).

The Illinois DOT comments that section 110(m) allows EPA to sanction an area less than a whole nonattainment area if a unit of local government is really to blame.

The New York and Illinois DOT also state that since the statute is clear and understandable on its face, no reference to legislative history is required or allowed. The Illinois DOT believes that section 110(m) should be viewed in conjunction with section 179(b)(1), and if Congress had not meant to limit the use of highway funding sanctions to nonattainment areas, it would not have placed that limitation in section 179(b). The Illinois DOT comments that Congressman Anderson had prefaced his remarks as expressing the intent of only four members of the House Public Works and Transportation Committee. The commenter noted that in May 1990 the House Energy and Commerce Committee sent out a version of the Amendments with no limit in section 179(b) on the area for sanctions (see H. Rep. No. 140, 101st Cong., 2d Sess., Part 1). The House Public Works Committee responded with a report of its own at that time amending section 110(m) and repeating almost the same words quoted by EPA in the proposed rulemaking. Congressman Anderson's words may have been on the point then, but they did not agree with the language of section 179(b) the way it was finally passed by Congress.

Also, the Illinois DOT cites the House Conference Committee Report which accompanied the final version of the Act as evidence that sanctions are to be limited to nonattainment areas [H. Rep. No. 952, 101st Cong., 2d Sess. 335–6; Cong. Rec. H13101, 13197; Oct. 26, 1990; 1990 U.S. Code Cong. & Adm. News 3385, 3867–8 (Discussing imposition of sanctions "* * * in an area that fails to prepare or implement a plan to attain air quality standards. * * *")].

Response. To address the concerns of all five commenters, EPA believes that section 110(m) and section 179, although interrelated, do set up two distinct sanctions processes. In general, section 179 provides for mandatory sanctions with respect to failures under part D (in general, the nonattainment area provisions). As provided in the proposed rule, section 179 focuses on nonattainment areas in several respects (see 57 FR 44536–37). First, the general introductory language of section 179(a) provides that sanctions must be imposed for a failure with respect to "* * * any implementation plan or plan revision required under this

part. * * *" The provision is referring to part D of title I, the portion of the Act dealing with nonattainment area requirements. While some part D requirements may also apply to attainment areas in limited circumstances, the primary focus of part D is nonattainment areas. Second, the highway sanction language expressly limits the application of sanctions under section 179(a) to nonattainment areas. Finally, the offset sanction requires new or modified sources in complying with the requirements of section 173 to increase their offsets to 2:1. Typically, only sources in nonattainment areas need to comply with section 173 and, therefore, in most instances the offset sanction will only affect sources in nonattainment areas. For the above reasons, EPA believes that section 179(a) does not require statewide imposition of sanctions.

On the other hand, section 110(m) clearly provides for the imposition of sanctions beyond nonattainment areas. The express language of section 110(m) provides that the Administrator may impose sanctions on "* * * any portion of the State the Administrator determines reasonable and appropriate. * * *" Beyond that, section 110(m) provides for the discretionary imposition of sanctions for a finding that an area has failed to meet any requirement with respect to any "plan or plan item" under the Act. Such requirements could apply to nonattainment, attainment, or unclassified areas. Although section 110(m) refers to the sanctions established in section 179(b), there is no language stating that the geographical limitations in section 179 override section 110(m)'s express authorization for sanctions on any part of the State that EPA determines reasonable and appropriate. Section 110(m) refers only to the sanctions themselves, not the accompanying limitations. For the above reasons, EPA believes that section 110(m) does establish its own geographic scope.

The Virginia DOT suggests that EPA should limit application of section 110(m) sanctions beyond the nonattainment area to circumstances where there is a lack of good faith. While EPA may take good faith into consideration in determining the geographic scope of section 110(m) sanctions, EPA does not agree that it should establish lack of good faith as a prerequisite for imposition of section 110(m) sanctions beyond the nonattainment area.

With respect to the comment of Illinois DOT that EPA can sanction less than an entire nonattainment area, the Agency agrees that under section 110(m)'s broad grant of authority for the imposition of discretionary sanctions, EPA may select an area smaller than the nonattainment area.

The IEPA comments that EPA is treating the geographic limitations of the highway and offset sanctions differently and that EPA should say that highway sanctions are also limited in scope. The EPA disagrees. First, we believe that both sanctions may be imposed on any portion of the State. However, by its method of application, the offset sanction will only have effect in those areas that must apply the emission offset requirements of section 173. Therefore, the offset sanction would have no effect in certain areas. The highway sanction is not self-limiting; therefore, it will have a broader effect.

Second, the EPA did not rely on legislative history to override statutory language, but rather to support statutory language that grants EPA discretion to apply sanctions to other than nonattainment areas. The Illinois DOT bases its argument that the legislative history does not support the imposition of sanctions beyond the nonattainment area on an assumption that section 110(m) does not provide an independent grant of authority to impose sanctions. However, the Act does provide two separate grants of sanction authority with different geographic scopes; this is supported by the language of the Act, as described above, and by the legislative authority. The language from H. Conf. Rep. No. 101–952 that references the imposition of sanctions on an area that fails to attain the air quality standard appears to refer to the imposition of sanctions under section 179 because it discusses the required imposition of sanctions. The language cited by EPA in the preamble to the proposed rule addresses a different grant of statutory authority to impose sanctions, namely, that authority under section 110(m). In addition, Illinois DOT cites H. Rep. No. 101–490, which clearly provides that EPA may impose sanctions beyond nonattainment areas by stating that EPA "* * * is empowered to apply sanctions to any portion of a State." The committee goes on to clarify how it believes EPA should use this broad grant of authority, indicating that EPA should impose sanctions on the governmental entity that is "primarily responsible," and noting that a State legislature's failure to adopt an inspection/maintenance program is a circumstance where statewide sanctions are appropriate.

3. Section 110(m) Does Not Establish Independent Authority to Sanction

Comment. The Virginia DOT believes section 179 is the basis for imposing sanctions and is not superseded by section 110(m). Furthermore, the Virginia DOT comments that section 110(m) expands on section 179 by requiring that an additional minimum 6-month grace period must be observed after the initial 18-month period (i.e., 24 months) before sanctions may be imposed on a statewide basis where a political subdivision is principally responsible for the deficiency. The City of Chicago comments that EPA's proposed imposition of statewide sanctions under section 110(m) as an alternative to section 179 would vitiate section 179. Once EPA determines none of the political subdivisions meet the criteria, and thus the entire State is principally responsible for a section 179(a) deficiency, EPA is bound by the requirements of section 179.

Response. The EPA agrees that sanctions cannot be imposed statewide within the first 24 months following a finding where a political subdivision is found principally responsible for the deficiency. However, EPA disagrees that section 179 provides the sole authority for imposing sanctions and, in doing so, allows for the imposition of statewide sanctions. As discussed in the response to Comment 2 above, section 179 does not refer to the imposition of statewide sanctions and, in fact, focuses on the imposition of sanctions in nonattainment areas. In fact, the EPA believes the reference to statewide sanctions under section 110(m) makes it clear that section 110(m) establishes a different authority to sanction States and that statewide sanctions are not required under section 179. Section 110(m) provides that statewide sanctions shall not be applied within 24 months of the time a finding is made if a political subdivision is principally responsible for the deficiency; this provision means that statewide sanctions may be imposed earlier than 24 months if no political subdivision is found principally responsible. If section 179 required statewide sanctions after 18 months, it would be contrary to the section 110(m) provision that sanctions shall not apply within the 24 months following the finding if a political subdivision is principally responsible for the deficiency. Therefore, EPA believes that its ability to impose statewide sanctions during the 24-month period following a finding is based on a determination under section 110(m) that a political subdivision is not

principally responsible for the deficiency.

Section 110(m) does not vitiate section 179 because section 179 sanctions are not statewide but are imposed on the specific area for which the deficiency arises, in most instances nonattainment areas. As stated previously, section 179 mandates that sanctions be imposed 18 months after a finding is made. While the imposition of sanctions earlier under section 110(m) could remove the need to impose sanctions under section 179 sanctions in that area, section 179 has continued force and effect in areas where section 110(m) sanctions are not imposed. The EPA does not believe that imposition of sanctions under section 110(m) conflicts with section 179 sanctions. Application of sanctions earlier than 18 months is not inconsistent because EPA believes the purpose of section 179 was to ensure that EPA did not delay sanctions beyond the periods prescribed in that action.

4. Regulatory Limitation on Early Imposition of Sanctions

Comment. The United States Department of Transportation (U.S. DOT) recommends adding a statement to the rule that EPA expects to impose sanctions on a statewide basis earlier than 18 months only in limited circumstances, after notice-and-comment rulemaking.

Response. This statement was not in the proposed rule and EPA believes it should not be included in the final rule. The EPA stated in the preamble to the proposed rule that it would only apply sanctions early in "unusual circumstances where the State has indicated explicit resistance to working to resolve a plan deficiency" (see 57 FR 44534). The final rule revises this preamble language because EPA believes the term "unusual circumstances" provides little guidance as to when EPA intended to use its discretionary sanction authority.

While EPA does not intend to use the section 110(m) authority in all situations where a finding is made, the Agency needs to ascertain that it has the flexibility to use this option when necessary. In order to develop some plans or plan items, States must perform certain steps that EPA can track to determine whether the State will meet deadlines in the Act. When a State believes that EPA can impose sanctions only after a deadline is missed and 18 months have gone by, then there is little incentive for the State to take the necessary actions to complete authorization and implementation of politically-difficult rules and regulations. The EPA needs to maintain its flexibility to respond rapidly to situations where it appears a State will not meet a deadline, and to assure the State that it does not, in fact, have an extended grace period for noncompliance. The certainty and swiftness of imposition of the Act's penalties are critical to timely completion of the SIP's. Consequently, the revised language, clarifies EPA's position concerning when discretionary sanctions may be appropriate while retaining EPA's flexibility to use such sanctions to ensure compliance with the Act. Thus, EPA will exercise section 110(m) sanctions earlier than 18 months only in cases where:

1. The State has indicated an explicit resistance to resolving a plan or program deficiency or to making a required plan or program submittal; or

2. Where special circumstances, particular program needs, or time constraints dictate the need for use of such sanctions.

Thus, the rule retains the Administrator's discretion to apply sanctions at any time after a finding is made; however, EPA will provide notice and opportunity for comment on the basis for all section 110(m) actions.

B. EPA Discretion to Determine the "Reasonable and Appropriate" Area for Imposition of Sanctions

1. *Comment.* The City of Chicago believes the discretion in § 52.30(d)—that if the criteria are met EPA may impose sanctions on a less than statewide basis to the area it determines is reasonable and appropriate—was not Congress' intent in enacting section 110(m). The City of Chicago believes EPA's only discretion is whether to apply sanctions to political subdivisions that meet the criteria. Thus, the City of Chicago believes EPA has no basis to apply sanctions when the criteria are not met (i.e., to apply sanctions to political subdivisions that were thought to be principally responsible, but did not meet the criteria, and to any other surrounding political subdivisions EPA determines is reasonable and appropriate) and that to apply sanctions to these areas is arbitrary and capricious.

Response. Section 110(m) states that sanctions may be applied to any portion of the State the Administrator determines reasonable and appropriate, with one exception. If one or more political subdivisions are principally responsible for the deficiency, sanctions may not be applied statewide. Therefore, if the criteria are met, i.e., a political subdivision is principally responsible, then EPA may not impose sanctions on a statewide basis. However, if no political subdivision is principally responsible, the text of section 110(m) expressly authorizes EPA to move forward and impose sanctions on a statewide basis. The EPA would make a determination, however, concerning what area of the State for which sanctions would be reasonable and appropriate. Furthermore, EPA is not required to establish criteria to determine the area of the State for which it is reasonable and appropriate to apply sanctions under section 110(m).

2. *Comment.* Four commenters, New York DOT, the Orange County Transportation Authority (OCTA), the City of Chicago, and the U.S. DOT, requested clarification of how EPA will determine the "reasonable and appropriate" area to apply sanctions. The City of Chicago and the U.S. DOT assert that the statute requires such clarification. The New York DOT believes that the lack of adequate guidance on what area is "reasonable and appropriate" will create confusion and continual uncertainty on the part of States as well as Federal agencies. The New York DOT suggests that the prime consideration should be whether a good faith effort has been made to bring the nonattainment area into compliance. The New York DOT believes that if this issue is not addressed in this rulemaking, it should be the subject of another rulemaking.

The OCTA cites the example of California, which consists of several regional authorities, which, in turn, each consist of several local jurisdictions. The OCTA is concerned about how EPA would impose sanctions in the case where a regional authority contains several local jurisdictions and where a local authority failed to do everything mandated by a regional plan. The commenter believes it would be more reasonable and appropriate to apply sanctions to the single local jurisdiction, not the regional authority. In addition to assuring that the State does not suffer sanctions if one political subdivision is principally responsible for the deficiency, the commenter suggests that EPA assure that regions within a State would not be subject to sanctions if one or more local jurisdictions is/are principally responsible for the deficiency.

The U.S. DOT comments that in situations where a nonattainment area contains multiple political subdivisions, none of which are principally responsible according to the five criteria, the rule must clarify how EPA will determine whether to apply sanctions to the specific responsible

political subdivision(s) rather than the entire nonattainment area.

The City of Chicago and U.S. DOT assert that the statutory mandate to promulgate criteria is not limited to the determination of principal responsibility. These commenters argue that EPA must also develop criteria to determine when the imposition of sanctions would be reasonable and appropriate, and the criteria should be sufficient to put potentially affected political subdivisions on notice of the activities or agreements which may put them at risk of sanctions.

Response. Section 110(m) specifically provides that EPA may impose sanctions on any part of the State that EPA deems is reasonable and appropriate. Section 110(m) then requires that EPA "* * * establish criteria for exercising (this) authority * * * to ensure that * * * such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency." The EPA believes this language strictly limits the required development of criteria to those necessary to determine if a political subdivision is principally responsible for the deficiency. There is no requirement that the criteria must guide EPA's further decision of which area is "reasonable and appropriate" for the imposition of sanctions. At this time, EPA does not have experience with imposing these sanctions and, therefore, does not want to constrain the Agency in the exercise of this discretion. The variety of circumstances would make it difficult to develop criteria that would be applicable in every instance. As to the comments of the City of Chicago and the U.S. DOT that EPA needs to establish criteria for when it will impose sanctions under section 110(m), EPA does not believe that such criteria are mandated. The public will have an opportunity to comment on EPA's determination of the area on which it will impose sanctions and the timing of sanctions during each specific section 110(m) rulemaking action.

C. Selection and Design of Criteria

Under this category, the commenters focused their particular concerns on the sanction criteria.

1. *Comment.* The OCTA suggests that the rule clarify that all five criteria are to be met, not merely used, by EPA to determine if a subdivision is principally responsible for the deficiency. The OCTA suggests the following language: "Criteria. The EPA will use the following five criteria, all of which must be met, to determine whether a political subdivision is principally responsible for the deficiency."

Response. The EPA agrees with this comment but determined that language other than that suggested would be clearer. Therefore, EPA has revised § 52.30(d)(1) to read as follows: "For the purposes of this action, EPA will consider a political subdivision to be principally responsible for the deficiency on which a section 179(a) finding is based, if all five of the following criteria are met."

2. *Comment.* The New York DOT comments that the necessity for all five criteria to be met is overly strict and biased toward imposition of sanctions statewide, and it may be difficult to establish that all five have been met. Therefore, the New York DOT suggests that only a majority (three out of five) be met.

Response. The EPA believes all five criteria are needed to determine whether a political subdivision is principally responsible. The EPA sees no compelling reason to weaken this requirement. In addition, the failure to determine that one or more areas are principally responsible does not presuppose the imposition of statewide sanctions; the EPA must determine that the area sanctioned is the reasonable and appropriate area.

3. *Comment.* The U.S. DOT requests clarification of what State actions are necessary to provide adequate legal authority under the proposed Criterion 1. Criterion 1 states that the State must provide adequate legal authority to a political subdivision to perform the required activity.

Response. The EPA does not believe that there is a single distinct definition of the term "legal authority." What constitutes adequate legal authority may vary from State to State. This should be handled on a case-by-case basis.

4. *Comment.* The New York DOT comments that under the proposed Criterion 2 [§ 52.30(c)(2)], there must be a very clear agreement in the SIP or some other document as to which functions are to be performed by which agencies. For example, functions traditionally performed by local agencies may not be performed that way under the Intermodal Surface Transportation Efficiency Act (ISTEA).

Response. The EPA agrees with the commenter and encourages States to develop clear agreements as to which functions are being performed by which agencies. Note in particular that section 174 of the Act requires States to jointly review and update, as necessary, their planning procedures that were in effect before the Act was amended in 1990 or to develop new procedures as appropriate. In preparing such procedures, State and local elected officials must determine which elements of a revised SIP will be developed, adopted, and implemented by the State, and which elements will be carried out by local or regional entities. The EPA has provided guidance on this and other section 174 requirements in a document entitled "1992 Transportation and Air Quality Planning Guidelines" (July 1992, EPA 420/R-92-001). The EPA will work with the State and the political subdivision to ascertain if this criterion has been met. In addition, any comments raised as to this issue during the rulemaking process on a specific section 110(m) action will be properly considered by EPA.

5. *Comment.* Concerning Criterion 4 [§ 52.30(c)(4)], the U.S. DOT also comments there should be a provision included to provide against "State failure." If a local agency cancels an agreement to perform a certain function, it might leave the State without the time or resources to perform the function. Thus, the State, instead of the local agency, would become principally responsible. The U.S. DOT believes it would be inappropriate to apply statewide sanctions in such a case.

Response. If the local agency cancels its agreement to perform a function, EPA would take this into consideration when determining whether the political subdivision is principally responsible in causing the deficiency. Moreover, this factor may be considered in determining the area to which it is reasonable and appropriate to apply sanctions. The EPA can consider all factors in determining what area is reasonable and appropriate.

6. *Comment.* The Massachusetts DOT believes the rule should contain a specific provision for State consultation in determining principal responsibility because many factors such as regional demographic trends, changing local traffic patterns, and land-use decisions in adjoining areas have a larger impact on emissions than institutional arrangements for air quality planning. The proposed criteria may be the best way to evaluate whether the State or the political subdivision is solely responsible for the emissions requirements, but it may not be relevant in targeting the actual source of the problem or in defining solutions.

Response. To the extent it determines appropriate, EPA will consult with the State when evaluating the criteria under section 110(m). In any event, the State will have adequate opportunity to raise any such concerns in the comment period following the notice of proposed

rulemaking for imposition of section 110(m) sanctions.

D. Other Relevant Comments

1. *Comment.* The State of Vermont comments that it is the only State in attainment with the ozone national ambient air quality standards and also located within the Northeast Ozone Transport Region. Vermont requests clarification in the rule of whether attainment status or inclusion in the ozone transport region (OTR) is the deciding factor with respect to applicability of these rules.

Response. Neither attainment status nor inclusion in the OTR is the deciding factor. Under section 110(m), EPA may impose sanctions on a statewide basis or on any area of the State deemed reasonable and appropriate based on the failure of the State or a political subdivision of the State to meet a requirement of the Act with respect to a plan or plan element. If a requirement is applicable to a political subdivision of the State, EPA will determine whether that political subdivision was principally responsible for the failure, using the criteria established in this rulemaking. The EPA's ability to use the section 110(m) sanctions is not limited to nonattainment areas or areas that must meet the title I, part D nonattainment requirements.

2. *Comment.* The City of Chicago comments that the term "required activity" contravenes the definition of required activity in section 179 and permits EPA to sanction entities without providing any prior notice that EPA considers a particular action to be sanctionable. The City of Chicago also comments that since section 110(m) incorporates section 179(a), EPA is not permitted to create a second, conflicting definition. Furthermore, the proposed definition does not identify covered activities, and it does not give entities prior notice of sanctionable activities. Finally, the City of Chicago is concerned about the ambiguity of the definition and that it may mean EPA is expanding the definition from section 179(a).

Response. Section 179(a) does not define required activity. Rather, EPA believes this introductory phrase under section 179(a) refers to submittals required under part D of the Act. The four general categories of activities listed in section 179(a) are the four possible types of State failure with respect to the required activities under part D. The types of failure are not synonymous with required activities under the introductory language of section 179(a). Finally, the City of Chicago contends that the definition of "required activity" is too open-ended because of the language "may include, but is not limited to."

The EPA interprets the term "required activity" for purposes of section 110(m) in a manner similar to that for section 179(a); however, EPA recognizes that for section 110(m), "required activity" refers to any plan or plan item requirement under the Act, not just those required under part D. Finally, EPA agrees that the language "may include, but is not limited to" may provide broader authority than that granted under section 110(m). Therefore, EPA has changed the definition in the final rule to provide: "The term 'required activity' refers to the submission of a plan or plan item or the implementation of a plan or plan item under the Clean Air Act."

3. *Comment.* The OCTA and the U.S. DOT request clarification of the term "political subdivision." Both commenters appear concerned about whether EPA in making a determination of "principal responsibility" may consider less than the entire nonattainment area. The OCTA notes that California has several regional authorities that each are composed of numerous local jurisdictions. These local jurisdictions often have the responsibility for "adopting and implementing air pollution controls."

Response. The definition of "political subdivision" set forth in § 52.30(a)(1) includes all types of governmental entities, including local jurisdictions. The EPA could sanction less than an entire nonattainment area based on a determination that a local jurisdiction was principally responsible for the deficiency on which the sanction is based.

4. *Comment.* The OCTA comments that the proposed rule should include a definition of "plan item." The OCTA notes that section 110(m) reads in part "* * * in relation to any plan or plan item (as that term is defined by the Administrator). * * *" The OCTA cites the example of the California SIP, which is partially composed of regional plans. Some regional plans require local jurisdictions to take certain actions, which to the commenter appear to be plan items.

Response. As discussed earlier, to make this clearer, EPA replaces the phrase "adequate SIP or SIP element" under § 52.30(a)(2) with the phrase "plan or plan item." Although EPA interpreted the phrase "adequate SIP or SIP element" to essentially mean the same as the phrase "plan or plan item," this replacement is more consistent with the language of section 110(m) which refers to "plan or plan item." "Plan and plan item" are also defined under § 52.30(a)(4).

E. Comments on Policy Stated In Preamble to Proposed Rule

1. Choice of Sanctions

Comment. The Texas DOT, the Chemical Manufacturers Association (CMA), and the Northwest Indiana Regional Planning Commission (NIRPC) asked EPA to identify which sanction will be applied for various types of SIP deficiencies. These commenters all state that the sanction should be tied to the underlying deficiency. For example, the commenters state that highway sanctions should only be applied when there is a SIP deficiency relative to mobile sources and the offset sanction where the deficiency is relative to stationary sources. The CMA recommends adding extra language to the rule as follows: "The EPA will assess the nature of the deficiencies and take this into account when determining which sanction to apply."

The NIRPC further asserts that only those projects which have the potential for increasing emissions should be targeted; withholding highway funds which may correct a problem is inappropriate.

Response. The type of sanction to be applied and the selection procedure are not part of this rulemaking. Sanction determinations will be made on a case-by-case basis. The EPA will go through notice-and-comment rulemaking on selection and imposition of sanctions under section 110(m). The notice will propose for comment which sanctions or sanction will be applied. In addition, the Act sets forth those projects exempted from the highway funding restrictions. The EPA will act consistently with the requirements of the Act in imposing the highway funding restrictions.

2. Impact of Rule on Title 23 Funds

Comment. The American Public Transit Association is concerned about how EPA's sanction determination process could affect the process and procedures of transferring flexible funds (i.e., certain title 23 program funds) from highway to transit purposes. The Southeastern Pennsylvania Transportation Authority requests clarification of how any imposed restrictions on highway funds would affect funds previously flexed to transit as provided for in the ISTEA.

Response. This rulemaking is not intended to address how the highway sanctions will be implemented. The EPA is in the process of developing procedures with the U.S. DOT to

provide for the coordinated implementation of the highway sanction. The EPA and the U.S. DOT will develop procedures consistent with the specifications in section 179(b).

3. Authority to Sanction For Failure to Implement

Comment. The Massachusetts DOT comments that EPA's authority to sanction a State if "* * * a requirement of an approved plan is not being implemented is too broad, given the large number of agencies, regulatory authorities, and group interests which can prevent a planned project from being implemented." Instead, a State's good faith effort to implement an approved project should be identified as an exception to this policy.

Response. The types of findings that may lead to the imposition of sanctions are specified in the Act; they are not being developed by this rulemaking. Therefore, once a finding of failure to implement a plan has been made, section 179(a) requires that the 18-month mandatory sanctions clock begins. Furthermore, any finding made under section 179(a) provides EPA with discretion to impose sanctions under section 110(m).

4. Clarification of Offset Sanction

Comment. The Massachusetts DOT requests clarification of the requirement for a 2:1 emissions reduction from existing sources to offset emissions from major new facilities. The Massachusetts DOT believes it is not reasonable to require reductions from existing, older or congested facilities before major new improvements are made.

Response. The procedure by which facilities offset emissions is not the subject of this rulemaking. Those issues must be resolved in regulations adopted by the State pursuant to the requirements of section 173.

VI. Miscellaneous

A. Relationship to Permit Program

The Act includes specific sanctions provisions for permitting requirements in section 502(d) and (i), 42 U.S.C., 7661a(d) and (i). The section 110(m) sanctions procedure does not apply with respect to findings regarding permit program failures.

B. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that this action is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C 605(b), the Administrator hereby certifies that the attached rule will not have a significant economic impact on a substantial number of small entities. Since the rule requires EPA to consider criteria before applying sanctions on a statewide basis, it potentially could result in a reduced burden on small entities.

D. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Carbon monoxide, Nitrogen oxides, Sulfur dioxide, PM–10, Sanctions.

Dated: December 29, 1993.

Carol M. Browner,

Administrator.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATIONS PLANS

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

Authority: 42 U.S.C. 7401–7671q.

2. Part 52 is amended by adding a new § 52.30 to subpart A to read as follows:

§ 52.30 Criteria for limiting application of sanctions under section 110(m) of the Clean Air Act on a statewide basis.

(a) *Definitions.* For the purpose of this section:

(1) The term "political subdivision" refers to the representative body that is responsible for adopting and/or implementing air pollution controls for one, or any combination of one or more of the following: city, town, borough, county, parish, district, or any other geographical subdivision created by, or pursuant to, Federal or State law. This will include any agency designated under section 174, 42 U.S.C. 7504, by the State to carry out the air planning responsibilities under part D.

(2) The term "required activity" means the submission of a plan or plan item, or the implementation of a plan or plan item.

(3) The term "deficiency" means the failure to perform a required activity as defined in paragraph (a)(2) of this section.

(4) For purposes of § 52.30, the terms "plan" or "plan item" mean an implementation plan or portion of an implementation plan or action needed to prepare such plan required by the Clean Air Act, as amended in 1990, or in response to a SIP call issued pursuant to section 110(k)(5) of the Act.

(b) *Sanctions.* During the 24 months after a finding, determination, or disapproval under section 179(a) of the Clean Air Act is made, EPA will not impose sanctions under section 110(m) of the Act on a statewide basis if the Administrator finds that one or more political subdivisions of the State are principally responsible for the deficiency on which the finding, disapproval, or determination as provided under section 179(a)(1) through (4) is based.

(c) *Criteria.* For the purposes of this provision, EPA will consider a political subdivision to be principally responsible for the deficiency on which a section 179(a) finding is based, if all five of the following criteria are met.

(1) The State has provided adequate legal authority to a political subdivision to perform the required activity.

(2) The required activity is one which has traditionally been performed by the local political subdivision, or the responsibility for performing the required activity has been delegated to the political subdivision.

(3) The State has provided adequate funding or authority to obtain funding (when funding is necessary to carry out

the required activity) to the political subdivision to perform the required activity.

(4) The political subdivision has agreed to perform (and has not revoked that agreement), or is required by State law to accept responsibility for performing, the required activity.

(5) The political subdivision has failed to perform the required activity.

(d) *Imposition of sanctions.* (1) If all of the criteria in paragraph (c) of this section have been met through the action or inaction of one political subdivision, EPA will not impose sanctions on a statewide basis.

(2) If not all of the criteria in paragraph (c) of this section have been met through the action or inaction of one political subdivision, EPA will determine the area for which it is reasonable and appropriate to apply sanctions.

[FR Doc. 94–551 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Part 52

[ND4–1–5670, UT8–1–5842; FRL–4823–9]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Programs for the States of North Dakota and Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On August 25, 1993 EPA published the notices of proposed rulemaking to approve the State Implementation Plan (SIP) revisions submitted by the States of North Dakota and Utah for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM) in each State. The implementation plans were submitted by the States to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval was set forth in the proposals. No comments were received pursuant to these proposed actions. Therefore, EPA is proceeding with its approval of the revisions to the North Dakota and Utah SIPs for establishing a PROGRAM in each State.

EFFECTIVE DATE: This rule will become effective on February 10, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at: Air Programs Branch, Environmental Protection Agency, Region VIII 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

FOR FURTHER INFORMATION CONTACT: Laura Farris, Mail Code–8ART-AP, USEPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background of Revisions

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The States of North Dakota and Utah submitted SIP revisions to EPA in order to satisfy the requirements of section 507 of the CAA. In order to gain full approval, the State's submittals must provide for each of the following PROGRAM elements:

(1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses required by section 507(a);

(2) The establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process which is required by section 507(a)(3); and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP required by section 507(e).

II. Summary of Submittals

The State of North Dakota has met all of the requirements of section 507 of the CAA by submitting a SIP revision that implements all required PROGRAM elements. N.D.C.C. sections 23–25–02 and 23–25–03 grants the Department the authority to undertake the elements of the PROGRAM. The Governor, through Executive Order 1992–5, established the Small Business Compliance Advisory Panel. The North Dakota State Department of Health and Consolidated Laboratories (the Department) formally adopted the SIP revision on October 23, 1992, which identifies a plan to implement the PROGRAM. This SIP revision is being added to the North Dakota SIP as section 12. The North Dakota PROGRAM was submitted to EPA by the Governor of North Dakota on November 2, 1992, and was initially reviewed for administrative and technical completeness. In a letter dated December 15, 1992, EPA requested additional information from the State in order to make a positive determination on the submittal. After receiving the additional information on January 18, 1993, EPA notified the State in a letter dated February 2, 1993, that the submittal was administratively and technically complete. The submittal then underwent review by EPA headquarters, and received a concurrence from all reviewers.

The State has met the first PROGRAM element by committing in its SIP revision section 12.5 to meet the six requirements set forth in section 507(a)(3) for the Small Business Assistance Program. The State has met the second PROGRAM element by locating the position of the Small Business Ombudsman in the Office of the Chief of the Environmental Health Section effective April 6, 1992, as stated in its SIP revision section 12.3. The State has met the third PROGRAM element through Executive Order 1992–5 dated May 21, 1992, issued by the Governor of North Dakota, which established a Small Business Compliance Advisory Panel in the State of North Dakota, and by outlining in its SIP revision section 12.4 the functions of the CAP and how the members will be determined, which is consistent with section 507(e). Additionally, the State of North Dakota has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's

eligibility using the criteria in section 507(c)(1) of the CAA. This mechanism is contained in section 12.2 of the State's SIP revision.

The State of Utah has met all of the requirements of section 507 by submitting a SIP revision that implements all required PROGRAM elements. Section 19–2–109.2 of the Utah Code Annotated, 1953, as amended authorizes the Utah Air Quality Board to establish a SBAP, and create a Compliance Advisory Panel. A new section 17, which is a plan for implementation of the SBAP, will be added to the Utah SIP. R307–2 of the Utah Air Conservation Rules incorporates this SIP revision by reference. The Utah PROGRAM was submitted to EPA by the Governor of Utah on November 9, 1992, with supplemental information sent on November 5, 1992, and January 11, 1993. EPA notified the State in a letter dated December 30, 1992, that the submittal was administratively and technically complete. The submittal then underwent review by EPA headquarters, and received a concurrence from all reviewers.

The State of Utah has met the first PROGRAM element by committing in section 17.3 of its regulations to meet the six requirements set forth in section 507(a)(3) of the CAA for the Small Business Assistance Program. The State of Utah has met the second PROGRAM element by locating the Office of the Small Business Ombudsman in the Department of Environmental Quality, Office of the Executive Director, as stated in section 17.5.1 of its regulations. The State of Utah has met the third PROGRAM element by outlining in sections 17.4.1 and 2 of its regulations the functions of the CAP and how the members will be determined, which is consistent with section 507(e) of the CAA. Additionally, the State of Utah has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. This mechanism is contained in section 17.2 of the State's regulations.

III. Final Action

EPA is approving the SIP revisions submitted by the States of North Dakota and Utah. The revisions were made to satisfy the requirements of section 507 of the CAA.

This action has been classified as a Table 3 action by the Acting 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 requirement of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

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.

By this action, EPA is approving two State programs created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. These programs do not impose any new regulatory burdens on small businesses; they are programs under which small businesses may elect to take advantage of assistance provided by the States. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control.

Dated: December 28, 1993.

Jack W. McGraw,

Acting 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 JJ—North Dakota

2. Section 52.1833 is added to subpart JJ to read as follows:

§ 52.1833 Small business assistance program.

The Governor of North Dakota submitted on November 2, 1992 a plan to develop and implement a Small Business Assistance Program to meet the requirements of section 507 of the Clean Air Act by November 15, 1994. The plan commits to provide technical and compliance assistance to small businesses, hire an Ombudsman to serve as an independent advocate for small businesses, and establish a Compliance Advisory Panel to advise the program and report to EPA on the program's effectiveness.

Subpart TT—Utah

3. Section 52.2348 is added to subpart TT to read as follows:

§ 52.2348 Small business assistance program.

The Governor of Utah submitted on November 9, 1992 a plan to develop and implement a Small Business Assistance Program to meet the requirements of section 507 of the Clean Air Act by November 15, 1994. The plan commits to provide technical and compliance assistance to small businesses, hire an Ombudsman to serve as an independent advocate for small businesses, and establish a Compliance Advisory Panel to advise the program and report to EPA on the program's effectiveness.

[FR Doc. 94–661 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094–AA43

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) amends several existing rules that govern procedures for hearings and appeals under the Surface Mining Control and Reclamation Act of 1977 in order to bring the rules up to date. Because of events that have occurred since they were adopted, the existing rules omit references or contain incorrect references, are inconsistent with other rules, or fail to provide necessary information or procedures. The amendments correct these defects. In this document OHA also updates telephone numbers of offices of field

solicitors and field offices of the Office of Surface Mining Reclamation and Enforcement (OSM), listed in the existing rules, to reflect changes which have been effected heretofore.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Telephone: 703–235–3750.

SUPPLEMENTARY INFORMATION: On November 19, 1991, OHA proposed amendments to existing procedural rules governing hearings and appeals under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (1988), because rules subsequently adopted or cases decided have rendered the existing rules out of date or shown them to be incomplete or inaccurate. See 56 FR 58330–58332 (Nov. 19, 1991). No comments were received on the published proposed amendments. The amendments effected by this final rulemaking are explained below under the heading for each rule involved.

Amendment of 43 CFR 4.1100

As a result of previous amendments of 43 CFR 4.1109(a) to provide current addresses and jurisdictions of field solicitors who are to be served documents (see 56 FR 2139, 2142–43 (Jan. 22, 1991), 56 FR 5061 (Feb. 7, 1991)), the definition of "field solicitor" in 43 CFR 4.1100(d) is superfluous. It was proposed to remove that definition and redesignate the following definitions in alphabetical order. No comments were received on this proposal. That definition is therefore removed and the following definitions (e) and (f) are redesignated (d) and (e).

Amendment of 43 CFR 4.1105(a)

30 CFR 842.15(d) provides a right of appeal to the Interior Board of Land Appeals (IBLA or the Board) under 43 CFR 4.1280 *et seq.* of the written determination, after informal review by the Director of the OSM or his or her designee, concerning the decision of an authorized representative of the Secretary not to inspect or take enforcement action concerning an alleged violation that is the subject of a request for a federal inspection under 30 CFR 842.12.

Similarly, 30 CFR 843.12(i) provides that any determination by an authorized representative of the Secretary granting or denying an abatement period exceeding 90 days under 30 CFR 842.12(h) shall contain a right of appeal to IBLA under 1280 *et seq.*

As the Board has had occasion to observe, however, 43 CFR 4.1105 does not name the permittee of the operation that is the subject of a determination of the Director or an authorized representative, or any person whose interests might be adversely affected by the outcome on appeal and who participated before OSM, as a party who must be served with a copy of the notice of appeal and statement of reasons under 43 CFR 4.1283(a) and who may participate under §§ 4.1284 and 4.1286. See Save Our Cumberland Mountains, Inc., 108 IBLA 70, 83 n.7, 96 I.D. 139, 146 n.7 (1989). OHA therefore proposed to amend 43 CFR 4.1105(a) by adding subsection (5) naming such permittees and persons as parties.

After this addition to 43 CFR 4.1105(a) was proposed, however, the Board decided Robert L. Clewell, 123 IBLA 253 (1992). In that case, citizens who had requested their identity be kept confidential, in accordance with 30 CFR 842.12(b), later revealed their identity to the coal company whose operation they had requested be inspected by sending a copy of their statement of reasons of appealing the denial of their request for inspection to the company. Had they not done so, under the terms of § 842.12(b), their "identity may not be revealed, even to other parties to a case, unless and until a competent official acting in response to a formal request filed under 5 U.S.C. 552 (1988) or other Federal law has determined that [their] identity must be made public because it does not fall within the scope of 5 U.S.C. 552(b)(7) (1988) or any other exemption from disclosure provided by law. See 42 FR 62665–66 (Dec. 13, 1977)." Robert L. Clewell, *supra* at 257 n.1.

As a result of this decision, OHA has added a statement to the new § 4.1105(a)(5) that a person who wishes his or her identity kept confidential under 30 CFR 842.12(b) is responsible for maintaining that confidentiality when serving documents in accordance with § 4.1109.

Amendment of 43 CFR 4.1109(a)

43 CFR 4.1109(a) is amended to update field solicitor office telephone number to reflect changes which have been effected heretofore.

Amendment of 43 CFR 4.1151(b)

OSM amended 30 CFR 723.19(a) and 845.19(a) to provide 30 days rather than 15 days in which a person may file a petition for review of a proposed civil penalty with the Hearings Division of OHA after the date of service of notice of an assessment conference officer's action. See 56 FR 10060, 10063 (Mar. 8, 1991). OHA therefore proposed to amend the corresponding procedural rule, 43 CFR 4.1151(b), to provide the same time and to add a reference to 30 CFR 845.18. No comments were received on the proposed change, so it is adopted.

Amendments of 43 CFR 4.1152, 4.1154, and 4.1157

The references to 30 CFR part 723 in 43 CFR 4.1152(a)(2); to 30 CFR 723.15 in 43 CFR 4.1154(a); and to 30 CFR 723.12 and 723.13 in 43 CFR 4.1157 (a) and (b) need to be updated by correcting the references in 43 CFR 4.1154(a) and in 43 CFR 4.1157 (a) and (b) and by adding references to the corresponding sections in 30 CFR part 845. OHA proposed to amend 43 CFR 4.1152, 4.1154, and 4.1157 for this purpose. No comments on these proposed changes were received, so they are adopted.

Amendment of 43 CFR 4.1266(b)(2)

43 CFR 4.1266(b)(2) is amended to update OSM field office telephone numbers to reflect changes which have been effected heretofore.

Amendment of 43 CFR 4.1271(a)

When 43 CFR part 4, subpart L was originally promulgated in 1978, 43 CFR 4.1271(a) provided that an aggrieved party could file a "notice of appeal" from an order or decision of an administrative law judge disposing of a proceeding "under this subpart, except a civil penalty proceeding under § 4.1150." This is still the language of the rule. Since 1978, however, other rules have been added to subpart L that provide for a "petition for discretionary review," rather than a notice of appeal, as the document to file with IBLA when seeking review of the initial decision of an administrative law judge. See 43 CFR 4.1309, 4.1369 (56 FR 2139, 2144, Jan. 22, 1991; 56 FR 5061, Feb. 7, 1991). OHA has also proposed rules that provide for petitions for discretionary review. See 43 CFR 4.1377, 4.1387 (56 FR 45806, Sept. 6, 1991). Further, special procedures for seeking IBLA review exist for other proceedings in subpart L. See 43 CFR 4.1187, 4.1196, 4.1391.

Although it is possible for IBLA to clarify by decision which avenue of appeal is appropriate for each proceeding, see *The Hopi Tribe* v. *Office of Surface Mining Reclamation & Enforcement*, 107 IBLA 329 (1989), it is preferable for the procedural rules themselves to contain this information. OHA therefore proposed to amend 43 CFR 4.1271(a) so that the rule will

specify for which proceedings a notice of appeal is appropriate. No comments on the proposed change were received, so it is adopted. Proceedings not covered by the procedural rules set forth in the revised § 4.1271(a) contain special provisions for seeking review of initial decisions.

Determination of Effects

The Department has determined that these rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These rules were not subject to OMB review under Executive Order 12866.

National Environmental Policy Act

The Department has determined that these rules will not significantly affect the quality of the human environment on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

Paperwork Reduction Act

These rules contain no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment

These rules do not pose any takings implications requiring preparation of a Takings Implication Assessment under Executive Order No. 12630 of March 18, 1988.

Drafting Information

The primary author of these regulations is Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands, Surface mining.

For the reasons set forth in the preamble, subpart L of part 4 of title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: December 12, 1993.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

43 CFR part 4 is amended as follows:

PART 4—[AMENDED]

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

1. The authority citation for part 4, subpart L, continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

§ 4.1100 [Amended]

2. Section 4.1100 is amended by removing paragraph (d) and redesignating paragraphs (e) and (f) as paragraphs (d) and (e) respectively.

3. Section 4.1105 is amended by adding paragraph (a)(5) to read as follows:

§ 4.1105 Parties.

(a) * * *

(5) In an appeal to the Board in accordance with 43 CFR 4.1280 through 4.1286 from a determination of the Director of OSM or his or her designee under 30 CFR 842.15(d) or a determination of an authorized representative under 30 CFR 843.12(i), the permittee of the operation that is the subject of the determination and any person whose interests may be adversely affected by the outcome on appeal and who participated before OSM. A person who wishes his or her identity kept confidential under 30 CFR 842.12(b) is responsible for maintaining that confidentiality when serving documents in accordance with § 4.1109.

* * * * *

4. Section 4.1109 is amended by revising the phone numbers in paragraph (a) to read as follows:

§ 4.1109 Service.

(a) * * *

East of the Mississippi River—

* * * * *

Telephone: (615) 545–4292, FAX (615) 545–4314.

* * * * *

Telephone: (412) 937–4000, FAX (412) 937–4003.

West of the Mississippi River—

* * * * *

Telephone: (303) 231–5350, FAX, (303) 231–5360.

* * * * *

5. Section 4.1151 is amended by revising paragraph (b) to read as follows:

§ 4.1151 Time for filing.

(a) * * *

(b) If a timely request for a conference has been made pursuant to 30 CFR 723.18 or 845.18, a petition for review must be filed within 30 days from service of notice by the conference officer that the conference is deemed completed.

* * * * *

6. Section 4.1152 is amended by revising paragraph (a)(2) to read as follows:

§ 4.1152 Contents of petition; payment required.

(a) * * *

(2) If the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula contained in 30 CFR part 723 or 845 was misapplied, along with a proposed civil penalty utilizing the civil penalty formula;

* * * * *

7. Section 4.1154 is amended by revising paragraph (a)(2) to read as follows:

§ 4.1154 Review of waiver determination.

(a) Within 10 days of the filing of a petition under this part, petitioner may move the administrative law judge to review the granting or denial of a waiver of the civil penalty formula pursuant to 30 CFR 723.16 or 845.16.

* * * * *

8. Section 4.1157 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 4.1157 Determination by administrative law judge.

(a) The administrative law judge shall incorporate in his decision concerning the civil penalty, findings of fact on each of the four criteria set forth in 30 CFR 723.13 or 845.13, and conclusions of law.

(b) If the administrative law judge finds that—

(1) A violation occurred or that the fact of violation is uncontested, he shall establish the amount of the penalty, but in so doing, he shall adhere to the point system and conversion table contained in 30 CFR 723.13 and 723.14 or 845.13 and 845.14, except that the administrative law judge may waive the use of such point system where he determines that a waiver would further abatement of violations of the Act. However, the administrative law judge shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the Act; or

* * * * *

9. Section 4.1266 is amended by revising the following phone numbers in paragraph (b)(2):

§ 4.1266 Determination on application concerning an order of cessation issued pursuant to section 521(a)(2) or section 521(a)(3) of the act.

* * * * *

(b) * * *

(2) * * *

Alabama Field Office (also serving Georgia): 205–290–7282

Illinois Field Office: 217–492–4495

Indiana Field Office: 317–226–6700

Kentucky Field Office: 606–233–2494

Missouri Field Office (also serving Iowa, Kansas and Nebraska): 816–374–6405

* * * * *

Oklahoma Field Office (also serving Arkansas, Louisiana and Texas): 918–581–6430

* * * * *

Tennessee Field Office: 615–545–4103

* * * * *

Wyoming Field Office (also serving Alaska, Idaho, Montana, North Dakota, Oregon, South Dakota and Washington): 307–261–5776

* * * * *

10. Section 4.1271 is amended by revising paragraph (a) to read as follows:

§ 4.1271 Notice of appeal.

(a) Any aggrieved party may file a notice of appeal from an order or decision of an administrative law judge disposing of a proceeding under §§ 4.1160 through 4.1171, 4.1200 through 4.1205, 4.1260 through 4.1267, 4.1290 through 4.1296, and 4.1350 through 4.1356.

* * * * *

[FR Doc. 94–601 Filed 1–10–94; 8:45 am]

BILLING CODE 4310–79–M

Bureau of Land Management

43 CFR Public Land Order 7026

[NV–930–4210–06; N–57060]

Withdrawal of Public Land for Recreation Site; Nevada

AGENCY: Bureau of Land Management, Interior

ACTION: Public Land Order.

SUMMARY: This order withdraws 105 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect a recreation site in Nye County. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: January 11, 1994.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6526.

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

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2(1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Gap Mountain Recreation Site:

Mount Diablo Meridian

T. 6 N., R. 61 E.,
sec. 26, S½N½SW¼NW¼, S½SW¼NW¼, and N½NW¼SW¼;
sec. 27, SW¼NE¼Ne¼, W½SE¼NE¼NE¼, and SE½NE¼.

The area described contains 105 acres in Nye County.

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

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

Dated: January 3, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–599 Filed 1–10–94; 8:45 am]

BILLING CODE 4310–HC–M

Proposed Rules

Federal Register
Vol. 59, No. 7
Tuesday, January 11, 1994

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-92-303]

Apricots: Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the United States Standards for Grades of Apricots. The proposal would specify definitions that do not appear in the standard but are described in the inspection handbooks and bring up to date any obsolete terms and definitions. In addition, the proposed rule will provide metric equivalents for dimensions given in terms of U.S. Customary units and contains conforming and editorial changes.

DATES: Comments must be postmarked or courier dated on or before March 14, 1994.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC. 20090-6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Thomas G. Gambill, at the above address or call (202) 720-2185.

SUPPLEMENTARY INFORMATION: The Department is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Apricots will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed 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.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Apricots became effective on May 25, 1928 and has not been revised since then. In June 1992, the Washington Apricot Marketing Committee (WAMC) requested the USDA to revise the standard. Consisting of producers from various districts throughout the State, the WAMC recommends minimum size, pack, and grade requirements each year for the Federal Marketing Order on Washington State grown apricots. Specifically, the WAMC requested that skin breaks (cuts and stem punctures), and stem pulls be changed from "free from" defects to "free from damage" or "serious damage" defects in the U.S. No. 1 and U.S. No. 2 grades, respectively. Such changes would have the effect of allowing these defects on fruit in various degrees without being scored against the grade (versus "free from" which means they are scored on sight). WAMC also suggested that the Department should make any other revisions deemed necessary.

AMS reviewed these issues to ascertain the need for the change proposed by WAMC as well as other technical changes or updates that the Agency believes may be helpful. Many suggestions and comments were received pertaining to a recent informal market survey by AMS. The California Apricot Advisory Board advised AMS that the changes proposed pertaining to skinbreaks and stem pulls are not warranted and would allow the export of otherwise unsaleable product.

Therefore, it would appear that there is not a widespread consensus among interested parties that skin breaks, stem punctures or similar defects should be allowed in these grades. However, in order for the Department to receive comments in a more widespread and formal manner this requested change as well as the following changes by the Department which would bring the standard up to date with current industry practices, are being proposed.

Sections 51.2925 and 51.2926 are proposed to be revised to remove cuts and skin breaks as free from defects (and change them to free from damage and serious damage defects, respectively). According to the Washington Apricot Marketing Committee, the "Washington Apricot industry has had difficulty in meeting the U.S. Grade Standards for Apricots with regard to 'skin breaks.' This has caused a great deal of hardship as the industry attempts to make sales into Canada. Over the past year members of the Washington Apricot Marketing Committee have been expressing a desire to gain some sort of relief from the strict interpretation of the 'free from' portion of the grade standards. The real problem, as our industry sees it, is that there is no definition of what constitutes 'damage' and 'serious damage' relative to 'skin breaks' and/or 'punctures.' Consequently, all of these types of defects are scored no matter how small or insignificant they might be."

It is proposed that §§ 51.2925 and 51.2926 be revised to include bruises as a specified defect. Bruising is a prevalent defect on apricots that should have specific areas designated which constitute damage and serious damage. Presently, this defect is scored based on the general definitions for damage and serious damage. It is proposed that any bruise causing discoloration exceeding the area of a circle three-eighths inch (9.5 mm) in diameter or one-eighth inch (3.1 mm) in depth (damage) or five-

eighths inch (15.9 mm) in diameter or three-sixteenths inch (4.8 mm) in depth (serious damage), or an aggregate of lesser bruises detracting from the appearance, edible or shipping quality of the apricot as much as the depth or area requirements previously mentioned be scored against the grade.

Section 51.2926a Unclassified is being removed. Unclassified is not a grade in itself but was simply a designation for apricots that do not meet any grade requirement. However, it is often mistaken as an actual grade. Since the designation is rarely used and may create some confusion in the market place it should be discontinued.

It is proposed that paragraph (c) Description of Pack of § 51.2927 be removed. This paragraph provides for pack designations in 4-basket crates. Apricots are seldom, if ever, packed in these types of containers for today's markets. Therefore, this paragraph is no longer needed.

Paragraph (d) Tolerance would also be removed. This paragraph allows a tolerance for offsize specimens. The proposed rule would make referencing of these tolerances easier and bring the format into conformity with more recent standards by establishing a separate "Tolerances" section. This new section, 51.2928 would respecify not only the size tolerances which are being removed from paragraph (d), but would also apply tolerances to packages marked according to count, and defect tolerances as well.

Section 51.2928 Mature is revised so that the definition of mature does not contain the word as part of the definition.

As previously mentioned a new section which would now be designated § 51.2928 Tolerances, would list all applicable tolerances for the grades. Other than the provision for packages marked according to count, there are no new tolerances proposed in this section. Rather than scatter the tolerances under different sections throughout the standard, they have been grouped together under one section.

A new section, 51.2929 Application of Tolerances, is being proposed. This section will designate a limit on excessively high defect percentages for an individual sample which, if exceeded, would cause the lot to fail to grade even though the average of these defects may be within the lot tolerances provided. It is proposed that for lot tolerances of ten percent or more, individual samples may not contain more than one and one-half times the tolerance specified, and for tolerances of less than 10 percent, individual samples may contain not more than double the tolerance specified.

The general definition for damage would be revised to reflect that which is currently used in most other standards. It also specifies that the dimensions provided for defect limits are based on an apricot one and seven-eighths inches (4.8 cm) in diameter, and correspondingly lesser or greater dimensions are allowed for smaller or larger sized apricots.

Under the new section (51.2932) proposed for damage, each defect is listed as a separate paragraph. New definitions under this section include dirt, scab, scale hail, skin breaks, stem pulls, and bruises. All specifications except for bruises, skin breaks, and stem pulls are taken from the inspection handbook on scoring these defects under the general definitions of damage and serious damage. The scoring for skin breaks and stem pulls was recommended by WAMC.

It is proposed that scale occurring as scale insects, scale marks, or similar marks which are heavily concentrated or are scattered and aggregating more than one-fourth inch (6.3 mm) in diameter (damage) or one-half inch (12.7 mm) in diameter (serious damage); scab spot when cracked or aggregating more than three-eighths inch (9.5 mm) in diameter in the aggregate (damage) or when the skin has been broken or when more than three-sixteenths of an inch (4.8 mm) deep or more than one-half inch (12.7 mm) in diameter in the aggregate (serious damage); and bruises when any bruise causes discoloration exceeding the area of a circle three-eighths inch (9.5 mm) in diameter or one-eighth inch (3.1 mm) in depth (damage) or when any bruise causes discoloration exceeding the area of a circle five-eighths inch (15.9 mm) in diameter or three-sixteenths (4.8 mm) in depth; skin breaks in the form of cuts and punctures which exceed individually or in the aggregate, an area equivalent to a circle three-sixteenths inch (4.8 mm) in diameter (damage) or three-eighths inch (9.6 mm) in diameter (serious damage); stem pulls which exceed an area equivalent to a circle three-eighths inch (9.6 mm) in diameter (damage) or one-half inch (12.7 mm) in diameter (serious damage); be specified as definitions under the appropriate sections.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR part 51 be amended as follows:

1. The authority citation for 7 CFR Part 51 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In Part 51, Subpart—United States Standards for Apricots is revised to read as follows:

Subpart—United States Standards for Grades of Apricots

Grades

Sec.
51.2925 U.S. No. 1.
51.2926 U.S. No. 2.

Marking and Packing Requirements

51.2927 Marking and packing requirements.

Tolerances

51.2928 Tolerances.

Application of Tolerances

51.2929 Application of tolerances.

Definitions

51.2930 Mature.
51.2931 Well formed.
51.2932 Damage.
51.2933 Serious damage.
51.2934 Diameter.

Subpart—United States Standards for Grades of Apricots

Grades

§ 51.2925 U.S. No. 1.

"U.S. No. 1" shall consist of apricots of one variety which are mature but not soft, overripe, or shriveled and which are well formed, free from decay, worm holes and from damage caused by limbrubs, russeting, growth cracks, dirt, scab, scale, hail, bruises, disease, insects, skin breaks, stem pulls, or mechanical or other means. For tolerances see § 51.2928.

§ 51.2926 U.S. No. 2.

"U.S. No. 2" shall consist of apricots of one variety which are mature but not soft, overripe or shriveled and which are free from decay, worm holes and free from serious damage caused by limbrubs, growth cracks, dirt, scale, hail, bruises, disease, insects, skin breaks, stem pulls or mechanical or other means. For tolerances see § 51.2928.

Marking and Packing Requirements

§ 51.2927 Marking and packing requirements.

The minimum size or numerical count of the apricots in any package shall be plainly labeled, stenciled, or otherwise marked on the package.

(a) *Numerical count.* When the numerical count is used the fruit in any sample shall not vary more than one-fourth inch in diameter. See § 51.2928 (b) Size for tolerances.

(b) *Minimum size.* "Minimum size" refers to the diameter of the smallest apricot in the package. It shall be stated in terms of whole and eighth inches, as 1½ inches min., 1⅝ inches min., etc., in accordance with the facts.

Tolerances

§ 51.2928 Tolerances.

In order to allow for variations incident to proper grading and handling the following tolerances are provided as specified:

(a) *Defects.*—(1) *U.S. No.1 grade.* Not more than 10 percent, by count, of any lot may be below the requirements of this grade and provided that not more than 5 percent, shall be allowed for defects causing serious damage and further provided that not more than 1 percent, shall be allowed for decay.

(2) *U.S. No. 2 grade.* Not more than 10 percent, by count, of any lot may be below the requirements of this grade, and not more than one-tenth of this amount, or 1 percent shall be allowed for decay.

(b) *Size.* (1) If packages are marked with numerical count: Not more than 10 percent of the samples in a lot may fail the one-quarter inch variation requirement designated in § 51.2927 paragraph (a).

(2) If packages are marked with minimum size: Not more than 10 percent, by count, of the apricots in any sample may be below the minimum size specified.

Application of Tolerances

§ 51.2929 Application of tolerances.

Individual samples are subject to the following limitations: Provided, that the averages for the entire lot are within the tolerances specified for the grade.

(a) For a tolerance of 10 percent or more; individual samples in any lot may contain not more than one and one-half times the tolerance specified.

(b) For a tolerance of less than 10 percent, individual samples in any lot may contain not more than double the tolerance specified.

Definitions

§ 51.2930 Mature.

Mature means having reached the stage of development which will insure a proper completion of the ripening process.

§ 51.2931 Well formed.

Well-formed means having the shape characteristic of the variety.

§ 51.2932 Damage.

Damage means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or a combination of defects, which materially detracts from the appearance, or the edible or shipping quality of the apricot. The dimensions given for these defects are based on an apricot with a diameter of 1⅞ inches (4.8 cm). Correspondingly larger or smaller dimensions are allowed on larger or smaller apricots. The following specific defects shall be considered as damage:

(a) *Growth Cracks* which are well healed and over three-eighths of an inch in length.

(b) *Limbrubs* which are smooth and shallow and are more than one-fourth inch (6.4 mm) in diameter.

(c) *Russeting* which is reddish to brown in color and exceeds 10 percent of the surface or thick, rough, and very dark and exceeds 5 percent of the surface.

(d) *Dirt* including spray residue appearing to the extent that it is readily apparent.

(e) *Scab* spots when cracked or aggregating more than three-eighths inch (9.5 mm) in diameter.

(f) *Scale* occurring as scale insects, scale marks, or similar marks which are heavily concentrated or are scattered and aggregating more than one-fourth inch (6.3 mm) in diameter.

(g) *Hail* when the skin has been broken or when not shallow and superficial or more than three-eighths inch (9.5 mm) in diameter in the aggregate.

(h) *Bruises* when: (1) The flesh is discolored deeper than one-eighth of an inch (3.1 mm); or

(2) Any bruise causing discoloration exceeding the area of a circle three-eighths inch (9.5 mm) in diameter; or

(3) An aggregate of lesser bruises detracting from the appearance, edible or shipping quality of the apricot as much as paragraph (h) (1) or (2) of this section.

(i) *Skin Breaks* including cuts or punctures which exceed individually or in the aggregate an area equivalent to a circle three-sixteenths inch (4.8 mm) in diameter.

(j) *Stem Pulls* which exceed an area equivalent to a circle three-eighths inch (9.6 mm) in diameter.

§ 51.2933 Serious damage.

Serious Damage means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or a combination of defects, which seriously detracts from the appearance, or the edible or shipping quality of the apricot. The dimensions given for these defects are based on an apricot with a diameter of 1⅞ inches (4.8 cm). Correspondingly larger or smaller dimensions are allowed on larger or smaller apricots. The following specific defects shall be considered as serious damage:

(a) *Growth Cracks* which are unhealed or when well healed and over one-half inch (12.7 mm) in length.

(b) *Limbrubs* which are smooth and shallow and are more than one-half inch (12.7 mm) in diameter.

(c) *Russeting* which is reddish to brown in color and exceeds one-third of the surface or thick, rough, and very dark and exceeds 15 percent of the surface.

(d) *Dirt* including spray residue which is readily apparent and seriously affects the appearance.

(e) *Scab* spots when cracked or when well healed and aggregating more than one inch (2.5 cm) in diameter.

(f) *Scale* occurring as scale insects, scale marks, or similar marks aggregating more than one-half inch (12.7 mm) in diameter.

(g) *Hail* when the skin has been broken or when more than three sixteenths (4.8 mm) of an inch deep or more than one-half inch (12.7 mm) in diameter in the aggregate.

(h) *Bruises* when: (1) The flesh is discolored deeper than three-sixteenths of an inch (4.8 mm); or

(2) Any bruise causing discoloration exceeding the area of a circle five-eighths inch (15.9 mm) in diameter; or

(3) An aggregate of lesser bruises detracting from the appearance, edible or shipping quality of the apricot as much as paragraph (h) (1) or (2) of this section.

(i) *Skin Breaks* including cuts or punctures which exceed individually or in the aggregate an area equivalent to a circle three-eighths inch (9.6 mm) in diameter.

(j) *Stem Pulls* which exceed an area equivalent to a circle one-half inch (12.7 mm) in diameter.

§ 51.2934 Diameter.

Diameter means the greatest diameter, measured through the center of the apricot, at right angles to a line running from the stem to the blossom end.

Dated: January 3, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–426 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–02–P

Agricultural Stabilization and Conservation Service

7 CFR Part 723

RIN 0560–AD56

Tobacco Marketing Quotas, Acreage Allotments, and Production Adjustment

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Omnibus Budget Reconciliation Act of 1993 (the 1993 Act) was enacted on August 10, 1993. Section 1106 of the 1993 Act amended the Agricultural Adjustment Act of 1938 (the 1938 Act) by adding new section 320C that imposes a domestic tobacco content requirement for cigarettes made in the United States by any "domestic manufacturer of cigarettes" as defined in the 1938 Act. Under the provisions of the Act, as amended, each such manufacturer of cigarettes must certify the percentage of tobacco produced in the United States which was used by the manufacturer to produce cigarettes during the preceding calendar year. If the percentage of United States produced tobacco used by a domestic manufacturer of cigarettes in the manufacture of cigarettes is less than 75 percent, the manufacturer will be subject to a domestic marketing assessment and must purchase a quantity of tobacco from inventories of the producer owned burley and flue-cured cooperative marketing associations in an amount equal to the quantity of imported tobacco used by the manufacturer to produce cigarettes during the preceding calendar year that exceeds 25 percent of the total quantity of tobacco used in such cigarette production. When a manufacturer is subject to a domestic content marketing assessment, the assessment rate will be based on the amount by which ½ the sum of the average prices per pound received during the most recent marketing year, by producers of domestically produced burley tobacco and flue-cured tobacco, respectively, exceeds the average price per pound paid for unmanufactured imported tobacco during the preceding calendar year. This proposed rule would amend the regulations to implement the provisions of section 320C.

DATES: Comments must be received on or before February 10, 1994, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Michael D. Thompson, Agricultural Program Specialist, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P. O. Box 2415, Washington, DC 20013–2415, telephone 202–720–4281.

SUPPLEMENTARY INFORMATION:

Executive Order 12886

This proposed rule is issued in conformance with Executive Order 12866. Based on a preliminary regulatory impact analysis, this proposed rule has been determined to be economically significant. To obtain a copy of the Preliminary Regulatory Impact Statement, contact Dr. Robert Miller, Director, Tobacco and Peanut Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P. O. Box 2415, Washington, DC 20013–2415, telephone (202) 720–8839.

The 75 percent domestic tobacco content requirement is expected to increase the usage of domestic tobacco by 188 million pounds for 1994 which will cost domestic manufacturers about $200 million. Since the cost of domestic tobacco is about double that of imported tobacco, domestic cigarette manufacturers are expected to shift cigarette production to foreign based operations. As this shift in production occurs, domestic cigarette production is expected to decline about 9 percent a year for the next four years. This will result in the loss of about 11,000 jobs in domestic cigarette manufacturing plants. The use of domestically produced tobacco will eventually decline to a level less than if there were no domestic content requirement. Domestic cigarette output is expected to decline about 40 percent by 1998. The impact statement indicates little effect on the consumer prices for cigarettes because the tobacco accounts for only about 3 percent of the cost of cigarettes. The regulatory impact analysis does not consider any effects that an increase in cigarette excise tax may have on domestic cigarette production.

The initial increase in the use of domestic tobacco is expected to draw down current loan stocks of burley and flue-cured tobacco. This will benefit tobacco producers in the short term since the Commodity Credit Corporation's net loan outlays for the 1994 marketing year are estimated to be about $380 million less as a result of the domestic tobacco content requirement. This will reduce the amount of the no-net-cost assessments paid by producers and purchasers of tobacco.

Except for the cigarette manufacturing sector, this proposed regulatory action is not expected to have an adverse effect on the environment, public health or safety, or State, local, or tribal governments or communities. This regulatory action is not expected to be inconsistent nor interfere with an action taken or planned by another federal agency. Other than as indicated in the summary of the regulatory impact statement, this action would not alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of the recipients thereof. This proposed rule would be consistent with the President's priorities and principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are:

Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive and preempt

State laws to the extent that such laws are inconsistent with the provisions of this proposed rule. Before any legal action is brought regarding determinations made under the provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

This proposed rule would impose new record keeping and information collection requirements on domestic manufacturers of cigarettes and related tobacco industry business beginning January 1, 1994. The contents of and justification for the reporting and record keeping requirements will be submitted to the Office of Management and Budget, under OMB No. 0560–0058, for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1980, as amended. Comments regarding these requirements in this proposed rule and suggested alternatives may be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503; and to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250.

Summary of Statutory Provisions

Section 320B of the 1938 Act imposes certain requirements on "domestic manufacturers of cigarettes" and those manufacturers are defined in section 301 of the 1938 Act to be those that produce and sell at least one percent of the cigarettes produced and sold in the United States. Section 320B requires that those manufacturers specify each year, in advance, their expected purchases of burley and flue-cured tobacco. The sanction for failing to do so accurately, within certain limits, is that the manufacturer must pay an additional assessment to offset the cost of the Federal tobacco program.

Section 320C provides for additional requirements that must be met by "domestic manufacturers of cigarettes" to avoid additional assessments. The provisions of section 320C are set out in greater detail below in the description of the content and organization of the proposed rule. Generally, under section 320C manufacturers who are "domestic manufacturers of cigarettes" must certify each year the percentage of U.S. tobacco used in their cigarettes. If more than 25 percent is imported tobacco, the manufacturer must pay an assessment. Also, if this limit is exceeded, the manufacturer must make compensatory purchases of tobacco from the burley and flue-cured producer loan associations and may be required to pay a penalty for failing to make such compensatory purchases in a timely manner. Under section 320C(f), the 75/25 ratio may be reduced if the Secretary determines that U.S. tobacco supply conditions warrant a reduction due to conditions beyond the control of producers. Also, section 320C requires that manufacturers file reports and maintain records as specified by the Secretary to enforce that section. Failure to file required reports or maintain records, or the submission of false information can lead to criminal penalties as well as other sanctions. Other new provisions concerning assessments on imported tobacco enacted in the 1993 Act will be implemented in a separate rule.

Coverage of the Proposed Rule; Definition of Tobacco

The 75/25 ratio is referred to in the rule as the "domestic content requirement." Since this requirement is a calendar year requirement under section 320C, the proposed rule would apply the requirement first in 1994. The authorizing statute was enacted well into 1993. There is nothing in the Act to provide for making the provisions retroactive.

The requirement applies only to "domestic manufacturers of cigarettes." The statute does not limit, as such, the content requirement to cigarettes produced by those manufacturers in the United States. The fact that section 320C applies the requirement only to certain "domestic" manufacturers, and given other provisions of section 320C, the proposed rule limits the coverage to cigarettes produced by subject manufacturers in the United States. For that purpose, the rule defines "United States," consistent with section 301 of the 1938 Act, to be the fifty States, the territories of the United States, the District of Columbia and Puerto Rico. With respect to limiting coverage to domestic production, section 320C(b) provides that the sanctions in 320C(c), (d), and (e) will apply when the use of "imported tobacco" exceeds 25 percent. Tobacco becomes "imported" only by reference to a domestic market. Hence, it appears clear that the statute was intended to cover only domestic production of cigarettes.

The domestic content requirement requires counting all the "tobacco" in the cigarettes and computing the amount of "imported tobacco" in those cigarettes. The 1938 Act covers many commodities, including tobacco. Until recently the tobacco provisions of the 1938 Act dealt mainly with regulating the production of tobacco by domestic producers and the definition of "tobacco" in section 301 of the 1938 Act, which is made generally applicable to the entire 1938 Act, appears to have been drafted accordingly when it was enacted in 1938. The term "tobacco" is used in section 320C without a modifier and in combination with the word "imported." Tobacco is classified by kind and by type number. For example, domestic burley tobacco is commonly referred to as type 31. Section 301 refers to the "Service and Regulatory Announcement 118 of the U.S. Department of Agriculture (USDA) Bureau of Agricultural Economics" published in 1929 and defines tobacco to mean certain specified tobacco types by type number as identified in Announcement 118. All of the identified types, however, are identified in Announcement 118 as domestic tobaccos. Foreign tobaccos are assigned other type numbers and, thus, under the section 301 definition, they technically would not appear to be, "tobacco" at all under that definition. However, section 320C clearly was intended to measure the amount of use of "imported tobacco," as those words would be defined in their common meaning as compared with domestic tobacco use. Use of the section 301 definition of "tobacco" would make that comparison impossible and make the statute essentially meaningless. Thus, the proposed rule presumes that the Congress did not intend for the section 301 definition of "tobacco" to be used for the section 320C purpose. The proposed rule has been drafted accordingly. "Tobacco" is defined in the proposed rule to mean that which is commonly considered to be "tobacco" in the trade. As there is no provision in the statute to do otherwise, that would include all foreign tobacco, including those like Turkish and Oriental tobaccos, which may not have as close a domestic counterpart as other tobaccos. This inclusion is consistent with the Conference report issued with the 1993 Act (H. Conf. Report No. 103–213) where the Conference managers stated their belief that the 75/25 ratio, by allowing the maintenance of current blends, would be sufficient to "permit the continued importation of Turkish and Oriental tobaccos." If Turkish and Oriental tobaccos were not subject to section 320C, the ratio would be irrelevant. These conclusions, as with all aspects of the proposed rule, are subject to further consideration on receipt of comments.

Discussion of Proposed Rule

1. Domestic Tobacco Content Requirement (§ 723.502)

A "domestic manufacturer of cigarettes" is defined in section 301(b)(17) of the 1938 Act as "a person that produces and sells more than 1 percent of the cigarettes produced and sold in the United States." To avoid the domestic marketing assessment and other sanctions imposed by section 320C of the amended 1938 Act, beginning in 1994 and each succeeding calendar year, each domestic manufacturer of cigarettes must use at least 75 percent domestically grown tobacco in the cigarettes manufactured by such manufacturer. In determining compliance with the domestic content requirement, the proposed rule specifies that imported tobacco will include all tobacco imported into the United States including Oriental and Turkish tobaccos. The domestic tobacco content requirement will apply to all cigarettes manufactured in the United States by a domestic manufacturer of cigarettes without regard to whether the manufactured cigarettes are sold domestically or exported. The domestic content requirement would not apply to cigarettes manufactured outside the United States by a domestic manufacturer of cigarettes. Likewise, the domestic tobacco content requirement would not apply to tobacco processed in the United States for use in making cigarettes outside the United States. Domestic manufacturers of cigarettes with operations located outside the United States would not be required to file reports for cigarettes manufactured in such foreign based operations for foreign-made cigarettes and the domestic content rules would not apply to such cigarettes.

2. Reports and Certifications by Domestic Manufacturers of Cigarettes (§ 723.502)

Under the proposed rule, beginning with the 1994 and each succeeding calendar year, each domestic manufacturer of cigarettes would be required to maintain records, file reports and certify to the quantities of domestic and imported tobacco used by such manufacturer to manufacture cigarettes in the United States. Determinations as to content percentages would be based on the weight of the tobacco when it is ready for the cigarette manufacturing process. Adjustments, to avoid double-counting, will be made for any tobacco which loses its identity during the manufacturing process and is recaptured and reused to manufacture cigarettes by the same manufacturer and for tobacco in any cigarettes returned to the manufacturer and reused by such manufacturer to manufacture other cigarettes. Such adjustments will be made only to the extent that records are maintained which prove the reuse of such tobacco. For the purpose of determining the domestic content percentage, any tobacco reconstituted, or otherwise processed, so as to lose its respective identity as either imported tobacco or domestic tobacco, before being acquired by a domestic manufacturer of cigarettes shall be considered to be imported tobacco when it is used to produce cigarettes by a domestic manufacturer of cigarettes. The proposed rule provides that reports and certifications must be mailed or otherwise delivered to Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U. S. Department of Agriculture, P. O. Box 2415, Washington, DC 20013–2415 by February 15 of the year after the calendar year for which reports and certifications apply. Failure to file timely reports or make required certifications will result in all tobacco used by the manufacturer in the manufacturing of cigarettes in the United States being considered as imported tobacco and sanctions would be applied accordingly. Such a presumption is provided for in section 320C(b) of the 1938 Act.

3. Domestic Marketing Assessment and Required Purchases of Tobacco (§§ 723.503 and 723.504)

Section 320C(c) of the Act provides that if the quantity of imported tobacco used by a domestic manufacturer for making cigarettes for the year exceeds 25 percent, such manufacturer must pay a domestic marketing assessment on each pound of imported tobacco used in excess of 25 percent. In addition, as provided in section 320C(d) and (e), such manufacturer must purchase tobacco from the existing burley and flue-cured tobacco inventories of producer owned cooperative marketing associations in an amount equal to the weight of imported tobacco used in excess of 25 percent.

The per pound domestic marketing assessment rate set by section 320C(c) is the difference between one-half the sum of the average market prices received by domestic producers of burley tobacco and flue-cured tobacco, respectively, and the average price of unmanufactured imported tobacco. Domestically produced burley and flue-cured tobaccos are marketed on a marketing year basis. The average price per pound paid to domestic producers for a kind of tobacco is determined for the marketing year. The marketing years are: for burley tobacco, October 1 through September 30; and for flue-cured tobacco, July 1 through June 30. Under the proposed rule, the average prices for domestically produced burley tobacco and flue-cured tobacco would be calculated using data published by the Department of Agriculture's National Agricultural Statistics Service (NASS). For the other side of the comparison, a weighted average price of all unmanufactured tobacco imported for consumption in the United States, with no allowance for tobacco reexported, would be calculated from Bureau of Census data. For example, if the calculated average market prices were $1.83 per pound for burley tobacco and $1.73 per pound for flue-cured tobacco, the average price would be $1.78 per pound. If the weighted average price of unmanufactured imported tobacco for the relevant period was $1.28 per pound, a domestic marketing assessment rate of $0.50 per pound would apply. That rate would be multiplied by the pounds of imported tobacco used in excess of the 25 percent limit (unless a higher limit had been set under the Secretary's discretionary authority to adjust the limit as provided for in section 320C(f)). If noncompliance is indicated, the cigarette manufacturer will have an opportunity for an administrative hearing before any domestic marketing assessments or other sanctions are imposed. Under the proposed rule payment of the assessment would be required to be made within 30 days after the manufacturer is notified of the amount due.

Where a domestic content violation has occurred, the compensatory purchases of tobacco by a manufacturer, as required by section 320C(d) and (e), must be in equal quantities of burley and flue-cured tobacco and must be from the inventories of producer owned cooperative marketing associations that handle price support loans for tobacco. However, the statute provides that if the total required compensatory purchases by all noncomplying manufacturers would reduce the associations inventories of loan stocks of burley or flue-cured tobacco below the reserve stock level for the respective kind of tobacco, the required purchase of such kind of tobacco, for each manufacturer, may be reduced proportionately. These provisions of section 320C would be implemented by § 723.504 of the proposed rule. The required purchases of burley tobacco could be made from either of the two producer owned marketing associations for burley

tobacco: the Burley Tobacco Growers Cooperative Association and the Burley Stabilization Corporation. There is only one applicable producer association for flue-cured tobacco, the Flue-Cured Tobacco Cooperative Stabilization Corporation. Under the proposed rule, required purchases of tobacco must be at the applicable list price published by the association without discounts of any kind. The manufacturer would be allowed to make such purchases from any grade or grades of uncommitted tobacco in the association's inventories. Compensatory purchases of tobacco would be required to be made within 30 days after the manufacturer is notified of the quantities of burley and flue-cured tobacco that must be purchased. However, the time could be extended if the manufacturer requests reconsideration of the compensatory purchase determination. As provided in sections 320C (d) and (e) of the statute, if a manufacturer fails to make the required compensatory purchases in a timely manner, the manufacturer, under the proposed rule, would be subject to a penalty of 75 percent of the average market price for the applicable kind of tobacco for the most recent marketing year multiplied by the quantity of tobacco involved. Further, as provided in sections 320C(d)(5) and (e)(5), these compensatory purchases could not be counted by the manufacturer for purchases in the application of section 320B of the 1938 Act.

4. Reduction of Domestic Content Required Percentage (§ 723.505)

Section 320C(f) provides that the Secretary may reduce the 75 percent domestic content requirement for a calendar year following a crop loss if the Secretary, in consultation with the producer owned tobacco associations, determines that: (1) Because of drought, insect or disease infestation, or other natural disaster or other conditions beyond the control of producers, the total quantity of a crop of domestic burley or flue-cured tobacco which is harvested and suitable for marketing is substantially less than the expected production for the crop and (2) loan stock inventories for the kind of tobacco have been depleted. Under the proposed rule, the expected production would be calculated based on the planted acreage of the kind of tobacco, as reported by the NASS, multiplied by the average of the 5 most recent years' average yields per acre as published by the NASS for that kind of tobacco. The loan stock inventory of a kind of tobacco would be considered to be depleted if the Secretary, in consultation with the associations, concluded that the loan stock inventories at the beginning of the next marketing year for such kind of tobacco would not likely exceed 25 percent of the reserve stock level. Under the proposed rule, the Secretary would make the determination to announce any reduced percentage for the domestic content requirement by November 30 of the year preceding the year of the reduction. Under the proposed rule, the Secretary's authority for making the determinations on reducing the domestic content percentage would be delegated to the Director, Tobacco and Peanuts Division.

5. Required Records and Reports (§ 723.506); False Statements (§ 723.507); and Confidentiality (§ 723.508)

Section 320C(b) of the 1938 Act requires that manufacturers maintain records and make such reports as are necessary to show compliance with the domestic tobacco content requirement. That section also provides that the Secretary and the USDA Office of Inspector General may examine such records and other matters as the Secretary has reason to believe may be relevant and that the Secretary may charge a fee to the manufacturer for the reasonable cost of any such examination. Section 320C(b) provides, as well, that any person who fails to provide requested information or provides false information shall be subject to 18 U.S.C. 1001 which, generally, provides that persons who knowingly and willfully supply false or misleading information, or cover up information, on matters within the jurisdiction of federal agencies, may be fined up to $10,000 or imprisoned up to five years. Section 320C(b) also provides that information submitted regarding cigarette content and levels of production will be exempt from disclosure to other members of the public under the Freedom of Information Act provisions of 5 U.S.C. 552. These provisions of section 320C are implemented in § 723.506 through § 723.508 of the proposed rule.

Under the proposed rule, with respect to records and reports, manufacturers would be required, at a minimum, to file reports and maintain records concerning the kind, quantity, form (stemmed, unstemmed, reconstituted, etc.), and country of origin of all tobacco which is:

(1) In inventory at the beginning of the calendar year,

(2) Acquired during the calendar year,

(3) Used to manufacture cigarettes in the United States during the calendar year, and

(4) Disposed of other than through the manufacture of cigarettes in the United States during the calendar year.

Separate records would be required for each lot, batch, or blend that is used to manufacture cigarettes. These records would be required to indicate the quantity of tobacco by category, domestic or import, and the total quantity of tobacco for each specific lot, batch, or run of tobacco. Regarding confidentiality, while the provisions of the statute controls disclosure of information regarding individual manufacturers, summary statistical data and general statements that are not related to a specific cigarette manufacturer could be released.

List of Subjects in 7 CFR Part 723

Acreage allotments, Assessments, Marketing quotas, Penalties, Recording and recordkeeping requirements, Tobacco.

For the reasons set out in the preamble, it is proposed that 7 CFR part 723 be amended as follows:

PART 723—TOBACCO

1. The authority citation for part 723 is revised to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b-1, 1314b-2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Part 723 is amended by adding subpart E to read as follows:

Subpart E—Domestically Produced Cigarettes

Sec.
723.501 Definitions.
723.502 Domestic tobacco content.
723.503 Domestic content marketing assessment.
723.504 Required purchases from tobacco loan stocks.
723.505 Reduction of domestic content percentage.
723.506 Required records and reports; Burden of proof.
723.507 False reports; Failure to file reports; and Examination of records.
723.508 Reconsideration and appeal.
723.509 Confidentiality of information.

Subpart E—Domestically Produced Cigarettes

§ 723.501 Definitions.

In addition to the definitions set forth at § 723.104, the definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

Domestic manufacturer of cigarettes. A person that produces and sells more than 1 percent of the cigarettes produced and sold in the United States.

Domestic tobacco. Any quantity of harvested tobacco which has been cultivated, grown, and produced in the United States.

Imported tobacco. Any tobacco, including Oriental and Turkish tobaccos, not produced in the United States if such tobacco has been entered into the United States. Any tobacco that cannot be verified as being domestic tobacco shall be presumed to be imported tobacco.

Manufactured tobacco. Tobacco that has been processed and packaged into cigarettes or other consumer tobacco products.

Producer owned cooperative marketing association. Those loan associations that offer price support for burley and flue-cured tobacco through contractual agreements with the Commodity Credit Corporation of USDA. These associations are the Burley Tobacco Growers Cooperative Association, the Burley Stabilization Corporation, and the Flue-Cured Tobacco Cooperative Stabilization Corporation.

Tobacco. Any commodity or substance that is commonly considered to be tobacco in the trade.

United States. The 50 States of the United States, the District of Columbia, Puerto Rico, or any Territory or Possession of the United States.

Unmanufactured tobacco. Any tobacco that is not processed and packaged as a consumer tobacco product.

USDA. The U.S. Department of Agriculture.

§ 723.502 Domestic tobacco content.

(a) *General requirement.* (1) Except as provided in § 723.505 of this part, during each calendar year beginning with 1994, the total domestic tobacco used for cigarettes manufactured in the United States by a domestic manufacturer of cigarettes shall, for the calendar year, equal or exceed 75 percent of the total quantity of tobacco used by such manufacturer in such cigarettes.

(2) Any tobacco that has been reconstituted, or otherwise processed to the extent that it has lost its respective identity as either domestic tobacco or imported tobacco before its acquisition by such domestic manufacturer of cigarettes, shall be considered as imported tobacco when determining compliance with the domestic tobacco content requirements of this subpart.

(3) Any tobacco having lost its identity with respect to its origin of production during the manufacturing process which is recaptured and reused to manufacture cigarettes in the United States by the same manufacturer and any cigarettes returned to the manufacturer and reused by such manufacturer to manufacture cigarettes in the United States shall not be recounted. The burden of establishing such re-use shall be on the manufacturer.

(b) *Reports required by manufacturers.* (1) Beginning with the 1994 calendar year, a domestic manufacturer of cigarettes shall report to the Director, for each calendar year, the following on the basis of weights of tobacco as it begins use in manufacturing cigarettes:

(i) The total quantity of tobacco used by the manufacturer to produce cigarettes in the United States during such calendar year.

(ii) The total quantity of imported tobacco used by the manufacturer in the production of cigarettes in the United States during such calendar year.

(iii) The total quantity of domestic tobacco used by the manufacturer in the production of cigarettes in the United States during such calendar year.

(2) For purposes of the report required by paragraph (b)(1) of this section, tobacco weights shall be reported based on the weight of tobacco when it is ready for manufacturing into cigarettes and to the extent, if any, that a conversion is needed, tobacco weight shall be converted to such weights based on normal processing yields with respect to the various forms and kinds of tobacco, subject to review by the Director.

(c) *Where and when to report.* The reports required by this subpart shall be mailed or otherwise delivered to Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013–2415 by February 15 of the year after the calendar year for which the report applies.

(d) *Failure to report.* A manufacturer who fails to report the quantities of domestic and imported tobacco used for manufacturing cigarettes shall be presumed to have used only imported tobacco in such cigarettes. The Director may determine the total quantity of tobacco used by any method determined reasonable by the Director to arrive at that estimate.

(e) *Failure to comply.* Each domestic manufacturer of cigarettes who fails to comply with the requirements of this section shall pay a domestic marketing assessment and shall purchase loan stocks of tobacco in accordance with §§ 723.503 and 723.504.

§ 723.503 Domestic content marketing assessment.

(a) *General.* Each domestic manufacturer of cigarettes who fails to comply with the domestic content requirement in § 723.502 shall pay a nonrefundable domestic marketing assessment to the Commodity Credit Corporation as provided in this section.

(b) *Assessment rate.* A domestic marketing assessment rate, for purposes of this section, shall be determined for each calendar year. The assessment rate shall be equal to the difference between one-half the sum of the average prices per pound received by domestic producers of burley tobacco and flue-cured tobacco, respectively, for the previous marketing year as determined by the Director. The Director may use for that purpose data published by the National Agricultural Statistic Service of USDA and the weighted average price of unmanufactured tobacco which was imported during the previous calendar year, as calculated from Bureau of Census data for such calendar year. Other data may be used in lieu of that data.

(c) *Amount of assessment due.* The Director shall assess a domestic marketing assessment against each domestic manufacturer of cigarettes who fails to comply with the domestic content requirement of this subpart. The domestic marketing assessment shall be determined by:

(1) Multiplying the required percentage of domestic content by the total pounds of tobacco used to produce cigarettes during the applicable calendar year;

(2) Subtracting the pounds of domestic tobacco used in such cigarettes from the result determined in paragraph (c)(1) of this section, and

(3) Multiplying the result determined in paragraph (c)(2) of this section, if a positive number, by the assessment rate determined under the provisions of paragraph (b) of this section.

(d) *Time for paying assessment.* The manufacturer shall pay the domestic marketing assessment provided for in this section within 30 calendar days after demand for payment. However, if the manufacturer timely requests reconsideration or timely appeals the determination, the time for payment of the amount in dispute may be extended by the Director to a date no later than 30 calendar days after the final determination is rendered.

(e) *Failure to timely pay assessment.* If a domestic manufacturer of cigarettes fails in a timely manner to pay any assessment under this section, such manufacturer shall be subject to a penalty in an amount equal to twice the

amount of the initial assessment. The penalty shall be payable in addition to the initial assessment and any other charges that apply.

§ 723.504 Required purchases from tobacco loan stocks.

(a) *General.* In addition to paying a domestic marketing assessment, each domestic manufacturer of cigarettes who fails to comply with § 723.502, as determined by the Director, shall purchase a quantity of burley and flue-cured tobacco from the loan stocks of the producer owned cooperative marketing associations as provided in this section.

(b) *Purchase quantity.* The amount of tobacco that must be purchased shall be an amount equal to the amount of imported tobacco on which the assessment in § 723.503 can be levied. The total amount of required purchases shall be divided equally between burley and flue-cured tobacco. If it is determined that the required amount of purchases by all manufacturers would reduce the inventories of burley or flue-cured tobacco below the reserve stock level, the Director may reduce the required purchase quantity on a pro rata basis. Required purchases under this section shall not be considered as purchases for purposes of meeting the manufacturer's purchase intentions under section 320B of the 1938 Act.

(c) *Purchase price.* In order to receive credit for a purchase to satisfy a purchase required by this section, the purchase price must not be less than published offer list price of the applicable producer cooperative marketing association. Credit for required purchases shall not be allowed if discounts, rebates, or other special incentives have been offered and received in connection with purchases of tobacco loan stocks from association inventories.

(d) *Failure to purchase required amount.* Each manufacturer shall have 30 calendar days from date of notification of the required purchase amount to complete the purchases required under this section. The producer cooperative marketing association shall report to the Director the quantities of required purchases that have been made. A manufacturer who fails to purchase within the allotted time the required quantity of burley or flue-cured tobacco shall be liable for penalty on each pound of tobacco for which there has been a failure to make a timely purchase. The penalty rate shall be the amount determined to be equal to 75 percent of the average market price for the kind of tobacco required to be purchased for the year preceding the year of the violation.

§ 723.505 Reduction of domestic content percentage.

(a) *General.* The Director, in consultation with the producer owned cooperative marketing associations, may reduce the domestic content level to a percentage below 75 percent for any calendar year, when the Director determines that the production of burley or flue-cured tobacco for the preceding year was substantially reduced because of natural disaster or other conditions beyond the control of producers for the immediately preceding crop year and that the loan stock inventory for the kind of tobacco involved will be depleted to 25 percent of the reserve stock level for that kind of tobacco.

(b) *Expected production.* For purposes of this section, the Director may determine, but shall not be required to determine, the expected production of tobacco based on the planted acreage as reported by the National Agricultural Statistics Service for the respective kind of tobacco multiplied by the simple average of the five most recent years' average yields per acre for the respective kind of tobacco.

(c) *Deadline for determination.* The Director shall announce the reduced percentage level for domestic content by November 30 of the year preceding the calendar year to which the reduced percentage will apply.

§ 723.506 Required records and reports; Burden of proof.

(a) *Required records.* (1) Each domestic manufacturer of cigarettes, for all manufacturing plants producing cigarettes chargeable to the manufacturer under this subpart, shall maintain records, on a calendar year basis, by kind of tobacco, the quantity, form and country of origin of all unmanufactured tobacco which is:

(i) In inventory at the beginning of the calendar year,

(ii) Acquired during the calendar year,

(iii) Used to manufacture cigarettes in the United States during the calendar year, and

(iv) Used, or otherwise disposed of, other than to manufacture cigarettes during the calendar year.

(2) Each domestic manufacturer of cigarettes shall maintain a record with respect to each batch or lot of tobacco used in each separate run or blend of cigarettes for the subject manufacturing plants as follows:

(i) The total quantity of tobacco used,

(ii) The quantity of domestic tobacco used,

(iii) The quantity of imported tobacco used,

(iv) The quantity of reconstituted tobacco used in the manufacturing of cigarettes and with respect to such tobacco:

(A) The quantity that resulted from tobacco that lost its identity during the manufacturing process and was recaptured and reused to manufacture cigarettes by such manufacturer.

(B) The quantity that resulted from cigarettes returned to the manufacturer and reused by such manufacturer to manufacture other cigarettes.

(3) Records shall be retained for at least 3 calendar years after the calendar year for which the report and certification in § 723.502 is made. Records shall be retained for a longer period upon written notification by the USDA Office of Inspector General, the Administrator, Deputy Administrator or Director. In any case, the destruction of records shall not release any party from any burden that may be lawfully imposed and shall not release any manufacturer from the burden of proof imposed by this section.

(b) *Required reports.* In addition to the reports and certifications required in § 723.502, each domestic manufacturer of cigarettes shall submit a report of the information required by paragraph (a)(1) of this section.

(c) *When and where to report.* The report required by this section shall be mailed or otherwise delivered to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013–2415 by February 15 of the year after the calendar year for which the report and certification applies.

(d) *Burden of proof.* The manufacturer shall bear the burden of proof on all issues arising under this subpart.

§ 723.507 False reports; Failure to file reports; and Examination of records.

(a) *False reports, failure to file report.* In addition to any other sanction or remedy or presumption that may apply, a person shall be subject to all other remedies provided for by law including, but not limited to, those that apply under section 320C of the 1938 Act and 18 U.S.C. 1001 for any:

(1) False report, certification, or statement, or

(2) Failure to provide required information.

(b) *Examination of records.* The Director, the Office of Inspector General, or an authorized representative may examine such records, books, computer files, or any other material to determine the correctness of any report or information provided to the Director or to obtain required information. The

reasonable cost incurred by such audit may be charged to the cigarette manufacturer who is the subject of the audit or examination.

§723.508 Reconsideration and appeal.

A domestic manufacturer of cigarettes may request that the Director reconsider any determination of such manufacturer's failure to comply with the provisions of this subpart. A request for reconsideration shall be made within 15 calendar days after the date of the notification of failure to comply. If such manufacturer is dissatisfied with the determination rendered with respect for reconsideration, such manufacturer may appeal the determination to the Director, National Appeals Division in accordance with part 780 of this title.

§723.509 Confidentiality of information.

The reports, certifications, and other information furnished by a cigarette manufacturer shall be kept confidential by all officials and employees of the Department of Agriculture. Only such data as may be determined relevant shall be disclosed to investigative authorities, under court orders, or at administrative hearings and to the extent permitted by law. Such information shall not be available to the public under the provisions of the Freedom of Information Act contained in 5 U.S.C. 552. Aggregate data and general statements not identified to an individual manufacturer may be released if otherwise allowed by law.

Signed at Washington, DC, on January 7, 1994.

Grant Buntrock,

Administrator, Agricultural, Stabilization and Conservation Service.

[FR Doc. 94–712 Filed 1–7–94; 1:02 pm]

BILLING CODE 3410–05–P

Food Safety and Inspection Service

9 CFR Chapter III

[Docket No. 93–024N]

Hazard Analysis and Critical Control Point Round Table; Solicitation of Participation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Solicitation of participation.

SUMMARY: Secretary Espy announced in late May 1993 that he was requesting the Food Safety and Inspection Service (FSIS) to present him with a plan for making the Hazard Analysis and Critical Control Point (HACCP) system of process control mandatory in all the Nation's federally inspected meat and poultry establishments. At the Secretary's direction to ensure greater input from all constituent and other interests, it was determined by FSIS that it would be beneficial to provide all constituent groups with a forum to comment on development of a mandatory HACCP system. Therefore, FSIS announces that a HACCP Round Table discussion will be held.

This notice outlines the Round Table process and solicits participation in the Round Table from the constituent groups identified below in the **SUPPLEMENTARY INFORMATION.** Furthermore, this notice offers the opportunity for persons who believe that an affected interest is not represented below to request participation at the Round Table.

DATES: A HACCP Round Table discussion will be held in about 60 days of the date of publication of this notice in the **Federal Register**. Individuals and organizations interested in participating in the Round Table must submit their names by January 25, 1994.

ADDRESSES: Interested persons should submit their names to Mr. Mark Manis, Director, Import Inspection Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, room 0114, South Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Manis at (202) 720–2952.

SUPPLEMENTARY INFORMATION: FSIS views this Round Table as an opportunity to allow free and frank discussion of the legitimate concerns of all constituents prior to the issuance of a proposed regulation on HACCP. This meeting is envisioned as a substantive opportunity to assist FSIS through a thorough discussion of the issues regarding HACCP. This will aid FSIS when it begins drafting the rule for implementing a HACCP system of production in all meat and poultry establishments.

The Round Table will be facilitated by a neutral third party. The facilitator will seek the full participation of all Round Table participants, will ensure that all identified issues are addressed by the Round Table participants, and will invite comments at the end of the Round Table. After the Round Table meeting, the facilitator will provide a transcript of the meeting, and will prepare a final report, which will include any comments submitted at the Round Table meeting and will summarize the positions of all Round Table participants.

The Round Table meeting will be open to the public. Issue papers will be prepared in advance of the meeting by the participants, and will be publicly available through the FSIS hearing clerk. All issues relative to a HACCP system shall be open for consideration.

FSIS has preliminarily identified the following categories of constituents:

- Meat and Poultry Industry and Their Representatives (Including Grocers and Retailers)
- Consumers and Their Representatives
- Scientists and Professional Scientific Organizations
- Producers and Farmers
- FSIS Employees and Their Representatives
- Federal, State, and Local Governments
- Public Health Officials and Medical Doctors

Any individual or organization that is interested in participating in the Round Table must communicate that interest, and identify his or her constituent category, to Mr. Mark Manis whose address and phone number appear in this notice in the paragraph entitled **FOR FURTHER INFORMATION CONTACT**, within 2 weeks of the date of the publication of this notice in the **Federal Register**. After the 2-week notification period, FSIS will: (1) Compile a list, for each category, of those who expressed an interest in participating in the Round Table meeting; and (2) share that list, by category, with the members of each category. FSIS will then request, within 2 weeks after sending the list to members of each category, that the members of each category select representatives to serve as both Round Table and Steering Committee participants.

To ensure the effectiveness of this process, the estimated number of Round Table participants will be between 25 and 30, and the total number of attendees will be determined by the capacity of the meeting room. FSIS will request each constituent category to appoint one representative to serve on the Steering Committee. FSIS will request that five representatives be appointed for the Round Table by each of the following constituent categories: Meat and Poultry Industry and Their Representatives; Consumers and Their Representatives; and Scientists and Professional Scientific Organizations. FSIS will request that four representatives be appointed for the Round Table from the Producers and Farmers category. FSIS will request that three representatives be appointed for the Round Table from the FSIS Employees and Their Representatives; and Federal, State, and Local Governments categories. FSIS will

request that two representatives be appointed for the Round Table from the Public Health Officials and Medical Doctors category.

If any constituent category is unable to designate its representatives, USDA will assist in the selection.

Furthermore, any person who believes that an affected interest is not represented by the identified categories of constituent groups may request, within 2 weeks of the date of publication of this notice in the **Federal Register**, Round Table participation for that affected interest.

Once the representatives are appointed, FSIS will convene a Steering Committee to be held in the Washington, DC, area in advance of the Round Table meeting. The Steering Committee will address all relevant pre-meeting issues and determine the: (1) Round Table issues; (2) process for developing issue papers prior to the Round Table; (3) timeframes; (4) meeting schedule; (5) Round Table discussion rules; and (6) any other matter which would assist in an effective and full discussion.

Done at Washington, DC, on: January 5, 1994.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 94–556 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–43]

Airworthiness Directives; Rolls-Royce, plc Spey Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Rolls-Royce, plc Spey series turbofan engines. This proposal would require a one-time inspection of stage 1 and stage 2 high pressure turbine (HPT) and low pressure turbine (LPT) steel disks for cracks and corrosion pitting. This proposal is prompted by a report of a stage 7 high pressure compressor steel disk found cracked due to corrosion. The actions specified by the proposed AD are intended to prevent an HPT or LPT steel turbine disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure.

DATES: Comments must be received by March 14, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–43, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from the Service Manager, Spey engines, Rolls-Royce, plc, East Kilbride, Glasgow G74 4PY, Scotland. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–43." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–43, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce, plc (R–R) Spey series turbofan engines. The CAA advises that they have received a report of a three-inch crack extending radially outward from the bore of a steel stage 7 high pressure compressor disk installed in an R–R Spey 506–14D engine. The crack had originated from a corrosion pit that apparently had been present at the disk's entry into service. Subsequent investigation revealed that engine failure due to disk burst was imminent.

The CAA has determined that steel stage 1 and stage 2 high pressure turbine (HPT) and low pressure turbine (LPT) disks could also contain corrosion pitting that could have been present since original manufacture. Rolls-Royce, plc has informed the FAA that all turbine disks installed in Spey engine models type certificated in the United States are made of steel. This condition, if not corrected, could result in an HPT or LPT steel turbine disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure.

Testing and further analysis indicate that to ensure that steel stage 1 and stage 2 HPT and LPT disks do not operate under prolonged exposure to levels of corrosion greater than the overhaul manual limits, at least one inspection is required after 40% of the disk cyclic life is expended in order for the disk to continue in service and to reliably attain full disk cyclic life. Rolls-Royce, plc has issued Service Bulletin No. Sp72–1044, dated September 1992, that specifies a one-time inspection of steel stage 1 and stage 2 HPT and LPT disks for cracks and corrosion pitting. The CAA classified this service bulletin as mandatory in order to assure the airworthiness of these R–R Spey series turbofan engines in the United Kingdom.

This engine model is manufactured in the United Kingdom and is type certificated for operation in the United

States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other R–R Spey series turbofan engines of the same type design registered in the United States, the proposed AD would require a one-time inspection of steel stage 1 and stage 2 HPT and LPT disks for cracks and corrosion pitting once the disks have completed at least 40% of their published Group "A" cyclic life limits as specified in the applicable overhaul manual. These disks must be inspected in accordance with the applicable overhaul manual during the engine's next shop visit for either HPT or LPT overhaul after the effective date of this AD. Accomplishment of this inspection will allow stage 1 and stage 2 HPT and LPT disks to complete the remainder of their current published cyclic life limits.

The FAA estimates that 173 engines installed on aircraft of U.S. registry would be affected by this proposed AD and that the average labor rate is $55 per work hour. The FAA estimates that it would take no additional work hours per engine to accomplish the proposed actions to the HPT's as the inspection is performed during scheduled overhauls. Approximately 80% of the engines will require an additional 25 work hours of extra access, inspection, and rebuild time to perform the required LPT inspection. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $189,750.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce, plc: Docket No. 93–ANE–43.

Applicability: Rolls-Royce, plc (R–R) Spey 506–14 series, 511–14 series, and 555–15 series turbofan engines, installed on but not limited to British Aerospace BAC 1–11 series and Fokker F28 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a high pressure turbine (HPT) or low pressure turbine (LPT) steel turbine disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure, accomplish the following:

(a) Perform a one-time inspection for cracks and corrosion pitting in steel stage 1 and stage 2 HPT disks that on the effective date of this airworthiness directive (AD) have completed 40% or more of their published Group "A" lives, in accordance with the procedures and schedule described in R–R Service Bulletin (SB) No. Sp72–1044, dated September 1992, at the next shop visit after the effective date of this AD.

(b) Perform a one-time inspection for cracks and corrosion pitting in steel stage 1 and stage 2 HPT disks that on the effective date of this AD have completed less than 40% of their published Group "A" lives, in accordance with the procedures and schedule described in R–R SB No. Sp72–1044, dated September 1992, at the first shop visit after completing 40% of their published Group "A" lives.

(c) Perform a one-time inspection for cracks and corrosion pitting in steel stage 1 and stage 2 LPT disks that on the effective date of this AD have completed 40% or more of their published Group "A" lives, in accordance with the procedures and schedule described in R–R SB No. Sp72–1044, dated September 1992, at the next shop visit after the effective date of this AD.

(d) Perform a one-time inspection for cracks and corrosion pitting in steel stage 1 and stage 2 LPT disks that on the effective date of this AD have completed less than 40% of their published Group "A" lives, in accordance with the procedures and schedule described in R–R SB No. Sp72–1044, dated September 1992, at the first shop visit after completing 40% of their published Group "A" lives.

(e) Replace with a serviceable part, disks that do not meet the inspection requirements described in section 72–50 of the applicable R–R Spey Engine Overhaul Manual, prior to return to service.

(f) Mark disks that meet the inspection requirements described in section 72–50 of the applicable R–R Spey Engine Overhaul Manual in accordance with R–R SB No. Sp72–1044, dated September 1992, prior to return to service.

(g) For the purpose of this AD, a shop visit is defined as an engine removal where engine maintenance entails removal of either HPT or LPT disks for the purposes of scheduled disk inspections.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on December 27, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–00586 Filed 01–10–94; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 93–ANE–31]

Airworthiness Directives; Rolls-Royce, plc Spey Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Rolls-Royce, plc (R–R) Spey series turbofan engines. This document proposes to supersede Telegraphic AD T89–02–52, which superseded Telegraphic AD T88–22–51. Telegraphic AD T88–22–51 reduced cyclic life limits for seventh stage high pressure compressor (HPC) disk from 40,000 total part cycles in service (TPC) to 35,000 TPC for the R–R Spey Model 506–14 and –14D engines. Telegraphic AD T89–02–52 currently requires repetitive inspections or further reduced cyclic life limits for seventh stage HPC disks. This proposal would increase the AD's effectivity to include additional R–R Spey engine models, eliminate the option for repetitive inspections, and further reduce the cyclic life limits. This proposal is prompted by further investigation into disk bore cracking that was caused by corrosion. The actions specified by the proposed AD are intended to prevent a seventh stage HPC disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure.

DATES: Comments must be received by February 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–31, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in this AD may be obtained from the Service Manager, Spey engines, Rolls-Royce, plc, East Kilbride, Glasgow G74 4PY, Scotland. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–31." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–31, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion:

The Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce, plc (R–R) Spey series turbofan engines. The CAA advises that they have received a report of a three-inch crack extending radially outward from the bore on a seventh stage high pressure compressor (HPC) disk installed in a R–R Spey Model 506–14D engine. The crack originated from a corrosion pit that apparently had been present at the disk's entry into service. Investigation indicated that failure of the engine due to disk burst was imminent. That condition, if not corrected, could result in a seventh stage HPC disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure.

This engine model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that airworthiness directive (AD) action is necessary for products of this type design that are certificated for operation in the United States.

On October 20, 1988, the FAA issued Telegraphic AD T88–22–51, which reduced cyclic life limits for seventh stage HPC disks from 40,000 total part cycles in service (TPC) to 35,000 TPC for the R–R Spey Model 506–14 and –14D engines. On January 26, 1989, the FAA issued Telegraphic AD T89–02–52, which supersedes Telegraphic AD T88–22–51, and currently requires repetitive inspections or further reduced cyclic life limits for seventh stage HPC disks.

Since the issuance of these two previous AD's, further investigation of the cracked disk revealed that the crack originated from a corrosion pit that could have been present at the disk's entry into service. A testing program investigated the effects of corrosion on seventh stage HPC disks, and as a result of this investigation, disk cyclic life has been reevaluated, assuming the possible presence of corrosion at entry into service. To account for the possible presence of corrosion, this proposed AD would further reduce the cyclic life limit, and would require removing from service seventh stage HPC disks that exceed the revised cyclic life limits following the schedule established in this AD.

This revised limit reduces the cyclic life limit below the point that intermediate, repetitive inspections are practical; therefore, this AD does not provide for repetitive inspections. In addition, this AD would increase the effectivity to include additional R–R Spey engine models not affected by the previous Telegraphic AD's.

Rolls-Royce issued Mandatory Service Bulletin No. Sp72–1034, Revision 1, dated May 4, 1990, that describes the revised cyclic life limits for seventh stage HPC disks, and the additional R–R Spey engine models affected. The CAA classified this service bulletin as mandatory in order to assure the airworthiness of these R–R Spey series turbofan engines in the United Kingdom.

Since an unsafe condition has been identified that is likely to exist or develop on other R–R Spey series turbofan engines of this same type design installed on aircraft registered in the United States, the proposed AD would supersede Telegraphic AD T89–02–52 to increase the AD's effectivity to

include additional R–R Spey engine models, eliminate the option for repetitive inspections of seventh stage HPC disks, further reduce the cyclic life limits, and require removing from service disks that exceed the revised cyclic life limits following the schedule established in this AD. The actions are required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 173 engines installed on aircraft of U.S. registry would be affected by this proposed AD, and that it would not take any additional work hours per engine to accomplish the proposed actions. Replacement parts, prorated for the reduced life, would cost approximately $1,718 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $297,214.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce, plc: Docket No. 93–ANE–31

Applicability: Rolls-Royce, plc (R–R) Spey 506–14 series, 511–14 series, and 555–15 series turbofan engines installed on but not limited to British Aerospace BAC 1–11 and Fokker F28 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a seventh stage high pressure compressor (HPC) disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure, accomplish the following:

(a) For seventh stage HPC disks that on the effective date of this airworthiness directive (AD) exceed the revised cyclic life limits described in R–R Service Bulletin (SB) Sp72–1034, Revision 1, dated May 4, 1990, remove from service and replace with a serviceable part within 60 days after the effective date of this AD.

(b) For seventh stage HPC disks that on the effective date of this AD do not exceed the revised cyclic life limits described in R–R SB Sp72–1034, Revision 1, dated May 4, 1990, remove from service and replace with a serviceable part: either prior to exceeding the revised cyclic life limits, or within 60 days after the effective date of this AD, whichever occurs later.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety, may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on December 29, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–00587 Filed 01–10–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–ANE–04]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45/–50 series turbofan engines. This proposal would require installation of a fan stator case stiffening ring assembly, and a new stage one fan shroud. This proposal is prompted by a report of an uncontained stage one fan blade failure, which resulted in an inflight engine shutdown, and damage to the aircraft. The actions specified by the proposed AD are intended to prevent an uncontained stage one fan blade failure, which can result in an inflight engine shutdown, and damage to the aircraft.

DATES: Comments must be received by February 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–04, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, ANE–142, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–ANE–04." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–04, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received a report of an uncontained stage one fan blade failure, attributed to excessive fan blade tip clearance. Engines without a fan stator case stiffening ring assembly, and a new stage one fan shroud, operate with relatively open stage one fan blade tip clearances. Increased fan rotor vibration occurs when the average tip clearance exceeds the maximum allowable clearance tolerances. This increased vibration increases stresses in the fan blade shank, which leads to cracking and subsequent blade failure. This condition, if not corrected, could result in an uncontained stage one fan blade failure, which can result in an inflight engine shutdown, and damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE CF6–50 Service Bulletin (SB) No. 72–573, Revision 5, dated September 15, 1981, that describes procedures for the installation of the stiffening ring assembly and new stage one fan shroud.

Since an unsafe condition has been identified that is likely to exist, or develop, on other engines of this same type design, the proposed AD would require installation of a fan stator case stiffening ring assembly and a new stage one fan shroud, which will result in reduced running clearances, and lower fan blade stresses. The compliance end date of August 31, 1995, ensures timely compliance without forced engine removals based on hardware availability. The actions would be required to be accomplished, in accordance with the service bulletin described previously.

There are approximately 67 GE CF6–45/–50 series turbofan engines of the affected design in the worldwide fleet. The FAA has been advised by the manufacturer that there are no engines on U.S. registered aircraft that would be affected by this AD. However, should an affected engine be imported on an aircraft and placed on the U.S. registry in the future, it would take approximately 48 work hours to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $9,360 per engine. Based on these figures, the total cost impact of the proposed AD is estimated to be $12,000 per engine.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12886; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. 93–ANE–04.

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines installed on, but not limited to, Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained stage one fan blade failure, which can result in inflight engine shutdown, and damage to the aircraft, accomplish the following:

(a) For engines that have not been modified in accordance with any revision level of GE CF6–50 Service Bulletin (SB) No. 72–573, prior to the effective date of this AD, install a fan stator case stiffening ring assembly and stage one fan shroud, in accordance with GE CF6–50 SB No. 72–573, Revision 5, dated September 15, 1981, by August 31, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on December 21, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–589 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–ANE–69]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45/–50 series turbofan engines. This proposal would require repetitive inspections of the left compressor discharge pressure (CDP) manifold and lower CDP tube for cracks, and if found cracked, rework or replacement with serviceable parts. This proposal would also require rework or replacement of the left CDP manifold, lower CDP tube, stage 14 turnbuckle, and other related CDP bleed air hardware, and inspection of the compressor rear frame (CRF) as a terminating action to the inspection program. This proposal is prompted by reports of cracks in the left CDP manifold, lower CDP tube, and CRF bleed port struts, that have resulted in inflight engine shutdowns and rejected takeoffs. The actions specified by the proposed AD are intended to prevent cracks in the left CDP manifold, lower CDP tube, and CRF bleed port struts, which could result in an inflight engine shutdown, rejected takeoff, or damage to the engine nacelle.

DATES: Comments must be received by March 14, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–69, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–69." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–69, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–45/–50 series turbofan engines. The Federal Aviation Administration (FAA) has received 228 reports of cracks in the left compressor discharge pressure (CDP) manifold, lower CDP tube, and compressor rear frame (CRF) bleed port struts. Of these 228 reports, 24 have resulted in inflight engine shutdowns, and 24 in rejected takeoffs. The current type design hardware has been found to crack, allowing hot air to leak into the core cowl area, resulting in false fire warnings.

The cracks in the current type design hardware are the result of high cycle fatigue (HCF). The excessive stress is the result of both thermal and airframe installation loading factors. New hardware exists which decreases operating stresses, therefore reducing the chance of cracks due to HCF. This condition, if not corrected, may result in cracks in the left CDP manifold, lower CDP tube, and CRF bleed port struts, which could result in an inflight engine shutdown, rejected takeoff, or damage to the engine nacelle.

The FAA has reviewed and approved the technical contents of GE CF6–50 Service Bulletin (SB) No. 75–065, Revision 1, dated March 26, 1993, that describes procedures for rework or replacement of the left CDP manifold, lower CDP tube, and other related CDP bleed air hardware, and inspection of the CRF bleed port struts; GE CF6–50 SB No. 75–067, dated March 15, 1993, that describes procedures for rework or replacement of the stage 14 turnbuckle; and GE CF6–50 SB No. 75–064, Revision 2, dated July 23, 1992, that describes procedures for repetitive inspections of the left CDP manifold and lower CDP tube for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive inspections of the left CDP manifold and lower CDP tube for cracks, and if found cracked, rework or replacement with serviceable parts. This proposal would also require rework or replacement of the left CDP manifold, lower CDP tube, stage 14 turnbuckle, and other related CDP bleed air hardware, and inspection of the CRF as a terminating action to the inspection program. The compliance end-date of October 31, 1996, is proposed to ensure timely compliance. Based upon engine shop visit rates, a compliance end-date of October 31, 1996, will ensure timely compliance while minimizing the number of forced engine removals. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 2202 GE CF6–45/–50 series engines of the affected design in the worldwide fleet. The FAA estimates that 223 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to accomplish the proposed inspections, 32 work hours per engine to accomplish the proposed terminating action, and that the average labor rate is $55 per work hour. Required parts would cost approximately $27,500 per engine.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,549,510.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. 93–ANE–69.

Applicability: General Electric Company (GE) CF6–5/–50 series turbofan engines installed on but not limited to Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the left compressor discharge pressure (CDP) manifold, lower CDP tube, and the compressor rear frame (CRF) bleed port struts, which could result in an inflight engine shutdown, rejected takeoff, or damage to the engine nacelle, accomplish the following:

(a) Inspect the left CDP manifold, Part Number (P/N) 9057M84G02 and 9057M84G03, and lower CDP tube, P/N 9068M40G01, in accordance with GE CF6–50 Service Bulletin (SB) No. 75–064, Revision 2, dated July 23, 1992, within the next 500 hours time in service (TIS) or 150 cycles in service (CIS) after the effective date of this airworthiness directive (AD), whichever occurs later. Thereafter, inspect at intervals not to exceed 500 hours TIS or 150 CIS since the last inspection, whichever occurs later.

(b) For left CDP manifolds and lower CDP tubes found cracked, accomplish the following prior to further flight:

(1) Rework or replace the left CDP manifold, lower CDP tube, and other related CDP bleed air hardware, and fluorescent penetrant inspect (FPI) the CRF in accordance with GE CF6–50 SB No. 75–065, Revision 1, dated March 26, 1993. For CRF's found cracked, either repair in accordance with GE CF6–50 Task Number Shop Manual, GEK 50481, Chapter 72–34–01, or replace with a serviceable part.

(2) Rework or replace the stage 14 turnbuckle, P/N 1555M42P01, in accordance with GE CF6–50 SB No. 75–067, dated March 15, 1993.

(c) Rework or replace the left CDP manifold, P/N 9057M84G02 and 9057M84G03, lower CDP tube, P/N 9068M40G01, and other related CDP bleed air hardware, and FPI the CRF in accordance with GE CF6–50 SB No. 75–065, Revision 1, dated March 26, 1993, at the next engine shop visit, or by October 31, 1996, whichever occurs earlier. For CRF's found cracked, either repair in accordance with GE CF6–50 Task Number Shop Manual, GEK 50481, Chapter 72–34–01, or replace with a serviceable part.

(d) Rework or replace the stage 14 turnbuckle, P/N 1555M42P01, in accordance with GE CF6–50 SB No. 75–067, dated March 15, 1993, at the next engine shop visit, or by October 31, 1996, whichever occurs earlier.

(e) Rework or replacement of the left CDP manifold, lower CDP tube, and stage 14 turnbuckle, in accordance with paragraph (b), or paragraphs (c) and (d), as applicable, of this AD constitutes terminating action to the repetitive inspections required in paragraph (a) of this AD.

(f) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for maintenance involving the separation of any major module.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

Issued in Burlington, Massachusetts, on December 27, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–588 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, 33, and 190

Risk Disclosure by Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators and Commodity Trading Advisors to Customers; Bankruptcy Disclosure

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is requesting public comment on the text of a draft two page generic risk disclosure statement currently being discussed among various international futures regulators that potentially could be used to meet the risk disclosure requirements for both domestic and foreign commodity futures and commodity option products subject to regulation by the CFTC. As contemplated by Commission rule 1.55(c), the text of the generic risk disclosure statement is being published, in part, to further these discussions relative to the development of one document to satisfy the risk disclosure requirements of the CFTC and such foreign jurisdictions as may choose to adopt its language for use in their jurisdictions. Based on the comments received, the CFTC may be better able to provide input to these discussions and to consider rule amendments to permit the substitution of this statement under rule 1.55(c) and certain other rules for firms doing cross-border business.

DATES: Comments must be submitted on or before February 10, 1994.

ADDRESSES: Comments should be sent to the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to "Generic Risk Disclosure—Advance Notice."

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld,

Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1993, the Commission, among other things, adopted final rule amendments to Commission rule 1.55(b) which simplified the risk disclosure process by consolidating the risk disclosure statements applicable to domestic futures transactions and foreign futures and foreign commodity options transactions in rules 1.55 and 30.6, respectively.[1] The use of such a statement was intended to greatly simplify the risk disclosure process for U.S. firms conducting cross-border business.

In response to Commission suggestions in the notice of proposed rulemaking concerning rule 1.55 that it also was considering the development of a "plain language" options disclosure statement,[2] some commenters supported that course of action and further suggested that the Commission not only shorten the rule 33.7 disclosure statement applicable to exchange-traded commodity option transactions but also consolidate it with the new combined domestic futures and foreign futures and foreign commodity options statement. In response, the Commission noted that certain international regulators were endeavoring to develop a single risk disclosure statement that could be used in multiple jurisdictions to satisfy the risk disclosure requirements applicable to domestic and cross-border transactions in futures and options. The Commission stated that if a universal statement were to be developed, it would consider permitting the use of such a statement in lieu of the new consolidated rule 1.55 risk disclosure statement as well as the options risk disclosure statement required by current rule 33.7.[3] Under amended rule 1.55(c), the Commission may permit the substituted use of a risk disclosure statement approved by a foreign regulatory or self-regulatory organization if the Commission determines that such statement reasonably is calculated to provide the disclosure required by Commission rule 1.55(b).[4]

For some time, a working group[5] of international regulators worked towards developing a single risk disclosure statement which could satisfy the risk disclosure requirements applicable, in the multiple participating jurisdictions, to domestic and cross-border transactions in futures and options ("generic disclosure statement").[6] Following extensive discussions, the draft generic disclosure statement set forth herein was developed and the draft text was passed to those regulatory authorities (including the CFTC) who were interested in taking the work forward. The text remains subject to final discussion and approval by the regulatory authorities of the participating jurisdictions.

It is intended that the generic disclosure statement would specify, in an addendum on a third page, the participating jurisdictions and the specific products for which it could be used. The addendum would be updated periodically as new jurisdictions adopted the text. In the United States, it is contemplated that such risk disclosure statement, if ultimately proposed and adopted after further public comment, would satisfy only those risk disclosure obligations set forth in Commission rules 1.55 (which incorporates the risk-disclosure contained in Commission rule 30.6),[7] the special disclosures related to futures-style margining of options permitted on certain foreign exchanges,[8] and the special bankruptcy disclosures of Commission rule 190.10(c) related to the acceptance of non-cash margin.

Approach Taken By Working Group

The approach taken by the international working group with respect to risk disclosure has been to develop a draft generic statement which focuses on the major risks of trading and contains the basic generic disclosures required by most jurisdictions.

Thus, the approach of the working group was to eliminate much of the definitional and educational material which currently is required to be disclosed by Commission rule 33.7 and to treat options disclosure in a manner equivalent to disclosure for futures. As such, the statement is intended to focus customer attention on the risks of trading, as currently is the practice with futures risk disclosure. Further, the statement would highlight the importance of obtaining sufficient information as to the specifics of trading without attempting to address the differences from market to market.

The elimination of a Commission mandated description of options trading and other educational material from the mandated risk disclosure statement does not mean, however, that firms do not have the obligation to provide all material disclosures in compliance with Commission and National Futures Association (NFA) rules.[9]

Additional Topics

As the working group's objective was not only to create a risk disclosure statement that categorized existing disclosure requirements in most jurisdictions but also to incorporate new matters deemed relevant in an evolving marketplace, the generic statement also contains the following additional topics.

---

[1] 58 FR 17496 (April 5, 1993). These amendments also:

—eliminated the requirement that the rule 190.10 disclosure regarding treatment of non-cash margin be acknowledged by the customer;

—clarified that the rule 1.55 risk disclosure statement may be included in a booklet of account opening documents, provided it appears on the cover page or following the cover page of such booklet;

—provided that the Commission may approve a risk disclosure statement that has been approved by a foreign jurisdiction or foreign SRO for use in lieu of the Commission-required statement;

—permitted the use of a single acknowledgement for rule 1.55 and 33.7 statements and other elections, subject to specified conditions; and

—simplified the disclosure requirements regarding the bulk transfer of accounts.

[2] See 57 FR 46101, 46108 (October 7, 1992).

[3] 58 FR at 17497 and 17502 (April 5, 1993).

[4] 58 FR at 17503–17504 (April 5, 1993).

[5] The working group was composed of representatives from Canada (Ontario Securities Commission), France (the French Conseil du Marche a Terme), Switzerland (the Swiss Ministry of Finance), the United Kingdom (the U.K. Securities and Investments Board, which chaired the working group), and the United States (the CFTC).

[6] See 58 FR at 17496, 17497 and 17502 (April 5, 1993).

[7] The Commission notes in this regard that pending resolution of the Commission's determination on this draft generic risk disclosure statement, firms operating pursuant to Commission rule 30.10 relief should continue to comply with the risk disclosure requirements set forth in the relevant Commission orders and that for these purposes may continue to use the text of rule 30.6 as published prior to the 1993 revisions to Commission rules 1.55 and 30.6 (which incorporated the rule 30.6 disclosures for foreign futures into the rule 1.55 disclosures for domestic futures) (see 58 FR 17496 (April 5, 1993)).

[8] See, e.g., CFTC Advisory No. 90–1 [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,597 (disclosure statement relating to the deferred payment of option premiums for options, superseding separate disclosure addenda required by orders concerning the London International Financial Futures Exchange (54 FR 37636 (September 12, 1989)), the International Petroleum Exchange (54 FR 50356 (December 6, 1989)), and the London Futures and Options Exchange (renamed as the London Commodity Exchange) (54 FR 50348 (December 6, 1989)); and 55 FR 14238 (April 17, 1990) (Sydney Futures Exchange).

[9] See, e.g., Commission rule 1.55(d), which provides that: This section [requiring distribution of a risk disclosure statement] does not relieve a futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law.

See also, NFA Compliance Rule 2–30 (customer information and risk disclosure).

1. Supporting Systems

The current draft generic disclosure statement would briefly disclose the fact that most open-outcry and electronic trading facilities are supported by computer-based component systems, which are vulnerable to temporary disruption or failure.

2. Electronic Trading

Differences in electronic trading systems are such that a common disclosure appropriate to the specifics of each such system may not be feasible and, in the case of domestic contract market electronic systems, the draft generic disclosure statement would not substitute for disclosure requirements that currently are required by individual contract markets for such systems. However, as the purpose of the draft generic disclosure statement is to articulate general risks common to futures and options trading, it is possible in the case of electronic systems to identify the risks common to any such system, such as the possibility of system failure and that the liability of the system provider may be limited. No attempt has been made to describe in detail the specifics of any one system. On the contrary, the proposed disclosure text encourages the customer to ask the firm with which it is dealing for details in this respect.

3. Off-Exchange Trading

The draft generic disclosure statement also contains a reference to the risks of off-exchange trading. The international working group drafting the consolidated disclosure statement concluded that such a provision, if worded appropriately, would not mislead or confuse customers in those jurisdictions which, for example, do not permit retail customers to participate in off-exchange markets.

Request For Comment

The Commission is inviting public comment and suggestions generally on the draft text of the generic risk disclosure statement so that any material public concerns can be considered by the Commission. The Commission also requests public comment on whether the use of a generic disclosure statement to substitute for current disclosures contained in rules 1.55, 33.7, 190.10 and Commission orders and Advisories regarding disclosures related to futures-style margining of option premiums allowed by certain foreign exchanges would be most useful if made mandatory for certain categories of registrants, and if so, which categories should be included, and whether use should be limited to firms doing cross-border business or more broadly available.

Text of Draft Generic Risk Disclosure Statement

Risk Disclosure Statement for Futures and Options

This brief statement does not disclose all of the risks and other significant aspects of trading in futures and options. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent of your exposure to risk. Trading in futures and options is not suitable for many members of the public. You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances.

Futures

1. Effect of "Leverage" or "Gearing"

Transactions in futures carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract so that transactions are "leveraged" or "geared." A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit: this may work against you as well as for you. You may sustain a total loss of initial margin funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed, your position may be liquidated at a loss and you will be liable for any resulting deficit.

2. Risk-reducing Orders or Strategies

The placing of certain orders (e.g. "stop-loss" orders, where permitted under local law, or "stop-limit" orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as "spread" and "straddle" positions may be as risky as taking simple "long" or "short" positions.

Options

3. Variable Degree of Risk

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarize themselves with the type of option (i.e. put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options must increase for your position to become profitable, taking into account the premium and all transaction costs.

The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a future, the purchaser will acquire a futures position with associated liabilities for margin (see the section on Futures above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that the chance of such options becoming profitable ordinarily is remote.

Selling ("writing" or "granting") an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavorably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a future, the seller will acquire a position in a future with associated liabilities for margin (see the section on Futures above). If the option is "covered" by the seller holding a corresponding position in the underlying interest or a future or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

Additional Risks Common to Futures and Options

4. Terms and Conditions of Contracts

You should ask the firm with which you deal about the terms and conditions of the specific futures or options which you are trading and associated obligations (e.g. the circumstances under which you may become obligated to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

5. Suspension or Restriction of Trading and Pricing Relationships

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or "circuit breakers") may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the future, and the underlying interest and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge "fair" value.

6. Deposited Cash and Property

You should familiarize yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

7. Commission and Other Charges

Before you begin to trade, you should obtain a clear explanation of all commission, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

8. Transactions in Other Jurisdictions

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

9. Currency Risks

The profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

10. Trading Facilities

Most open-outcry and electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure.

11. Electronic Trading

Trading on an electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instructions or is not executed at all. Your ability to recover certain losses which are particularly attributable to trading on a market using an electronic trading system may be limited to less than the amount of your total loss. Limits on liability may be imposed by the system provider, the market, the clearing house and/or member firms. Such limits may vary: You should ask the firm with which you deal for details in this respect.

12. Off-exchange Transactions

In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange transactions. The firm with which you deal may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks.

Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarize yourself with applicable rules.

This disclosure document meets the risk disclosure requirements in the jurisdictions identified below ONLY for those instruments which are specified:

Jurisdiction "A":
futures
options on futures
Jurisdiction "B":
futures
options on futures
options on commodities
Jurisdiction "C":
futures
options on futures
options on equities
etc.

Issued in Washington, DC. on January 5, 1994 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–608 Filed 1–10–94; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201, 202, 229, and 240

[Release No. 34–33429; File No. S7–40–92]

RIN 3235–AF91

Rules of Practice—Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending from January 6, 1994 to February 4, 1994 the comment period for Securities Exchange Act Release No. 34–33163 (58 FR 61732 [Nov. 22, 1993]), which proposed comprehensive revisions to the Commission's Rules of Practice governing Commission administrative proceedings including, among others, evidentiary hearings before administrative law judges, appeals of

self-regulatory organization disciplinary actions and administrative law judge initial decisions and certain rulemaking proceedings. Since publication of the rules, the Commission has received from interested persons a number of requests for extension of the comment period.

DATES: Comments must be submitted on or before February 4, 1994.

ADDRESSES: Comments should be addressed to File No. S7–40–92, Attention: Jonathan G. Katz, Secretary; U.S. Securities and Exchange Commission; 450 Fifth Street, NW.; Stop 6–9; Washington, DC 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Andrew Z. Glickman or Daniel O. Hirsch, Office of the General Counsel at (202) 272–2428; U.S. Securities and Exchange Commission; 450 Fifth Street, NW.; Stop 6–6; Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 5, 1993, the Commission authorized publication in the **Federal Register** of a proposal to make major amendments to the Commission's Rules of Practice. Published on November 22, 1993 (58 FR 61732), this proposal stems from the work of the Commission's Task Force on Administrative Proceedings, chaired by Commissioner Mary Schapiro. In addition to updating the Commission's existing rules and make them more consistent with actual practices, the proposed revisions would establish procedures to implement the authority granted to the Commission by the Securities Enforcement Remedies and Penny Stock Reform Act. The Commission requested that comments the received by January 6, 1994.

Since the publication of the Rules, the Commission has received from interested persons a number of requests for an extension of the comment period. On December 27, 1993, an Ad Hoc Committee of the American Bar Association that is preparing comments in response to the Commission's proposal sent a letter requesting that the comment period be extended from January 6, 1994 to February 1, 1994. The stated reason for this request is the ABA requires more time because of the breadth of the Commission's proposal and its accompanying commentary. Three other parties have contacted the Commission's Office of the General Counsel to request an extension of the comment period.

II. Discussion

In light of the length and complexity of the release and the benefits to the Commission of receiving carefully considered comments, the Commission believes a reasonable extension of the comment period is appropriate. Therefore, in order to assist interested participants in their consideration and preparation of carefully reasoned comments, the Commission is extending the comment period for all persons to February 4, 1994.

III. Conclusion

The comment period for responding to Securities Exchange Act Release No. 34–33163 is extended to February 4, 1994.

Dated: January 5, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–621 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 787 and 93F–022P]

RIN 1512–AA07

Seiad Valley Viticultural Area

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Siskiyou County, California, to be known as "Seiad Valley." This proposal is the result of a petition filed by Brian J. Helsaple of Seiad Valley Vineyards. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

DATES: Written comments must be received by March 14, 1994.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, Attn: Notice No. 787. Copies of written comments received in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Public Affairs and Disclosure, room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Brian J. Helsaple of Seiad Valley Vineyards proposing to establish a viticultural area in Siskiyou County, California, to be known as "Seiad Valley." The proposed viticultural area is located in northwestern California, about 15 miles south of the Oregon border. It contains approximately 2160 acres, of which approximately 2.5 acres are planted to vineyards. Seiad Valley Vineyards is the only commercial grower and the only wine producer currently active within the proposed viticultural area.

Evidence of Name

Evidence that the name of the proposed area is locally and/or nationally known as referring to the area specified in the petition includes:

(a) The U.S.G.S. map used to show the boundaries of the proposed area (the Seiad Valley Quadrangle 7.5 minute series map) uses the name "Seiad Valley" to describe the area immediately surrounding Seiad Creek, corresponding to the portion of the proposed area which is north of the Klamath River. The map also shows the town of Seiad Valley within this area. The map shows no separate designation for the portion of the proposed area south of the Klamath River, which is drained by Grider Creek.

(b) The petitioner provided excerpts from the 1957 issue of Siskiyou Pioneer, an annual publication of the Siskiyou County Historical Society, which discuss the history of the name Seiad Valley, and local understanding of the extent of the area known as Seiad, or Seiad Valley. "Sciad," by Betty Livingston and Hazel Davis, states the name Seiad was originally spelled Sciad, and the creek and valley were called that by the trappers "before the prospectors came in 1850." Sometime after 1871, the spelling of the name changed to Seiad. In "Gold Mining from Scott Bar to Happy Camp," by J.B. Grider, the following description appears:

> Seiad is a small valley two miles long and one mile wide * * * There are two large creeks in Seiad, Grider Creek and Seiad Creek. Grider Creek flows north into the Klamath from the Marble Mountain territory. Seiad creek flows south into the Klamath from the Siskiyous and Red Mountain."

(c) The petitioner also provided a copy of a claim document dated August 26, 1942, which states the Grider Creek mining claim is "situate in the Seiad Mining District."

Evidence of Boundaries

The petitioner has defined the proposed area primarily by its elevation, using the 1600 and 1800 foot contour lines. As evidence that the proposed boundaries for the area are as specified in the petition, the petitioner states that the vegetation within and outside the area provides a dramatic contrast. Within the proposed area, cottonwood, oak and willow trees and wild blackberries and grapes grow in addition to the cultivated crops. Outside the proposed area, on the higher slopes of the surrounding mountains, conifers such as cedar, Douglas fir and Ponderossa pine predominate in the thin, eroded soils with scant summer moisture.

Geographical Features

The proposed viticultural area consists of the valleys drained by Seiad Creek and Grider Creek, which both flow into the Klamath River in northwestern California. According to the petitioner, these valleys and an expanse of land along the Klamath River which connects them share characteristics of topography, soil composition and climate which distinguish the proposed viticultural area from the surrounding areas. The petitioner provided the following evidence to support his claims:

Topography

The U.S.G.S. topographic map submitted by the petitioner shows the proposed area is a relatively flat area varying in elevation from 1,400 to 1,600 feet, with a small portion as high as 1,800 feet, surrounded by steeply rising terrain. Outside the area, the elevation ranges from 2,000 to 2,800 feet, with peaks exceeding 3,000 feet on all sides, and some peaks as high as 3,900 feet. The petitioner explains that snow melt, runoff, and erosion from these higher areas into the valley create a contrast in both the quality of soils and the availability of water within and outside the proposed area. The lower elevation within the proposed area also contributes to more moderate temperatures there.

Soil

The petitioner states that the valley floor "is composed of deep fertile soil mixtures of loam, sand, clay and rocks eroded from the surrounding mountain slopes." According to a draft environmental impact report prepared in 1975 by the California Department of Transportation, the valley floor is "mostly alluvium deposits which were widely dredged and hydraulically mined for gold. Chromite was also mined within the Seiad Valley area." Dredging left "tailings," or piles of rounded rocks, wherever the dredge operated. The petitioner states that these granite-dominated rock tailings store heat during the day and provide protection against frost in spring and fall.

Climate

The petitioner provided the following material related to the climate in the area:

(a) An article in the Pioneer Press of September 16, 1992, titled "Rock-pile grapevines surprising all experts," contrasted Siskiyou County growing conditions with those in Seiad Valley vineyard: "What's stopped the area from becoming a wine-producing area are the erratic late spring freezes in the zone where elevations are low enough to even make it possible. And in some of the county's lowest elevation areas, the precipitation levels are too high." The article stated the rock tailings in his vineyard "may give Helsaple just the edge he needs to be the county's first successful longterm wine grape grower."

(b) The Sunset New Western Garden Book, 1979 edition, climate map of northern California and western Nevada showed Seiad Valley as Zone 7, and characterizes a Zone 7 climate as having hot summers and mild but pronounced winters, favorable for deciduous fruit that requires a marked seasonal pattern.

Proposed Boundary

The boundary of the proposed Seiad Valley viticultural area may be found on one United States Geological Survey (U.S.G.S.) map with a scale of 1:24000. The boundary is described in § 9.148.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are

proposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

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

Public Participation

ATF requests comments from all interested parties. We are particularly interested in comments concerning application of the name "Seiad Valley" to the area south of the Klamath River, which is drained by Grider Creek. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.148 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.148 Seiad Valley.

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

(b) *Approved map.* The appropriate map for determining the boundary of the Seiad Valley viticultural area is a U.S.G.S. 7.5 minute series topographical map of the 1:24000 scale, titled "Seiad Valley, Calif.," 1980.

(c) *Boundary.* The Seiad Valley viticultural area is located in Siskiyou County, California. The boundary is as follows:

(1) The beginning point is the intersection of the 1600 foot contour line with the power transmission line north of the Klamath River, near Mile 130;

(2) From the beginning point, the boundary follows the 1600' contour line in a generally northeasterly direction until it reaches the intersection of an unnamed light duty road and an unimproved road just west of Canyon Creek;

(3) The boundary then follows the unimproved road north to its end, then goes east in a straight line until it reaches the 1800' contour line;

(4) The boundary then follows the 1800' contour line in a northeasterly direction to the point, near Sawmill Gulch, where the contour line crosses Seiad Creek and turns south and west;

(5) The boundary continues to follow the 1800' contour line as it proceeds southwest for approximately 4.5 miles, then turns sharply south-southeast for approximately 0.3 miles, until the contour line turns sharply east at a point just north of the Klamath River;

(6) The boundary then diverges from the 1800' contour line and proceeds south-southeast in a straight line, across the Klamath River and State route 96, until it intersects with the 1600' contour line;

(7) The boundary then follows the 1600' contour line south and west, then north and west, roughly following the course of the Klamath River, until it reaches an unnamed peak 1744 feet high;

(8) The boundary continues along the 1600' contour line as it diverges from the Klamath River and proceeds south, just to the east of an unnamed light duty road, to the point where that road crosses Grider Creek;

(9) The boundary diverges from the contour line and proceeds west in a straight line across the road and Grider Creek until it intersects with the 1600' contour line on the west side of Grider Creek;

(10) The boundary then follows the 1600' contour line north, west and north again until it reaches a point where the contour line turns west, just south of the Klamath River;

(11) The boundary diverges from the 1600' contour line and proceeds in a straight line in a northeasterly direction, back to the point of beginning.

Approved: December 28, 1993.

Daniel R. Black

Acting Director

[FR Doc. 94–477 Filed 01–10–94; 8:45 am]

BILLING CODE 4810–31–U

POSTAL SERVICE

39 CFR Part 111

Special Bulk Third-Class Eligibility Restrictions

AGENCY: Postal Service.

ACTION: Proposed rule, notice of public meeting.

SUMMARY: In response to requests from postal customers, the Postal Service has decided to hold a public meeting to facilitate the receipt of comments regarding a proposal to implement new statutory restrictions on the use of special bulk third-class mail.

DATES: January 28, 1994, 10 a.m.

ADDRESSES: U.S. Postal Service Headquarters, 475 L'Fanfant Plaza, SW., Benjamin Franklin Room, 11th Floor South, Washington, DC 20260.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: On December 10, 1993, the Postal Service published proposed rule changes to implement recently enacted statutory restrictions on the use of special bulk third-class mail. 58 FR 64918. See also 58 FR 65959 (December 17, 1993) which extended the period for comment on this proposal. A number of customers have requested an opportunity to present their views and concerns in person regarding the proposed rule change. The Postal Service generally does not hold, nor does it generally find a need for, public meetings concerning proposed rules. Nevertheless, in this limited instance, the Postal Service has determined to grant the request for a public meeting. Interested parties may, of course, submit written comments in accordance with the instructions in the **Federal Register** notice. Comments submitted at the meeting may be written or oral. Oral comments will be transcribed for future reference, and will

be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at the above address. Individuals wishing to present comments are asked to limit their oral presentations to ten minutes. In order that the Postal Service may properly plan for the meeting, individuals who will attend are required to notify the person identified above by telephone or in writing no later than January 21, 1994.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–736 Filed 1–10–94; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO21–1–5685; CO21–1–5110; A–1-FRL–4824–6]

Approval and Promulgation of Air Quality Implementation Plans for the State of Colorado; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Colorado. The Colorado revisions include revisions to Regulation No. 13 (oxygenated gasoline program) submitted on August 6, 1990 and November 27, 1992, implementing and amending oxygenated gasoline programs in the Fort Collins-Loveland, Colorado Springs, and Boulder-Denver Metropolitan Statistical Areas (MSA) as required by section 211(m) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (the Act). This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before February 10, 1994.

ADDRESSES: Comments may be mailed to: Doug Skie, Chief, Air Programs Branch, Air, Radiation and Toxics Division (8ART-AP), Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, State Implementation Plan Section (8ART-AP), Air Programs Branch, US Environmental Protection Agency, Region 8, Denver, Colorado 80202–2466, (303) 293–1887.

SUPPLEMENTARY INFORMATION:

A. Background for This Action Regarding Section 211(m) of the Act

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starts, which are more prevalent in the winter.

Section 211(m) of the Act requires that various states submit revisions to their SIPs, and implement oxygenated gasoline programs no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.[1]

In addition to the guidance on establishment of control period by area, EPA has issued guidance related to the oxygenated gasoline program. On October 20, 1992, EPA announced the availability of oxygenated gasoline credit program guidelines in the **Federal Register.**[2] Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e., an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. Where a credit program has been adopted, EPA's guidelines provide that no gallon of gasoline should contain less than 2.0% oxygen by weight.

EPA issued labeling regulations under section 211(m)(4) of the Act. These labeling regulations were published in the **Federal Register** on October 20, 1992.[3]

The Oxygenated Gasoline Program areas in the State of Colorado are designated nonattainment for carbon monoxide and classified as moderate with design values of 11.3, 11.8, and 16.2 parts per million, respectively, for the Fort Collins-Loveland control area, the Colorado Springs control area, and the Boulder-Denver[4] control area, based on 1988 and 1989 data.[5] Under section 211(m) of the Act, Colorado was required to submit a revised SIP, meeting the criteria specified in section 110 and part D of title I of the Act, which includes oxygenated gasoline programs for the Fort Collins-Loveland MSA, the Colorado Springs MSA, and the Boulder-Denver MSA, by November 15, 1992.[6] On November 27, 1992, Roy Romer, Governor of Colorado, submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the State on September 17, 1992, which updates the State's existing oxygenated gasoline program based on the criteria outlined in EPA's program guidance. EPA summarizes its analysis of the state submittal below. A more detailed analysis of the state submittal is contained in a Technical Support Document (TSD) dated September 25, 1993, which is available from the Region 8 office, listed in the **Addresses** section.

1. Type of Program and Oxygen Content Requirement

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or

---

[1] See "Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under section 211(m) of the Clean Air Act as Amended—Notice of Availability," 57 FR 47849 (October 20, 1992).

[2] See footnote 1. EPA issued guidelines for credit programs under section 211(m)(5) of the Act.

[3] See "Notice of Final Oxygenated Fuels Labeling Regulations under section 211(m) of the Clean Air Act as Amended—Notice of Final Rulemaking," 57 FR 47769. The labeling regulations may be found in 40 CFR 80.35.

[4] See credit program guidelines in footnote 3, wherein the November 15, 1992 SIP revision due date was specified.

[5] See "Designation of Areas for Air Quality Planning Purposes," 56 FR 56694 (November 6, 1991).

[6] See credit program guidelines in footnote 3, wherein the November 15, 1992 SIP revision due date was specified.

dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the EPA Administrator issued guidelines for credit programs allowing the use of marketable oxygen credits. The State of Colorado, by the authority of the Air Quality Control Commission (AQCC), has elected to adopt a regulation requiring 2.7% oxygen content for each gallon of gasoline sold in a control area, not allowing for the use of marketable oxygen credits. The following sections of this notice address some specific elements of the State's submittal. Parties desiring more specific information should consult the TSD.

2. Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. Colorado has established control periods consistent with the EPA guidance. The control period for all of Colorado's affected areas begins on the first day of November each year and ends following the last day of February. Colorado State oxygenated gasoline regulations require oxygenated gasoline to be sold in the Fort Collins-Loveland MSA, the Colorado Springs MSA, and the Boulder-Denver MSA, consistent with the requirements of section 211(m)(2) of the Act.

3. Transfer Documents

Colorado has no requirements related to transfer documentation in its oxygenated gasoline regulation. EPA feels that the State's policy of presumptive liability provides the incentive for all parties to ensure gasoline meets the oxygen content requirements of the program. In lieu of transfer documentation indicating oxygen content, the State provides for presumptive liability on the part of the party in possession of gasoline found to be in violation of the required oxygen content, and allows for no defenses. The State has historically inspected refineries, bulk fuel storage plants, fuel distribution plants, pipelines, and retail station for fuel compliance, holding all parties responsible to meet oxygen content requirements for gasoline in their possession.

4. Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states visit at least 20% of regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

The Colorado oxygenated gasoline regulation is legally enforceable by the Colorado Department of Health, Division of Air Pollution Control (APCD). The APCD is committed to the enforcement of this program requiring a level of sampling greater than EPA's recommendation for the sampling of 20% of all oxygenated gasoline dispensing sites. Violation of this regulation results in a civil penalty not to exceed $25,000 per day of violation. The APCD considers three factors when assessing penalties: the penalty constraint; the economic benefit of noncompliance; and a gravity component taking into consideration the intentional nature of the violation, whether the violator cooperated with the APCD, whether a repeat violation has occurred, the actual oxygen content of the sample, and an other relevant factors as detailed in the Oxygenated Gasoline Program Policy and Procedure Manual (Procedure Manual), published by the Colorado Department of Health, Air Pollution Control Division, October 1992. Penalty authority is contained in section 25–7–122 C.R.S.

5. Test Methods and Laboratory Review

Each state regulation must include a test method. EPA's guidelines recommend the use of the OFID test, although parties may elect to use ASTM-D4815–89 or another method, approved by EPA.

EPA has tentatively approved a variation of the ASTM-D4815–89 testing method for use in Colorado, as detailed in the Procedure Manual. The State may continue to use this testing method unless otherwise instructed by EPA.

EPA has established an interim testing tolerance, which states appropriate ranges for credit and per-gallon programs.[7] As EPA states in the memorandum, for a per-gallon program, such as adopted by Colorado, the purpose of the testing is to determine whether the gasoline contains less than 2.7 percent oxygen by weight. Colorado is using testing tolerances consistent with the tolerances in the EPA memo.

6. Labeling

EPA was required to issue Federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the **Federal Register** on October 20, 1992[8], required the following statement be posted for a per-gallon program or credit program with minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

The Federal regulation also specifies the appearance and placement requirements for the labels.

EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. Colorado has adopted labeling regulations which conform to Federal regulation.

B. Background for This Action Regarding Regulation No. 13 Prior to the Requirements of Section 211(m) of the Act

On August 6, 1990, the Governor of Colorado submitted additional revisions to Regulation No. 13. The Regulation 13 amendments were necessary because the Colorado Air Pollution Control Division (APCD) found that progress toward attaining the carbon monoxide (CO) standard was not adequate to meet the December 31, 1987, Clean Air Act deadline. The August 6, 1990, revisions required between December 1 and March 1 of each winter season, a 2.6 percent level of oxygen for all gasoline except premium unleaded.

EPA recognizes that this, August 6, 1990, revision to Regulations No. 13 does not meet EPA's current guidance for oxygenated gasoline programs. However, Colorado's present SIP revision, November 27, 1993, for the oxygenated gasoline program amends the State's existing program, which includes elements that were contained in the past SIP revision, August 6, 1990. EPA is also proposing to approve this past revision, in order for the SIP to be considered fully approved.

Request for Public Comment

The EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above. Comments must be received on or before February 10, 1994.

Proposed Action

EPA is proposing to approve the revisions to the Colorado SIP for both Regulation No. 13 (oxygenated gasoline

[7] See Memorandum dated October 5, 1992 from Mary T. Smith, Director, Field Operations and Support Division to State/Local Oxygenated Fuels Contacts.

[8] See footnote 3.

program) revisions, meeting the requirements of section 211(m) of the Act.

Executive Order

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 requirement of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Regulatory Flexibility

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 population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act 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 Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act 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).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 10, 1993.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 94–616 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–F

---

40 CFR Parts 63 and 430

[FRL–4825–4]

Public Meeting on the Rulemaking for the Pulp, Paper, and Paperboard Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The EPA is announcing the first of two public meetings to be held during the 90-day public comment period on the notice of proposed rulemaking for the pulp, paper, and paperboard industry, published on December 17, 1993, at 58 FR 66078. The public meetings are intended to be forums at which the EPA can discuss the status of regulatory development and at which interested parties can provide information and ideas on key technical, scientific, and other issues and can ask clarifying questions about the notice of proposed rulemaking.

DATES: The public meeting will be held on January 19, 1994, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Omni Durham Hotel, 201 Foster Street, Durham, North Carolina in Ballroom 103. Seating will be available for approximately 225 attendees.

FOR FURTHER INFORMATION CONTACT: Contact Wendy Smith, Engineering and Analysis Division (4303), US EPA, 401 M Street, SW., Washington, DC 20460, or telephone (202) 260–7184.

SUPPLEMENTARY INFORMATION: The EPA plans to sponsor two public meetings and two public hearings. The dates and locations of the second public meeting and the public hearings will be announced in a subsequent notice.

The public meetings will be in a format similar to the public meetings held prior to publication of the notice of proposed rulemaking. These meetings will not be recorded by a reporter or transcribed for inclusion in the record for the pulp, paper, and paperboard industry rulemaking. Comments and speakers are invited at the meetings, but comments to be included in the record must be either submitted in writing in accordance with the instructions in the notice of proposed rulemaking or provided orally at the formal public hearings.

All written comments submitted in accordance with the instructions in the notice of proposed rulemaking will be incorporated into the record and considered before promulgation. It is not necessary to present oral comments at the public meetings or hearings for comments to be considered.

Inspection of Documents

Documents relating to the topics mentioned above and a more detailed agenda will be available at the meeting.

Dated: January 5, 1994.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 94–752 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 580 and 581

[Docket No. 93–22]

Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Commission by Notice of Proposed Rulemaking published November 24, 1993 (58 FR 62077) proposed amendments to its Non-Vessel-Operating Common Carriers (NVOCC) coloading rules to clarify ambiguities and to address current practices resulting in increased application of untariffed NVOCC charges. Sixty days was allowed for comment. Requests for additional time to comment ranging from 30 to 90 days have been filed by various interests. Upon consideration of the requests, the Commission has determined to grant a 30-day extension, thereby providing a total of 90 days for comment, which is deemed adequate under the circumstances.

DATES: Comments due on or before February 24, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Wm. Jarrel Smith, Jr., Director, Bureau of Investigations, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5860.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–641 Filed 1–10–94; 8:45 am]

BILLING CODE 6730–01–M

Notices

Federal Register
Vol. 59, No. 7
Tuesday, January 11, 1994

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Redelegation of Authority To Approve Releases of Liability in Connection With Voluntary Liquidations

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of redelegation of authority.

SUMMARY: On September 11, 1992, the Farmers Home Administration (FmHA) redelegated certain authorities to all State Directors dealing with the settlement of and/or the release of liability on FmHA debts owed by borrowers who made application to settle their FmHA debts or request release of liability. Notice of this redelegation was published in 57 FR 43688 (September 22, 1992). The redelegation authority, granted on September 11, 1992, expired on September 30, 1993, and the Administrator now gives notice to extend that redelegation until December 31, 1994. All release of liability cases of $1,000,000 or more (including principal, interest and other charges) must be submitted to the National Office for approval by the Administrator. This action is taken to expedite the processing of requests of borrowers who are unable to repay all of their FmHA debts.

The effect of the extension of the redelegation of the Administrator's authority is to continue to expedite the administrative review process for releases of liability, permitting more timely debt relief to FmHA borrowers, and to consequently reduce the Agency's portfolio of inactive uncollectible accounts.

EFFECTIVE DATE: October 1, 1993 though December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Melvin R. Padgett II, Senior Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, room 5444, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 720–6293.

SUPPLEMENTARY INFORMATION:

Programs Affected

This action affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans.
10.406 Farm Operating Loans.
10.407 Farm Ownership Loans.
10.410 Low-Income Housing Loans.
10.416 Soil and Water Loans.
10.417 Very Low-Income Housing Repair Loans and Grants.
10.428 Economic Emergency Loans.

The notice of the delegation of authority for approving release of liability cases reads as follows:

This extends the authority to approve Release of Liability cases given under the unnumbered memorandum dated September 11, 1992, entitled "Extension of the Delegation of Authority for Approving Debt Settlement/Release of Liability Cases." You were given authority to approve debt settlement cases of less $1,000,000 in FmHA Instruction 1956–B, Section 1956.84(a) on April 21, 1993, under Procedure Notice Number 204.

Pursuant to authority delegated to me as Administrator of Farmers Home Administration, I hereby redelegate to State Directors authority to approve the following:

1. Release of Lability cases in accordance with Sections 1955.10(f)(2) and 1955.20(b)(2) of FmHA Instruction 1955–A, "Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property."

2. Release of Liability cases in accordance with Section 1962.34(h) of FmHA Instruction 1962–A, "Servicing and Liquidation of Chattel Security," and Sections 1965.26(f)(5)(ii) and 1965.27(f) of FmHA Instruction 1965–A, "Servicing of Real Estate Security for Farmer Programs Loans and Certain Note Only Cases."

This authority does not extend to Release of Liability cases for Nonprogram loans, Economic Opportunity loans, and claims against third party converters.

Cases where the borrower's total indebtedness, including principal, interest, and other charges, is $1,000,000 or more must be submitted to the National Office for approval by the Administrator.

This extension of the redelegation shall be effective through December 31, 1994, unless revoked or otherwise modified in writing. The authority delegated to the State Director cannot be further delegated.

Dated: December 29, 1993.

Michael V. Dunn,
Administrator, Farmers Home Administration.

[FR Doc. 94–555 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–07–M

Forest Service

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming; Legal Notice of the Opportunity To Comment on Certain Proposed Actions and of Decisions Subject to Notice and Comment

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This is a list of those newspapers that will be used to publish notice of all decisions which are subject to appeal under 36 CFR 217, notice of the opportunity to comment on certain proposed actions pursuant to 36 CFR 215.5, and notice of decisions subject to appeal under the general provisions of 36 CFR part 215. As required at 36 CFR 215.5 and 215.9, such notice shall constitute legal evidence that the agency has timely and constructive notice of decisions that are subject to public notice and comment and administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing the notices required under the provisions of 36 CFR part 215 shall begin January 3, 1994.

FOR FURTHER INFORMATION CONTACT: John P. Halligan, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, Box 25127, Lakewood, Colorado 80225, Area Code 303–275–5148.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Rocky Mountain Region shall give notice of the opportunity to comment on certain proposed actions and of decisions subject to appeal pursuant to 36 CFR part 215 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. The day after the publication of the public notice in the primary newspaper shall be the first day of the appeal filing period.

Decisions by the Regional Forester

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published in the Rocky Mountain News, published daily in Denver, Denver County, Colorado. Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in the Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota. For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: Coloradoan, published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: Greeley Tribune, published daily in Greeley, Weld County, Colorado.

Boulder District: Boulder Daily Camera, published daily in Boulder, Boulder County, Colorado.

Clear Creek District: Clear Creek Courant, published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: Sulphur Sky High News, published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Collbran and Grand Junction Districts: Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

Paonia District: Delta County Independent, published weekly in Delta, Delta County, Colorado.

Cebolla and Taylor River Districts: Gunnison Country Times, published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: Telluride Times-Journal, published weekly in Telluride, San Miguel County, Colorado.

Ouray District: Montrose Daily Press, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado

Comanche District: Plainsman Herald, published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the La Junta Tribune Democrat, published daily in La Junta, Otero County, Colorado, and in the Ark Valley Journal, published weekly in La Junta, Otero County, Colorado.

Cimarron District: Tri-State News, published weekly in Elkhart, Morton County, Kansas.

South Platte District: Daily News Press, published daily in Castle Rock, Douglas County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the High Timber Times, published weekly in Conifer, Jefferson County, Colorado, and in the Fairplay Flume, published weekly in Fairplay, Park County, Colorado.

Leadville District: Herald Democrat, published weekly in Leadville, Lake County, Colorado.

Salida District: The Mountain Mail, published daily in Salida, Chaffee County, Colorado.

South Park District: Fairplay Flume, published weekly in Fairplay, Park County, Colorado.

Pikes Peak District: Gazette Telegraph, published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decision

Bears Ears District: Northwest Colorado Daily Press, published daily in Craig, Moffat County, Colorado. In addition, notice of decisions by the District Ranger will also be published in the Hayden Valley Press, published weekly in Hayden, Routt County, Colorado, and in the Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Yampa and Hahns Peak Districts: Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Middle Park District: Middle Park Times, published weekly in Kremmling, Grand County, Colorado.

Noarth Park District: Jackson County Star, Published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decision

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Friday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: Aspen Times, published weekly in Aspen, Pitkin County, Colorado.

Blanco District: Meeker Herald, published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: Summit Sentinel, published twice weekly in Frisco, Summit County, Colorado.

Eagle District: Eagle Valley Enterprise, published weekly in Eagle, Eagle County, Colorado.

Holy Cross District: Vail Trail, published weekly in Minturn, Eagle County, Colorado.

Rifle District: Rifle Telegram, published weekly in Rifle, Garfield County, Colorado.

Sopris District: Valley Journal, published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District: The North Platte Telegraph, published daily in North Platte, Lincoln County, Nebraska.

Samuel R. McKelvie National Forest: The Valentine Newspaper, published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts: The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Pine Ridge District: The Chadron Record, published weekly in Chadron, Dawes County, Nebraska.

Black Hills National Forest, South Dakota and Eastern Wyoming

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below).

District Ranger Decisions

Tongue District: Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: Buffalo Bulletin, published weekly in Buffalo, Johnson County, Wyoming.

Medicine Wheel District: Lovell Chronicle, published weekly in Lovell, Big Horn County, Wyoming.

Tensleep District: Northern Wyoming Daily News, published daily in Worland, Washakie County, Wyoming.

Paintrock District: Greybull Standard, published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Douglas District: Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Brush Creek and Hayden Districts: Rawlins Daily Times, published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Forest Supervisor Decisions

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: Powell Tribune, published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

Wind River District: The Dubois Frontier, published weekly in Dubois, Teton County, Wyoming.

Lander District: Wyoming State Journal, published twice weekly in Lander, Fremont County, Wyoming.

Dated: January 3, 1994.

Elizabeth Estill,

Regional Forester.

[FR Doc. 94–598 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 931246–3346]

Review of Draft Report of the Federal Internetworking Requirements Panel

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to announce the availability, after January 14, 1994, of the draft report of the Federal Internetworking Requirements Panel (FIRP). This panel was named by NIST to review open systems network requirements and to recommend policies on the use of networking standards by the Federal government. Organized in cooperation with the Federal Networking Council and the Federal Information Resources Management Policy Council, the FIRP has been considering issues related to interoperability requirements, security, ease of use, national and international connectivity, and standards maintenance for the Internet Protocol Suite (IPS), Open Systems Interconnection (OSI) specifications, and proprietary networking protocols.

Prior to submitting its final report to NIST, the FIRP solicits the views of industry, the public, and Federal, State and local governments on the draft report. The purpose of this notice is to solicit such views.

The draft report will be available after January 14, 1994 and can be obtained in any of the following ways:

Anonymous file transfer can be achieved through FTP, FTAM and Gopher. Electronic files are named draft-firp-report.asc and report0.fir. For anonymous FTP:

1. ftp to osi.ncsl.nist.gov (129.6.48.100)
2. respond to the "login:" prompt with user name "anonymous" (do not type the quotes)
3. respond to the "password:" prompt with your E-mail address.
4. you are now logged in. Use "cd" to change directory to ./pub/firp. Use "ls" or "dir" to get directory listings. Use "get" to transfer a file.

For anonymous FTAM:

Paddr=(1,1,1,47:0005 : 80 : 005A00 : 0000 : 0001 : E137 : 080020079EFC : 00)
userid=anon, no password, realstore=unix

The corresponding "ISODE isoentities" entry is:

osi.ncsl.nist.gov filestore NULL / #1 / #1 / #1 / NS + 47000580005a 0000000001e 137080020079 efc00

Questions regarding these services should be sent via SMTP mail to staff@osi.ncsl.nist.gov.

An electronic mail request for the draft report may be sent to:firp-draft@osi.ncsl.nist.gov.

Paper copies of the draft report are available from Joan Wyrwa, Technology Building, Room B217, NIST, Gaithersburg, MD 20899; telephone: (301) 975–3643; facsimile: (301) 590–0932.

DATES: Comments on the draft report must be received on or before February 18, 1994.

ADDRESSES: Written comments concerning the draft report should be sent to: Anastase Nakassis; Acting Chief, Systems and Network Architecture Division; ATTN: Draft Report of FIRP; Technology Building, Room B217; National Institute of Standards and Technology; Gaithersburg, MD 20899. Comments may also be sent by electronic mail to firp-comments@osi.ncsl.nist.gov. Please limit written comments to five printed pages or less. Electronic comments should not exceed five pages when printed.

FOR FURTHER INFORMATION CONTACT: Anastase Nakassis, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone: (301) 975–3632. E-mail: firp.staff@osi.ncsl.nist.gov.

Dated: January 3, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–538 Filed 1–10–94; 8:45 am]

BILLING CODE 3510–CN–M

[Docket No. 900820–3141]

RIN No. 0693–AA68

Approval of Federal Information Processing Standards (FIPS) Publication 140–1, Security Requirements for Cryptographic Modules

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a revision of Federal Information Processing Standard 140, General Security Requirements for Equipment Using the Data Encryption Standard, which will be published as FIPS Publication 140–1. This revised standard supersedes FIPS 140 in its entirety.

SUMMARY: On January 8, 1991, a notice was published in the **Federal Register** (56 FR 681) that a revision of Federal Information Processing Standards Publication (FIPS PUB) 140, General Security Requirement for Equipment Using the Data Encryption Standard, was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this proposed revision were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the revised standard as Federal Information Processing Standards Publication (FIPS PUB) 140–1, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenue, NW., Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective on January 11, 1994.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NITS). Specific ordering information from NTIS for this revised standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Miles E. Smid, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2938.

Dated: January 4, 1994.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 140–1

(Date)

Announcing the Standard for Security Requirements for Cryptographic Modules

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. *Name of Standard.* Security Requirements for Cryptographic Modules (FIPS PUB 140–1).

2. *Category of Standard.* Computer Security.

3. *Explanation.* This standard specifies the security requirements that are to be satisfied by a cryptographic module utilized within a security system protecting unclassified information within computer and telecommunication systems (including voice systems). The standard provides four increasing, qualitative levels of security: Level 1, Level 2, Level 3, and Level 4. These levels are intended to cover the wide range of potential applications and environments in which cryptographic modules may be employed. The security requirements cover areas related to the secure design and implementation of a cryptographic module. These areas include basic design and documentation, module interfaces, authorized roles and services, physical security, software security, operating system security, key management, cryptographic algorithms, electromagnetic interference/electromagnetic compatibility (EMI/EMC), and self-testing. This standard supersedes FIPS 140, General Security Requirements for Equipment Using the Data Encryption Standard, in its entirety.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology, (Computer Systems Laboratory).

6. *Cross Index.*

a. FIPS PUB 46–1, Data Encryption Standard.

b. FIPS PUB 48, Guidelines on Evaluation of Techniques for Automated Personal Identification.

c. FIPS PUB 74, Guidelines for Implementing and Using the NBS Data Encryption Standard.

d. FIPS PUB 81, DES Modes of Operation.

e. FIPS PUB 83, Guideline of User Authentication Techniques for Computer Network Access Control.

f. FIPS PUB 112, Password Usage.

g. FIPS PUB 113, Computer Data Authentication.

h. FIPS PUB 171, Key Management Using ANSI X9.17.

i. FIPS PUB 180, Secure Hash Standard.

j. Special Publication 500–157, Smart Card Technology: New Methods for Computer Access Control.

k. Special Publication 800–2, Public Key Cryptography.

Other NIST publications may be applicable to the implementation and use of this standard. A list (NIST Publications List 91) of currently available computer security publications, including ordering information, can be obtained from NIST.

7. *Applicability.* This standard is applicable to all Federal agencies that use cryptographic-based security systems to protect unclassified information within computer and telecommunication systems (including voice systems) that are not subject to Section 2315 of Title 10, U.S. Code, or

Section 3502(2) of Title 44, U.S. Code. This standard shall be used in designing, acquiring and implementing cryptographic-based security systems within computer and telecommunication systems (including voice systems), operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information (using a computer or telecommunications system) on behalf of the Federal Government to accomplish a Federal function. Federal agencies which use cryptographic-based security systems for protecting classified information may use those systems for protecting unclassified information in lieu of systems that comply with this standard. Non-Federal government organizations are encouraged to adopt and use this standard when it provides the desired security for protecting valuable or sensitive information.

8. *Applications.* Cryptographic-based security systems may be utilized in various computer and telecommunication (including voice) applications (e.g., data storage, access control and personal identification, radio, facsimile, video) and in various environments (e.g., centralized computer facilities, office environments, hostile environments). The cryptographic services (e.g., encryption, authentication, digital signature, key management) provided by a cryptographic module will be based on many factors which are specific to the application and environment. The security level of a cryptographic module shall be chosen to provide a level of security appropriate for the security requirements of the application and environment in which the module is to be utilized and the security services which the module is to provide. The security requirements for a particular security level include both the security requirements specific to that level and the security requirements that apply to all modules regardless of the level. System characteristics not related to security (e.g., telecommunications interoperability) are beyond the scope of this standard.

9. *Specifications.* Federal Information Processing Standard (FIPS) 140–1, *Security Requirements for Cryptographic Module* (affixed).

10. *Implementations.* This standard covers implementations of cryptographic modules including, but not limited to, hardware components or modules, software programs or modules, computer firmware, or any combination thereof. Cryptographic modules that are validated by NIST, or that comply with the requirements of the FIPS 140–1 implementation and FIPS 140 acquisition schedules in Section 14 of the announcement of this standard, will be considered as complying with this standard. Information about the FIPS 140–1 validation program can be obtained from the National Institute of Standards and Technology, Computer Systems Laboratory, Gaithersburg, MD 20899.

11. *FIPS Approved Security Methods.* Cryptographic modules that comply with this standard shall employ cryptographic algorithms, cryptographic key generation algorithms and key distribution techniques, and authentication techniques that have been FIPS approved for protecting Federal Government unclassified information. FIPS approved cryptographic algorithms, cryptographic key generation algorithms and key distribution techniques, and authentication techniques include those that are either:

a. Specified in a Federal Information Processing Standard (FIPS), or

b. Adopted in a FIPS and specified either in an appendix to the FIPS or in a document referenced by the FIPS.

If a cryptographic module is required to incorporate a trusted operating system, then the module shall employ trusted operating systems that have been evaluated by a NIST accredited evaluation authority and against a FIPS approved evaluation criteria.

Information about approved cryptographic methods and approved operating system evaluation authorities and criteria can be obtained from NIST.

12. *Interpretation.* Resolution of questions regarding this standard will be provided by NIST. Questions concerning the content and specifications should be addressed to: Director, Computer Systems Laboratory, ATTN: FIPS 140–1 Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

13. *Export Control.* Certain cryptographic devices and technical data regarding them are deemed to be defense articles (i.e., inherently military in character) and are subject to Federal government export controls as specified in Title 22, Code of Federal Regulations, parts 120–128. Some exports of cryptographic modules conforming to this standard and technical data regarding them must comply with these Federal regulations and be licensed by the U.S. Department of State. Other exports of cryptographic modules conforming to this standard and technical data regarding them fall under the licensing authority of the Bureau of Export Administration of the U.S. Department of Commerce. The Department of Commerce is responsible for licensing cryptographic devices used for authentication, access control, proprietary software, automatic teller machines (ATMs), and certain devices used in other equipment and software. For advice concerning which agency has licensing authority for a particular cryptographic device, please contact the respective agencies.

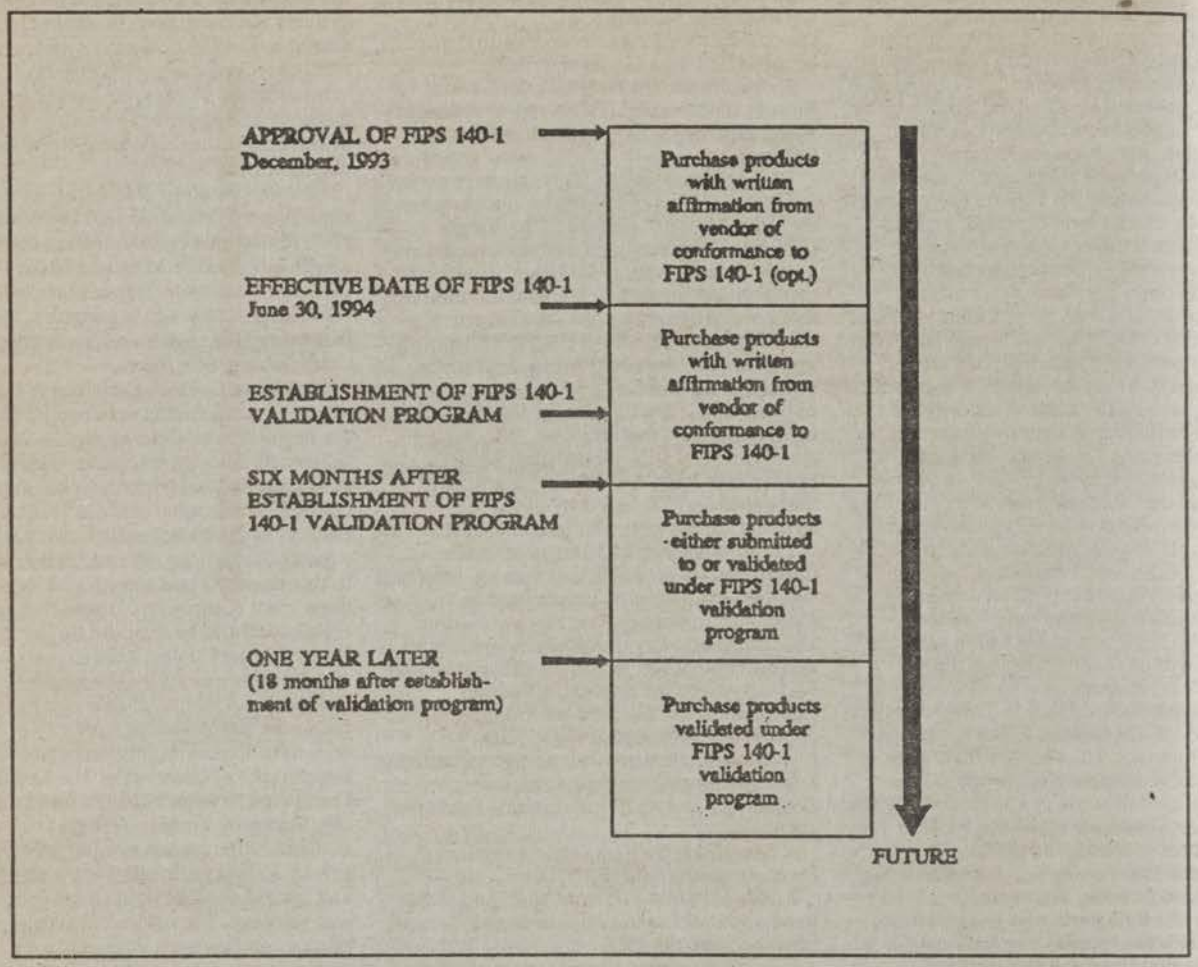


Table 1: FIPS 140-1 Implementation Schedule

14. *Implementation Schedule.* Table 1 summarizes the implementation schedule for FIPS 140–1. The effective date of this standard is June 30, 1994.

From approval of FIPS 140–1 to its effective date, agencies may purchase equipment with FIPS 140–1 cryptographic modules that have been affirmed in writing from the manufacturer as complying with this standard. From June 30, 1994 until six months after the establishment of the FIPS 140–1 validation program by NIST, agencies that have determined a need for equipment with cryptographic modules shall purchase equipment with FIPS 140–1 cryptographic modules that have been affirmed in writing by the manufacturer as complying with this standard. A copy of the written affirmation shall have been sent to the Director, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899.

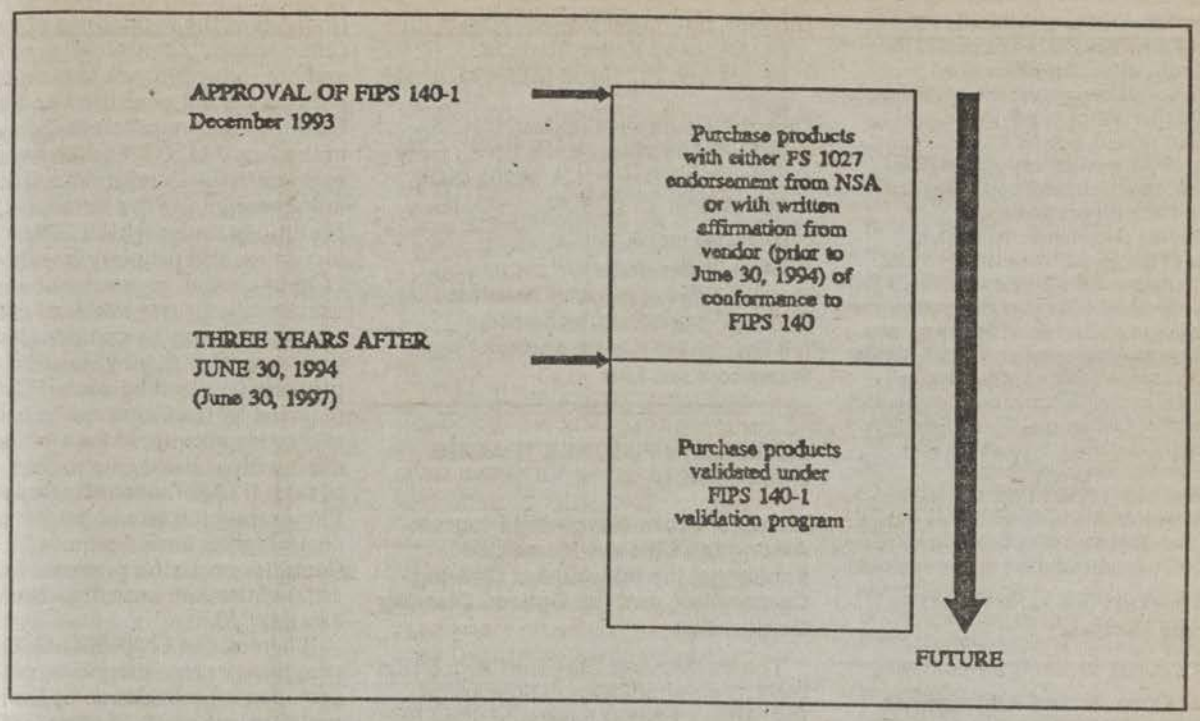


Table 2: FIPS 140 Schedule for Acquisition of Validated Products

For a one year period following the six months after the establishment of the FIPS 140–1 validation program, agencies shall purchase either equipment with validated FIPS 140–1 cryptographic modules, or equipment whose cryptographic modules have been submitted for FIPS 140–1 validation. After this period, only FIPS 140–1 validated cryptographic modules will be considered as meeting the provisions of this standard.

Table 2 summarizes the schedule for acquisition of FIPS 140 compliant equipment. For up to three years following June 30, 1994, equipment with cryptographic modules complying to FIPS 140, General Security Requirements for Equipment Using the Data Encryption Standard (formerly Federal Standard 1027), may be purchased in lieu of equipment with modules that comply with this standard. These modules either shall have been endorsed by the National Security Agency (NSA) as complying to Federal Standard 1027, or shall be affirmed in writing by the manufacturer as complying to FIPS 140. NSA endorsed modules shall have been endorsed prior to December, 1993. A list of endorsed products (NSA Endorsed Data Encryption Standard (DES) Products List) is available from the NSA. For modules affirmed by the manufacturer as complying with FIPS 140, a copy of the written affirmation shall have been sent by the manufacturer to the Director of the Computer Systems Laboratory at NIST prior to June 30, 1994. A list of these methods is available from NIST.

Equipment purchased under the above conditions may continue to be used for the lifetime of the equipment without the need for further affirmation or validation for conformance to this standard.

15. *Qualifications.* The security requirements specified in this standard are based upon information provided by many sources within the Federal government and private industry. The requirements are designed to protect against adversaries mounting cost-effective attacks on unclassified government or commercial data (e.g., hackers, organized crime, economic competitors). The primary goal in designing an effective security system is to make the cost of any attack greater than the possible payoff.

While the security requirements specified in this standard are intended to maintain the security of a cryptographic module, conformance to this standard does not guarantee that a particular module is secure. It is the responsibility of the manufacturer of a cryptographic module to build the module in a secure manner.

Similarly, the use of a cryptographic module that conforms to this standard in an overall system does not guarantee the security of the overall system. The responsible authority in each agency shall assure that an overall system provides an acceptable level of security.

Since a standard of this nature must be flexible enough to adapt to advancements and innovations in science and technology, this standard will be reviewed every 5 years in order to consider new or revised requirements that may be needed to meet technological and economic changes.

16. *Waiver Procedure.* Under certain exceptional circumstances, the heads of Federal agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to Section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver

determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under Section 552(b) of Title 5, U.S. Code, shall be part of the procurement documentation and retained by the agency.

17. *Where to obtain copies.* Copies of this publication are available for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 140-1 (FIPS PUB 140-1), and title. When microfile is desired, this should be specified. Payment may be made by check, money order, credit card, or deposit account.

[FR Doc. 94-539 Filed 1-10-94; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Marine Mammals

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

ACTION: Issuance of Public Display Permit No. 884.

SUMMARY: On Tuesday, September 21, 1993, notice was published in the **Federal Register** (58 FR 49024) that an application (P2Y) had been filed by Sea World, Inc. for a permit to import one adult male killer whale (*Orcinus orca*) identified as "Ulysses" from the Barcelona Zoo in Barcelona, Spain.

Notice is hereby given that on January 4, 1994, as authorized by the provisions of the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 *et. seq.*) the NMFS issued a permit for the above activities subject to the special conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the MMPA. The NMFS has determined that Sea World, Inc. offers an acceptable program for education or conservation purposes. Sea World, Inc. facilities are open the public on a regularly scheduled basis and access to these facilities is not limited or restricted other than by the charging of an admission fee.

The permit is available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713-2289);

Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893-3141); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90302 (310/980-4016).

Dated: January 5, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-585 Filed 1-10-94; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Trilateral Cross-Margining Program Among the Chicago Mercantile Exchange, the Intermarket Clearing Corporation, and the Options Clearing Corporation

The Intermarket Clearing Corporation ("ICC") and the Chicago Mercantile Exchange ("CME") have submitted to the Commodity Futures Trading Commission ("Commission"), pursuant to section 5a(a)(12)(A) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 7a(a)(12)(A), and Commission Regulation 1.41(b), 17 CFR 1.41(b), a proposal to implement a trilateral cross-margining program with the Options Clearing Corporation ("OCC") (CME, ICC, and OCC together being the "participating clearing organizations). The CME-ICC-OCC program would involve the cross-margining of positions in specified commodity futures, commodity options, and securities options ("eligible contracts") carried for, among others, certain market professional customers. These market professionals would include CME members and firms owning CME memberships, members of exchanges cleared by ICC, and market makers, specialists, and registered traders on securities options markets whose accounts would not be proprietary within the meaning of Commission Regulation 1.3(y), 17 CFR 1.3(y), ("participating market professionals") and whose positions are carried by participating futures commission merchants ("FCMs") that also are participating broker-dealers ("B/Ds") or by participating FCMs and their affiliated participating B/Ds which may also be FCMs (together "participating clearing firms").

Section 5a(a)(12)(A) of the Act provides that the Commission shall approve contract market rules only if such rules "are determined by the Commission not to be in violation of [the] Act or the regulations of the Commission." Commingling of futures and non-futures funds of customers currently is not permitted under the Commission's regulations. Section 4d(2) of the Act, 7 U.S.C. § 6d(2), however, authorizes the Commission to issue an order prescribing the terms and conditions under which "money, securities, and property (received by an FCM to margin, guarantee or secure the commodity futures trades or contracts of a customer) may be commingled * * * with any other money, securities, and property received by such [FCM] and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such [FCM]." Accordingly, any proposal which would permit such commingling would require Commission action pursuant to section 4d(2) of the Act, as well as Section 5a(a)(12)(A).

Whereas, the CME-ICC-OCC non-proprietary cross-margining proposal provides for calculation by the participating clearing organizations of a single margin requirement to support the positions of participating market professionals in eligible contracts carried by participating clearing firms;

Whereas, the Commission has reviewed the CME-ICC-OCC cross-margining proposal; new ICC rules 514, 515, 516, 517, 518, 519, and 520; proposed amendments to ICC Rules 101, 301, 302, 513 and 614; the proposed agreement among the participating clearing organizations; the proposed agreements among the participating clearing firms and the participating clearing organizations; and the proposed agreements among the participating market professionals and participating clearing firms submitted by letters dated September 21, 1992 through April 22, 1993; the representations of the participating clearing organizations as to the operation of the program; the representations of the Securities Investor Protection Corporation ("SIPC") and the Securities and Exchange Commission ("SEC"); and such other documents as constitute the complete record in this matter ("Record");

Whereas, the agreements among participating market professionals, participating clearing firms, and participating clearing organizations require that:

(a) Each participating market professional acknowledge in writing that any money, securities or property, including securities option positions, held on his behalf in a non-proprietary cross-margining account ("cross-margining property") will be treated in

a manner consistent with the terms of this Order and any other applicable order issued by the Commission;

(b) Each participating market professional acknowledge and agree in writing that any cross-margining property held on his behalf by a participating FCM or a participating B/D affiliated with a participating FCM will be customer property deemed to be received by the participating FCM to be accounted for, treated, and dealt with by such FCM as belonging to such market professional in a manner consistent with Section 4d of the Act;

(c) Each participating market professional agree in writing that, in the event of the bankruptcy, liquidation, or receivership of or other proceeding involving the distribution of funds held by a participating clearing firm against which such market professional has a customer net equity claim in respect of the cross-margining property, such claim shall be subordinated to the customer net equity claims of "public customers," as that term is defined in Commission Regulation 190.01(hh), 17 CFR 190.01(hh), of such clearing firm that do not relate to money, securities, or property in any cross-margining account; and

(d) Each participating market professional acknowledge and agree in writing that cross-margining property held for or on his behalf will not be customer property under the Federal securities laws to the extent necessary to effect this Order and will not be customer property under Subchapter III of Chapter 7 of Title 11 of the Bankruptcy Code, 11 U.S.C. §§ 741–752 or the Securities Investor Protection Act ("SIPA"), 15 U.S.C. § 78aaa *et seq.*, and will not be claimed as such, and will be customer property under the Act, Subchapter IV of Chapter 7 of Title 11 of the Bankruptcy Code, 11 U.S.C. 761–766, and part 190 of the Commission's regulations, 17 CFR part 190;

Whereas, each participating market professional which signs such a participant agreement will be a customer of a participating FCM;

Whereas, each participating clearing firm will treat money, securities, and property received in respect of all accounts other than cross-margining accounts in a manner consistent with the requirements of the Commission and the SEC appropriate thereto;

Whereas, SIPC has represented that it has no objection to the agreements under which a participating market professional's cross-margining property would not be deemed to be customer property for the purposes of SIPA; and

Whereas, the SEC has concurred with the treatment of securities positions and cross-margining accounts set forth in this Order;

Now Therefore, based on the Record in this matter, and provided that the cross-margining proposal submitted by CME and ICC and related proposed rules and rule amendments submitted by ICC are implemented consistently with the representations and agreements cited herein, and provided that:

(a) Each participating clearing organization, participating clearing firm, and participating market professional execute the agreements referred to herein;

(b) Each participating clearing organization, participating clearing firm, and depository separately account for cross-margining property maintained in non-proprietary cross-margining accounts and not commingle such cross-margining property with money, securities, and property maintained in any non-cross-margining accounts or proprietary cross-margining accounts;

(c) Each participating clearing organization, participating clearing firm, participating market professional, and depository provide the Commission with access to its books and records with respect to non-proprietary cross-margining accounts and positions in a manner consistent with Commission Regulation 1.31, 17 CFR 1.31;

(d) Each participating clearing firm include all cross-margining property received from participating market professionals as provided herein to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions, or accruing to such participating market professionals as a result of such trades, contracts, commodity option transactions or securities option transactions, when calculating segregation requirements for the purposes of Section 4d of the Act;

(e) Each participating clearing firm compute total segregation requirements under Section 4d of the Act and Commission Regulation 1.32, 17 CFR 1.32, by calculating separately the requirements for cross-margining and non-cross-margining accounts without using any net liquidating equity in one account to reduce a deficit in the other;

(f) Each participating clearing firm designate non-proprietary cross-margining accounts and positions as such in its books and records, including both internal documents maintained at the firms and account statements sent to participating market professionals;

(g) Each participating clearing organization calculate the margin requirements for each non-proprietary cross-margining account separately from the margin requirements for other accounts, including proprietary cross-margining accounts; collect any margin required with respect to non-proprietary cross margining accounts separately without applying any margin in any such account to satisfy a margin requirement in any proprietary account or any non-cross-margining customer account and without applying any margin in a non-cross-margining customer account to satisfy a margin requirement in any proprietary account or any non-proprietary cross-margining account; and maintain all cross-margining property received from participating clearing firms to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions that are effected for non-proprietary cross-margining accounts or held in such accounts, and all accruals resulting from such trades, contracts, commodity option transactions, or securities option transactions, separately from money, securities, and property received to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions that are effected for or held in any proprietary account or any non-cross-margining customer account, and related accruals; and

(h) Each participating clearing organization satisfy any deficiency in a non-proprietary cross-margining account without recourse to non-cross-margining segregated funds;

(i) Notwithstanding the foregoing, a participating clearing firm may commingle cross-margining property maintained in respect of the non-proprietary cross-margining arrangement among CME, ICC, and OCC with money, securities and property maintained in respect of similar Commission-approved non-proprietary cross-margining arrangements between CME and other commodity clearing organizations, between ICC and other commodity clearing organizations, or between OCC and other commodity clearing organizations, and may apply such commingled money, securities, and property to meet its obligations to a commodity or option clearing organization arising from trades or positions held in its non-proprietary cross-margining account established pursuant to one or more of such cross-margining arrangements, provided that the participating clearing firm:

(i) Separately identify and account for the money, securities and property held pursuant to each of the non-proprietary cross-margining arrangements; and

(ii) separately calculate the margin requirements with respect to each of the non-proprietary-cross-margining arrangements, treating each position as being held pursuant to only one such arrangement;

It Is Hereby Ordered pursuant to section 4d(2) of the Act:

(1) That all money, securities, and property received by a participating FCM or a participating B/D affiliated with a participating FCM to margin, guarantee, or secure securities option trades or contracts carried in a non-proprietary-cross-margining account for or on behalf of participating market professionals, or accruing as a result of such trades or contracts, and held subject to the terms of this Order, shall be deemed to have been received by the participating FCM and shall be accounted for and treated and dealt with as belonging to the participating market professional customers of the participating FCM consistently with Section 4d of the Act;

(2) That, subject to the terms of this Order, notwithstanding any provisions to the contrary in the Commission's regulations (including, but not limited to, Regulations 1.20(a), 1.22, and 1.24, 17 CFR 1.20(a), 1.22, and 1.24), the money, securities, and property described in the preceding paragraph of this Order may be commingled in a non-proprietary cross-margining account with money, securities, and property received by a participating FCM to margin, guarantee, or secure trades or positions in eligible commodity futures or commodity option contracts, or accruing as a result of such trades or contracts, and otherwise required by the Commission to be segregated under the Act; and

(3) That, in the event of bankruptcy, liquidation, or receivership of or other proceeding involving the distribution of funds held by a participating clearing firm, any customer net equity claim which a participating market professional has in respect of cross-margining property held by such participating clearing firm in a non-proprietary cross-margining account shall be treated as a customer net equity claim, under Part 190 of the Commission's regulations and Subchapter IV of Chapter 7 of Title 11 of the Bankruptcy Code, but shall be subordinated to the customer net equity claims of "public customers," as that term is defined in Commission Regulation 190.01(hh), of such clearing firm that do not relate to cross-margining property.

It is further ordered, Pursuant to section 5a(a)(12)(A) of the Act and based upon the Commission action in the three preceding paragraphs of this Order, that the CME's and ICC's request for Commission approval of their proposal to establish a CME–ICC–OCC cross-margining program for proprietary and market professional accounts and approval of the related proposed rules and rule amendments is hereby granted.

Editorial note: This document was received at the Office of the Federal Register on January 5, 1994.

Issued in Washington, DC, this second day of June 1993.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–543 Filed 1–10–94; 8:45 am]

BILLING CODE 6351–01–P

Trilateral Cross-Margining Program Among the Commodity Clearing Corp., the Intermarket Clearing Corp., and the Options Clearing Corp.

The Intermarket Clearing Corporation ("ICC") and the Commodity Clearing Corporation ("CCC") have submitted to the Commodity Futures Trading Commission ("Commission"), pursuant to section 5a(a)(12)(A) of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(a)(12)(A), and Commission Regulation 1.41(b), 17 CFR 1.41(b), a proposal to implement a trilateral cross-margining program with The Options Clearing Corporation ("OCC") (CCC, ICC, and OCC together being the "participating clearing organizations"). The CCC–ICC–OCC program would involve the cross-margining of positions in specified commodity futures, commodity options, and securities options ("eligible contracts") carried for, among others, certain market professional customers. These market professionals would include New York Cotton Exchange ("NYCE") or FINEX members and firms owning NYCE or FINEX memberships, members of exchanges cleared by ICC, and market makers, specialists, and registered traders on securities options markets whose accounts would not be proprietary within the meaning of Commission Regulation 1.3(y), 17 CFR 1.3(y), ("participating market professionals") and whose positions are carried by participating futures commission merchants ("FCMs") that also are participating broker-dealers ("B/Ds") or by participating FCMs and their affiliated participating B/Ds which may also be FCMs (together "participating clearing firms").

Section 5a(a)(12)(A) of the Act provides that the Commission shall approve contract market rules only if such rules "are determined by the Commission not to be in violation of [the] Act or the regulations of the Commission." Commingling of futures and non-futures funds of customers currently is not permitted under the Commission's regulations. Section 4d(2) of the Act, 7 U.S.C. 6d(2), however, authorizes the Commission to issue an order prescribing the terms and conditions under which "money, securities, and property [received by an FCM to margin, guarantee or secure the commodity futures trades or contracts of a customer] may be commingled * * * with any other money, securities, and property received by such [FCM] and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such [FCM]." Accordingly, any proposal which would permit such commingling would require Commission action pursuant to section 4d(2) of the Act, as well as section 5a(a)(12)(A).

Whereas, the CCC–ICC–OCC non-proprietary cross-margining proposal provides for calculation by the participating clearing organizations of a single margin requirement to support the positions of participating market professionals in eligible contracts carried by participating clearing firms;

Whereas, the Commission has reviewed the CCC–ICC–OCC cross-margining proposal; the proposed agreement among the participating clearing organizations; the proposed agreements among the participating clearing firms and the participating clearing organizations; and the proposed agreements among the participating market professionals and participating clearing firms submitted by letters dated April 7 through November 16, 1993; the representations of the participating clearing organizations as to the operation of the program; the representations of the Securities Investor Protection Corporation ("SIPC") and the Securities and Exchange Commission ("SEC"); and such other documents as constitute the complete record in this matter ("Record");

Whereas, the agreements among participating market professionals, participating clearing firms, and participating clearing organizations require that:

(a) Each participating market professional acknowledge in writing that any money, securities, or property, including securities option positions, held on his behalf in a non-proprietary cross-margining account ("cross-margining property") will be treated in a manner consistent with the terms of this Order and any other applicable order issued by the Commission;

(b) Each participating market professional acknowledge and agree in writing that any cross-margining property held on his behalf by a participating FCM or a participating B/D affiliated with a participating FCM will be customer property deemed to be received by the participating FCM to be accounted for, treated, and dealt with by such FCM as belonging to such market professional in a manner consistent with section 4d of the Act;

(c) Each participating market professional agree in writing that, in the event of the bankruptcy, liquidation, or receivership of or other proceeding involving the distribution of funds held by a participating clearing firm against which such market professional has a customer net equity claim in respect of the cross-margining property, such claim shall be subordinated to the customer net equity claims of "public customers," as that term is defined in Commission Regulation 190.01(hh), 17 CFR 190.01(hh), of such clearing firm that do not relate to money, securities, or property in any cross-margining account; and

(d) Each participating market professional acknowledge and agree in writing that cross-margining property held for or on his behalf will not be customer property under the Federal securities laws to the extent necessary to effect this Order and will not be customer property under subchapter III of chapter 7 of title 11 of the Bankruptcy Code, 11 U.S.C. 741–752 or the Securities Investor Protection Act ("SIPA"), 15 U.S.C. 78aaa *et seq.*, and will not be claimed as such, and will be customer property under the Act, subchapter IV of chapter 7 of title 11 of the Bankruptcy Code, 11 U.S.C. 761–766, and part 190 of the Commission's regulations, 17 CFR part 190;

Whereas, each participating market professional which signs such a participant agreement will be a customer of a participating FCM;

Whereas, each participating clearing firm will treat money, securities, and property received in respect of all accounts other than cross-margining accounts in a manner consistent with the requirements of the Commission and the SEC appropriate thereto;

Whereas, SIPC has represented that it has no objection to the agreements under which a participating market professional's cross-margining property would not be deemed to be customer property for the purposes of SIPA; and

Whereas, the SEC has concurred with the treatment of securities positions and cross-margining accounts set forth in this Order;

Now Therefore, based on the Record in this matter, and provided that the cross-margining proposal submitted by CCC and ICC is implemented consistently with the representations and agreements cited herein, and provided that:

(a) Each participating clearing organization, participating clearing firm, and participating market professional execute the agreements referred to herein;

(b) Each participating clearing organization, participating clearing firm, and depository separately account for cross-margining property maintained in non-proprietary cross-margining accounts and not commingle such cross-margining property with money, securities, and property maintained in any non-cross-margining accounts or proprietary cross-margining accounts;

(c) Each participating clearing organization, participating clearing firm, participating market professional, and depository provide the Commission with access to its books and records with respect to non-proprietary cross-margining accounts and positions in a manner consistent with Commission Regulation 1.31, 17 CFR 1.31;

(d) Each participating clearing firm include all cross-margining property received from participating market professionals as provided herein to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions, or accruing to such participating market professionals as a result of such trades, contracts, commodity option transactions, or securities option transactions, when calculating segregation requirements for the purposes of Section 4d of the Act;

(e) Each participating clearing firm compute total segregation requirements under Section 4d of the Act and Commission Regulation 1.32, 17 CFR 1.32, by calculating separately the requirements for cross-margining and non-cross-margining accounts without using any net liquidating equity in one account to reduce a deficit in the other;

(f) Each participating clearing firm designate non-proprietary cross-margining accounts and positions as such in its books and records, including both internal documents maintained at the firms and account statements sent to participating market professionals;

(g) Each participating clearing organization calculate the margin requirements for each non-proprietary cross-margining account separately from the margin requirements for other accounts, including proprietary cross-margining accounts; collect any margin required with respect to non-proprietary cross-margining accounts separately without applying any margin in any such account to satisfy a margin requirement in any proprietary account or any non-cross-margining customer account and without applying any margin in a non-cross-margining customer account to satisfy a margin requirement in any proprietary account or any non-proprietary cross-margining account; and maintain all cross-margining property received from participating clearing firms to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions that are effected for non-proprietary cross-margining accounts or held in such accounts, and all accruals resulting from such trades, contracts, commodity option transactions, or securities option transactions, separately from money, securities, and property received to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions that are effected for or held in any proprietary account or any non-cross-margining customer account, and related accruals; and

(h) Each participating clearing organization satisfy any deficiency in a non-proprietary cross-margining account without recourse to non-cross-margining segregated funds;

(i) Notwithstanding the foregoing, a participating clearing firm may commingle cross-margining property maintained in respect of the non-proprietary cross-margining arrangement among CCC, ICC, and OCC with money, securities, and property maintained in respect of similar Commission-approved non-proprietary cross-margining arrangements between CCC and other commodity clearing organizations, between ICC and other commodity clearing organizations, or between OCC and other commodity clearing organizations, and may apply such commingled money, securities, and property to meet its obligations to a commodity or option clearing organization arising from trades or positions held in its non-proprietary cross-margining account established pursuant to one or more of such cross-margining arrangements, provided that the participating clearing firm:

(i) Separately identify and account for the money, securities, and property held pursuant to each of the non-proprietary cross-margining arrangements; and

(ii) Separately calculate the margin requirements with respect to each of the non-proprietary-cross-margining

arrangements, treating each position as being held pursuant to only one such arrangement;

It is hereby ordered, Pursuant to section 4d(2) of the Act:

(1) That all money, securities, and property received by a participating FCM or a participating B/D affiliated with a participating FCM to margin, guarantee, or secure securities option trades or contracts carried in a non-proprietary-cross-margining account for or on behalf of participating market professionals, or accruing as a result of such trades or contracts, and held subject to the terms of this Order, shall be deemed to have been received by the participating FCM and shall be accounted for and treated and dealt with as belonging to the participating market professional customers of the participating FCM consistently with section 4d of the Act;

(2) That, subject to the terms of this Order, notwithstanding any provisions to the contrary in the Commission's regulations (including, but not limited to, Regulations 1.20(a), 1.22, and 1.24, 17 CFR 1.20(a), 1.22, and 1.24), the money, securities, and property described in the preceding paragraph of this Order may be commingled in a non-proprietary cross-margining account with money, securities, and property received by a participating FCM to margin, guarantee, or secure trades or positions in eligible commodity futures or commodity option contracts, or accruing as a result of such trades or contracts, and otherwise required by the Commission to be segregated under the Act; and

(3) That, in the event of bankruptcy, liquidation, or receivership of or other proceeding involving the distribution of funds held by a participating clearing firm, any customer net equity claim which a participating market professional has in respect of cross-margining property held by such participating clearing firm in a non-proprietary cross-margining account shall be treated as a customer net equity claim, under part 190 of the Commission's regulations and subchapter IV of chapter 7 of title 11 of the Bankruptcy Code, but shall be subordinated to the customer net equity claims of "public customers," as that term is defined in Commission Regulation 190.01(hh), of such clearing firm that do not relate to cross-margining property.

It is further ordered, Pursuant to section 5a(a)(12)(A) of the Act and based upon the Commission action in the three preceding paragraphs of this Order, that the CCC's and ICC's request for Commission approval of their proposal to establish a CCC–ICC–OCC cross-margining program for proprietary and market professional accounts and approval of the related proposed rules and rule amendments is hereby granted.

Issued in Washington, DC, this 28th day of December 1993.

By the Commission,

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–541 Filed 1–10–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 26 & 27 January 1994.

Time of Meeting: 0800–1700, 26 January 1994; 0800–1200, 27 January 1994.

Place: Washington, DC, Pentagon.

Agenda: The Army Science Board's (ASB) Summer Study on "Capabilities Needed to Counter Current and Evolving Threats" will conduct an initial kick-off meeting. This meeting is closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraphs (1) thereof, and Title 5, U.S.C., Appendix 2, subparagraph 10(d). The classified, and unclassified information to be discussed are so inextricably intertwined so as to preclude opening any portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–612 Filed 1–10–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Noncompetitive Award of Financial Assistance; Industrialized Housing: Product and Process Research Proposal

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Seattle Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a cooperative agreement to University of Oregon (UO). The award represents a continuation of DOE funded research for the UO to produce marketable industrialized housing that is more energy efficient. Public Law 95-224 provides the statutory authority for the proposed award.

SUPPLEMENTARY INFORMATION: UO has been engaged in industrialized housing research for the last four years and has made successful advances to produce marketable industrialized housing that is more energy efficient and has a lower operating and first cost than conventional "stick-built" construction. Research under the cooperative agreement will provide needed data to DOE and industry utilizing industrialized housing technologies.

Therefore, the financial assistance application is being accepted because the work to be funded is necessary to continue activities presently being funded by DOE and the work will enhance the public benefit. DOE knows of no other entity which is conducting such an activity in the near or distant future. The project period for the cooperative agreement is expected to begin in November 1993 for a five year period. DOE plans to provide funding in the amount of $10,075,000 for this project period.

FOR FURTHER INFORMATION CONTACT: Jeffrey James, U.S. Department of Energy, Seattle Support Office, 800 Fifth Avenue, suite 3950, Seattle, WA 98104, (206) 553–2079.

Issued in Chicago, Illinois, on December 29, 1993.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–634 Filed 1–10–94; 8:45 am]

BILLING CODE 6450–01–M

Future Use of the Naval Oil Shale Reserves Numbers 1 and 2; Meeting

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of meeting.

SUMMARY: The Department of Energy plans to evaluate options for future use of Naval Oil Shale Reserves Numbers 1 and 2, including options for development of the conventional oil and natural gas resources that may be contained within these Reserves. Reserve Number 1 occupies 41,000 acres in Garfield County, Colorado, and Reserve Number 2 occupies 90,000 acres in Carbon and Uintah Counties, Utah. Approximately 40 percent of the Utah Reserve is included within the Uintah and Ouray Indian Reservation. Two open hearings are planned to provide opportunity for public comment on possible, future uses for these properties.

DATES AND ADDRESSES: The meeting will be held on January 25, in Salt Lake City, Utah, the Airport Holiday Inn, 1–4 p.m.; and on January 27, in Denver, Colorado, Red Lion Inn, Quebec Ave., 1–4 p.m..

FOR FURTHER INFORMATION CONTACT: Gary V. Latham, U.S. Department of Energy, Office of Naval Petroleum and Oil Shale Reserves, 1000 Independence Ave., SW., Washington, DC 20585, Ph: (202) 586–0475, FAX: (202) 586–4446.

SUPPLEMENTARY INFORMATION: Naval Oil Shale Reserves Numbers 1 and 2 originally were set aside by Congress to furnish the Navy with a supply of fuel in the event of a national emergency. Naval Oil Shale Reserve No. 1 is estimated to have more than 18 billion barrels of oil in place, with approximately 2.5 billion barrels of oil recoverable from shale rated at 30 gallons or more per ton. Naval Oil Shale Reserve No. 2 is estimated to have almost 4 billion barrels of shale oil in place. No estimate of recoverable shale oil has been made. The Department of Energy has no current plans to develop the oil shale resources of either Reserve No. 1 or Reserve No. 2.

The Naval Petroleum and Oil Shale Reserves' Strategic Plan recognizes that although development of shale oil has been deferred, the potential for conventional oil and gas resources within the Naval Oil Shale Reserves properties must be assessed and plans formulated to develop these resources in the near to mid-term. Based upon current and past production from oil and gas fields located in the vicinities of the Naval Oil Shale Reserves, the potential for recovery of substantial quantities of oil and natural gas from within the Reserves' boundaries is quite high. Options for development of these resources includes partnerships with industry (lease or farmout), Federal development, or simply deferring development, maintaining all or a portion of the properties as wilderness areas. Attendance at each of the two scheduled hearings will be limited to sixty persons. Oral and/or written presentations are invited. Oral presentations will be limited to five minutes each.

Dated: January 4, 1994.

Jack S. Siegel,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 94–644 Filed 1–10–94; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for expedited review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: DOE has requested expedited OMB approval by January 14, 1994. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration, Office of Oil and Gas
2. EIA–14, 182, 782A,B,C, 821, 856, 863, 877, 878, and 888
3. 1905–0174
4. Petroleum Marketing Program
5. Revision—A new survey, EIA–888, "On-Highway Diesel Fuel Price Survey," will be included in the Petroleum Marketing Program when approved by OMB. The survey is designed to collect data on the National and Petroleum Administration for Defense (PAD) District level cash price of self-serve, motor vehicle diesel fuel. The data will be used to monitor changes in motor vehicle prices, and to report to the Congress and others upon request. Respondents will be a scientifically selected sample of companies owning retail outlets which sell motor vehicle diesel fuel.
6. Weekly, Monthly, Annually (EIA–888 Weekly)
7. Mandatory
8. Businesses or other for-profit
9. 16,803 respondents (250 respondents for EIA–888)
10. 6.54 responses per respondent (52 responses for EIA–888)
11. 1.46 hrs per response (10 minutes per response for EIA–888)
12. 160,578 hours (650 hrs. for EIA–888)
13. The Petroleum Marketing Program surveys collect information on costs, sales, prices, and distribution for crude oil and petroleum products. Data are published in petroleum publications and in multifuel reports. Respondents are refiners, first purchasers, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, distributors and importers.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which amended chapter 35 of title 44, United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, January 4, 1994.

John Gross,

Acting Director, Statistical Standards, Energy Information Administration.

BILLING CODE 6450–01–M

EIA-888 ( )

U.S. DEPARTMENT OF ENERGY
Energy Information Administration

Form Approved
OMB Number:
Form Expires:

EIA-888:
ON-HIGHWAY DIESEL FUEL PRICE SURVEY

This report is mandatory under Public Law 93-275. For the provisions concerning the confidentiality of information and sanctions, see Sections V and VI of the instructions. Public reporting burden for this collection of information is estimated to average 3 minutes per response, including the time of reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Energy Information Administration, Office of Statistical Standards EI-73, 1000 Independence Ave. SW, Washington, DC 20585; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART I. IDENTIFICATION DATA

Company Name

Name of Contact Person

Contact's Telephone Number
( ) –

Street/Box/RFD

City | State | Zip Code

DOE ID No.

Parent Company: _____

Parent DOE ID No: _____

Reference Dates: Price as of:

Month Day Year

PART II. PRICE DATA

(Retail price of Motor Vehicle Diesel Fuel, self-service, cash only, including all taxes)

Date Called	Price ($0.000 per gallon)

Comments:

Completed by: _____

Title 18 USC 1001 makes it a criminal offense for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

Printed with soy ink on recycled paper

EIA-888 ( )

Form Approved
OMB Number:
Form Expires:

U.S. DEPARTMENT OF ENERGY
Energy Information Administration

INSTRUCTIONS FOR FILING THE EIA-888: ON-HIGHWAY DIESEL FUEL PRICE SURVEY

GENERAL INFORMATION

I. Purpose

The EIA-888 survey is designed to collect data on the National and Petroleum Administration for Defense (PAD) District level cash price of self-serve, motor vehicle diesel fuel. The data are used to monitor changes in motor vehicle diesel fuel prices, and to report to the Congress and others when requested.

The data are used by the U.S. Department of Energy's (DOE) Energy Information Administration (EIA) in accordance with Section 13(b) of the Federal Energy Administration Act of 1974 (FEAA), (P.L. 93-275).

II. Who Must Submit

The Form EIA-888 must be completed by a scientifically selected sample of companies owning retail outlets which sell motor vehicle diesel fuel.

III. When to Submit

The data collected on Form EIA-888 are requested on Monday of each week by telephone. No written confirmation of your data submission is required.

IV. Where to Submit

EIA personnel collect the data by telephone. Respondents are not required to submit any information. If you have any questions concerning these instructions, please contact the Form EIA-888 Project Manager at the toll free number, 1-800-638-8812. Firms located in Maryland should call 301-495-8440.

V. Sanctions

The timely submission of EIA-888 by those required to report is mandatory under Section 13(b) of the Federal Energy Administration Act of 1974 (FEAA) (Public Law 93-275), as amended. Failure to respond may result in a civil penalty of not more than $2,500 for each violation, or a fine of not more than $5,000 for each willful violation. The government may bring a civil action to prohibit reporting violations which may result in a temporary restraining order or a preliminary or permanent injunction without bond. In such civil action, the court may also issue mandatory injunctions commanding any person to comply with these reporting requirements.

VI. Provisions Regarding Confidentiality of Information

The Office of Legal Counsel of the Department of Justice concluded on March 20, 1991, that the Federal Energy Administration Act requires the Energy Information Administration to provide company-specific data to the Department of Justice, or to any other Federal agency when requested for official use, which may include enforcement of Federal law. The information contained on this form may also be made available, upon request, to another component of the Department of Energy (DOE); to any Committee of Congress, the General Accounting Office, or other Congressional agencies authorized by law to receive such information. A court of competent jurisdiction may obtain this information in response to an order.

Printed with soy ink on recycled paper

EIA-888 ( )

GENERAL INFORMATION (Continued)

The information contained on this form will be kept confidential and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. §552, the DOE regulations, 10 C.F.R. §1004.11, implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. §1905.

Upon receipt of a request for this information under the FOIA, the DOE shall make a final determination whether the information is exempt from disclosure in accordance with the procedures and criteria provided in the regulations. To assist us in this determination, respondents should demonstrate to the DOE that, for example, their information contains trade secrets or commercial or financial information whose release would be likely to cause substantial harm to their company's competitive position. A letter explaining (on an element-by-element basis) the reasons why the information would be likely to cause the respondent substantial competitive harm if released to the public would aid in this determination. A new justification does not need to be provided each time information is submitted, if the company has previously submitted a justification for that information and the justification has not changed.

SPECIFIC INSTRUCTIONS

Part I
Identification Data

I. Report corrections to information contained on the label if the label is incomplete or incorrect.

II. DOE Identification (ID) Number

Your DOE identification (ID) number is the 10-digit number printed on the label.

III. Reference Dates

The report period is as of 8:00 a.m. Monday

Indicate month, day, and year (e.g., November 5, 1993 is: Month 11 Day 05 Year 93).

Part II
Price Data

The reported price should be the cash price for self-serve motor vehicle diesel fuel. If the station does not offer self-serve, then report the cash price for mini-serve (if available) or full serve.

[FR Doc. 94–635 Filed 1–10–94; 8:45 am]
BILLING CODE 6450-01-C

Federal Energy Regulatory Commission

[Docket No. ER94-282-000, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rates and Corporate Regulation Filings

December 30, 1993.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corporation

[Docket No. ER94-282-000]

Take notice that on December 17, 1993, Wisconsin Public Service Corporation (WPSC) requested the Commission to disclaim jurisdiction over a retail rate schedule under which WPSC serves the Du Bay Campground in Mosinee, Wisconsin ("the Campground) at WPSC's rural small commercial and industrial (CG-2) rate, or if the Commission asserts jurisdiction, to accept the agreement for filing and waive the notice requirement to allow that the rate schedule to become effective May 1, 1992.

Comment date: January 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corporation

[Docket No. ER94-281-000]

Take notice that on December 17, 1993, Wisconsin Public Service Corporation (WPSC) requested the Commission to disclaim jurisdiction over a retail rate schedule CZ-1 under which WPSC served the Northern Mobile Home Court (Northern) until November of 1993. WPSC provided the service to Northern under "Option 2" of rate schedule, which provides that the customer may install its own meters at each trailer stall and rebill electric service to the tenant. WPSC asserts that the service is clearly nonjurisdictional; however, WPSC wishes to be absolutely certain to avoid any late filing penalties. If the Commission asserts jurisdiction, WPSC requests that the CZ-1 rate schedule be accepted for filing and that the notice requirement be waived to allow that rate schedule to become effective as to the Northern service on January 1, 1963, which is approximately when service to Northern commenced.

Comment date: January 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Kentucky Power Company

[Docket No. ER94-121-000]

Take notice that on December 16, 1993, Kentucky Power Company (Kentucky) tendered for filing an amendment in the above-referenced docket.

Comment date: January 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER94-110-000]

Take notice that on December 17, 1993, New England Power Company (NEP) tendered for filing an amendment in the above-referenced docket.

Comment date: January 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER94-70-000]

Take notice that on December 15, 1993, New England Power Company (NEP) tendered for filing an amendment in the above-referenced docket.

Comment date: January 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER94-225-000]

Take notice that on December 14, 1993, New England Power Company tendered for filing an amendment to its filing in this docket.

Comment date: January 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER94-265-000]

Take notice that on December 16, 1993, PacifiCorp tendered for filing agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993, under Docket No. PL93-2-002, the Settlement Agreement between Bonneville Power Administration (Bonneville), Washington Public Power Supply System (Supply System) and PacifiCorp dated February 27, 1990.

Copies of this filing were supplied to Bonneville, the Supply System, the Public Utility Commission of Oregon, and the Utah Public Service Commission.

PacifiCorp requests waiver of prior notice requirements be granted.

Comment date: January 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-552 Filed 1-10-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. RP94-103-000]

Williston Basin Interstate Pipeline Company; Report of Refund

January 4, 1994.

Take notice that on December 30, 1993 Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report pursuant to Section 39 of Williston Basin's Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that on December 30, 1993, refunds were mailed to affected customers previously served under Rate Schedules G-1 and SGS-1 of First Revised Volume No. 1 to Williston Basin's FERC Gas Tariff to refund the remaining balance in Williston Basin's Account No. 191 as of October 31, 1993, with interest through December 29, 1993. Williston Basin states that the total amount refunded was $37,245, including interest of $6,222.

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 January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–553 Filed 1–10–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4824–8]

Final Outer Continental Shelf Air Permit Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Outer Continental Shelf air permit.

SUMMARY: The United States Environmental Protection Agency (EPA) hereby gives notice of the final Outer Continental Shelf air permit decision for the Chevron U.S.A. Production Company, Inc., Destin Dome Block 97 Exploratory Well. Destin Dome Block 97 is located approximately 29 miles offshore of Pensacola, Florida. After due consideration of the facts applicable to this Outer Continental Shelf source as they appear in the Administrative Record and the requirements expressed in the Clean Air Act and appropriate regulations, the Regional Administrator has determined that the Outer Continental Shelf air permit, OCS-FL–001, should be issued with the revisions incorporated since the preliminary determination announced by the previous public notice for this permit (Public Notice Date: October 3, 1993). This action constitutes EPA's final permit decision in accordance with Title 40, Code of Federal Regulations (40 CFR) § 124.15(a). The permit will become effective as specified in this notice, provided that no timely request for review under 40 CFR 124.19 is received by EPA.

Any person who filed comments on the draft Outer Continental Shelf permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by 40 CFR Part 124 and when appropriate, a showing that the condition in question is based on a finding of fact or conclusion of law which is clearly erroneous, or an exercise of discretion or an important policy consideration.

EFFECTIVE DATE: This action is effective February 9, 1994. The date of service of notice of this final permit decision was January 10, 1994.

The petition must be submitted to the Regional Administrator by February 9, 1994.

ADDRESSES: Send petitions addressed to Mr. John L. Hankinson, Jr., Regional Administrator, at the EPA address in this notice (Attention: R. Scott Davis/APTMD). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Region IV Library, Environmental Protection Agency, 345 Courtland Street NE, Atlanta, GA 30365.

Air Resources Management Division, Florida Department of Environmental Protection, 111 South Magnolia Drive, Tallahassee, Florida 32399.

West Florida Regional Library, 200 West Gregory, Pensacola, Florida 32501–4878.

Orange County Library, 101 East Central Boulevard, Orlando, Florida 32801.

FOR FURTHER INFORMATION CONTACT: R. Scott Davis, Air, Pesticides, and Toxics Management Division, U.S. EPA Region IV, 345 Courtland Street, NE, Atlanta, GA 30365. Telephone (404) 347–5014.

Dated: January 5,1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–617 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4824–7]

National Drinking Water Advisory Council Request for Nominations

The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act as amended. The Council consists of fifteen members, including a Chairperson. Five members represent the general public; five members represent appropriate state and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member holds office for a term of three years and is eligible for reappointment. On December 15 of each year, five members complete their appointment. This notice solicits names to fill the five vacancies as of December 16, 1993.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. Nominations must include a current resume providing the nominee's background, experience, and qualifications.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings.

Nominations should be submitted to Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street SW, Washington, DC 20460, no later than 30 days after publication of this notice in the **Federal Register**. The agency will not formally acknowledge or respond to nominations.

Dated: January 5, 1994.

James R. Elder,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 94–618 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4822–7]

Environmental Information and Assessment Committee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a one-day meeting of the Environmental Information and Assessment (EIA) Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the EIA Committee examines issues associated with the gathering, dissemination, and use of

environmentally related data and information.

Three topics will be discussed during the meeting:

1. A new EIA Committee project to devise recommendations that may be incorporated in the Information Resources Management (IRM) Strategic Plan EPA is developing.

2. Previous EPA IRM planning efforts.

3. The status of current EPA IRM programs.

Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meeting will be held on Wednesday, January 19, 1994, from 9 a.m. to 5 p.m.

ADDRESSES: Written comments should be sent to: Mark Joyce 1601F, Office of Cooperative Environmental Management, U.S. EPA, 401 M Street SW., Washington, DC 20460.

The public meeting will be held at the National Governor's Association Hall of the States, Room 333, 444 North Capitol Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Official, Direct line (202) 260–6889, Secretary's line (202) 260–6892.

Dated: December 22, 1993.

Mark Joyce,

Designated Federal Official.

[FR Doc. 94–619 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4824–2]

CWA 303(d): EPA's Intent To Approve and Availability of State List Submissions

AGENCY: Environmental Protection Agency, Region II.

ACTION: Notice.

SUMMARY: This notice announces the U.S. Environmental Protection Agency's (EPA) intent to approve the lists submitted to the U.S. EPA pursuant to Clean Water Act (CWA) section 303(d) by the State of New York, the State of New Jersey, and the Commonwealth of Puerto Rico on September 4, 1992, May 20, 1993, and November 18, 1993, respectively. Please be advised that the U.S. Virgin Islands is not required to submit a 303(d) list because there are no water quality-limited segments in the U.S. Virgin Islands requiring Total Maximum Daily Loads (TMDL). EPA issued its intent to approve the New York State September 4, 1992 list submittal on May 18, 1993. With regard to the New Jersey May 20, 1993 and the Puerto Rico November 18, 1993 list submittals, although EPA has not yet sent out approval letters, EPA does intend to approve both of these list submittals as well.

In the case of the Puerto Rico section 303(d) list, it should be noted that several modifications, which will affect the Commonwealth's section 303(d) list, have been agreed upon by the Puerto Rico Environmental Quality Board (PREQB) and EPA subsequent to the November 18, 1993 submittal. These proposed modifications reflect recent negotiations between PREQB and EPA regarding 1994 permitting priorities in Puerto Rico. The current Puerto Rico section 303(d) list does not reflect these specific modifications. Since the section 303(d) process is ongoing, another comprehensive review/revision of all State section 303(d) lists is scheduled to take place in April, 1994. At that time the Puerto Rico section 303(d) list will be updated to include all agreed upon modifications.

EPA is soliciting public comment on its intent to approve these 303(d) lists, which, together with EPA's tentative approval documents, are available to the public.

DATES: Comments on EPA's intent to approve these lists and the list submittals, must be submitted to EPA on or before February 10, 1994.

ADDRESSES: Copies of the lists submitted pursuant to 303(d) and EPA's tentative approval documents can be obtained by writing to Mr. Wayne Jackson, Surface Water Quality Branch, U.S. Environmental Protection Agency Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278 or calling (212) 264–5685. Comments on these items should be sent to Mr. Wayne Jackson at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Jackson, telephone (212) 264–5685.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA), as amended by the Water Quality Act of 1987, requires every State to: Identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) of the CWA are not stringent enough to meet any water quality standard applicable to such waters. Each State is required to identify the pollutants causing the impairment of the listed waters. Section 303(d) further requires the State to establish a priority ranking for such waters, taking into account the severity of the pollution and the designated uses of these waters. Finally, the State is required to identify waters targeted for TMDL development over the next two (2) years. TMDLs establish the allowable pollutant loadings necessary for a waterbody to meet applicable State water quality standards. State 303(d) lists and TMDLs are submitted to EPA for approval or disapproval. The deadline for submitting the above lists to the United States Environmental Protection Agency (EPA) was October 22, 1992 (See 57 FR 33047 (July 24, 1992)).

Consistent with 40 CFR 130.7, New York, New Jersey and Puerto Rico submitted to EPA, for approval, their listing decisions under section 303(d) on September 4, 1992, May 20, 1993, and November 18, 1993, respectively. EPA today notices its intent to approve these lists and solicits public comment on both the intent to approve and on the lists. EPA is soliciting comments on the New York, New Jersey, and Puerto Rico 1992 CWA section 303(d) lists and approvals. All future biennial submissions of the 303(d) lists will provide for public comment at the State level.

The lists and approvals are available by mail or for public inspection at the EPA Region 2 office by appointment. To request a copy of a list and/or approval, to make arrangements to examine the lists, or to submit comments, contact the Agency representative identified above. Comments must be submitted within thirty (30) days of the publication of this notice.

Following the close of the comment period, EPA will make a final determination on the State lists and will issue a response to comments received. A copy of EPA's decision and response to comments document will be sent to all parties submitting comments in response to this notice.

Dated: December 27, 1993.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 94–620 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4823–8]

Water Pollution Control; Approval of Application by South Dakota To Administer the National Pollutant Discharge Elimination System Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Approval of application.

SUMMARY: On December 30, 1993, the Acting Regional Administrator for the Environmental Protection Agency (EPA), Region VIII, approved the application by the State of South Dakota to administer and enforce the national pollutant discharge elimination system (NPDES) program for regulating discharges of pollutants into waters within the State.

EFFECTIVE DATE: December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Janet LaCombe at (303) 293–1593, NPDES Branch, (8WM–C); U.S.E.P.A., Region VIII; Denver Place, 999 18th Street, suite 500; Denver, CO 80202–2466.

SUPPLEMENTARY INFORMATION: The application of the South Dakota Department of Environment and Natural Resources (DENR) was received by EPA on April 28, 1993. Several modifications were made to the application package, based on discussions between the EPA, the DENR, and the Office of the Attorney General. The final changes, including the signing of the Memorandum of Agreement by the Governor, were completed on August 30, 1993.

South Dakota's application was described in **Federal Register** notices dated September 1 and 9, 1993, at 58 FR 46145 and 47417, and in notices published in the Rapid City Journal and the Sioux Falls Argus-Leader on August 27 and September 10, 1993. In the September 1, 1993 **Federal Register** notice and the August 27, 1993 newspaper notices, EPA highlighted three issues upon which it specifically requested public comment. These issues concerned unsigned complaints from the general public, penalty authority, and citizen intervention in enforcement actions.

Copies of South Dakota's application package were available for public review at the EPA Region VIII office and at the DENR office in Pierre, South Dakota. Copies also could be purchased from the DENR at a cost of $10.00.

EPA provided copies of South Dakota's public notices to permitted facilities, tribal councils and tribal environmental agencies, and environmental groups in South Dakota. The mailing list used is part of the record of the program application and review process. By letter dated August 25, 1993, EPA provided copies of South Dakota's application to the U.S. Fish & Wildlife Service, and to the South Dakota State Historic Preservation Officer.

As part of the public comment process, EPA conducted two public hearings on South Dakota's application. The hearings occurred on October 14, 1993 at the Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, South Dakota, beginning at 3 and 7 p.m. The first hearing lasted approximately one hour, and the second lasted about 45 minutes. The register of those attending is contained in the administrative record. In addition, until October 22, 1993, EPA accepted written comments from the public. All comments or objections presented at either public hearing or received in writing by EPA Region VIII by October 22, 1993, were considered by EPA.

Comments were received regarding the following issues: (1) Unsigned complaints, (2) penalty authority, (3) citizen intervention, (4) jurisdiction over Indian Country, (5) pretreatment program, (6) mechanisms for ensuring protection of endangered and threatened species, and (7) overall benefits or lack of benefits resulting from authorization. EPA response to all comments are contained in this notice. Summaries of the comments and EPA's responses follow. The comments and hearing record are contained in the administrative record supporting this notice.

I. Unsigned Complaints

Federal regulations at 40 CFR 123.26(b)(3) and (4) require a State approved to administer the NPDES program to maintain a program for investigating information regarding violations of applicable program and permit requirements, to maintain procedures for receiving and ensuring proper consideration of information submitted by the public about violations of applicable program and permit requirements, to encourage public efforts in reporting violations, and to make available information on reporting procedures.

As outlined in EPA's September 1, 1993 **Federal Register** notice and August 27, 1993 newspaper notices, Section 34A–2–111 of the South Dakota Codified Laws (SDCL) prohibits the DENR from performing inspections or conducting other investigatory activities pursuant to SDCL Sections 34A–2–40, 34A–2–44, and 34A–2–45 based on, or as a result of, information received from the general public unless the person providing the information signs a complaint, which is to remain confidential with the DENR. The statement by the South Dakota Attorney General notes that information in complaints from the general public made to another agency or DENR program and then referred to the DENR NPDES program is not considered "as a result of" a complaint from the general public.

The State has described the means by which it will consider and respond to NPDES-related information from the general public and from other state governmental agencies. The DENR will investigate and respond to all citizen complaints where a signed complaint form has been received and will investigate all complaints received from other government agencies. At the time an unsigned complaint is received, DENR will determine whether appropriate department authorities exist under any state environmental statute to handle the unsigned complaint. If not, the citizen shall be referred to the South Dakota Department of Emergency and Disaster Services, the South Dakota Department of Game, Fish & Parks, or another appropriate State agency. The appropriate State agencies shall receive anonymous complaints and either investigate under their authorities or sign and refer the complaint to DENR. The process used for investigating and responding to unsigned complaints will be published in major newspapers in South Dakota and will be prominently posted in the main office and the field offices of the DENR.

In its oversight role, EPA has established a "hotline" (1–800–227–8917) to receive complaints, both identified and anonymous, regarding NPDES-related activities in South Dakota. To communicate this fact to the general public, EPA will publish the hotline number in the Rapid City "Journal" and the Sioux Falls "Argus-Leader", as well as sending a notice to public interest groups and permitted facilities. The hotline number may be used by callers who have information concerning a possible violation of an NPDES permit or program requirement. The caller will be referred to a staff member of the EPA Region VIII NPDES Branch. This staff person will record the information received and make a decision whether or not an investigation is needed. EPA may conduct the investigation or request that the DENR investigate.

A. Comments in Support of Sec. 34A–2–111

Those supporting South Dakota's system for addressing unsigned complaints included the DENR, municipal, agricultural, and mining associations, municipalities, another State agency, and industrial dischargers.

1. Several commenters questioned the motives of people who submit unsigned complaints and/or the merits of such complaints. They referred to the right to

face one's accusers. Their comments included:

A few persons stated that unsigned complaints result from feuds, cranks, or competitors.

Two expressed the opinion that if a complaint is genuine, the person making it should have the commitment to sign it. A representative of an agricultural group that identified itself as the prime sponsor of Sec. 34A–2–111 stated that "there should be a great deal of responsibility laid at the feet of those people making the complaint * * * [South Dakota is] a stand-up place * * * South Dakota newspapers, by and large, don't accept letters to the editors that are unsigned. South Dakota State agencies, by and large, do not accept letters of complaint or phone calls that are anonymous. South Dakota Attorney General's office does not accept complaints that are anonymous, with some exceptions." Two commenters stated that a person is entitled to face his accusers and is protected from anonymous harassment. One of them cited the Sixth Amendment of the U.S. Constitution.

2. Some commenters indicated that the state government and the regulated community should be protected from unsigned complaints:

One city official noted that unsigned complaints can have a detrimental effect upon an organization otherwise trying to work cooperatively to achieve compliance.

"* * * an anonymous phone call or letter is too easy a method to trigger an environmental audit * * *."

"[Section] 34A–2–111 is a necessary statute that helps to limit the expenditure of staff time on frivolous personal grudge type complaints."

3. Some commenters praised DENR's record in conducting investigations and allowing for public participation. They also noted the existence of the EPA "800" number. Their remarks included:

The Secretary, DENR, asserted in his written statement: "To our knowledge, since the passage of this law [SDCL Section 34A–2–111], this law has never hindered our ability to address water pollution incidents nor has it hindered public involvement."

"* * * the current SDCL Section 34A–2–111 is working very well. DENR is very responsible in investigating complaints and has a system in place to guarantee that investigations take place once a complaint arises and to keep the identity of the party making the complaint confidential."

A few commenters referred to the fact that EPA is maintaining an "800" number for persons not wishing to communicate with the state.

4. Several commenters indicated that the state's system provides sufficient opportunity for public participation and agency investigation of complaints. They supported this point by identifying three ways in which Section 34A–2–111 was restricted in its applicability:

a. The prohibition applies to complaints from the general public, not to complaints made or passed on by another federal, state or local level of government. If DENR determines that it lacks authority to investigate a complaint, the complaint is then referred to another agency.

b. The prohibition does not apply to the state's mining laws, solid waste laws, and hazardous waste laws. Most complaints from factory workers will relate to hazardous waste violations, which are not covered by this prohibition.

c. The prohibition does not apply to DENR's right of entry, to the issuance of an emergency order, to determinations of responsibility for discharges, to waste disposal into state waters, and to more general authorities to investigate violations of Chapter 34A–2.

B. Comments Opposing Sec. 34A–2–111

Those opposing South Dakota's system for handling unsigned complaints included environmental groups and individuals working in municipal facilities.

1. Some commenters stated that people hesitate to sign complaints because they fear reprisals:

An anonymous individual who described himself or herself as a "person employed in the wastewater and pretreatment field in the State of South Dakota" stated, "Many times people are reluctant to sign complaints because of some type of repercussion."

"It is a reality that many individuals are reluctant to report suspected or obvious discharge violations for fear of reprisal. Real or perceived, it is a reality."

An environmental group (which stated that it had recently concluded a successful citizen's suit against a mining company in South Dakota) commented that it had filed written complaints with the DENR based on anonymous tips that it, rather than the DENR, had received. Citizens had been reluctant to file a complaint even if it was considered "confidential." This group also stated that it had never found any citizen complaint to be frivolous or harassing.

2. Several commenters criticized the process for investigating and responding to unsigned complaints, described in Item E.4. on page 7 of the MOA. Their comments included:

"The MOA should contain unequivocal language setting forth a specific procedure for SDDENR to follow for maintaining (1) an investigation of violations and (2) procedures for ensuring proper consideration of information from the public about violations."

"We do find fault, at times, with the depth and timeliness of the 'investigation' conducted by DENR upon our filed complaints. Investigations conducted several days to weeks after a complaint is filed may miss a violation."

"In South Dakota, with its small population and overlapping networks of personal and business relationships, unsigned complaints—if they are seriously considered by SDDENR are likely to be the most fruitful sources of violation reporting."

"It is not clear * * * whether department authorities exist within SDDENR to appropriately handle unsigned citizen complaints if referred by another State agency. . . . We do not consider it appropriate to burden other State agencies whose administrative and field staff are already clearly overworked."

"Any unsigned complaint will simply fall into the cracks between agencies and nothing will be done."

"The Departments of Agriculture and Game, Fish and Parks do not have authority or expertise for dealing with complaints that are properly the concern of SDDENR."

3. Some commenters indicated that SDCL prevented South Dakota's application from meeting pertinent authorization requirements:

"We believe neither SDCL 34A–2–111 nor EPA's proposed solution meets the requirements of Section 402(b)(2)(B) and Section 402(b)(7) of the Clean Water Act, and 40 CFR Sections 123.26(b)(3) and (4) * * *. EPA should withhold NPDES delegation until SDCL 34A–2–111 is repealed."

"The requirements of forty (sic) CFR Sections 123.26(b)(3) and (4) will not be met under the MOA because of the convoluted nature of provisions for receiving and dealing with unsigned complaints."

4. Some commenters stated that the state's procedure for handling unsigned complaints created the impression that the state favored special interests over the general public:

"If there's a problem, [most citizens] want action, no matter whom they call. For a citizen to be told they have to call another agency to get a water problem addressed just confirms [the] citizen's view of government as controlled by special interests who get laws like 34A–

2–111 approved * * *. State government should not be empowered by EPA to cripple or make more difficult and confusing citizens' ability to work directly with the proper state regulators because of paranoia on the part of the special interests who are regulated under water quality laws." Two individuals commented in a letter that they were "appalled of (sic) the manner in which the State intends on handling or rather not handling citizen complaints and the legalese double talk the State Attorney General's office is trying to portray as meaningful procedures."

C. EPA's Response to Comments on Sec. 34A–2–111

The State has a program and procedures for public reporting of violations that ensures their proper consideration, even though the existence of § 34A–2–111 appears to require a more cumbersome process than is desirable. EPA might propose a simpler program or procedures for a hypothetical "model" state program. However, under the Clean Water Act, a State is provided flexibility in achieving the minimum requirements of the Act, including those for public participation. If approached by another state on suggestions for public reporting, EPA would recommend against inclusion of a Section 111-type provision. EPA encourages South Dakota to repeal Section 111 as inefficient and having the potential to limit the discretion of the very state agency entrusted to exercise enforcement discretion.

EPA doubts that facilities subject to DENR investigations could use Section 111 as a means to avoid the consequences for failing to comply with § 34A–2–40, –44, and –45. DENR investigators are not required by any provision of state law to identify the basis for the information leading to investigation. Moreover, DENR has authority to initiate prosecution based on verified information. Notwithstanding questions about enforceability, DENR has indicated its intention to faithfully implement applicable provisions of state law, as well as to implement public participation procedures to meet the requirements of 40 CFR 123.27(d). EPA encourages DENR to periodically evaluate the effectiveness of its public reporting procedures in providing public participation in the NPDES enforcement program in South Dakota, particularly in light of the existence of Section 111.

The fact that the prohibition in 34A–2–111 does not apply to complaints from governmental entities or to other State environmental programs provides the State some options for the general public to use in reporting concerns about possible violation or problems related to wastewater treatment or effluent. The description of the State process will be published in major newspapers in South Dakota and posted in the DENR offices located throughout the State. Therefore, mechanisms exist to ensure proper consideration of information from the general public and are sufficient to meet the minimum requirements of public participation consistent with 40 CFR 123.26.

EPA acknowledges there may be some delay in investigation of information received from the general public because of the requirement for a signed complaint. South Dakota has explained, however, that the requirement should not unduly delay prompt investigation when the member of the general public indicates a willingness to identify himself or herself and sign a complaint.

The volume of unsigned complaints which are received by any one entity is not expected to be so great that it would strain the resources available to that organization. However, the DENR is responsible for assuring whatever resources needed to respond to unsigned complaints are available, as well as providing adequate resources to administer the NPDES program as a whole.

EPA notes that the adequacy and effectiveness of DENR's public reporting requirements are easily verified, both by EPA and the general public. If the described procedures do not, in practice, provide for adequate and effective public reporting, DENR's compliance with public reporting requirements may be reexamined. Should subsequent administrative or judicial interpretations of Section 111 broaden its scope from that described in the program submission or otherwise impair implementation of the public reporting procedures, EPA may reevaluate whether the existence of Section 111 yet enables DENR to adequately administer the NPDES program.

Motives of Anonymous Tipsters, Rights of the Accused, and Complainant Fear of Reprisal

EPA does not dispute that some complaints may be submitted with questionable motives or that signed complaints may often be more credible than unsigned ones. "Crank" calls may be from disgruntled neighbors or business competitors. However, a statute is not needed to eliminate the problems associated with frivolous calls. The DENR has professionally trained staff capable of screening out such calls, based on the information provided or not provided. Such calls are also possible from persons who do sign their names.

The fact that the prohibition applies only to the general public and not to other governmental entities allows the NPDES program to use information referred to it by these entities. This information may be provided as problems the entities have identified in the course of their duties (including accepting referrals). It may also come from problems identified by complainants to other entities about their programs which contain information also applicable to the NPDES program.

Regarding the rights of the accused, the Sixth Amendment right to face accusers applies in criminal cases when the testimony of an informant is to be used in trial. However, if an informant's tip is independently confirmed by a law enforcement agency and the testimony of the informant is not needed at trial, then any rights under this amendment have not been affected.

Fear of reprisal may occur even in situations where a person does not have to provide a name, since in small communities it might be fairly easy to figure out or at least narrow down the persons likely to have reported the information. In addition, employees may fear reprisal from their employers should they report possible violations of NPDES statutes, regulations, or permit conditions. However, such fears may be diminished by the fact that SDCL 34A–2–111 requires the identity of the complainant to be kept confidential.

Protection of Agencies and Regulated Community/Favoring Special Interests

A frivolous claim may place a strain on an organization trying to cooperate. However, the potential for strain is offset by the potential to promote the general good which complaints may provide the State in identifying and correcting problems early on. Also, it would seem that there would be few instances of complaints being merely frivolous or harassing.

There is always the chance that actions by governmental entities may be misconstrued by the general public. This is not a basis for determining a program does not meet the requirements for delegation. However, this is an issue both the SDDENR and the EPA will be sensitive to as they administer and oversee the NPDES program.

The State of South Dakota is a sparsely populated state with relatively few industries. Moreover, the existence of overlapping business and personal

networks provides an opportunity for someone removed from a situation to provide information instead of someone concerned about retaliation from an employer. South Dakota's small population and overlapping networks may be productive sources of information. These networks can work to the advantage of the NPDES program in that possible NPDES violations, particularly those affecting surface waters may be reported in connection with information supplied to other environmental programs. For example, according to the DENR, the DENR Ground Water program has the lead on spills and contacts the NPDES staff when there is a potential for surface waters to be affected. The Mining program will generally receive any tips regarding mining problem spills/discharges (e.g. cyanide) and share them with the NPDES staff. Game Fish & Parks recently referred a case of a discharge without a permit to the DENR. That agency also uses its own authority when the discharge is in the area of a fishery. All of these programs are not affected by the prohibition in SDCL 34A–2–111 and, in the past, have received and forwarded complaints which also related to NPDES-related activities.

The concern expressed that information may fall between the cracks is a valid one. It is possible this could occur in any process for receiving information sources outside the administering office. However, the system established for investigating and responding to complaints provides that the DENR will investigate and respond to all citizen complaints where a signed complaint form has been received and will investigate all complaints received from other government agencies.

Conclusion

EPA determines that the procedure South Dakota has established is adequate to comply with the Clean Water Act and with NPDES federal regulations. South Dakota has established a process to deal with issues raised by the general public by accepting signed complaints and being required to keep the identity of the source confidential and by referring other complaints to another State agency. The Governor, as a signatory to the MOA, has committed to follow the process for receiving and responding to information from sources outside the State NPDES program.

Though section 111 may not provide an adequate program for public reporting in other states or for other programs, under the particular circumstances of the DENR NPDES program, the state procedures are adequate for the following reasons: (1) South Dakota is not heavily industrialized, (2) the prohibition pertains only to water programs and not other media programs, (3) the state is sparsely populated for the most part, (4) the right of entry (§ 34A–2–46) is not impaired, (5) the prohibition provision does not appear to be directly enforceable by dischargers, and (6) the State NPDES program retains the authority to respond in emergencies (see 34A–2–68), to enforce against persons causing pollution of waters (see 34A–2–21), and to conduct investigations to determine the responsible person for causing a discharge which may cause or has caused pollution of state waters (see 34A–2–71.1) regardless of the source of information leading to these actions.

The situation in South Dakota is such that there are overlapping networks of state agencies and there are active environmental groups which will identify issues on behalf of their membership and of individuals who communicate information and concerns to their groups.

EPA notes that anonymous tips are just one source of complaints, albeit a significant source. The statute does not place restrictions on any other sources of information or other activities than those defined in 34A–2–40, –44, and –45.

EPA oversight includes an hotline number (1–800–227–8917) to receive complaints from all sources. Oversight also includes monitoring the DENR process and results from public participation in compliance and enforcement. If there appears to be a problem, EPA will revisit this aspect of the program with DENR.

II. Penalty Authority

Section 402(b)(2)(B) of the CWA requires an authorized state program to have authority to inspect, monitor, enter, and require reports to at least the same extent as required by section 308 of the CWA. Section 402(b)(7) of the CWA requires an authorized state program to have adequate authority to abate violations of permits or the permit program through penalties and other means of enforcement. EPA State NPDES program requirements at 40 CFR 123.27(a)(3)(i) provide that an approved state program is to have the authority to recover civil penalties for the violation of "any NPDES filing requirement" and "any duty to allow or carry out inspection, entry or monitoring activities," as well as for the violation of any NPDES permit condition or any regulation or order issued by the state program director.

As outlined in EPA's September 1, 1993, **Federal Register** notice and August 27, 1993 newspaper notices, South Dakota does not have direct statutory authority to collect civil penalties, or criminally enforce, a failure to comply with SDCL 34A–2–44 (record-keeping), 34A–2–45 and –46 (inspection authorities), due to a lack of citation to SDCL 34A–2–75 (penalty provision) in these sections. However, because the Department [of Environment and Natural Resources] can prosecute (both civilly and criminally) violations of permit conditions and because it can set permit conditions for recording, reporting, monitoring, entry, and inspection under 34A–2–40, it can enforce these statutes for permitted facilities.

The Department can, with regard to unpermitted facilities, obtain both the records and entry for inspections pursuant to search warrants issued on the basis of the criminal provisions of SDCL 34A–2–75 and the violation of SDCL 34A–2–36 (operating without the required permit). Civil penalties for failure to comply with SDCL 34A–2–44, –45, and –46 by an unpermitted facility are available only through violation of an order issued by the Department pursuant to SDCL 34A–2–53.

A. Comments Favoring Existing Penalty Authority

The DENR and various members of the regulated community expressed opinions that the lack of a direct authority to impose penalties for violations of the cited statutes would have little affect on the ability of the State to exact penalties for failure to comply with the statutes.

One commenter from the regulated community thought that no detrimental effects would be expected and, therefore, the system for collecting penalties was adequate until such time as the matter was corrected by the legislative process. The Secretary of the DENR noted that the Attorney General's Statement indicated that reporting requirements will be included in the permit, and are therefore enforceable for permitted facilities. As to unpermitted facilities, the Secretary of the DENR (who would be the party issuing orders) stated that the DENR could issue an enforcement order in a timely manner to require any necessary reporting or sampling and that the DENR could enforce these orders. The Secretary also cited a recent water pollution enforcement case settlement which included a penalty of $489,000 and was accomplished without the authority to enforce any NPDES condition or requirement. He stated that delegation

would only increase the abilities of the DENR to enforce violations of the state's environmental laws. Another state agency noted that "It appears * * * that the case where this EPA concern would be applicable is for facilities that are discharging without a permit and not keeping records. For these facilities, failure to have a permit would be a more severe violation than the failure to keep records."

One commenter thought that penalties for items normally found in a permit should not begin to accrue for an unpermitted facility until after the state issues an order.

B. Comments Criticizing Existing Penalty Authority

Those who criticized the existing authority were the pretreatment coordinator for a municipal treatment facility and one environmental group. They questioned the ability of the authority to stand up to judicial review and the round-about means the DENR would have to use to exercise the authority in collecting penalties.

One commenter expressed the opinion that the state's authority to collect penalties from unpermitted facilities is not clear, particularly in light of the *Freeman* v. *South Dakota* lawsuit. In that case, the court found that Mr. Freeman's civil rights were violated when, upon refusing State health inspectors entry, he was served with a closure order. The commenter stated that the finding was made because the citation under licensure statutes failed to cite an enforcement provision.

An environmental group indicated that the State's roundabout legal reasoning to support its authority to obtain records and entry to inspect at unpermitted facilities may be overlooked by a judge faced with what appears to be a clear failure to provide for criminal and civil sanctions for record-keeping or inspection violations. Specific penalty provision language must be added to 34A–2–44, –45, and –46 in order to comply with 40 CFR 123.27(a)(3)(i).

Another environmental organization stated that the state should have direct statutory authority to collect civil penalties and to criminally enforce a failure to comply with Sec. 34A–2–44. They also noted that the MOA should require South Dakota to adopt less round-about methods to obtain records and entry and to be able to do so without the DENR having to issue an order. They believed that formal issuance of orders and search warrants can take too much time.

C. EPA's Response to Comments on Penalty Authority

EPA's authorization regulations require civil penalties to be recoverable for the violation of any NPDES permit condition; any NPDES filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or any regulation or orders issued by the State Director. See 40 CFR 123.27(a)(3)(i). The State has demonstrated an adequate authority and methodology for collecting penalties from permitted and unpermitted facilities. However, EPA would recommend a legislative amendments to 34A–2–44, –45, and –46 to define failure to comply with each as a violation enforceable through 34A–2–53. These amendments would allow a more direct, and thereby more effective, implementation of the enforcement program.

Adequacy of the Ability To Recover Penalties

The State has shown that legal mechanisms exist for exacting penalties tied to permitted and unpermitted facilities which fail to comply with SDCL 34A–2–44, –45, and –46. The authorities used are not specifically based on a violation of these statutes. However, they do provide for 'civil penalties to be recoverable' for refusal to allow or carry out inspection, entry or monitoring activities, which is what 40 CFR 123.27(a)(3)(i) requires.

The situation in *Freeman* v. *South Dakota* does not apply to the State's authority to collect penalties for refusals to allow the state to inspect potential water pollution violations. In that case, State inspectors had summarily terminated a campground's license because the campground's operator would not allow the state to inspect without a warrant. In *Freeman*, civil rights were violated because the State inspectors lacked statutory enforcement authority. In the Case of South Dakota NPDES, SDDENR does have adequate statutory authority to issue administrative orders. The South Dakota Attorney General has stated South Dakota has adequate statutory authority to implement the program described.

Calculation of Penalties

Ignorance of the law is not an argument for deferring penalties. The regulated community is notified through public notice of the requirements for permits, right of entry, etc. It is their responsibility to be aware of these requirements and be accountable for them from the time the requirements become effective.

EPA agrees that the penalty for failure to have a permit might be more severe than for a failure to keep records by itself. However, both requirements are normally available to the regulator in taking enforcement actions. The existence of a penalty for a discharge without a permit does not, by itself, offset the need for a mechanism to collect penalties for failure to allow or carry out inspection, entry or monitoring requirements. As noted earlier, such a mechanism exists.

Regarding the date at which a violation begins, the State has asserted that administrative orders or search warrants could be issued within one or two days. Therefore, the number of days of violation used to calculate penalties for unpermitted facilities would be almost the same as for permitted facilities. In cases where a discharge causes pollution of any waters of the state, the penalty can be calculated for each day the discharge occurred as a violation of 34A–2–21, subject to a § 34A–2–75 order. The number of days of violation is just one factor applied in calculating penalties. The small difference in the number of days of violation between permitted and unpermitted facilities could be offset by the presence of other factors in calculating and negotiating the final penalty (e.g. the existence of another violation -discharge without a permit). Therefore, the immediate revision of SDCL 34A–2–44, –45, and –46 is not required. However, EPA does consider such revisions desirable, so that the State would have more direct remedies for these violations.

It should also be noted that EPA, in its oversight role, can take enforcement action. Typically, EPA would send to the State a Notice of Violation and give the State 30 days to take action. If the State were not to take sufficient action, including not collecting a large enough penalty, EPA could file an order and collect penalties from the date the violations started. Citizen suits are also a means to assure appropriate penalties are collected.

Conclusion

EPA finds that the penalty authority and process for collecting penalties is adequate and serves as a protection against noncompliance with water pollution control law, rules, and permits. EPA's oversight role offers a second level of protection. A third level of protection is offered by related statutes, such as prohibiting discharges which may cause or cause pollution of waters of the state (see 34A–2–21), prohibiting discharge of waste or pollutants without a permit (see 34A–2–

36), and prohibiting reduction of existing water quality (see 34A–2–22). Therefore, the DENR NPDES program adequately meets the requirements for recovering penalties.

III. Citizen Intervention

EPA's September 1, 1993 **Federal Register** and August 27, 1993 newspaper notices requested public comment on South Dakota's statutory procedure for citizen intervention in administrative enforcement actions, as required by 40 CFR 123.27(d). South Dakota has certified that it allows intervention as of right in administrative enforcement actions pursuant to SDCL Sec. 34A–10–2. It has indicated that Sec. 34A–10–2, considered alone, appears to grant merely "permissive intervention"; that is, intervention if no other party objects). However, South Dakota has also certified that if a citizen is denied intervenor status in an administrative case, he may file a lawsuit in circuit court to have the court order him to be named as a party in the administrative proceeding, pursuant to Sec. 34A–10–5. Because of the possibility for such a circuit court proceeding, South Dakota's Attorney General construes SDCL 34A–10–2 to allow mandatory intervention in administrative procedures. The Memorandum of Agreement, a document signed both by the State of South Dakota and the EPA, states that the SDDENR will allow intervention as of right in civil proceedings to at least the same extent required by 40 CFR 123.27(d)(1) and shall not oppose intervention in administrative proceedings as provided by § 34A–10–2.

A. Comments Favoring Existing Intervention Procedure

Members of the regulated community commented that the statutory procedure afforded citizens an adequate right of intervention. One specific comment, made by a member of the regulated community, was that the State assurance in the MOA makes the citizen right to intervention mandatory. This commenter also noted that the Attorney General Statement interprets SDCL 34A–10–2 to mean that the citizen's right to intervene is mandatory.

B. Comments Opposing Existing Intervention Procedure

Environmental groups and individual citizens criticized the existing intervention procedure and its application by the DENR.

1. Some commenters stated that intervention rights were not being honored.

One environmental group stated that it was "* * * especially concerned about the problems posed * * * by the progressive subtle and not so subtle deterioration of participation by citizens and non-profit citizens organizations in quasi-judicial hearings." It referred to individual citizens being ignored at public hearings, public documents being unavailable for review and comment before a contested case hearing, and decisions being given little publicity. One individual commented that at a public hearing in the Fall of 1992 he "* * * watched (and objected) as BME Board members subverted the rules of that hearing by allowing a mining industry lawyer take control of the hearing. Board members allowed the attorney to cross examine citizens as if they were under oath when the citizens were simply there to testify on their own behalf. The incidents are a matter of record. They are also quite typical of DENR."

Another environmental group cited instances where it or individual citizens were excluded from permit modification, remediation, and negotiation processes.

Another individual citizen's letter provided comments which "* * * center[ed] on the State of South Dakota's continued and specific efforts to stifle and judicially dissuade individuals from pursuing environmental issues. They concluded that "[O]bviously, the state of South Dakota has little understanding of citizen participation and rights to involvement."

"Politically powerful applicants regularly 'short-circuit' the contested case procedure with active help from the Attorney General and the DENR. In several controversial cases * * * DENR and/or the applicant have used various procedures to obtain 'quickie hearings' designed to thwart due process and a fair hearing. One state board, at the urging of the Attorney General, * * * carved out a novel justification, citing SDCL 1–22–27, that allows applicants the right to short-circuit the contested case process."

"A circuit court remedy for denial of intervenors status is NO remedy because of expense and unwieldiness."

2. Commenters expressed the concern that public interest and environmental groups must be represented by an attorney at contested cases hearings.

An environmental group stated that DENR has denied them intervention in administrative hearings if they are not represented by an attorney. They noted that the State's application does not clearly state whether an attorney is required.

"Public interest groups must be represented by an attorney at contested case hearings. Since hardly any of us can afford such, the public interest has rarely been represented in the past few years."

"The Board [of Minerals and the Environment] [h]as so decreed, and the state Attorney General's office has rendered an opinion of agreement that only attorney's (sic) can present cases before the Board if the group appearing before the Board is an association, corporation, or other similar entity. The Board has effectively prevented environmental groups from appearing before the Board without the considerable expense of an attorney. It is our understanding that other State Boards do not have the attorney requirement."

C. EPA's Response to Comments Concerning Intervention Procedure

EPA has determined that DENR intervention authority and procedures adequately meets the requirement of 40 CFR 123.27(d). Citizen intervention rights will be honored. There is currently no requirement for public interest groups to be represented by attorneys at NPDES contested case proceedings.

Honoring Intervention Rights

The great majority of the comments expressing concerns with the application of intervention rights pertained to non-NPDES State program topics (e.g. mining, sewage ash, landfills) and a State board (Board of Minerals and Environment) which will not administer the NPDES program in South Dakota.

South Dakota statutes, rules, and program documents provide citizen access to information. SDCL 1–27–1 specifically allows for open inspection of all records and documents during normal business hours. The MOA (page 7, item E.1) provides public access to NPDES files during normal working hours. Public notice of proposed general permits, major permits, and pretreatment program applications is provided for in the MOA (page 7, item E.3) and the Program Description (page 9). South Dakota Rule 74:03:13:02 requires the DENR to public notice any contested case hearing requested and the reasons for the hearing. The public notice of any proposed settlement of a State enforcement action is required only when the authority which allows intervention as of right is not demonstrated (see 40 CFR 123.27(d)).

The Attorney General Statement construes the language of SDCL 34A–10–2 concerning intervention to be

mandatory. In addition, both the MOA (page 3, item A.13) and the Program Description (page 19) allow for citizen intervention as of right in civil proceedings equivalent to that required by 40 CFR 123.26(d)(1).

Representation by an Attorney

The South Dakota Bar Association has issued an ethics opinion that appearance before administrative agencies on behalf of corporations or associations must be by licensed attorneys. The ruling concerning representation at contested case hearings was in reference to contested case hearings held by the Board of Minerals and Environment. The requirement for representation by an attorney does not appear to apply to the NPDES program. However, even in the case of the Board of Minerals and Environment, the Board does not exclude individual citizens from full participation at hearings, but applies the requirement for legal representation of organizations.

The DENR clarified in an addendum to the MOA regarding the NPDES program that individual members of the general public and nonprofit organizations shall not be required to be represented by attorneys in NPDES program contested case hearings to the extent allowed by the State Bar Association and the State Supreme Court. EPA believes that a state bar association does not have the authority to direct the policies and procedures of a state agency which derives its authority from the state legislature. EPA does recognize that a state bar association can constrain the activities of individual attorneys employed by a state agency. In its oversight role, EPA will monitor future rulings of the South Dakota Bar Association and the State Supreme Court regarding citizen intervention and whether environmental organizations are being required to be represented by attorneys. If either of these occur, EPA will consider the impact these rulings and requirements have on the viability of the State's NPDES enforcement program.

Conclusion

EPA has determined that DENR intervention authority and procedures adequately meets the requirement of 40 CFR 123.27(d).

IV. Jurisdiction Over Indian Country

As outlined in EPA's September 1, 1993 **Federal Register** and August 27, 1993 newspaper notices, EPA withheld from NPDES program authorization consideration those lands which were in Indian Country or for which there was significant controversy over whether or not the land was Indian Country. As noted earlier, EPA provided copies of South Dakota's public notices to tribal councils and tribal environmental agencies. Tribal governments and affected permittees were also provided with copies of the list of permitted facilities which EPA would continue to administer.

In withholding authorization for these areas, EPA was not making a determination as to whether or not South Dakota had adequate jurisdiction. This issue was considered deferred. Nevertheless, a number of comments were received regarding jurisdiction. No comments were received from tribal councils or tribal environmental organizations.

A. Comments Regarding EPA's Continued Administration of the NPDES Program in Indian Country

One commenter, a member of the regulated community, stated that EPA's retaining authority within the identified Indian Reservations should lighten the load for SDDENR.

A number of commenters however, disagreed with EPA's administering the program in Indian Country or land in controversy. Some of the comments were the following:

"* * * EPA is asserting a jurisdictional authority which it cannot for regulatory and resource reasons, carry out; the result is inconsistent environmental protection, and some geographical areas left without environmental protection * * * If EPA insists that it carve out geographical areas of the state which should not have equal environmental protection, then I want to make it very clear that the State of South Dakota will further pursue the issue of jurisdiction on non-Indian lands within reservation boundaries."

"To the extent that EPA retains authority over facilities located on lands other than retained Indian allotments, we believe EPA violates the holding * * * [that] exclusive tribal and federal jurisdiction is limited to the retained allotments * * * We believe the better policy, at least as it applies to former reservation areas, is to grant the State authority unless the Tribe can show authority for the dischargers being within the exclusive jurisdiction of the Tribe or federal government."

"We feel South Dakota has demonstrated its intent and ability to administer programs fairly in the entire state. Therefore, the SDDENR should administer the NPDES program throughout the State. The department will need to work closely with tribal governments. Splitting the non-Federal responsibilities could result in ineffective protection of the waters of the state."

A state agency expressed concern that the split in administering the program would cause confusion.

B. EPA's Response to Comments Regarding Jurisdiction Over Indian Country

As noted in the public notice, EPA made the decision to withhold authorization to administer the NPDES program on "Indian Country," as defined in 18 U.S.C. 1151, which includes lands inside reservation boundaries and trust lands found outside reservations. For the most part, these include nine Federal Indian reservations:

1. Cheyenne River Indian Reservation
2. Crow Creek Indian Reservation
3. Flandreau Indian Reservation
4. Lower Brule Indian Reservation
5. Pine Ridge Indian Reservation
6. Rosebud Indian Reservation (includes Todd County and portions of Millette and Gregory Counties)
7. Sisseton Indian Reservation
8. Standing Rock Indian Reservation
9. Yankton Indian Reservation.

This issue was deferred until a satisfactory demonstration of jurisdiction over Indian Country is made by the State of South Dakota or another governmental entity. Otherwise, delegation of any part of the program would have to be held up pending a lengthy resolution of this complicated issue.

While a number of comments were received regarding jurisdiction, this issue is deferred until such time as an appropriate analysis is made of the State's authority to assert jurisdiction over lands for which EPA is retaining jurisdiction. EPA will specifically mail copies of public notices of future assertions to those who provided comments, so they may make their comments during the appropriate public comment period.

It should be noted that EPA has prepared a list of NPDES-permitted facilities which will continue to be administered by EPA. Operators or owners of facilities subject to the NPDES program which are located on these lands should continue to send original or renewal permit applications to EPA. They will be notified of this at the time all permittees are notified of the program authorization decision. Persons with questions as to whether their facilities may be in Indian Country are advised to consult with the Bureau of Indian Affairs and the EPA.

V. Pretreatment Program

A state pretreatment program must meet the requirements of 40 CFR 403.10(f) before being approved for program administration by the EPA. Under 40 CFR 403.10(f)(1)(i) and 403.3(j), an approved state program must have the authority to require industrial users to comply with pretreatment standards for specific industrial subcategories, as established by EPA regulations in 40 CFR, Chapter I, Subchapter N, "Effluent Guidelines and Standards." When South Dakota submitted its proposed program to EPA, subchapter N had not been incorporated into the State program. However, incorporation was approved at the July 28, 1993, public hearing of South Dakota Water Management Board and became effective on September 5, 1993.

A. Comments Regarding the Pretreatment Program

One commenter, a pretreatment program manager, expressed concerns and raised questions regarding the clarity of the pretreatment program procedures and the level of resources needed by the DENR to administer the pretreatment program:

"1. I feel DENR must elaborate and develop a procedure for entering into a joint powers agreement with a municipality in order for DENR to run a municipal pretreatment program. There is nothing in the submission that indicates the extent to which DENR will administer the program, especially if a large municipality requests the Department run their program.

2. Does DENR have the authority to flatly refuse to administer a municipal pretreatment program?

3. If DENR issues a SWD Permit to a POTW and mandates the development of a pretreatment program, can the POTW in turn request the State to administer the program? If so, what are the procedures for requesting that DENR administer the program?

4. Assuming the State becomes delegated, what is the timeframe for previously approved pretreatment programs to submit notice to the DENR that the POTW wishes to continue administering the program?

5. I honestly feel that if ONE of the larger POTW's [sic] request that DENR administer their pretreatment program, along with all of the other smaller POTW pretreatment responsibilities the state will assume, the Department will not have enough personnel to adequately administer this program."

A second commenter proposed that the following be added to the administrative rules:

"74:03:26—A POTW that intends to discharge wastewater to a separate POTW which is under a different authority must submit a request for approval to the Secretary at least 90 days prior to discharge. The Secretary must evaluate the impact of industrial user wastes on contributing POTW and receiving POTW.

The Secretary may choose one of the following options to protect both POTWs from significant industrial user discharges:

(1) Require contributing jurisdiction to establish a Pretreatment Program in accordance to [sic] the requirements in 40 CFR Part 403.8(a) and the State provide direct oversight over program.

(2) State implement a POTW Pretreatment Program in lieu of the contributing jurisdiction as set forth in 40 CFR Part 403.8(e).

(3) Control all significant industrial users in the contributing jurisdiction directly by conditions established in 74:03:26:03 to 74:03:26:14 and the State of SD Pretreatment Program."

B. EPA's Response to Comments

ARSD Section 74:03:26:02 and Section V of the Program Description provide for development of a joint powers agreement in cases where a POTW required to develop a pretreatment program has requested the DENR to assume pretreatment program requirements. This request is to be made within 30 days of notification that the State has been delegated the pretreatment program or within 30 days of the facility being notified that it is required to develop a pretreatment program. In the latter case, this notification would be made either at the time of issuance of an NPDES permit with such a requirement or the conclusion of an enforcement action imposing such a requirement.

EPA believes that any POTW can request that the State assume responsibility for a local pretreatment program, subject to implementation of an agreed-upon joint powers agreement. It appears that the DENR may refuse to administer a program only if no joint powers agreement is developed within forty-five days after notification of intent by the POTW.

EPA agrees that the DENR should provide more detailed instructions to POTWs regarding the joint powers agreement process. This can be done at the time the POTW requests the DENR to administer its pretreatment program, since the procedures may vary somewhat depending on the extent and content of local legal authorities and procedures at each facility when the request is received.

The DENR will be required upon authorization to supply whatever resources are necessary to ensure that all pretreatment program activities are fully implemented and enforced. DENR staff are knowledgeable about the resources required to implement a program. SDCL 34A–2–120 provides for the DENR to collect annual fees from, not only the POTW for which it administers the pretreatment program ($35,000), but each pretreatment industrial user ($600 plus up to $1,600 per process line for analytical testing). These fees, plus any legislative appropriations, would be the financial basis for DENR administering the overall state pretreatment program and individual programs with which it has joint powers agreements.

Regarding the proposed rule changes, EPA finds additional rules are not needed to provide the State the authority to require a POTW to develop a pretreatment program or to request that the DENR administer the program in lieu of the POTW. The State is not required to offer POTWs the option to develop or have programs developed at POTWs which do not meet the criteria contained in 40 CFR 403.8(a), as seems to be suggested by the second commenter's proposed rules.

Conclusion

The pretreatment program described adequately meets the requirements of 40 CFR 403.10(f). The Program Description outlines the process for joint powers agreements. EPA recognizes that the specific steps for developing joint powers agreements between the DENR and an individual POTW may vary according to the situation at each municipality. EPA will continue to play a significant review and oversight role in the development and implementation of joint powers agreements.

VI. Endangered Species Act

In our August 25, 1993 letter to the United States Fish and Wildlife Service (FWS), EPA initiated informal consultation under section 7 of the Endangered Species Act (ESA) on EPA's proposal to authorize the DENR to administer the NPDES Program under section 402 of the Clean Water Act in South Dakota. The FWS responded to EPA on October 20, 1993. EPA responded to that letter with a letter on November 19, 1993 describing permitting and variance procedures and providing a biological assessment of the impact of program authorization on endangered and threatened species in South Dakota delineated in the FWS October 20th letter. The November 19th letter also stated that EPA believed that

the delegation would have no effect on the listed species. Responding in its November 30, 1993 letter to the EPA, the FWS indicated that it could concur with our no adverse effect finding if EPA agreed to four conditions.

EPA and DENR staff met with staff at the FWS South Dakota Field Office in Pierre to discuss the conditions. Based on that meeting, the EPA and DENR agreed to these conditions, as follows. FWS concurred on EPA's Finding of No Adverse Affect on December 15, 1993. The MOA between EPA and South Dakota on the administration of the South Dakota NPDES program addressed these conditions.

1. In each individual public notice or variance, the State shall make an initial determination of effect on all federally listed endangered and threatened species that may occur in the project area of influence.

• This information will be provided to the Service as well as to the EPA with sufficient time to review and, if necessary, provide comments, as reflected in the Memorandum of Agreement signed between EPA and the State of South Dakota.

• The State will communicate with the Service, on a periodic basis, on the permits that it will be issuing. The Service will work with the State to identify those permits for which there are species in the project area.

2. If it is determined by the State that the individual permit or variance to the permit provided to the Service may adversely affect any federally listed and/or proposed endangered and threatened species, the State will work with the Service to eliminate the adverse affect.

3. If the Service does not concur with the State's "no affect" determination, the State will work with the Service to eliminate the adverse effect.

4. If any adverse effects cannot be eliminated, the permit application or variance will be held in abeyance and the EPA, with their oversight responsibilities, will require consultation with the Service, after EPA has completed the formal objection process and the permit has reverted to EPA for issuance.

A. Comments Concerning Information Needed and the Consultation Process

One environmental organization urged EPA to engage in formal consultation with the FWS pursuant to Section 7 of the Endangered Species Act. Another environmental group questioned whether EPA had complied with requirements to consult with the FWS and with the State Game, Fish, and Parks Department.

B. EPA's Response to Comments

The EPA successfully completed informal consultation with the U.S. Fish & Wildlife Service, as described above. Therefore, there was no need to engage in the formal consultation process.

VII. Overall Delegation Issues

EPA received a number of public comments regarding the overall capability and intent of the DENR to administer an authorized NPDES program.

A. Comments Regarding the Benefits of Delegation

1. Many commenters praised the capabilities, competency, knowledge, and past performance of the DENR staff.

"* * * we have relied on the South Dakota Department of Environment and Natural resources as a resource for questions and concerns we have had with the NPDES program. We have found the DENR to be staffed by a group of well-informed professionals dedicated to the enhancement of water quality. Their guidance and advice have always been valuable * * *."

"The DENR has established itself as a very competent department and has a very positive working relationship with a variety of industries within the state. The DENR will be very effective in administering and enforcing the NPDES program for the State of South Dakota * * * we haven't always agreed with DENR on our positions, but let me say clearly we have always been treated very fairly." "To me, the State seems very capable of making decisions and taking action, while at the Federal level, response does not occur with promptness."

"We are aware of the efforts the Department made prior to and during the 1992 State Legislative session to secure funding needed to upgrade staff capability to take over management of the NPDES program."

"* * * environmental regulations are best administered at the state level. State administration provides both the permittee and the regulator better opportunity for face to face communication and for better understanding of the specifics of an operation through regular inspections. Administration and enforcement are both enhanced by having the regulators in close proximity to the regulated facilities."

2. Numerous commenters emphasized the advantages of regulation by an agency actually in the State. Comments included the following:

"EPA technical staff are normally available by phone only, while state staff are frequent visitors to the area and are available for valuable on-site assistance * * *. Our experience in working with [a delegated state regarding other facilities] has been one where positive environmental benefits have been achieved in an efficient, timely manner. We deal directly and in person with all the regulatory people involved, which drastically reduces the questions of interpretation, improves timeliness of permit compliance and in the end provides quicker, effective solutions to environmental problems."

"I believe that delegation of the NPDES program for regulating the discharges of pollutants into waters within the State will mean a more effective operation on both a programmatic and cost basis."

"We are as concerned for the environment of our employees as much as anyone else is, but we have a desire for cooperation rather than dictation."

"I believe a program administered by the state of South Dakota, with regional offices in efforts to help industry clean up our environment, should we be polluting it, would be a tremendous benefit to all manufacturers."

"Having the answers in state and accountable to South Dakotans will enhance businesses' ability to comply."

"[The State Feedlot Program Regulation Review] * * *. Committee concluded that State management of the NPDES program was needed to accomplish effective regulation of feedlot wastes in South Dakota."

"The National Performance Review recently cited recommendations to create a system of program delivery that works better and costs less. The very first recommendation (EPA01) specifically states: 'Improve Environmental Protection Through Increased Flexibility for Local Government'. The United States Environmental Protection Agency has a real opportunity today to act on this recommendation by approving South Dakota's application!"

"There are several reasons why the Legislature supported this [Second Century Environmental Protection] Act:

—State administration of the federal program would enhance economic development;
—Improved coordination would exist between local and state governmental agencies; and
—The state would better safeguard the public health, safety, welfare and the environment of this state through a customer service approach."

B. Comments Opposing Authorization

A number of commenters identified problems associated with delegation.

both in public participation issues and in other areas:

"If [program authorization] were to happen, South Dakota citizens, although they might not know it, would be without protection."

"DENR's activities last year demonstrate clearly the agency's tendency toward advocacy for, rather than regulation of, the entities it is, by law, required to oversee * * *. [This group] seeks denial of state delegation until the philosophy of DENR changes from that of advocate for the regulated community to one of regulator." An environmental group criticized the state's commitment to enforcement. An environmental group requested that EPA require monitoring data to be submitted and housed at DENR. They also suggested that issued and denied permits require equivalent levels of clearances.

C. EPA's Response to Comments on Overall Authorization Issues

EPA noted and considered all public comments considering the overall advantages and disadvantages of approving the NPDES program administration by the State of South Dakota.

Many of the comments reflected the advantage of State program approval which the Clean Water Act envisioned: the program can be administered more effectively closer to the regulated community when the agency and its staff are competent and committed to protecting the environment and public health.

Resources to be used meet the minimum requirements of the NPDES program as it now exists. The State would be responsible for devoting the resources needed to maintain this program and implement additional requirements, as they occur.

EPA's responses to public participation issues are found under the sections on "Unsigned Complaints" and "Citizen Intervention".

EPA typically does not require submission of monitoring data other than discharge monitoring reports (DMRs) when it administers the NPDES program in a state. Therefore, it does not require an approved state to do so.

It appears that there are equivalent levels of clearance for permit issuance and denial. In both cases, the Secretary makes that decision. This is noted in the flow chart on page 9 of the Program Description.

Conclusion

The State of South Dakota has demonstrated that it adequately meets the requirements for program authorization as defined in the Clean Water Act, 40 CFR part 123, and 40 CFR part 403. The U.S. Fish & Wildlife Service concurred with the EPA "no adverse affect" determination regarding program authorization. The State Historic Preservation Office concurred with the EPA "no effect" determination. This authorization does not include the sludge management program.

At this time, EPA is withholding authorization to administer the NPDES program on Indian Country located within South Dakota, including lands for which there is significant controversy over whether or not the land is Indian Country.

Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of South Dakota's authority to administer the NPDES permit program, including regulation of federal facilities and issuance of general permits and to administer the pretreatment program.

STATE NPDES PROGRAM STATUS

	Approved State NPDES permit program	Approved to regulate federal facilities	Approved State pretreatment program	Approved general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	.....	.....	03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74	.....	.....	10/23/92
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79	.....	01/04/84
Indiana	01/01/75	12/09/78	.....	04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/12/92
Kansas	06/28/74	08/28/85	.....	11/24/93
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	04/16/85	11/29/93
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	.....	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	.....	07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	.....	10/15/92
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90	.....	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	08/17/92
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	.....	08/02/91
Rhode Island	99/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92

STATE NPDES PROGRAM STATUS—Continued

	Approved State NPDES permit program	Approved to regulate federal facilities	Approved State pretreatment program	Approved general permits program
South Dakota	12/30/93	12/30/93	12/30/93	12/30/93
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	.....	03/16/82	08/26/93
Virgin Islands	06/30/76	.....	.....	.....
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73	.....	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	.....	09/24/91
Totals	40	35	28	39

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits)=26

Review Under Regulatory Flexibility Act and Executive Order 12866

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of entities. The proposed approval of the South Dakota NPDES program does not alter the regulatory control over any industrial category. No new substantive requirements are established by this action. Therefore, because this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not needed.

On October 12, 1993, the Office of Management and Budget exempted this Agency action from the requirements of Executive Order 12866.

Dated: December 30, 1993.

Jack W. McGraw,

Acting Regional Administrator, Environmental Protection Agency, Region VIII.

[FR Doc. 94–493 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 5, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0093.

Title: Application for Renewal of Radio Station License in Specified Services.

Form Number: FCC Form 405.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Annually and every decade.

Estimated Annual Burden: 540 responses; 2.25 hours average burden per response; 1,215 hours total annual burden.

Needs and Uses: FCC Form 405 is used by all common carriers and Multipoint Distribution Service non-common carriers to apply for renewal of radio station licenses. Section 307(c) of the Communications Act of 1934 limits the terms of common carrier radio licenses to ten years and requires that written applications be submitted for renewal. Applicants granted developmental and special temporary authority are required to apply for renewal in shorter intervals—usually one year after date of grant and annually thereafter. FCC Form 405 has been revised to incorporate a certification required by the Commission's rules implementing the provisions of Section 5301 of the Anti-Drug Abuse Act of 1988. Licensing Branches evaluate the information submitted; review the particulars and conditions of the current authorization; and take action to renew the license for a new term. If the information were not submitted, the Commission would not be able to carry out its responsibilities mandated by the Communications Act of 1934, as amended.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–593 Filed 1–10–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1994]

Petition for Reconsideration of Action in Rulemaking Proceeding

January 4, 1994.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed January 26, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Amendment of § 73.606(b) Table of Allotments, TV Broadcast Stations (Ridgecrest, California) (MM Docket No. 92–246 RM–8091).

Petition for Reconsideration

Number of Petitions Filed: 1.

Federal Communications Commission.

LaVera Marshall,

Acting Secretary.

[FR Doc. 94–592 Filed 1–10–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Stevedoring, Terminal, CFS and Maintenance and Repair Services; Agreement Filed; et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200815.

Title: Stevedoring, Terminal, CFR and Maintenance and Repair Services Agreement between Matson Terminals, Inc./Naviera Interamericana Navicana S.A. (Ports of Los Angeles, Oakland and Seattle).

Parties: Matson Terminals, Inc. ("Matson") Naviera Interamericana Navicana S.A. ("Naviera").

Synopsis: The proposed Agreement permits Matson to furnish Naviera with stevedoring, terminal, container freight station, and maintenance and repair services, including berth/crane and other service guarantees at the ports of Los Angeles, Oakland and Seattle. Subject to Agreement provisions, the parties have agreed upon other matters relating to terminal services and charges.

Agreement No.: 224–200816.

Title: Stevedoring, Terminal, CFR and Maintenance and Repair Services Agreement between Matson Terminals, Inc./Compania Sudamericana De Vapores (Ports of Los Angeles, Oakland and Seattle).

Parties: Matson Terminals, Inc. ("Matson") Compania Sudamericana De Vapores ("CSDV").

Synopsis: The proposed Agreement permits Matson to furnish CSDV with stevedoring, terminal, container freight station, and maintenance and repair services, including berth/crane and other service guarantees at the ports of Los Angeles, Oakland and Seattle. Subject to Agreement provisions, the parties have agreed upon other matters relating to terminal services and charges.

Agreement No.: 224–200817.

Title: Stevedoring, Terminal, CFS and Maintenance and Repair Services Agreement between Matson Terminals, Inc./Flota Mercante Gran Colombiana (Ports of Los Angeles, Oakland and Seattle).

Parties: Matson Terminals, Inc. ("Matson") Flota Mercante Gran Colombiana ("Flota").

Synopsis: The proposed Agreement permits Matson to furnish Flota with stevedoring, terminal, container freight station, and maintenance and repair services, including berth/crane and other service guarantees at the ports of Los Angeles, Oakland and Seattle. Subject to Agreement provisions, the parties have agreed upon other matters relating to terminal services and charges.

Dated: January 5, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–549 Filed 1–10–94; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 94–01]

Ceres Marine Terminal, Inc. v. Maryland Port Administration; Filing of Complaint and Assignment

Notice is given that a complaint filed by Ceres Marine Terminal, Inc. ("Complainant") against Maryland Port Administration ("Respondent") was served January 6, 1994. Complainant alleges that Respondent has violated sections 16 and 17 of the Shipping Act, 1916, 46 U.S.C. 815 and 816, and sections 10 (b)(11), (b)(12), (d)(1) and (d)(3) of the Shipping Act of 1984, 46 U.S.C. app §§ 1709 (b)(11), (b)(12), (d)(1) and (d)(3) by granting more favorable lease terms to other terminals with respect to terminal services and barge services, providing superior crane service to another terminal while failing to provide adequate crane service to Complainant, refusing to permit Complainant to install one of its own cranes, and denying equivalent lease terms to Complainant.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by January 6, 1995, and the final decision of the Commission shall be issued by May 8, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 94–642 Filed 1–10–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

E.R. Hawthorne & Co., Inc., 9370 Wallisville Rd., suite 100, Houston, TX 77013. Officers: John E. Guida, President/Director, Charles B. Dorf, Vice President/Director, Charles M. Schayer, Secretary/Director

All State International Freight Inc., 500 Carson Plaza Dr., suite 205, Carson, CA 90746. Officer: Jae Hoon Yoon, President

Clutch Cargo International, Inc., 1401 Mark Street, Elk Grove Village, IL 60007. Officers: Peter Mourousias, President, Lance Lucibello, Director, Keith Halvorsen, Stockholder

Traders of Miami, Inc., 4710 N.W. 170th Street, Carol City, FL 33055. Officers: Heriberto Canela, President, Lissette Canela, Vice President/Secretary

R.E. Rogers, Inc., 6242 Westchester Parkway, 160, Los Angeles, CA 90045. Officers: Ronald K. Burchett, President, James O. Kelty, Vice President, Louis M. Kerpan, Jr., Director of Operations

Olympic International Freight Forwarders, Inc., 4411 NW 74th Ave., Miami, FL 33166. Officers: Teresa Guzman, President, Jose L. Guzman, Stockholder, Rodrigo Guzman, Vice President

Aeroships International, Inc., 110 Leawood Drive, Roselle, IL 60172–1612. Officers: Thomas E. Bates, President/Treasurer, Jeannine K. Ellenwood, Vice President/Secretary

Dated: January 5, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–550 Filed 1–10–94; 8:45 am]

BILLING CODE 6730–01–M

[Petition Nos. P1–94 and P2–94]

Petition for Temporary Exemption From Electronic Tariff Filing Requirements; Petition of Effective Tariff Management Corporation on Behalf of Various Common Carriers; and Petition of Transax Data on Behalf of Various Common Carriers; Filing of Petitions

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from electronic tariff filing requirements of the Commission's ATFI System. To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than January 18, 1994. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served as follows:

P1–94—Tanga S. Fitzgibbon, Executive Vice President, Effective Tariff Management Corporation, 4000 Mitchellville Road, Suite 326–B, Bowie, Maryland 20716

P2–94—Michael A. Sarro, Account Manager, Transax Data, 721 Route 202/206, Bridgewater, New Jersey 08807

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 94–643 Filed 1–10–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Report to Congressional Committees Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives.

SUMMARY: This report has been prepared by the Federal Reserve Board pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991. Section 121 requires each Federal banking and thrift agency to report annually to the above specified Congressional Committees regarding any differences between the accounting or capital standards used by such agency and the accounting or capital standards used by other banking and thrift agencies. The report must also contain an explanation of the reasons for any discrepancy in such accounting or capital standards. The report must be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Rhoger H Pugh, Assistant Director (202/728-5883), Norah M. Barger, Manager (202/452-2402), Gerald A. Edwards, Jr., Assistant Director (202/452-2741), Robert E. Motyka, Supervisory Financial Analyst (202/452-3621), or Nancy J. Rawlings, Senior Financial Analyst (202/452-3059), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551.

Introduction and Overview

This is the fourth annual report[1] on the differences in capital standards and accounting practices that currently exist among the three banking agencies (the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC)) and the Office of Thrift Supervision (OTS).[2] Section One of the report focuses on differences in the agencies' capital standards; Section Two discusses differences in accounting standards. The remainder of this introduction provides an overview of the discussion contained in these sections.

Capital Standards

As stated in the previous reports to the Congress, the three bank regulatory agencies have, for a number of years, employed a common regulatory framework that establishes minimum capital adequacy ratios for commercial banking organizations. In 1989, all three banking agencies as well as the OTS, adopted a risk-based capital framework that was based upon the international capital accord developed by the Basle Committee on Banking Regulations and Supervisory Practices (Basle Accord) and endorsed by the central bank governors of the G-10 countries.

The risk-based capital framework establishes minimum ratios of total and Tier 1 (core) capital to risk-weighted assets. The Basle Accord requires banking organizations to have total capital equal to at least 8 percent, and Tier 1 capital equal to at least 4 percent, of risk-weighted assets after a phase-in period which ended on December 31, 1992. Tier 1 capital is principally comprised of common shareholders' equity and qualifying perpetual preferred stock, less disallowed intangibles such as goodwill. The other component of total capital, Tier 2, may include certain supplementary capital items, such as general loan loss reserves and subordinated debt. The risk-based capital requirements are viewed by the three banking agencies and the OTS as minimum standards, and most institutions are expected to, and generally do, maintain capital levels well above the minimums.

In addition to specifying identical ratios, the risk-based capital framework implemented by the three banking agencies includes a common definition of regulatory capital and a uniform system of risk weights and categories. While the minimum standards and risk weighting framework are common to all the banking agencies, there are some technical differences in language and interpretation among the agencies. The OTS employs a similar risk-based capital framework although it differs in some respects from that adopted by the three banking agencies. These differences, as well as other technical differences in the agencies' capital standards, are discussed in Section One of this report.

In addition to the risk-based capital requirements, the agencies also have established leverage standards setting forth minimum ratios of capital to total assets. As discussed in Section One, the three banking agencies employ uniform leverage standards, while the OTS has established, pursuant to FIRREA, somewhat different standards.

---

[1] The first two reports prepared by the Federal Reserve Board were made pursuant to section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The third report was made pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which superseded section 1215 of FIRREA.

[2] At the federal level, the Federal Reserve System has primary supervisory responsibility for state-chartered banks that are members of the Federal Reserve System as well as all bank holding companies. The FDIC has primary responsibility for state nonmember banks and FDIC-supervised savings banks. National banks are supervised by the OCC. The OTS has primary responsibility for savings and loan associations.

The staffs of the agencies meet regularly to identify and address differences and inconsistencies in their capital standards. The agencies are committed to continuing this process in an effort to achieve full uniformity in their capital standards. In this regard, Section One contains discussions of the banking agencies' efforts during the past year to achieve uniformity with respect to the risk categories of certain assets, specifically, identifiable intangible assets, loans to finance construction of 1- to 4-family residential homes that have been pre-sold, and multifamily housing loans. In addition, the agencies have worked together to revise the risk-based capital requirements as required by provisions of section 305 of FDICIA to take account of interest rate risk and risks arising from concentrations of credit and nontraditional activities. Finally, staffs of the agencies have been meeting in 1993 to discuss a uniform draft proposal that would amend their risk-based capital guidelines to provide for recognition of bilateral netting arrangements associated with rate contracts that genuinely reduce credit risk.

Accounting Standards

Over the years, the three banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed Uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the three banking agencies are substantially consistent, aside from a few limited exceptions, with generally accepted accounting principles (GAAP) as they are applied by commercial banks.[3] The uniform bank Call Report serves as the basis for calculating risk-based capital and leverage ratios, as well as for other regulatory purposes. Thus, material differences in regulatory accounting and reporting standards among commercial banks and FDIC-supervised savings banks do not exist.

The OTS requires each thrift institution to file the Thrift Financial Report (TFR), which is consistent with GAAP as it is applied by thrifts. The TFR differs in some respects from the bank Call Report. One reason is that thrift GAAP is different in a few limited areas from GAAP as it is applied by banks; another, as previously mentioned, is that there are a few minor areas in which the bank Call Report departs from bank GAAP. A summary of the differences between the bank Call Report and the TFR is presented in Section Two.

Over the past year, the three banking agencies and the OTS have continued to undertake projects that seek to simplify and reduce differences in reporting standards between commercial banks and thrift institutions. On June 10, 1993, the four agencies announced six initiatives to implement the President's March 10 program to improve the availability of credit to businesses and individuals. These initiatives included changes to regulatory reporting requirements, all of which are consistent with GAAP. In this respect, the agencies separately issued guidance to banks and thrifts that generally conforms regulatory reporting requirements for sales of Other Real Estate Owned (OREO) with GAAP, as set forth in FASB Statement No. 66. These changes generally eliminated a 10 percent minimum down payment requirement needed by the borrower/purchaser to record a sale of OREO for regulatory reporting purposes. In addition, as part of these initiatives, the agencies issued joint policies on restoring nonaccrual loans to performing status and improving the reporting guidance on insubstance foreclosures.

Although these actions end the first phase of the President's credit availability program, the agencies are continuing efforts to reduce paperwork and regulatory burdens. These efforts include considering the remaining few differences between GAAP and regulatory accounting principles. In this regard, the agencies now have projects under way that are to refine and improve policies and addresses a few differences that currently exist among the agencies, including projects on recourse, netting, and hedging.

Section One

Differences In Capital Standards Among Federal Banking and Thrift Supervisory Agencies

Leverage capital ratios

The three banking agencies employ a leverage standard based upon the common definition of Tier 1 capital contained in their risk-based capital guidelines. These standards, established in the second half of 1990 and in early 1991, require the most highly-rated institutions to meet a minimum Tier 1 capital ratio of 3 percent. For all other institutions, these standards generally require an additional cushion of at least 100 to 200 basis points, i.e., a minimum leverage ratio of at least 4 to 5 percent, depending upon an organization's financial condition.

As required by FIRREA, the OTS has established a 3 percent core capital ratio and a 1.5 percent tangible capital leverage requirement for thrift institutions. However, the OTS is in the process of finalizing a new leverage rule that will generally conform to the rules of the three banking agencies. The differences that will exist after the OTS has adopted its new standard pertain to the definition of core capital. While this definition generally conforms to Tier 1 bank capital, certainadjustments discussed below apply to the core capital definition used by savings associations. In addition, core capital as currently defined by the OTS includes qualifying supervisory goodwill. Such goodwill is to be phased out of thrift core capital by the end of 1994, after which time the treatment of goodwill for thrift institutions will be consistent with that of the banking agencies.

Risk-based capital ratios

The three banking agencies have adopted risk-based capital standards consistent with the Basle Accord. These standards, which were fully phased in at the end of 1992, require all commercial banking organizations to maintain a minimum ratio of total capital (Tier 1 plus Tier 2) to risk-weighted assets of 8 percent. Tier 1 capital comprises common stockholders' equity, qualifying perpetual preferred stock, and minority interests in consolidated subsidiaries, less goodwill. Tier 1 capital must comprise at least 50 percent of the total risk-based capital requirement. Tier 2 capital includes such components as general loan loss reserves, subordinated term debt, and certain other preferred stock and convertible debt capital instruments, subject to appropriate limitations and conditions. Risk-weighted assets are calculated by assigning risk weights of 0, 20, 50, and 100 percent to broad categories of assets and off-balance sheet items based upon their relative credit risks. The OTS has adopted a risk-based capital standard that in most respects is similar to the framework adopted by the banking agencies. Beginning with year-end 1992, the OTS standard requires a minimum risk-based capital ratio equal to 8 percent.

All the banking agencies view the risk-based capital standard as a minimum supervisory benchmark. In part, this is because the risk-based capital standard focuses primarily on credit risk; it does not take full or explicit account of certain other banking

[3] In those cases where bank Call Report standards are different from GAAP, the regulatory reporting requirements are intended to be more conservative than GAAP.

risks, such as exposure to changes in interest rates. The full range of risks to which depository institutions are exposed are reviewed and evaluated carefully during on-site examinations. In view of these risks, most banking organizations are expected to operate with capital levels well above the minimum risk-based and leverage capital requirements.

The Federal Reserve has for some time been working with the other U.S. banking agencies and the regulatory authorities on the Basle Supervisors' Committee to develop possible methods to measure and address certain market and price risks. In April, 1993, the Basle Supervisors' Committee issued a consultative paper that addresses, among other items, proposals to include certain risks into the framework of the Basle Accord. These risks include exposures resulting from imbalances between the maturity of debt instruments held as assets and issued as liabilities and holdings of traded debt and equity securities. One important reason for addressing these risks on an international level is to develop supervisory approaches that do not undermine the competitiveness of U.S. banking organizations.

Notwithstanding this initial effort, the OTS capital standards for some time have taken into account interest rate risk and the FRB, OCC and FDIC sought public comment on a proposed framework for incorporating into their capital standards interest rate risk in August, 1992, as required under section 305 of FDICIA. In response to concerns raised and recommendations made by commenters, on September 14, 1993, the three banking agencies issued for public comment a substantially modified proposal on interest rate risk. The approach ultimately adopted by the banking agencies could differ from that already taken by the OTS.

Section 305 of FDICIA also requires the banking agencies to amend their risk-based capital rules to take account of concentrations of credit risk and nontraditional activities. During 1993 the staffs of the four agencies met regularly to draft proposals for public consideration. Final proposals are expected to be issued in the first part of 1994.

In addition to coordinating their efforts to implement section 305, the agencies also worked together to eliminate differences in their capital standards, as well as to revise their standards in response to legislative mandates, accounting changes, and industry concerns. In this regard, during 1993, the three banking agencies eliminated the principal difference in their capital standards when they issued final rules revising those standards with regard to the types of intangible assets that may be included in the Tier 1 capital calculation for risk-based and leverage capital purposes. Specifically, under these final rules, banking organizations may include in capital purchased mortgage servicing rights (PMSRs) and purchased credit card relationships (PCCRs), but are required to deduct from capital core deposit intangibles (CDIs) and other identifiable intangible assets. The final rule also included limits and discounts that are applicable to PMSRs and PCCRs in capital. The OTS draft final rule, which is consistent with the final rule issued by the other agencies, is currently under review.

Another difference the federal banking agencies worked to eliminate during 1993 was the risk-based capital treatment of multifamily housing loans. While the three banking agencies assign multifamily housing loans (5 units or more) to the 100 percent risk category, the OTS allows certain multifamily mortgage loans to qualify for the 50 percent risk category. This would apply, for example, to loans secured by buildings with 5-36 units (as described below). This effort was undertaken pursuant to section 618 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA), which requires the agencies to lower the risk weight for multifamily housing loans meeting certain criteria from 100 to 50 percent. At the time of this report, final rules have not been issued by the agencies, although it is anticipated that they will be uniform and will be issued in the very near future.

Section 618 of the RTCRRIA also required the agencies to revise their risk-based capital guidelines to lower from 100 percent to 50 percent the risk category for certain construction loans for presold 1- to 4-family residential properties. During 1993, the four agencies issued similar final rules implementing this provision of section 618.

The staffs of the four agencies also have been coordinating the issuance of uniform proposals to include in Tier 1 capital the net unrealized changes in value of securities available for sale for purposes of calculating the risk-based and leverage capital ratios of banking organizations. This proposal effectively would result in the adoption, for regulatory capital purposes, of the Financial Accounting Standards Board (FASB) Statement of Financial Accountant Standards No. 115 (FASB 115), "Accounting for Certain Investments in Debt and Equity Securities." It is expected that the agencies will issue proposals for public comment in the very near term.

In response to industry recommendations, and in conjunction with the Basle Supervisors' Committee consultative paper issued in April, 1993, the staffs of the four agencies have been meeting to draft uniform rules which would amend their risk-based capital standards with regard to bilateral netting arrangements. Specifically, the proposals would seek public comment on whether to recognize for risk-based capital purposes bilateral netting arrangements associated with interest and foreign exchange rate contracts. Such netting arrangements would have to genuinely reduce credit risk and be enforceable in all relevant jurisdictions as evidenced by well-founded and reasoned legal opinions. It is anticipated that the agencies will issue proposals on this matter early in 1994.

Differences among the risk-based capital standards of the OTS and the three banking agencies are discussed below.

Certain collateralized transactions

On December 23, 1992, the Federal Reserve Board issued, after an appropriate public comment period, an amendment to its risk-based and leverage capital guidelines for state member banks and bank holding companies that lowers from 20 to 0 percent the risk category for collateralized transactions meeting certain criteria. This preferential treatment is only available for claims collateralized by cash on deposit in the bank or by securities issued or guaranteed by OECD central governments or U.S. government agencies. In addition, a positive margin of collateral must be maintained on a daily basis fully taking into account any change in the banking organization's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral held in support of that claim.

The OCC, on August 18, 1993, issued a proposal for public comment that would also lower the risk weight for certain collateralized transactions. The FDIC and OTS are considering similar proposals.

Equity investments

In general, commercial banks that are members of the Federal Reserve System are not permitted to invest in equity securities, nor are they generally permitted to engage in real estate investment or development activities. To the extent that commercial banks are

permitted to hold equity securities (for example, in connection with debts previously contracted), the three banking agencies generally assign such investments to the 100 percent risk category for risk-based capital purposes.

Under the three banking agencies' rules, the agencies may, on a case-by-case basis, deduct equity investments from the parent bank's capital or make other adjustments, if necessary, to assess an appropriate capital charge above the minimum requirement. The banking agencies' treatment of investments in subsidiaries is discussed below.

The OTS risk-based capital standards require that thrift institutions deduct certain equity investments from capital over a phase-in period, which ends on July 1, 1994, as explained more fully below in the section on subsidiaries.

FSLIC/FDIC - covered assets (assets subject to guarantee arrangements by the FSLIC or FDIC)

The three banking agencies generally place these assets in the 20 percent risk category, the same category to which claims on depository institutions and government-sponsored agencies are assigned.

The OTS places these assets in the zero percent risk category.

Limitation on subordinated debt and limited-life preferred stock

Consistent with the Basle Accord, the three banking agencies limit the amount of subordinated debt and limited-life preferred stock that may be included in Tier 2 capital. This limit, in effect, states that these components together may not exceed 50 percent of Tier 1 capital. In addition, maturing capital instruments must be discounted by 20 percent in each of the last five years prior to maturity.

Neither of these capital components is a permanent source of funds, and subordinate debt cannot absorb losses while the bank continues to operate as a going-concern. On the other hand, both components can provide a cushion of protection to the FDIC insurance fund. Thus, this limitation permits the inclusion of some subordinated debt in capital, while assuring that permanent stockholders' equity capital remains the predominant element in bank regulatory capital.

The OTS has no limitation on the total amount of limited-life preferred stock or maturing capital instruments that may be included within Tier 2 capital. In addition, the OTS allows thrifts the option of: (1) discounting maturing capital instruments, issued on or after November 7, 1989, by 20 percent a year over the last 5 years of their term -- the approach required by the banking agencies; or (2) including the full amount of such instruments provided that the amount maturing in any of the next seven years does not exceed 20 percent of the thrift's total capital.

Subsidiaries

Consistent with the Basle Accord and long-standing supervisory practices, the three banking agencies generally consolidate all significant majority-owned subsidiaries of the parent organization for capital purposes. This consolidation assures that the capital requirements are related to all of the risks to which the banking organization is exposed.

As with most other bank subsidiaries, banking and finance subsidiaries generally are consolidated for regulatory capital purposes. However, in cases where banking and finance subsidiaries are not consolidated, the Federal Reserve, consistent with the Basle Accord, generally deducts investments in such subsidiaries in determining the adequacy of the parent bank's capital.

The Federal Reserve's risk-based capital guidelines provide a degree of flexibility in the capital treatment of unconsolidated subsidiaries (other than banking and finance subsidiaries) and investments in joint ventures and associated companies. For example, the Federal Reserve may deduct investments in such subsidiaries from an organization's capital, may apply an appropriate risk-weighted capital charge against the proportionate share of the assets of the entity, may require a line-by-line consolidation of the entity, or otherwise may require that the parent organization maintain a level of capital above the minimum standard that is sufficient to compensate for any risks associated with the investment.

The guidelines also permit the deduction of investments in subsidiaries that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes. For example, the Federal Reserve deducts investments in, and unsecured advances to, Section 20 securities subsidiaries from the parent bank holding company's capital. The FDIC accords similar treatment to securities subsidiaries of state nonmember banks established pursuant to Section 337.4 of the FDIC regulations.

Similarly, in accordance with Section 325.5(f) of the FDIC regulations, a state nonmember bank must deduct investments in, and extensions of credit to, certain mortgage banking subsidiaries in computing the parent bank's capital. (The Federal Reserve does not have a similar requirement with regard to mortgage banking subsidiaries. The OCC does not have requirements dealing specifically with the capital treatment of either mortgage banking or securities subsidiaries. The OCC, however, does reserve the right to require a national bank, on a case-by-case basis, to deduct from capital investments in, and extensions of credit to, any nonbanking subsidiary.)

The deduction of investments in subsidiaries from the parent's capital is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent banking organization. In deducting investments in, and advances to, certain subsidiaries from the parent's capital, the Federal Reserve expects the parent banking organization to meet or exceed minimum regulatory capital standards without reliance on the capital invested in the particular subsidiary. In assessing the overall capital adequacy of banking organizations, the Federal Reserve may also consider the organization's fully consolidated capital position.

Under the OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries that are engaged in activities that are permissible for national banks and subsidiaries that are engaged in "impermissible" activities for national banks. Subsidiaries of thrift institutions that engage only in permissible activities are consolidated on a line-by-line basis if majority-owned and on a pro rata basis if ownership is between 5 percent and 50 percent. As a general rule, investments, including loans, in subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent. However, investments, including loans, outstanding as of April 12, 1989, to subsidiaries that were engaged in impermissible activities prior to that date are grandfathered and will be phased-out of capital over a transition period that expires on July 1, 1994. During this transition period, investments in subsidiaries engaged in impermissible activities that have not been phased-out of capital are to be consolidated on a pro rata basis.

Qualifying multifamily mortgage loans

The three banking agencies currently place multifamily mortgage loans (five units or more) in the 100 percent risk weight category. Historically, when compared to loans secured by mortgages on 1- to 4-family residences, which generally are assigned to the 50 percent risk category, the credit risk associated with multifamily mortgage loans, unless conservatively underwritten and seasoned, is more akin to that

experienced on commercial property loans, which are assigned to the 100 percent risk category. The OTS allows certain multifamily mortgage loans to qualify for the 50 percent risk category. This would apply, for example, to loans secured by buildings with 5-36 units, provided these loans have a maximum 80 percent loan-to-value ratio and an 80 percent occupancy rate.

Pursuant to Section 618(b) of the RTCRRIA, the three banking agencies and the OTS were directed to amend their risk-based capital guidelines to lower the risk weight of certain multifamily housing loans, and securities backed by such loans, from 100 percent to 50 percent. The section specifies several criteria that a multifamily housing loan must satisfy in order to qualify for a 50 percent risk weight. These criteria are:

(1) The loan is secured by a first lien;

(2) The ratio of the principal obligation to the appraised value of the property, that is, the loan-to-value ratio, does not exceed 80 percent (75 percent if the loan is based on a floating interest rate);

(3) The annual net operating income generated by the property (before debt service) is not less than 120 percent of the annual debt service on the loan (115 percent if the loan is based on a floating interest rate);

(4) The amortization of principal and interest occurs over a period of not more than 30 years and the minimum maturity for repayment of principal is not less than seven years; and

(5) All principal and interest payments have been made on time for a period of not less than one year.

In addition, Section 618(b) also provides that multifamily housing loans accorded a 50 percent risk weight must meet any underwriting characteristics that the appropriate Federal banking agency may establish, consistent with the purposes of the minimum acceptable capital requirements to maintain the safety and soundness of financial institutions.

The agencies have proposed revisions to their capital standards to meet the requirement of section 618(b). It is anticipated that final rules implementing section 618(b) will be issued by the respective agencies in the very near future.

Nonresidential construction and land loans

The three banking agencies assign loans for real estate development and construction purposes to the 100 percent risk category. Reserves or charge-offs are required, in accordance with examiner judgment, when weaknesses or losses develop in such loans. The banking agencies have no requirement for an automatic charge-off when the amount of a loan exceeds the fair value of the property pledged as collateral for the loan.

The OTS generally assigns these loans to the 100 percent risk category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, that excess portion must be deducted from capital in accordance with a phase-in arrangement, which ends on July 1, 1994.

Mortgage-backed securities (MBS)

The three banking agencies, in general, place privately-issued MBSs in a risk category appropriate to the underlying assets but in no case to the zero percent risk category. In the case of privately-issued MBSs where the direct underlying assets are mortgages, this treatment generally results in a risk weight of 50 percent or 100 percent. Privately-issued MBSs that have government agency or government-sponsored agency securities as their direct underlying assets are generally assigned to the 20 percent risk category.

The OTS assigns privately-issued high quality mortgage-related securities to the 20 percent risk category. These are, generally, privately-issued MBSs with AA or better investment ratings.

At the same time, both the banking and thrift agencies automatically assign to the 100 percent risk weight category certain MBSs, including interest-only strips, residuals, and similar instruments that can absorb more than their pro rata share of loss. The Federal Reserve, in conjunction with the other banking agencies and the OTS, issued, on January 10, 1992, more specific guidance as to the types of "high risk" MBSs that will qualify for a 100 percent risk weight.

Assets sold with recourse

In general, recourse arrangements allow the purchaser of an asset to "put" the asset back to the originating institution under certain circumstances, for example if the asset ceases to perform satisfactorily. This, in turn, can expose the originating institution to any loss associated with the asset. As a general rule, the three banking agencies require that sales of assets involving any recourse to be reported as financings and that the assets be retained on the balance sheet. This effectively requires a full leverage and risk-based capital charge whenever assets are sold with recourse, including limited recourse. The Federal Reserve generally applies a capital charge to any off-balance sheet recourse arrangement that is the equivalent of a guarantee, regardless of the nature of the transaction that gives rise to the recourse obligation.

An exception to this general rule involves pools of 1- to 4-family residential mortgages and to certain farm mortgage loans. Certain recourse transactions involving these assets are reported in the bank Call Report as sales, thereby removing these transactions from leverage ratio calculations. These transactions, which are the equivalent of off-balance sheet guarantees, involve the type of credit risk that is addressed by bank risk-based capital requirements, although some questions in this regard have been raised because of the treatment afforded these transactions for leverage purposes. The Federal Reserve has clarified its risk-based capital guidelines to ensure that recourse sales involving residential mortgages are to be taken into account for determining compliance with risk-based capital requirements. The FDIC clarified its guidelines on this matter in 1993.

In general, the OTS also requires a full capital charge against assets sold with recourse. However, in the case of limited recourse, the OTS limits the capital charge to the lesser of the amount of recourse or the actual amount of capital that would otherwise be required against that asset, that is, the normal full capital charge.

Some securitized asset arrangements involve the issuance of senior and subordinated classes of securities against pools of assets. When a bank originates such a transaction by placing loans that it owns in a trust and retaining any portion of the subordinated securities, the banking agencies require that capital be maintained against the entire amount of the asset pool. When a bank acquires a subordinated security in a pool of assets that it did not originate, the banking agencies assign the investment in the subordinated piece to the 100 percent risk-weight category. The Federal Reserve carefully reviews these instruments to determine if additional reserves, asset write-downs, or capital are necessary to protect the bank.

The OTS requires that capital be maintained against the entire amount of the asset pool in both of the situations described in the preceding paragraph. Additionally, the OTS applies a capital charge to the full amount of assets being serviced when the servicer is required to absorb credit losses on the assets being serviced.

In 1990, the three banking agencies and the OTS, under the FFIEC, issued for public comment a fact finding paper pertaining to the wide range of issues

relating to recourse arrangements. These issues include the definition of "recourse" and the appropriate reporting and capital treatments to be applied to recourse arrangements, as well as so-called recourse servicing arrangements and limited recourse. The objective of this effort was to develop a comprehensive and uniform approach to recourse arrangements for capital adequacy, reporting, and other regulatory purposes. The comments received were very extensive and generally illustrated the extreme complexity of the subject. In view of the project's significance and complexity, the FFIEC in December 1990 decided to narrow the scope of the initial phase of the recourse project to credit-related risks, including the appropriate treatment of credit-related recourse arrangements that involve limited recourse or that support a third party's assets.

A recourse working group, composed of representatives from the member agencies of the FFIEC, presented a report and recommendations to the FFIEC in August 1992 and were directed to carry out a study of the impact of their recommendations on depository institutions, financial markets, and other affected parties. The interagency group carried out this study in early 1993. As a result of that study, the working group has revised several of their recommendations to reflect market practice. Proposals for public comment are expected to be issued shortly.

Agricultural loan loss amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 are permitted to defer and amortize losses incurred on agricultural loans between January 1, 1984 and December 31, 1991. The program also applies to losses incurred between January 1, 1983 and December 31, 1991, as a result of reappraisals and sales of agricultural Other Real Estate Owned (OREO) and agricultural personal property. These loans must be fully amortized over a period not to exceed seven years and, in any case, must be fully amortized by year-end 1998. Thrifts are not eligible to participate in the agricultural loan loss amortization program established by this statute.

Treatment of junior liens on 1- to 4-family properties

In some cases, a banking organization may make two loans on a single residential property, one loan secured by a first lien, the other by a second lien. In such a situation, the Federal Reserve views these two transactions as a single loan, provided there are no intervening liens. This could result in assigning the total amount of these transactions to the 100 percent risk weight category, if, in the aggregate, the two loans exceeded a prudent loan-to-value ratio and, therefore, did not qualify for the 50 percent risk weight. This approach is intended to avoid possible circumvention of the capital requirements and capture the risks associated with the combined transactions.

The FDIC, OCC, and the OTS generally assign the loan secured by the first lien to the 50 percent risk-weight category and the loan secured by the second lien to the 100 percent risk-weight category.

Pledged deposits and nonwithdrawable accounts

The capital guidelines of OTS permit thrift institutions to include in capital certain pledged deposits and nonwithdrawable accounts that meet the criteria of the OTS. Income Capital Certificates and Mutual Capital Certificates held by the OTS may also be included in capital by thrift institutions. These instruments are not relevant to commercial banks, and, therefore, they are not addressed in the three banking agencies' capital guidelines.

Mutual Funds

The three banking agencies assign all of a bank's holdings in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. The purpose of this is to take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund in view of the fact that the future composition and risk characteristics of the fund's holding cannot be known in advance.

The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time. In addition, the OTS guidelines also permit, on a case-by-case basis, investments in mutual funds to be allocated on a pro rata basis in a manner consistent with the actual composition of the mutual fund.

Section Two

Differences In Accounting Standards Among Federal Banking and Thrift Supervisory Agencies

Under the auspices of the FFIEC, the three banking agencies have developed uniform reporting standards for commercial banks which are used in the preparation of the Call Report. The FDIC has also applied these uniform Call Report standards to savings banks under its supervision. The income statement and balance sheet accounts presented in the Call Report are used by the bank supervisory agencies for determining the capital adequacy of banks and for other regulatory, supervisory, surveillance, analytical, and general statistical purposes.

Section 121 of FDICIA requires accounting principles applicable to financial reports (including the Call Report) filed by federally insured depository institutions with a federal banking agency to be uniform and consistent with generally accepted accounting principles (GAAP). However, under Section 121, a federal banking agency *may* require institutions to use accounting principles "no less stringent than GAAP" when the agency determines that a specific accounting standard under GAAP does not meet these new accounting objectives. The banking agencies believe that GAAP generally satisfies the three accounting objectives included in FDICIA Section 121. The three accounting objectives in FDICIA Section 121 mandate that accounting principles should:

1. Result in financial statements and reports of condition that accurately reflect the institution's capital;
2. Facilitate effective supervision of depository institutions; and
3. Facilitate prompt corrective action at least cost to the insurance funds.

As indicated above, Section 121 of FDICIA requires the Federal Reserve and the other federal banking agencies to utilize accounting principles for regulatory reports that are consistent with GAAP or are no less stringent than GAAP. The reporting instructions for Call Reports that are required by the three banking agencies are substantially consistent, aside from a few limited exceptions, with GAAP as applied by commercial banks. As a matter of policy, the regulatory reporting instructions for Call Reports deviate from GAAP only in those instances where statutory requirements or overriding supervisory concerns warrant a departure from GAAP. Furthermore, in those cases where accounting principles applicable to bank Call Reports are different from GAAP, the regulatory accounting principles are intended to be more conservative than GAAP. Thus, the accounting principles that are followed for regulatory reporting purposes are consistent with the objectives and mandate of FDICIA Section 121.

The agencies have been working to limit the number of differences between

regulatory accounting principles and GAAP, however, in some circumstances differences will exist when there is a need to address supervisory concerns. In addition, the agencies have been working closely to coordinate any new accounting policies, to ensure consistency among the agencies and to reduce or eliminate differences with GAAP.

The OTS has developed and maintains a separate reporting system for the thrift institutions under its supervision. The TFR is based on GAAP as applied by thrifts, which differs in some respects from GAAP for banks.

A summary of the primary differences in accounting principles by the federal banking and thrift agencies for regulatory reporting purposes are set forth below, based on a study developed on an interagency basis:

Futures and forward contracts

The banking agencies, as a general rule, do not permit the deferral of gains or losses by banks on futures and forwards whether or not they are used for hedging purposes. All changes in market value of futures and forward contracts are reported in current period income. The banking agencies adopted this reporting standard as a supervisory policy prior to the adoption of FASB Statement No. 80, which allows hedge or deferral accounting, under certain circumstances. Contrary to this general rule, hedge accounting in accordance with FASB Statement No. 80 is permitted by the three banking agencies only for futures and forward contracts used in mortgage banking operations.

The OTS practice is to follow FASB Statement No. 80 for futures contracts. In accordance with this statement, when hedging criteria are satisfied, the accounting for the futures contract is related to the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred gains or losses which would be reflected on the thrift's balance sheet in accordance with GAAP.

Excess servicing fees

As a general rule, the three banking agencies do not follow GAAP for excess servicing fees, but require a more conservative treatment. Excess servicing results when loans are sold with servicing retained and the stated servicing fee rate is greater than the normal servicing fee rate. With the exception of sales of pools of first lien one-to-four family residential mortgages for which the banking agencies' approach is consistent with FASB Statement No. 65, excess servicing fee income in banks must be reported as realized over the life of the transferred asset, not recognized up front as required by FASB Statement No. 65.

The OTS allows the present value of the future excess servicing fee to be treated as an adjustment to the sales price for purposes of recognizing gain or loss on the sale. This approach is consistent with FASB Statement No. 65.

In-substance defeasance of debt

The banking agencies do not permit banks to report defeasance of their debt obligations in accordance with FASB Statement No. 76. Defeasance involves a debtor irrevocably placing risk-free monetary assets in a trust solely for satisfying the debt. Under FASB Statement No. 76, the assets in the trust and the defeased debt are removed from the balance sheet and a gain or loss for the current period can be recognized. However, for Call Report purposes, banks may not remove assets or *defeased* liabilities from their balance sheets or recognize resulting gains or losses. The banking agencies have not adopted FASB Statement No. 76 because of uncertainty regarding the irrevocable trusts established for defeasance purposes. Furthermore, defeasance would not relieve the bank of its contractual obligation to pay depositors or other creditors.

OTS practice is to follow FASB Statement No. 76.

Sales of assets with recourse

In accordance with FASB Statement No. 77, a transfer of receivables with recourse is recognized as a sale if:

(1) The transferor surrenders control of the future economic benefits,

(2) The transferor's obligation under the recourse provisions can be reasonably estimated, and

(3) The transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

The practice of the three banking agencies is generally to permit commercial banks to report transfers of receivables with recourse as sales only when the transferring institution

(1) Retains no risk of loss from the assets transferred and

(2) Has no obligation for the payment of principal or interest on the assets transferred.

As a result, virtually no transfers of assets with recourse can be reported as sales. However, this rule does not apply to the transfer of first lien 1- to 4-family residential or agricultural mortgage loans under certain government-sponsored programs (including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation). Transfers of mortgages under these programs are generally treated as sales for Call Report purposes.

Furthermore, private transfers of first lien 1- to four- family residential mortgages are also reported as sales if the transferring institution retains only an insignificant risk of loss on the assets transferred. However, the seller's obligation under recourse provisions related to sales of mortgage loans under the government programs is viewed as an off-balance sheet exposure. Thus, for risk-based capital purposes, capital is generally expected to be held for recourse obligations associated with such transactions.

The OTS policy is to follow FASB Statement No. 77. However, in the calculation of risk-based capital under the OTS guidelines, off-balance sheet recourse obligations generally are converted at 100 percent. This effectively negates the sale treatment recognized on a GAAP basis for risk-based capital purposes, but not for leverage capital purposes. Thus, by making this adjustment in the risk-based capital calculation, the differences between the OTS and the banking agencies for capital adequacy measurement purposes, are substantially reduced.

The FFIEC has a study under way involving the topic of transfers of assets with recourse (often referred to as the "recourse study"). As part of this study, the staff of the Federal Reserve is reviewing the reporting treatment for sales of assets with recourse and is exploring with the staffs of the other agencies the possibility of reducing or eliminating the differences between regulatory reporting requirements and GAAP in this area. A proposal addressing this issue is being finalized for issuance for public comment in the near future.

Push-Down Accounting

When a depository institution is acquired in a purchase transaction, but retains its separate corporate existence, the institution is required to revalue all of the assets and liabilities at fair value at the time of acquisition. When push-down accounting is applied, the same revaluation made by the parent holding company is made at the depository institution level.

The three banking agencies require push-down accounting when there is at least a 95 percent change in ownership. This approach is generally consistent with interpretations of the Securities and Exchange Commission.

The OTS requires push-down accounting when there is at least a 90 percent change in ownership.

Negative Goodwill

The three banking agencies require that negative goodwill be reported as a liability, and not be netted against goodwill assets. Such a policy ensures that all goodwill assets are deducted in regulatory capital calculations, consistent with the Basle Accord.

The OTS permits negative goodwill to offset goodwill assets reported in the financial statements.

Offsetting of Amounts Related to Certain Contracts

The three banking agencies are planning to adopt FASB Interpretation No. 39 (FIN 39) solely for on-balance sheet items arising from off-balance sheet derivative instruments, when FIN 39 becomes effective in 1994. FIN 39 allows institutions to offset assets and liabilities arising from traditional balance sheet items (e.g., loans, deposits, etc.) as well as netting assets and liabilities arising from off-balance sheet derivative instruments only when four conditions are met. The Call Report's existing guidance generally prohibits netting of assets and liabilities.

The OTS policy on netting of assets and liabilities is consistent with GAAP.

The Board staff intends to join the other agencies in a study of the possibility of adopting FIN 39 for traditional balance sheet items in the next year.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–648 Filed 1–10–94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR) Stocking Change and Revision of SF 523, Medical Record—Authorization for Autopsy and SF 523A—Medical Record—Disposition of Body

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR is changing the stocking requirement of SF 523, Medical Record—Authorization for Autopsy and SF 523A, Medical Record—Dispotion of Body. These forms are now authorized for local reproduction. You can request camera copy of SF 523 and SF 523A from General Services Administration (CARM), Attn.: Barbara Williams, (202) 501–0581.

These forms also are revised to delete the Privacy Act statement from the back of the form. The following reasons reflect this change:

1. No personal identifying information is collected (prestamped on form).

2. Any information that would be included under the Privacy Act is covered by a blanket statement in the medical case record. This form is part of such record.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Freed, GSA Standard and Optional Forms Liaison Officer, (202) 501–0492.

DATES: Effective January 11, 1994.

Dated: December 30, 1993.

Johnny T. Young,

Director, Reproduction Services Division.

[FR Doc. 94–603 Filed 1–10–94; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act of 1980 (U.S.C. chapter 35), we are submitting to the Office of Management and Budget (OMB) a request for approval of a new information collection on Cuban and Haitian entrants to the United States. This information collection, sponsored by the Office of Refugee Resettlement (ORR) at the Administration for Children and Families (ACF), is entitled: "Entrant Information and Referral Form (Form ORR–5)." This information collection on Cuban and Haitian entrants to the United States will allow ACF and the Department of Justice to provide information and placement services to the entrants.

ADDRESSES: Copies of this request for OMB approval may be obtained from Stephen R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding this approval should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on the Document:

Title: Entrant Information and Referral Form ORR–5.

OMB No.:

Description: The Cuban/Haitian Entrant Program is authorized under Title V of the Refugee Education Assistance Act of 1980, Public Law 96–422. Section 501(a) of that Act directs the President to provide assistance and services to Cuban and Haitian entrants to the same extent as those available to refugees under title IV of the Immigration and Nationality Act (hereafter referred to as the "Act"). An entrant differs from a refugee in the manner of his or her entry into the U.S. Refugees are identified as such by overseas consular officials who arrange for their transportation to the U.S. and for reception and placement services at the community of resettlement. An extensive case file is compiled by the consular official and precedes the refugee to his final destination where he is met by a representative of a national voluntary refugee resettlement agency (volging). The volging schedules case management and social services as needed for the refugee. Each step in the refugee resettlement process is documented and data are collected and maintained on the refugee by the Department of State's Refugee Data Center (RDC).

The entrant usually arrives without prior contact with U.S. officials and therefore without documentation. The entrant's first contact with the U.S. government is with an officer of the Immigration and Naturalization Service (INS) who determines the entrant's immigration status and whether the entrant is to be detained or released. If the entrant is found eligible to remain in the U.S., reception and placement services are arranged through the Community Relations Service (CRS) of the Department of Justice.

Because advance preparation is not possible for entrants, ORR and other Federal agencies have maintained an office in the Miami area to provide information and referral services for the influx of Cubans and Haitian entrants who have been arriving in the U.S. since 1959. ORR and the Community Relations Service (CRS) of the Department of Justice which maintains strong ties to the local Cuban and Haitian communities coordinate employment and referral services with community groups, local providers, immigration authorities, volgags, State agencies, hospitals, schools and Federal social services agencies.

The Miami office maintains a data base on entrants from which data is made available to the State Department, INS, Department of Justice, and the Department of Health and Human

Services for statistical and management purposes.

Annual Number of Respondents: 4,000

Annual Frequency: 1

Average Burden Per Response: 15 min.

Total Burden Hours: 1,000

Dated:

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94-600 Filed 1-10-94; 8:45 am]

BILLING CODE 4184-01-M

Agency for Health Care Policy and Research

Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (title 5, U.S.C., appendix 2) announcement is made of the following advisory committees scheduled to meet during the month of February 1994:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: February 9–11, 1994, 8 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852.

Open February 9, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing experimental, analytical and theoretical research on costs, quality, access, effectiveness, and efficiency of the delivery of health services for the research grant program administered by Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on February 9 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed session, the Subcommittee will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Elizabeth A. Breckinridge, Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Name: Health Care Technology Study Section.

Date and Time: February 14–16, 1994, 8:30 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, The Maryland Room, Bethesda, Maryland 20814.

Open February 14, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications concerned with medical decisionmaking, computers in health care delivery, and the utilization and effects of health care technologies and procedures.

Agenda: The open session on February 14 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. The closed sessions of the meeting will be devoted to a review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Alan E. Mayers, Ph.D., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Name: Health Services Research Review Subcommittee.

Date and Time: February 17–18, 1994, 8 a.m.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Tenley Town I, Washington, DC 20015.

Open February 17, 8 a.m. to 8:45 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by AHCPR.

Agenda: The open session of the meeting on February 17 from 8 a.m. to 8:45 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing analytical and theoretical research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Patricia G. Thompson, Ph.D., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Name: Health Services Research Dissemination Study Section.

Date and Time: February 23–24, 1994, 8 a.m.

Place: Hyatt Regency Bethesda. One Bethesda Metro Center, Conference Room TBA, Bethesda, MD 20814.

Open February 24, 8 a.m. to 8:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with the review of and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policy makers, providers, and consumers.

Agenda: The open session of the meeting on February 24 from 8 a.m. to 8:30 a.m. will be devoted to a presentation by the Administrator, AHCPR. During the closed portions of the meeting, the Study Section will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR,

has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Linda Blankenbaker, Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: December 29, 1993.

Risa J. Lavizzo-Mourey,

Acting Administrator.

[FR Doc. 94–542 Filed 1–10–94; 8:45 am]

BILLING CODE 4160–90–U

Centers for Disease Control and Prevention

[Program Announcement Number 409]

Grants for Injury Prevention Research for Violence Against Women; Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC) announces that applications are being accepted for Injury Prevention Research Grants for Violence Against Women. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity, mortality and improve the quality of life. This announcement is related to the area of Violent and Abusive Behavior. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized under sections 301 and 391 of the Public Health Service Act (42 U.S.C. 241 and 280b). Program regulations are set forth in title 42 of the CFR part 52.

Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus state, tribal, and local health departments and other state, tribal, and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Availability of Funds

Approximately $2.0 million is projected to be available in FY 1994 to fund approximately 5 to 9 grants. The amount of funding actually available may vary and is subject to change. New grant awards will not exceed $300,000 per year (including both direct and indirect costs). Research grant supplements will generally be no more than $75,000 (including both direct and indirect costs). Awards will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops, the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds. In addition, continuation awards will be eligible for increased funding to offset inflationary costs depending upon the availability of funds.

Purpose

The purposes of this program are:

A. To build the scientific base for the prevention of injuries and deaths due to violence against women as delineated in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993; Healthy People 2000; Violence in America: A Public Health Approach; Understanding and Preventing Violence; and Injury Prevention: Meeting the Challenge (supplement to the American Journal of Preventive Medicine, (Vol. 5, no. 3, 1989);

B. To identify effective strategies to prevent injuries and deaths due to violence against women;

C. To expand the development and evaluation of current and new intervention methods and strategies for the primary prevention of violence against women;

D. To encourage professionals from a wide spectrum of disciplines such as medicine, health care, public health, criminal justice, behavioral and social sciences, and others to undertake research to prevent and control injuries that result from violence against women.

Program Requirements

The following are applicant requirements:

A. A principal investigator who has conducted research, published the findings, and has specific authority and responsibility to carry out the proposed project.

B. Demonstrated experience in conducting, evaluating, and publishing injury control research on the applicant's project team.

C. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

D. An explanation of how research findings could lead to the development of injury control interventions within 3–5 years of project start-up. Furthermore, how the research findings might be disseminated and implemented through organizations (such as public health agencies) or systems, both public and private.

E. The ability to carry out injury control research projects.

F. The overall match between the applicant's proposed theme and research objectives, and the program priorities as described under the heading "Programmatic Interest" and in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993; Healthy People 2000; Violence in America: A Public Health Approach; Understanding and Preventing Violence; and Injury Prevention: Meeting the Challenge.

Note: Grant funds will not be made available to support the provision of direct care services. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Interests

The grants should concentrate on the need to prevent the morbidity, mortality, and disability which result from violence against women, in order to reduce the devastating social and economic impact on the nation. Applicants are encouraged to propose research which either: (1) Rigorously evaluates the outcomes of violence prevention strategies currently in use, or (2) identifies modifiable risk factors which can lead to the development of effective interventions. Examples of possible projects listed under the priority areas below are by no means exhaustive, and innovative approaches are encouraged. Because of time constraints, comments were not solicited from the general public regarding funding priorities and special considerations.

In prevention, there is specific interest in research that evaluates the effectiveness of interventions to prevent injuries and deaths due to violence against women, or reduce their impact. There is also interest in research that develops the basic sciences of injury control (i.e., social and behavioral sciences, and epidemiology). This research might evaluate one or more different approaches to implementing a specific intervention strategy. In addition, there is a need to examine intervention strategies for which evidence of effectiveness is either sparse or totally lacking. Interventions chosen for evaluation should have a significant potential for reducing morbidity, mortality, disability, or cost. Special consideration will be given to grants which target populations at high risk for violence-related injuries and their consequences, including adolescents, children, racial and ethnic minorities, urban residents, and people with low incomes.

Examples of strategies for preventing violence against women which need to be rigorously evaluated for impact on violent outcomes include:

- Establishing protocols for early identification and referral of abuse victims in health settings (e.g., Are women who are identified as being physically or sexually abused through victim identification and referral protocols in hospital emergency departments, substance abuse and mental health centers, STD clinics, or prenatal care clinics less likely than others to experience future abuse? Do home health visits reduce partner abuse in targeted families and, as a consequence, reduce the likelihood that children will witness such violence?);
- Batterer treatment programs;
- Alcohol and drug abuse treatment services for batterers and victims in tandem with batterer treatment programs;
- Public information and awareness campaigns to change attitudes and beliefs which perpetuate violence against women (e.g., Can well-designed and administered public awareness campaigns change knowledge and attitudes that perpetuate violence against women? Are hotlines that provide crisis intervention counseling an effective mechanism for increasing the use of available services and programs?)

In epidemiology, there is programmatic interest in analytic research that identifies mechanisms, causes, or risks of injury which might lead to new or more effective interventions for violence against women. Examples of potentially modifiable risk factors which should be examined for each area are listed below:

- Attitudes and beliefs which influence violent behavior against women (e.g., Are boys and men who hold attitudes conducive to violence against women more likely to be violent towards women? What role does culture play in perpetuating these attitudes?);
- The impact of early childhood experiences of violence (either as a witness or victim of violence) upon the tendency to develop violent behavior patterns in adulthood (e.g., What childhood experiences mitigate the harmful effects on children of witnessing violent acts against women? What role does past exposure to varying forms of violence play in repeated victimization?);
- The role of alcohol and other drugs among batterers and their victims;
- Factors in a dating relationship which precipitate violent behavior (e.g., Are young men who commit violent acts against a date likely to continue these behaviors?);
- Factors which precipitate battering during pregnancy.

Also of programmatic interest is epidemiologic research having as its focus the development of improved methods for and the evaluation of injury surveillance systems that accurately quantify the incidence and severity of injuries that result from violence against women (e.g., emergency department-based surveillance of injuries due to violence against women). Research is needed that more accurately defines the cost of violence against women, from a social, physical, and psychological perspective (e.g., How does violence against women affect productivity in the workplace? How does such violence affect the cost of health care in general?).

Cost analysis should be included in the plans, where appropriate, to evaluate an intervention(s) that addresses violence against women. A more complete discussion of methodologies for assessing cost analysis is presented in, A Framework for Assessing the Effectiveness of Disease and Injury Prevention, (CDC, Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR-3, pages 5-11). (To receive information on these reports see the section Where To Obtain Additional Information.)

Evaluation Criteria

Upon receipt, applications will be screened by CDC staff for completeness and responsiveness as outlined under the previous heading, Program Requirements (A-F). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications which are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review; the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. The primary review will be a peer evaluation by the Injury Research Grants Review Committee (IRGRC) of the scientific and technical merit of the application. The final review will be conducted by the CDC Advisory Committee for Injury Prevention and Control (ACIPC), which will consider the results of the peer review together with program need and relevance. Funding decisions will be made by the Director, National Center for Injury Prevention and Control (NCIPC), based on merit and priority score ranking by the IRGRC, program review by the ACIPC, and the availability of funds.

A. The first review will be a peer review to be conducted on all applications. Factors to be considered will include:

1. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested;
2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the injury control knowledge gaps which the proposal is intended to fill;
3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research;
4. For competitive renewal and supplemental applications, the progress made during the prior project period. For new applications, (optional) the progress of preliminary studies pertinent to the application.
5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plan.
6. The extent to which the evaluation plan will allow for the measurement of

progress toward the achievement of the stated objectives.

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

9. The reasonableness of the proposed budget to the proposed research and demonstration program.

10. Adequacy of existing and proposed facilities and resources.

B. The second review will be conducted by the Advisory Committee for Injury Prevention and Control. The factors to be considered will include:

1. The results of the peer review.

2. The significance of the proposed activities in relation to the objectives stated in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993; Healthy People 2000; Violence in America: A Public Health Approach; Understanding and Preventing Violence; and Injury Prevention: Meeting the Challenge.

3. National needs.

4. Overall distribution among:

• The major disciplines of violence-related injury prevention: social and behavioral sciences, and epidemiology;

• Populations addressed (e.g., adolescents, minorities, the elderly, urban, rural); and

5. Budgetary considerations (e.g., preference may be given to applicants who submit proposals requesting funding for research projects of one to two years).

C. Continued funding. Continuation awards made after FY 1994, but within the project period, will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress demonstrated through monitoring presentations or work-in-progress workshops;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

D. Supplementary funding. Competing Supplemental grant awards may be made when funds are available, to support research work or activities not previously approved by the Injury Research Grants Review Committee (IRGRC). Applications should be clearly labelled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number is 93.136.

Application Submission and Deadline

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than one month prior to the planned submission deadline, (e.g., February 15 for March 15 submission). The letter should identify the specific program announcement number, indicate the intended submission deadline, and include the name of the principal investigator. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies, on or before March 15, 1994 to: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305.

C. Deadlines

1. Applications shall be considered as meeting the deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for submission for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional information, call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 409. You will receive a complete program description, information on application procedures, and application forms. If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, (404) 842–6796. Programmatic technical assistance may be obtained from Ted Jones, Project Officer, Extramural Research Grants Branch, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Mailstop K–58, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724, (404) 488–4824.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238. Copies of Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993; Injury Prevention: Meeting the Challenge; and A Framework for Assessing the Effectiveness of Disease and Injury Prevention, (CDC, Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR–3, pages 5–11) may be obtained by calling (404) 488–4646. Also, information for obtaining Violence in America: A Public

Health Approach and Understanding and Preventing Violence can be received by calling the previously listed phone number (404/488–4646).

Dated: January 4, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–582 Filed 1–10–94; 8:45 am]

BILLING CODE 4160–18–P

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 59052–59054, dated November 5, 1993) is amended to retitle the Personnel Management Office to the Human Resources Management Office within the Office of Program Support, Centers for Disease Control and Prevention (CDC).

Section HC–B, Organization and Functions, is hereby amended as follows:

Delete in their entirety the titles and functional statements for the *Personnel Management Office (HCA57)* and the *Office of the Director (HCA571)* and insert the following:

Human Resources Management Office (HCA57). (1) Provides service, support, advice, and assistance to CDC organizations, management, and employees in all areas of human resources management; (2) conducts and coordinates personnel management for CDC's civil service and Commissioned Corps personnel; (3) conducts CDC's fellowship programs; (4) develops and issues policies and procedures; conducts recruitment, special emphasis, staffing, position classification, position management, pay administration, performance management systems, employee training and development, and employee and labor relations programs; (5) maintains personnel records and reports, and processes personnel actions and documents; (6) administers the Federal life and health insurance programs; (7) administers the employee recognition, suggestion, and incentive awards programs; (8) furnishes advice and assistance in the processing of Office of Workers' Compensation Program claims; (9) coordinates committee management activities; (10) conducts CDC's personnel security and substance abuse programs; (11) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses on CDC personnel and staffing to CDC management and employees; (12) maintains liaison with PHS, HHS, and the U.S. Office of Personnel Management in the area of human resources management.

Office of the Director (HCA571). (1) Provides leadership and technical guidance to CDC in planning, coordinating, and conducting an effective personnel program for civil service (including the Senior Biomedical Research Service and the Senior Executive Service), Commissioned Corps, and fellowship program personnel; (2) plans, directs, and evaluates the activities of the Human Resources Management Office (HRMO); (3) coordinates the Total Quality Management effort within HRMO; (4) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses on CDC personnel and staffing to CDC management and employees; (5) advises the Director, CDC, and other CDC management staff on all matters relating to human resources management.

Effective Date: Dec. 22, 1993.

David Satcher,

Director.

[FR Doc. 94–502 Filed 1–10–94; 8:45 am]

BILLING CODE 4160–18–M

National Institutes of Health

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, January 27–28, 1994, to be held at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland. This meeting will be open to the public on Thursday, January 27, from 8:30 a.m. to 1:15 p.m. for a status report by the Director, NIA; a report on the Biology of Aging Program; a report on NIA Intramural Program; an report on the Working Group on Program; and a report on the Advisory Committee to Director, NIH, meeting.

The meeting will be open again on Friday, January 28, from 8:30 a.m. until adjournment for a report on the Behavioral and Social Research Program; a report on International Affairs; a report on the Inclusion of Women and Minorities in Research; a report on the Minority Task Force; and parting comments from retiring members. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on Thursday, January 27 from 2:15 p.m. to recess for the review, discussion and evaluation of grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as a sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: January 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–534 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, January 24–25, 1994. The meeting will be held in building 31, Conference Room 6, National Institute of Health, Bethesda, Maryland. The meeting of the Subcommittee on Planning will be held on January 24 in Building 31, room 2A03.

The Council meeting will be open to the public on January 24 from 9:30 a.m. until 5 p.m. The agenda includes a report by the Director, NICHD, IOM report on Clinical Applications of Mifepristone RU 486 and Other Antiprogestins, and a report by the Developmental Biology, Genetics and

Teratology Branch, NICHD. The meeting will be open on January 25 upon completion of applications at approximately 12:30 p.m. to adjournment if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on January 24 from 8 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the full Council will be closed to the public on January 25 from 8 a.m. to approximately 12:30 p.m. for the completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NICHD, 6100 Executive Boulevard, room 5E03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research, and 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: January 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–532 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, January 24–25, 1994, at the Siena Hotel (Tuscany Room), 1505 E. Franklin Street, Chapel Hill, North Carolina 27514.

This meeting will be open to the public on January 24 from 9 a.m. to approximately 3:30 p.m. and from 8:30 a.m. to 9 a.m. on January 25 for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on January 24 from approximately 3:30 p.m. to 5 p.m. and from 9 a.m. to adjournment on January 25, for the review, discussion and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, rm. B1C02, NIH, Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Herrell in advance of the meeting. Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: January 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–533 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Ethylene Glycol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of Ethylene Glycol, a major constituent of motor vehicle antifreeze-coolant fluids and also in other commercial products including hydraulic brake fluids, adhesives, printer's inks, and wood stains. It is also used in the manufacturer of polyester films and fibers, polyethylene terephthalate (PET) solid state resins, plasticizers, elastomers, cellophane, and other products.

Two year toxicology and carcinogenesis studies were conducted by administering ethylene glycol in the diet of 60 male mice (0, 6,200, 12,500, or 25,000 ppm) and 60 female mice (0, 12,500, 25,000, or 50,000 ppm) for up to 103 weeks. These concentrations correspond to daily doses of approximately 1,500, 3,000, or 6,000 mg/kg body weight for male mice and 3,000, 6,000, or 12,000 mg/kg for females.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity [1] of ethylene glycol in male B6C3F1 mice receiving 6,250, 12,500, or 25,000 ppm, or in female B6C3F1 mice receiving 12,500, 25,000, or 50,000 ppm. Administration of ethylene glycol resulted in hepatocellular hyaline degeneration in male mice fed diets containing 12,500 or 25,000 ppm and in female mice fed diets containing 50,000 ppm. An increased incidence of medial hyperplasia of small pulmonary arteries and arterioles occurred in female mice fed diets containing 12,500, 25,000, or 50,000 ppm ethylene glycol.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of Ethylene Glycol (Cas No. 107–21–1) in B6C3F1 Mice (Feed Studies) (TR–413) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: January 3, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–535 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

---

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Mercuric Chloride

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of Mercuric Chloride, an inorganic compound that has been used in agriculture as a fungicide, in medicine as a topical antiseptic and disinfectant, and in chemistry as an intermediate in the production of other mercury compounds.

Two-year toxicology and carcinogenicity studies were conducted by administering to groups of 60 rats of each sex 0, 2.5, or 5 mg mercuric chloride/kg body weight and to groups of 60 mice of each sex 0, 5, or 10 mg/kg in deionized water by gavage 5 days per week for 2 years.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity[1] of mercuric chloride in male F344 rats based on the increased incidence of squamous cell papillomas of the forestomach. Marginally increased incidences of thyroid follicular cell adenomas and carcinomas may have been related to mercuric chloride exposure. There was equivocal evidence of carcinogenic activity of mercuric chloride in female F344 rats based on two squamous cell papillomas of the forestomach. There was equivocal evidence of carcinogenic activity of mercuric chloride in male B6C3F1 mice based on the occurrences of two renal tubule adenomas and one renal tubule adenocarcinoma. There was no evidence of carcinogenic activity of mercuric chloride in female B6C3F1 mice receiving 5 or 10 mg/kg.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of Mercuric Chloride (CAS No. 7487–94–7) in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR–408) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dated: January 3, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–536 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of p-Nitrophenol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of p-Nitrophenol used in the production of acetaminophen, methyl and ethyl parathion insecticides, fungicides, and dyestuffs.

Eighteen-month toxicology and carcinogenesis studies were conducted by applying p-Nitrophenol in acetone to the intrascapular skin of groups of 60 Swiss-Webster mice of each sex. Doses of 0, 40, 80, or 160 mg/kg p-Nitrophenol were administered to mice 3 days per week for 78 weeks.

Under the conditions of these 18-month dermal studies there was no evidence of carcinogenic activity[1] in male or female Swiss-Webster mice receiving 40, 80, or 160 mg/kg p-Nitrophenol.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of p-Nitrophenol (CAS No. 100–02–7) in Swiss-Webster Mice (Dermal Studies) (TR–417) are available without charge from Central Data Management, NIEHS, MD AO–01, P.O. Box. 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: January 3, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–537 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF INTERIOR

Bureau of Land Management

[AZ–024–94–4333–01]

Intent To Close to Public Entry Public Lands To Protect Endangered Species Until a Suitable Permit System Is Implemented

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of closure of public entry to public lands.

SUMMARY: Notice is hereby given that portions of the Public Lands along the Gila River below Coolidge Dam in Gila County, Arizona will be closed to all forms of boating and rafting. The Gila River in this area is jointly administered by the Bureau and the San Carlos Indian Reservation. This closure will not apply to emergency response agencies conducting official business. This use restriction covers the Gila River as it crosses Public Lands from T. 3 S., R. 18 E., Section 17, downstream to the confluence of Mescal Creek and the Gila River in T. 3 S., R. 17 E., Section 29, G & SR Meridian, Arizona.

EFFECTIVE DATES: This order is effective upon signature of the authorized officer. January 1, 1994 through July 1, 1994.

SUPPLEMENTARY INFORMATION: The purpose of this use restriction is to provide protection for nesting bald eagles *Haliaeetus leucocephalus*. In past years, the Gila River was not navigable in this area due to water hazards. Recent flooding has opened up the river channel and facilitated a proliferation of rafting and boating in the area. The bald eagle nest is low to the ground and immediately adjacent to the river channel making it susceptible to human disturbance. To comply with the Endangered Species Act of 1973, as amended, the Bureau must not allow actions that may result in "take" of an endangered species without being permitted according to Section 7 of the Act. Failure by the Bureau to control public access to this area may result in disturbance to the nesting bald eagles and a violation of the Act. The Bureau will consult with the U.S. Fish and Wildlife Service when a permit system is established jointly with the San Carlos Indian Reservation.

Order

Notice is hereby given that effective on the date of signature by the authorized officer of this notice, the following use restriction will be in effect on the Gila River Public Lands below Coolidge Dam until July 1, 1994, or until an opening notice is published.

1. No person may boat, raft or float on the Gila River on Public Lands described below. Emergency response agencies on official business will be exempt from this order.

Gila and Salt River Meridian, Arizona

T. 3 S., R. 18 E.,
Secs. 17, 18, 19, 29
T. 3 S., R. 17 E.,
Secs. 24, 25, 26, 27, 28, 29, 34

Authority for this use restriction may be found in 43 CFR 8364.1d. Violations of this closure are punishable by a fine not to exceed $100,000 and/or 12 months in jail.

FOR FURTHER INFORMATION CONTACT: Gail Acheson, Area Manager, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, AZ 85027, (602) 780–8090.

Dated: January 3, 1994.

David J. Miller,

Acting District Manager.

[FR Doc. 94–602 Filed 1–10–94; 8:45 am]

BILLING CODE 4310–02–M

Fish and Wildlife Service

Wild Bird Conservation Act (Act) of 1992; Possible Moratorium on Imports of Wild Birds From Indonesia and Sénégal Into the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of Comment Period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) published two notices in the **Federal Register** of November 5, 1993, announcing the receipt of petitions to impose a moratorium on the imports of wild birds from Indonesia and Sénégal into the United States, pursuant to the Wild Bird Conservation Act of 1992 (58 FR 59061 and 58 FR 59063). Through the issuance of this notice, the Service now extends the comment period on both of these petitions an additional 90 days, in order to receive as complete information as is possible concerning the status of wild bird species in Indonesia and Sénégal.

DATES: The Fish and Wildlife Service (Service) will consider comments and information received by April 11, 1994 in making a decision on this proposed action.

ADDRESSES: Comments and information should be sent to: Director, U.S. Fish and Wildlife Service, c/o Mr. Marshall P. Jones, Chief, Office of Management Authority, 4401 N. Fairfax Dr., room 420 C, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, Office of Management Authority, at the above address, telephone (703) 358–2093

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) published two notices in the **Federal Register** of November 5, 1993, announcing the receipt of petitions to impose a moratorium on the imports of wild birds from Indonesia and Sénégal into the United States, pursuant to the Wild Bird Conservation Act of 1992 (58 FR 59061 and 58 FR 59063). The petitions were found to present sufficient information indicating that imposing a moratorium on the imports of wild birds from Indonesia and Sénégal may be warranted under the Act. The Service received requests in writing from the following to extend the comment period: Government of Indonesia, Government of Sénégal, Pet Industry Joint Advisory Council, and American Federation of Aviculture. In particular, the Governments of Indonesia and Sénégal requested additional time to fully review the petitions and prepare a response. Those written requests were received by the Service during the period of December 23–27, 1993. The Service considers these requests warranted, and through the issuance of this notice, extends the comment period on both of these petitions an additional 90 days, in order to receive as complete information as is possible concerning the status of wild bird species in both Indonesia and Sénégal.

Public Comments Solicited

The Service intends that any final decision resulting from these petitions will be as accurate and as effective as possible. Therefore, any comments or data from the public, other concerned governmental agencies, the scientific or conservation communities, trade organizations, or any other interested party concerning any aspect of the wild bird trade in Indonesia and Sénégal are hereby solicited.

Author: The author of this notice is Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority.

(Notice: Wild Bird Conservation Act (WBCA) of 1992; Extension of comment period on petitions requesting moratorium on imports of Wild Birds from Indonesia and Sénégal into the United States.)

Dated: January 4, 1994.

Richard N. Smith,

Acting Director.

[FR Doc. 94–554 Filed 1–10–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 31, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by January 26, 1994.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Jefferson County

Pratt School, 306 Ave. U., Birmingham, 93001591

GEORGIA

Oconee County

Abe Jones House, 2411 Hog Mountain Rd., Watkinsville vicinity, 93001572

INDIANA

Marion County

Fort Benjamin Harrison Historic District, E. 56th St., Indianapolis, 93001581

IOWA

Johnson County

Schindhelm-Drews House, 410 N. Lucas St., Iowa City, 93001589

Scott County

Regina Coeli Monastery, 1401 Central Ave., Bettendorf, 93001590

KENTUCKY

Boyle County

St. Mildred's Court—West Lexington Avenue Historic District, 125–162 St. Mildred's Ct. and 797–852 W. Lexington Ave., Danville, 93001582

Clinton County

Huddleston, Judge Killis, House, Jct. of US 127 and KY 734, Albany vicinity, 93001583

Hardin County

Fort Duffield, E of US 31W off West Point Marina Rd., West Point vicinity, 93001584

Kenton County

The Hadsworth Electric Manufacturing Company, 20 W 11th St., Covington, 93001585

Russell County

Russell Lodge #284, Public Square, Jamestown, 93001586

Spencer County

Camp Branch Historic District (Spencer County, Kentucky MPS). SW side KY Rt. 55, .2 mi. NW of Co. Rd. 1392, Taylorsville vicinity, 93001594

Miller, Isaac, Farm (Spencer County, Kentucky MPS), N side KY Rt. 48, .9 mi. W of Fairfield, Fairfield vicinity, 93001596

Riverview School (Spencer County, Kentucky MPS), NE side KY Hwy, 31E, 1.2 mi. N of High Grove, High Grove vicinity, 93001595

MASSACHUSETTS

Berkshire County

Golden Hill Bridge, Golden Hill Rd, over the Housatonic R., Lee, 93001592

Middlesex County

Bowers, Jerathmell, House, 150 Wood St., Lowell, 93001588

Suffolk County

Eliot Congregational Church, 56 Dale St., corner 118–120 Walnut St., Boston, 93001587

House at 1 Bay Street, 1 Bay St., Boston, 93001573

PUERTO RICO

Dorado Municipality

S.S., Antonio Lopez, Shipwreck Site and Remains, Angelina Reef, N of Mameyal Beach, Dorado vicinity, 93001593

TENNESSEE

Sevier County

Avent, Mayna Treanor, Studio, Jake's Creek Trail, Elkmont vicinity, 93001575

UTAH

Cache County

Ewing, Samuel and Lana, House, 107 S. 100 East, Smithfield, 93001578

James, John P. and Sarah, House, 210 W. 9000 South. Paradise, 93001578

Washington County

Santa Clara Relief Society Hall, Approximately 3036 W. Santa Clara Dr., Santa Clara, 93001577

[FR Doc. 94–449 Filed 1–10–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1133X)]

Consolidated Rail Corporation—Abandonment Exemption—in Somerset County, PA

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately a 1.5± mile line of railroad between milepost 0.0± and milepost 1.5±, in Windber, in Somerset County, PA.

Conrail has certified that: (1) no local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 10, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 21, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 31, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 14, 1994. 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 the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 6, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–610 Filed 1–10–94; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of 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 the Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket Nos. AB–12 and AB–398; Sub-No. 149X and 1X]

Southern Pacific Transportation Company Abandonment Exemption in Fresno County, CA; San Joaquin Valley Railway Company Discontinuance of Service Exemption in Fresno County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the Southern Pacific Transportation Company's abandonment of and the San Joaquin Valley Railway Company's discontinuance of service over a 4.15-mile segment of the Clovis Branch rail line, from milepost 219.00 at or near the Glorietta rail station, to milepost 223.15, at or near the Cooper Avenue rail station in Fresno County, CA.[1]

DATES: The exemption will be effective on February 10, 1994, unless a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR

[1] The Southern Pacific Transportation Company also will abandon a 4.71-mile spur track that connects to the Clovis Branch at milepost 220.9 at or near the Pinedale rail station. Under 49 U.S.C 10907(b)(1) the Commission has no jurisdiction over that action, because the segment is a spur track.

1152.27(c)(2)[2] must be filed by January 21, 1994; petitions to stay must be filed by January 26, 1994; requests for public use condition must be filed by January 31, 1994; and petitions to reopen must be filed by February 7, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub-No. 149X) and Docket No. AB–398 (Sub-No. 1X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioners' respresentative: Louis E. Gitomer, 919 18th Street, NW., suite 210, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (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 service (202) 927–5271.]

Decided: December 27, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–611 Filed 1–10–94; 8:45 am]

BILLING CODE 7035–01–P

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Development of a Comprehensive Internal Offender Classification for State Prisons

(2) None. National Institute of Corrections

(3) One time collection

(4) State or local governments. The information collected in conjunction with this project will facilitate the development of a model internal objective offender classification process that can be used by prisons in state departments of corrections to make effective housing and program assignments.

(5) 54 annual respondents at 0.33 hours per response

(6) 18 annual burden hours

(7) Not applicable under section 3504(h)

Public comment on this item is encouraged.

Dated: January 5, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–572 Filed 1–10–94; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of December, 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,135; Trinity Industries, Inc., Plant #70, Chicago Heights, IL

TA–W–29,117; Midwest Body Corp., Paris, IL

TA–W–29,239; Alda Oil and Gas, Oklahoma City, OK

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–29,152; Unisys Corp., Customer Service Engineering, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,186; McDonnell Douglas Finance Corp., Long Beach, CA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,047; E.I. DuPont De Nemours & Co., DuPont Industries Imaging, Rochester, NY

U.S. imports of unexposed X-ray film and graphic arts film declined in the 12 month period September through August 1992–1993 compared with the same period in 1991–1992.

TA-W-29,148; Evan Picone, Inc., North Bergen, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,325; Ameripex International, Inc., Denver, CO

Predominant portion of services provided by the subject firm are international in nature. Any layoffs resulting from losses in revenues in the international market are not considered import impacted under the terms of the terms of the Trade Act of 1974.

TA-W-29,287; American Pipeline, American Processing L.P., Goldsmith, TX.

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat therefore, and the absolute decline in sales or production.

TA-W-29,176; Shell Pipe Line Corp., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,178; Pecten Chemical Co., Houston, TX

TA-W-29,179; Pecten International Co., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,196; Shell Chemical Co., Houston, TX

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-29,197; Shell Oil Products, Houston, TX

The investigations revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations

TA-W-29,000; Pennsylvania Optical, Reading, PA

A certification was issued covering all workers separated on or after August 8, 1992.

TA-W-29,260; Reltoc Manufacturing Co., Inc., Plant E, Wynne, AR

A certification was issued covering all workers separated on or after September 30, 1992.

TA-W-29,155 & TA-W-29,155A; Reltoc Manufacturing Co., Plant C, Forest City, AR and Plant CC, Forrest City, AR

A certification was issued covering all workers separated on or after September 30, 1992.

TA-W-29,243 & 29,244; Cinderella Knitting Mills, Leesport, PA and Gastonia, NC

A certification was issued covering all workers separated on or after November 4, 1992.

TA-W-29,138; Pilgrim Too Sportswear, Inc., Summit Hill, PA

A certification was issued covering all workers separated on or after October 7, 1992.

TA-W-29,184; American Cyanamid Co., Bound Brook, NJ

A certification was issued covering all workers separated on or after October 21, 1992.

TA-W-29,309; Bausch & Lomb, Oakland, MD

A certification was issued covering all workers separated on or after November 24, 1992.

TA-W-29,112; Simpson Paper Co., Shasta Mill, Anderson, CA

A certification was issued covering all workers separated on or after September 27, 1992.

TA-W-29,123; Reltoc Manufacturing Co., Inc., Plant D, Florence, AL

TA-W-29,124; Reltoc Manufacturing Co., Inc., Plant A, Winfield, AL

TA-W-29,124A; Reltoc Manufacturing Co., Inc., Plant GB, Winfield, AL

TA-W-29,124B; Reltoc Manufacturing Co., Inc., Plant AA, Winfield, AL

TA-W-29,124C; Reltoc Manufacturing Co., Inc., Plant AAA, Winfield, AL

A certification was issued covering all workers separated on or after September 30, 1993.

TA-W-29,172; The Ohio Art Co., Bryan, OH

A certification was issued covering all workers separated on or after October 19, 1992.

TA-W-29,171; Borg-Warner Automotive, Muncie, IN

A certification was issued covering all workers engaged in the production of manual transmissions separated on or after October 14, 1992. Also, All workers engaged in the production of transfer cases and automatic locking hubs for four-wheel-drive vehicles are denied.

TA-W-29,200; Playtimer Industries Limited, Elizabethville, PA

A certification was issued covering all workers separated on or after October 26, 1992.

TA-W-29,153; Steingut Dress Co., Dupont, PA

A certification was issued covering all workers separated on or after October 14, 1992.

TA-W-29,189; Four Eleven Sportswear Corp., Madisonville, TN

A certification was issued covering all workers separated on or after October 21, 1992.

TA-W-29,173; Shell Oil Co., Administration—E&P/Set. Houston, TX & Operating at Various Locations in The following States:

A; AL, B; AK, C; CA, D; CT, E; Washington, DC, F; FL, G; GA, H; IL, I; IN, J; LA, K; MD, L; MI, M; MS, N; MO, O; NJ, P; NM, Q; NY, R; OH, S; OK, T; OR, U; PA, V; TX, W; UT, X; VA, Y; WA, Z; WV.

A certification was issued covering all workers separated on or after December 13, 1993.

TA-W-29,174; Shell Oil Co., Whell Western E & P, Inc., Houston, TX & Operating at Various Locations in the Following States:

A; AK, B; LA, C; MI, D; MS, E; MT, F; NM, G; TX

A certification was issued covering all workers separated on or after December 13, 1993.

TA-W-29,175; Shell Offshore, Inc., New Orleans, LA & Operating at Various Locations in the Following States:

A; AL, B; FL, C; LA, D; MS, E; TX

A certification was issued covering all workers separated on or after December 13, 1993.

TA-W-29,177; Shell Development Co., Houston, TX

A certification was issued covering all workers separated on or after December 13, 1993.

I hereby certify that the aforementioned determinations were

issued during the month of December, 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 3, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94-637 Filed 1-10-94; 8:45 am]

BILLING CODE 4510-30-M

Office of Workers' Compensation Programs

Report of Computer Matching Program Between Department of Labor and Department of Health and Human Services, Social Security Administration

Participating agencies: The participating agencies in this computer matching program are the Office of Workers' Compensation Programs, Department of Labor (DOL) and the Department of Health and Human Services, Social Security Administration (SSA). This Notice is published as required by the Computer Matching and Privacy Protection Act of 1988, as amended. A new written agreement for this long-standing computer matching program recently has been approved by both the Department of Labor and the Department of Health and Human Services Data Integrity Boards.

Purpose of match: DOL will conduct a computer matching program of DOL and SSA records of Black Lung benefit recipients in order to detect individuals who might improperly receive dual Black Lung benefits from SSA and DOL. When a verified match occurs, the case will be referred to the proper DOL office for development to assure the validity of the match and to make any required benefit adjustments. The SSA data will contain the date of death of SSA beneficiaries. This information will help to minimize those cases in which benefit payments are made to deceased beneficiaries, by identifying a DOL beneficiary who has died, but DOL has not been notified of the death. The SSA data also will assist DOL in properly referring inquiries and correspondence received at DOL regarding SSA-only Black Lung beneficiaries.

Authority for conducting the matching program: Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901, et seq.

Categories of records and individuals covered: SSA, as the source agency, will provide DOL with its Black Lung Payment System, HHS/SSA/OSR 09-60-0045, (52 FR 9543, March 25, 1987), which will be matched with DOL's Office of Workers' Compensation Programs' Black Lung Benefit Payment records contained in DOL/ESA-30 (55 FR 7131, February 28, 1990). The individuals covered will be DOL and SSA Black Lung beneficiaries.

Inclusive dates of the matching program: The Matching program will begin either 30 days after the publication date of this Notice, or 30 days after a copy of the written agreement for this matching program is sent to the Chairman of the Committee on Government Affairs of the U.S. Senate, to the Chairman of the House Government Operations Committee, and to the Director of the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

Address for receipt of public comment: Lawrence W. Rogers, Director, Office of Workers' Compensation Programs, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219-7503.

Signed at Washington, DC, this 5th day of January 1994.

Lawrence W. Rogers,

Director, Office of Workers' Compensation Programs.

[FR Doc. 94-640 Filed 1-10-94; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. New Warwick Mining Company

[Docket No. M-93-323-C]

New Warwick Mining Company, R.D. 1, Box 167A, Mount Morris, Pennsylvania 15349 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Warwick Mine (I.D. No. 36-02374) located in Greene County, Pennsylvania. Due to hazardous roof conditions, certain areas of the mine cannot be traveled safely. The petitioner proposes to establish evaluations points to monitor for methane and the quantity of air in the affected areas. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Costain Coal, Inc.

[Docket No. M-93-324-C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459-0289 has filed a petition to modify the application of 30 CFR 75.364(b) (weekly examination) to its Baker Mine (I.D. No. 15-14492) located in Webster County, Kentucky. The petitioner requests that the minimum volume of air reaching the inby monitoring point be 5,000 cubic feet per minute. In addition, the petitioner proposes to physically examine the affected areas weekly rather than daily because the mine wide atmospheric monitoring system, with a proposed additional sensor to measure air velocity, would provide the necessary monitoring. This petition modifies a Decision and Order on a previous petition, docket number M-92-94-C. The petitioner states that the proposed alternate method would not result in a diminution of safety to the miners.

3. Consolidation Coal Company

[Docket No. M-93-325-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.343(b) (underground shops) to its Loveridge No. 22 Mine (I.D. No. 46-01433) located in Marion County, West Virginia. The petitioner proposes to ventilate the underground motor barn with intake air that is coursed through the affected air course directly into a return air course and that is not used to ventilate working places; and to establish check points to monitor for methane and the quantity of air in the affected area on a weekly basis. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. North Mountain Coal Company

[Docket No. M-93-326-C]

North Mountain Coal Company, R.D. #1, Box 32A, Dornsife, Pennsylvania 17823 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its West Side South Dip (I.D. No. 36-07681) located in Northumberland County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches

0.5 percent either during operation or a preshift examination.

5. McElroy Coal Company

[Docket No. M-93-327-C]

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. Due to deteriorating roof conditions, certain areas of the return air course cannot be traveled safely. The petitioner proposes to establish evaluation points at specific locations and to have a certified person monitor for methane and the quantity and quality of air at these evaluation points on a weekly basis and record the results in a book kept on the surface. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Sonora Mining Corporation

[Docket No. M-93-13-M]

Sonora Mining Corporation, P.O. Box 1418, Jamestown, California 95327 has filed a petition to modify the application of 30 CFR 56.9300 (berms or guardrails) to its Jamestown Mine (I.D. No. 04-04695) located in Tuolumne County, California. The petitioner proposes to eliminate the use of berms during construction of the final lift on the tailings dam and place material on the dam in one-foot compact layers in order to comply with the California State Division of Dam Safety. The petitioner states that the height of the dam (200') has reached a point where the width on top will not allow enough room for scrapers to travel and dump their loads if berms are used. In addition, the petitioner states that to maintain a safe work environment, mobile equipment that would work on top would drive forward only.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 10, 1994. Copies of these petitions are available for inspection at that address.

Dated: January 5, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94-638 Filed 1-10-94; 8:45 am]

BILLING CODE 4510-43-P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974: Publication of Proposed Change to a System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Notice: Proposed amendment to a record system.

SUMMARY: This notice proposes amendments to one system of record, MSPB/Internal-1, Pay, Leave and Travel.

EFFECTIVE DATE: The proposed action will be effective without further notice on December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Richard Dorr, Financial and Administrative Management Division, Office of Administration, (202) 653-7263.

SUPPLEMENTARY INFORMATION: Pub. L. 101-509, Title VI—General Provisions Section 629, 104 Stat. 1478 (1990) permits Federal agencies to participate in any program established by State or local government that encourages employees to use public transportation. The Merit Systems Protection Board is establishing a fare subsidy program for its employees. Employees who qualify will receive partial reimbursement for commuting expenses. Pursuant to the provisions of the Privacy Act, the following proposed amendments are necessary for information collection and maintenance of the fare subsidy program records. These changes to MSPB/Internal-1, Pay, Leave, and Travel records, are administrative in nature, and are not within the purview of the provisions of 5 U.S.C. 552 a(r). MSPB/Internal-1 was last published on April 27, 1990, 55 FR 17842. The specific changes to the notice being amended are set forth below.

Dated: January 5, 1994.

Robert E. Taylor,

Clerk of the Board.

1. Under MSPB/Internal-1, Categories of Records in the System: At the end of the paragraph, remove the last word "and" and add, "and fare subsidy program."

2. Under Authority for Maintenance of the System: At the end of the paragraph, remove the last word "and" and add, "Pub. L. 101-59."

[FR Doc. 94-548 Filed 1-10-94; 8:45 am]

BILLING CODE 7400-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: "10 CFR Part 55: Operators' Licenses."

3. The form number if applicable: Not applicable.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities to determine the eligibility of applicants for operators' licenses and perform a review of applications and reports for simulation facilities submitted to the NRC.

5. Who will be required or asked to report: Holders of and applicants for facility (i.e., nuclear power, research, and test reactor) operating licenses and individual operators' licenses.

6. An estimate of the number of annual responses: 115.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 3,536 (approximately 944 hours of reporting burden and approximately 2,592 hours of recordkeeping burden).

8. An indication of whether Section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: 10 CFR Part 55 of the NRC's regulations, "Operators' Licenses" specifies information and data to be provided by applicants and facility licensees so that the NRC may make determinations concerning the licensing of operators for nuclear power plants necessary to promote the health and safety of the public. The reporting and recordkeeping requirements contained in 10 CFR part 55 are mandatory for the licensees and applicants affected.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555. Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0018), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 3rd day of January 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–575 Filed 1–10–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company, Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an one-time exemption from the requirements of section III.A.5(b)(2) of appendix J to 10 CFR part 50 issued to the Carolina Power & Light Company (the licensee), for the Brunswick Steam Electric Plant (BSEP), Unit 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a one-time partial exemption from the schedular requirement in section III.A.5(b)(2) of appendix J to 10 CFR part 50, which requires a Type A test to be performed at each plant shutdown for refueling until two consecutive Type A tests meet the acceptance criteria in section III.A.5(b). This exemption would allow the licensee to return the BSEP to a normal testing frequency. Presently, both BSEP units are in the accelerated testing condition of section III.A.5(b)(2) due to the as-found testing failures which were within L_a leakage limits but exceeded the 0.75 L_a limit. For Type A (containment integrate leak rate) tests conducted at peak pressure, the measured leakage rate, L_{am}, must be less than 75 percent of the maximum allowable leakage rate, L_a, measured at the calculated peak containment internal pressure, P_a. These terms are defined in section II of appendix J. In accordance with section III.A.6(b) of appendix J, if subsequently two consecutive Type A tests for a unit should fail to meet the acceptance criterion, the accelerated test frequency will be resumed. The next Unit 1 Type A test will be conducted during the Reload 9 outage, scheduled for March 1995, and the next Unit 2 Type A test will be conducted during the Reload 12 outage, scheduled for March 1997.

The proposed action is in accordance with 10 CFR 50.12, Specific Exemptions, and is based upon the information provided to the Commission in the licensee's request for exemption dated October 19, 1993.

The Need for the Proposed Action

The proposed exemption is needed to avoid outage extensions and the increased outage costs while the tests for the accelerated Type A containment leakage rate are being conducted. Granting of the exemption would return both BSEP units to a normal test frequency. The exemption would also minimize subjecting the drywell to additional structural stresses during the Type A tests.

Environmental Impacts of the Proposed Action

The Commission's staff has determined that (a) the granting of the proposed exemption would not significantly increase the probability or amount of expected containment leakage and (b) the integrity of the containment would be maintained. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. The proposed exemption would not otherwise affect radiological plant effluents. Therefore, the Commission's staff concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance testing schedular requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to this facility but could result in an increased frequency for Type A tests. This would result in the expenditure of resources without any compensating benefit.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Brunswick Steam Electric Plant, Units 1 and 2, dated January 1974.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for one-time partial exemption dated October 19, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555 and at the Local Public Document Room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 5th day of January 1994.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Acting Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–577 Filed 1–10–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–285]

Omaha Public Power District; Fort Calhoun Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40, issued to Omaha Public Power

District (OPPD/the licensee), for operation of Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would consist of revisions to 10 CFR part 20 references to recognize the new section numbers, revise definitions to ensure consistency with 10 CFR part 20, and change administrative controls for reporting and recordkeeping to maintain compliance with the new part 20. The changes would revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents and reflect the relocation of the prior 10 CFR 10.106 requirements to the new 10 CFR 20.1302. These changes are in response to the licensee's application for amendment dated May 21, 1993, as supplemented September 10, 1993, implementing the new 10 CFR part 20.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The proposed revision, in regards to the actual release rates as referenced in the Technical Specifications (TSs) as a dose rate to the maximally exposed member of the public, will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed amendment to the TSs, any alternative to the amendment will have either no significantly different environmental impact or will have greater environmental impact. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (FES) related to the operation of the Fort Calhoun Station, Unit No. 1, dated August 1972.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the application for amendment dated May 21, 1993, as supplemented September 10, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 5th day of January 1994.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Director, Project Directorate IV-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94-576 Filed 1-10-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Company, Surry Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-32 and DPR-37 issued to the Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station, Units 1 and 2 located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents, and reflect the relocation of the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. These changes are in response to the new 10 CFR Part 20. The review of an additional item, to revise the definition of "UNRESTRICTED AREA", was not completed and consequently is not included in the amendment. It will be addressed by separate correspondence.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impact of the Proposed Action

The proposed revision does not change the actual release rates as referenced in the Technical Specifications (TS) as a dose rate to the maximally exposed number of the public. Therefore, there will be no increase in the types or amounts of effluents that may be released offsite, nor an increase in individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed changes.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed changes.

Alternatives to the Proposed Action

Since the Commission's staff has concluded that there is no significant environmental impact associated with the proposed changes to the TS, any alternative to the amendments will have either no significantly different environmental impact or greater environmental impact. The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in connection with the Final Environmental Statement related to the operation of the Surry Power Station, Units 1 and 2, dated May and June 1972, respectively.

Agencies and Persons Consulted

The staff consulted with the State of Virginia regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based on the above environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the application dated July 16, 1993, as supplemented November 15, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 5th day of January 1994.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-579 Filed 1-10-94; 8:45 am]

BILLING CODE 7590-01-M

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued NUREG-1435, Supplement 3, Status of Safety Issues at Licensed Power Plants, TMI Action Plan (TMI) Requirements, Unresolved Safety Issues (USIs), Generic Safety Issues (GSIs) and Other Multiplant Actions (MPAs). The document covers the status of implementation and verification of these issues at licensed operating plants.

This NUREG has been prepared to provide a comprehensive description of the implementation and verification status of all TMI, USI, GSI and other MPAs at licensed operating plants and to make this information available to other interested parties, including the public.

Copies of the Report have been placed in the NRC's Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555. Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. GPO deposit account holders may charge their order by calling 202/275-2060. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 20th day of December 1993.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 94-580 Filed 1-10-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-373]

Commonwealth Edison Company, Lasalle County Station, Unit 1; Consideration of Issuance of an Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing Correction

In notice document 93-31188 beginning on page 67873, in the issue of Wednesday, December 22, 1993, make the following correction:

On page 67874, in the first sentence of the sixth complete paragraph in the third column, the date "January 6, 1994" should be changed to read "January 21, 1994".

Dated at Rockville, Maryland, this 4th day of January 1994.

For the Nuclear Regulatory Commission.

Anthony T. Gody, Jr.,

Project Manager, Project Directorate III-2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94-578 Filed 1-10-94; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, January 20 and Friday, January 21, 1994 at the Embassy Suites Downtown Hotel, 1250 22nd Street NW., Washington, DC, in the Consulate Room. The meetings are tentatively scheduled to begin at 9 a.m. each day. Among the topics to be discussed are global budgeting and premium limits, risk adjustment, community rating, establishment of fee schedules under health system reform, graduate medical education, coverage decisions under health system reform, fee levels and access under Medicaid, access to health care for the underserved nonphysician practitioners, and the effects of health system reform on Medicare beneficiaries.

ADDRESSES: Please note that the Commission has a new address: 2120 L Street, NW/suite 200/Washington, DC 20037. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, or Annette Hennessey, Executive Assistant, at 202/653-7220.

SUPPLEMENTARY INFORMATION: Agendas for the meeting will be available on Friday, January 14, 1994 and will be mailed out at that time. To receive an agenda, please direct all requests to the receptionst at 202/653-7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 94-560 Filed 1-10-94; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

January 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Camco International, Inc.
Common Stock, $.01 Par Value (File No. 7-11774)
Centerpoint Properties Corp.
Common Stock, $.001 Par Value (File No. 7-11775)
G&L Realty Corp.
Common Stock, $.01 Par Value (File No. 7-11776)
Matlack Systems, Inc.
Common Stock, $1.00 Par Value (File No. 7-11777)
Sofamor Danek Group, Inc.
Common Stock, No Par Value (File No. 7-11778)
Sun Communities, Inc.
Common Stock, $.01 Par Value (File No. 7-11779)
Grupo Televisa S.A.
Global Dep. Shs. (rep. 2 Ord. Participation Certificate) (File No. 7-11780)
UTI Energy Corp.

Common Stock, $.001 Par Value (File No. 7–11781)
Alexander Haagen Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11782)
AM International
Common Stock, $.01 Par Value (File No. 7–11783)
Columbus Realty Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11784)
GC Company
Warrants, No Par Value (File No. 7–11785)
Mascotech, Inc.
Common Stock, $1.00 Par Value (File No. 7–11786)
Oil Dri Corporation of America
Common Stock, $.10 Par Value (File No. 7–11787)
Compania Boliviana de Energia Electrica S.A./Bolivian Power Company Limited
Common Stock, No Par Value (File No. 7–11788)
First American Financial Corporation
Common Stock, $1.00 Par Value (File No. 7–11789)
M.I. Schottenstein Homes, Inc.
Common Stock, $.01 Par Value (File No. 7–11790)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–564 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Banco Frances Del Rio de La Plata, S.A.
Depositary Shares (rep. 3 Ord. shs Pesos 1.00 Par Value (File No. 7–11759)
Eastman Chemical Co.
Common Stock, $.01 Par Value (file No. 7–11760)
First American Financial Corp.
Common Stock, $1.00 Par Value (file No. 7–11761)
G & L Realty Corp.
Common Stock, $.01 Par Value (File No. 7–11762)
Grupo Financero Serfin, S.A. de C.V.
American Depositary Shares (rep. 4 Ser. L shs., without Par No) (File No. 7–11763)
Grupo Televisa S.A.
Global Depositary Shares (each representing 2 Ord. partic. Ctfs., each of which represents 1 Ser. A sh. 1 Ser. L sh. & 1 Div. Prem. sh.) (File No. 7–11764)
Irvine Apartment Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–11765)
Korea Equity Fund
Common Stock, $.10 Par Value (File No. 7–11766)
National Westminster Bank Plc
Exch. Cap. Sec., Ser. A (File No. 7–11767)
PaineWebber Premier High Income Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–11768)
Property Trust of America
Cum. Cv. Cl. A Pfd. Shares of Beneficial Interest, $1.00 Par Value (File No. 7–11769)
Sun Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–11770)
Valley National Bancorp
Common Stock, No Par Value (File No. 7–11771)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–565 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Inc.

January 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Brock Exploration Corporation
Common Stock, $.10 Par Value (File No. 7–11743)
Checkpoint Systems, Inc.
Common Stock, $.10 Par Value (File No. 7–11744)
Cheyenne Software, Inc.
Common Stock, $.01 Par Value (File No. 7–11745)
Golden Star Resources Ltd.
Common Stock, No Par Value (File No. 7–11746)
Levitz Furniture, Inc.
Common Stock, $.01 Par Value (File No. 7–11747)
Motor Coach Industries Int'l, Inc.
Common Stock, $.01 Par Value (File No. 7–11748)
NVR, L.P.
Warrants exp. September 30, 1996 (File No. 7–11749)
United States Cellular Corp.
Rights exp. November 15, 1993 (File No. 7–11750)
Alumax, Inc.
Common Stock, $.01 Par Value (File No. 7–11751)
Asia Pacific Fund, Inc.
Rights Expiring December 10, 1993 (File No. 7–11752)
Aviall, Inc.
Common Stock, $.01 Par Value (File No. 7–11753)
GC Companies, Inc.
Common Stock, $.01 Par Value (File No. 7–11754)
Hillhaven Corp.
Common Stock, $.75 Par Value (File No. 7–11755)
Singapore Fund, Inc.
Rights Expiring November 11, 1993 (File No. 7–11756)
Korea Equity Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–11757)
Talbot's, Inc.
Common Stock, $.01 Par Value (File No. 7–11758)

These securities are listed and registered on one or more other national

securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–566 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Compania Boliviana de Energia Electric S.A./ Bolivian Power Company Ltd.
Common Stock, No Par Value (File No. 7–11791)
M.I. Schottenstein Homes, Inc.
Common Stock, $.01 Par Value (File No. 7–11792)
First American Financial Corp.
Common Stock, $1.00 Par Value (File No. 7–11793)
Fletcher Challenge Limited
American Depositary Shares Forest Division (File No. 7–11794)
Fletcher Challenge Limited
American Depositary Shares Ordinary Shares (File No. 7–11795)
NFC Plc
American Depositary Shares (File No. 7–11796)
Georgia Power Company
Adjustable Rate Class A Pfd Stock, No Par Value (File No. 7–11797)
Buffton Corporation
Common Stock, $0.05 Par Value (File No. 7–11798)
Editek, Inc.
Common Stock, $0.01 Par Value (File No. 7–11799)
Benson Eyecare Corp.
Common Stock, $0.01 Par Value (File No. 7–11800)
Datametrics Corporation
Common Stock, $0.01 Par Value (File No. 7–11801)
Alexander Haagen Properties
Common Stock, $.01 Par Value (File No. 7–11802)
Oil Dri Corporation of America
Common Stock, $.01 Par Value (File No. 7–11803)
Simon Property Group, Inc.
Common Stock, $0.001 Par Value (File No. 7–11804)
New York State Electric & Gas Corp.
Adj. Rate Special Pfd Stock Series B Cum. $25 Par Value (File No. 7–11805)
Washington Homes, Inc.
Common Stock, $.01 Par Value (File No. 7–11806)
Sun Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–11807)
Columbus Realty Trust
Beneficial Interest, $.01 Par Value (File No. 7–11808)
Grupo Mexicano de Desarrollo S.A.
American Depositary Shares each representing one Series B Share No Par Value (File No. 7–11809)
Grupo Mexicano de Desarrollo S.A.
American Depositary Shares each representing one Series L Share No Par Value (File No. 7–11810)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–567 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33425; File No. SR–CBOE–93–58]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Maintenance by Members of Certain Written Policies and Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Rule 4.18 to provide that a member who is a lessor of a membership and who performs no other function in respect of the membership is not subject to the requirements of Rule 4.18 concerning the establishment, maintenance, and enforcement of written policies and procedures respecting misuse of non-public information. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to amend Rule 4.18 to provide that a member who is a lessor of a membership and who performs no other function in respect of the membership is not subject to the requirements of Rule 4.18 concerning the establishment,

maintenance, and enforcement of written policies and procedures respecting misuse of non-public information.

In its current form, Rule 4.18 requires all members to maintain and enforce written policies and procedures concerning non-public information. Lessor members who have no other activities, however, do not conduct any securities business in respect of their membership, and, according to the Exchange, are not required to register as broker-dealers under section 15 of the Securities Exchange Act of 1934. Under these circumstances, the Exchange believes there is no reason to subject these members to the written policy and procedure requirements of Rule 4.18, which by their terms are meaningful only to an ongoing securities business. Accordingly, Rule 4.18 is proposed to be amended to clarify that members who perform no function in respect of their membership except as lessors do not have to establish, maintain or enforce written policies and procedures precluding misuse of non-public information.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to promote just and equitable principles of trade and to protect the public interest by eliminating unnecessary costs and burdens without impairing CBOE's capacity to meet the requirements of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to that which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–58 and should be submitted by February 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–561 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33427; File No. SR-CBOE–93–53]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Designated Reporting Authority for Interest Rate Options

January 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 24, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to designate in its rules the entities that report to the Exchange the current values and the exercise settlement values of the interest rate measures underlying the interest rate options listed for trading on the Exchange. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to specify the entities that the CBOE has designated to report the current values and the closing exercise settlement values of interest rate measures underlying CBOE's interest rate options. The CBOE believes that the proposed amendment also conforms the procedures currently employed for determining current values and closing exercise settlement values of its short-term interest rate options ("IRX")[1] with those procedures recently approved by the Commission for the listing and trading on the Exchange of options based on the yields of specified U.S. Treasury notes and bonds ("Long-Term Measures").[2]

[1] 17 CFR 200.30–3(a)(12) (1993).

[1] The Exchange also currently lists and trades a long-term interest rate option which is based on composite yields of the most recently auctioned seven- and ten-year treasury notes and 30-year Treasury bonds ("LTX"). The Exchange has represented, however, that since the Treasury plans to cease issuing seven-year notes, the Exchange will not issue any new series of LTX contracts. *See* Securities Exchange Act Release No. 33106 (October 26, 1993), 58 FR 58358 (November 1, 1993) ("Exchange Act Release No. 33106").

[2] *Id.*

As amended, new Interpretation .01 to Rule 23.1 lists Telerate Inc. as the designated reporting authority of current values used for intra-day options pricing purposes and the Federal Reserve Bank of New York ("FRBNY") as the designated reporting authority of spot yields used for calculating the exercise settlement values of interest rate options.[3] The Commission recently approved those designations in connection with the listing and trading of Long-Term Measures.[4] The proposal makes those designations applicable to all interest rate options traded on the Exchange.

In addition, the proposed amendment to Rule 23.1 specifies that the Exchange will use a backup polling procedure to establish applicable underlying values for exercise settlement purposes on those occasions on the last trading day prior to expiration of the interest rate option contracts that the FRBNY does not generate the required spot yields.[5] This polling procedure will be uniform for all interest rate options traded on the Exchange.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to promote just and equitable principles of trade, to enhance cooperation and coordination with persons engaged in facilitating transactions in securities, and to protect investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5).[6] Specifically, the Commission finds, as it did in approving these same pricing procedures for the Long-Term Measures, that the CBOE proposal has been adequately designed to guard against unreliable or manipulated quotas.[7] The CBOE has been obtaining quotes from Telerate for intra-day pricing of its interest rate options without generating any concern with respect to unreliable or manipulated quotes. In this regard, the proposal merely codifies the Exchange's intra-day pricing procedures currently in effect and which have previously been approved by the SEC for use with all of the Exchange's interest rate options.[8]

With respect to the CBOE's reliance on FRBNY spot yield quotes and the backup polling procedure when those quotes are unavailable, the Commission finds as it did in approving the Long-Term Measures, that these procedures are more reliable than the polling procedures currently employed for purposes of determining closing settlement values for the IRX and the LTX option contracts.[9] Therefore, the Commission believes it is appropriate to codify these procedures, making them applicable to all of the Exchange's interest rate options.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the Exchange to begin implementing these procedures with respect to the IRX contracts as soon as possible in order to minimize any investor confusion that could arise from having varying procedures for determining closing settlement values for different interest rate option contracts. Additionally, the Commission notes that no comments were received prior to approval when these procedures were published for comment in the **Federal Register** with respect to the Long-Term Measures. Accordingly, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commisasion's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-93-53 and should be submitted by February 1, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[10] that the proposed rule change (SR-CBOE-93-53) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–623 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

[3] The spot yield is determined each business day by reference to the price and interest rate of the underlying Treasury security. Customarily, each time the Treasury issues a new note or bond, the new note or bond will become the reference instrument within its issue type. Substitution of the new issue as the reference instrument takes effect on the day following the Treasury's new issue auction. Occasionally, the most recently auctioned issue will not be the longest maturity, and in that circumstance, no substitution will occur.

[4] See Exchange Act Release No. 33106, *supra* note 1.

[5] Under this polling procedure, the CBOE's computer will randomly draw the names of ten primary government bond dealers from a list of 16 dealers. Each of the ten dealers will be asked to provide a bid and ask quotation for each relevant Treasury security. A series of checks will be conducted on each set of quotes to ensure the integrity of the process. If a quote is rejected, another dealer will be randomly selected from CBOE's list of government bond dealers to provide the necessary quotations. Once ten acceptable quotes have been obtained, the midpoint of each bid-ask quotation is determined and the midpoints are then averaged to compute the closing yield for the issue. *Id.*

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] See Exchange Act Release No. 33106, *supra* note 1.

[8] See Exchange Act Release No. 33106, *supra* note 1; Securities Exchange Act Release No. 26938 (June 15, 1989), 54 FR 26285 (order approving the listing and trading of IRX and LTX option contracts).

[9] See Exchange Act Release No. 33106, *supra* note 1.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–33428; File No. SR–CBOE–93–42]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing of Regular and Long-Term Options on the Nasdaq 100 Index

January 5, 1994.

I. Introduction

On September 22, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC") or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the Nasdaq 100 Index ("Nasdaq Index" or "Index").[3] The proposed rule change was published for comment in Securities Exchange Act Release No. 33166 (November 8, 1993), 58 FR 60710 (November 17, 1993). No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of Proposal

A. General

The CBOE proposes to trade options on the Nasdaq Index, a stock index calculated and maintained by the Nasdaq Stock Market, Inc. ("Nasdaq"), a subsidiary of the National Association of Securities Dealers, Inc. ("NASD"). The CBOE also proposes to list long-term options ("LEAPS") on the Index. Index LEAPS will trade independent of and in addition to regular Index options traded on the Exchange.

B. Composition of the Index

The Index contains one hundred of the largest non-financial securities issued by U.S. issuers and traded on the Nasdaq National Market. Nasdaq will use a capitalization-weighted method to calculate the Index.[4] As of January 3, 1994 the Index was at 398.28.

As of October 25, 1993, the market capitalizations of the individual stocks in the Index ranged from a high of $26.8 billion to a low of $437 million, with the mean and median being $2.54 billion and $1.3 billion, respectively. The market capitalization of all the stocks in the Index was $253.8 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 536 million shares to a low of 15.1 million shares. The average price per share of the stocks in the Index, for a six-month period between April 1, 1993 and September 1, 1993, ranged from a high of $103.29 to a low of $6.15. In addition, the average daily trading volume of the stocks in the Index, for the same six-month period, ranged from a high of 2.853 million shares per day to a low of 10,579 shares per day, with the mean and median being 631,631 and 407,639 shares, respectively. Lastly, no one stock comprised more than 10.54% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 33.27% of the Index's value. The percentage weighting of the lowest weighted stock was 0.17% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 1.12% of the Index's value.

C. Maintenance

The Index will be maintained by Nasdaq. Nasdaq has notified the CBOE that it recently updated the list of securities comprising the Index and will continue to make revisions to the Index on an annual basis. Nasdaq also, in its discretion, will make special adjustments to the securities comprising the Index to reflect such events as stock splits or reverse splits, spinoffs, stock dividends, reorganizations, recapitalizations, and similar events, upon their occurrence.

D. Calculation of the Index

The Index will be calculated using a capitalization-weighting methodology. The representation of each security in the Index will be proportional to the security's last sale price times the total number of shares outstanding, in relation to the total market value of all of the securities in the Index. The level of the Index is calculated as follows:

$$\text{Index Level} = \frac{\text{Current Market Value}}{\text{Adjusted Base Period Market Value}} \times 125$$

$$\text{Adjusted Base Period Market} = \frac{\text{Current Market Value After Adjustments}}{\text{Current Market Value Before Adjustments}} \times \text{Previous Base Period Market Value}$$

The numerical value of the Index was established at 250 prior to the opening of the market on February 1, 1985. At the close of the market on December 31, 1993, the Index was at 796.56. Then, effective January 3, 1994, the Index value was halved, creating an Index level of 398.28 at the market opening on January 3, 1994. The Index is calculated and disseminated every fifteen seconds to market information vendors. Nasdaq will also calculate the exercise settlement value for each expiring series of Nasdaq Index options and make this value available to the CBOE for use by the Options Clearing Corporation in effecting settlement of exercises and assignments of the options.

The Index value, for purposes of setting outstanding Index options contracts upon expiration, will be calculated based upon the regular way opening sale prices for each of the Index's component stocks on the last trading day prior to expiration.[5] Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the last reported sale price of such security will be used in any case where that security does not trade on that day.[6]

E. Contract Specifications

The proposed options on the Index will be cash-settled, European-style

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] The CBOE amended the rule change proposal on October 27, 1993 to include an updated list of the securities comprising the Nasdaq 100 Index. This list of securities became the basis of calculations of the value of the Nasdaq 100 Index as of October 26, 1993. *See* letter from Robert B. Wilcox, Jr., Schiff Hardin & Waite to Michael A. Walinskas, Staff Attorney, Division of Market Regulation, SEC, dated October 27, 1993 ("Amendment No. 1").

[4] See *infra* Section D entitled "Calculation of the Index" for a description of this calculation method.

[5] See CBEO Rule 24.9(a)(4).

[6] *Id.*

options.[7] Standard options trading hours (9:30 a.m. to 4:15 p.m. New York time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be $5.00 for full-value Index options with a duration of one year or less to expiration.[8] The Exchange intends to list up to three near-term calendar months and three additional calendar months at three month intervals.[9] As described in more detail below, the Exchange also intends to list Index LEAPS that will expire twelve to thirty-six months from the date of their issuance.

Index options (including full-value and reduced-value Index LEAPS) will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Since options on the Index will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).[10]

F. Listing of Long-Term Options on the Full-Value or Reduced-Value Nasdaq Index

The Exchange may list LEAPS that expire 12 to 36 months from date of issuance on the full-value Nasdaq Index or a reduced-value Nasdaq Index that will be computed on one-tenth the value of the full-value Index.[11] The current and closing Index value for reduced-value Nasdaq LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, a Index value of 185.46 would be 18.55 for the Index LEAPS and 185.43 would become 18.54. The reduced-value LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. The strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

The same Exchange rules which are applicable to the trading of full-value LEAPS will be applicable to the trading of reduced-value Index LEAPS. For example, both full-value and reduced-value Index LEAPS may expire from 12 to 36 months from the date of issuance, and there may be up to six expiration months beyond one year to expiration. Moreover, either full-value or reduced-value Index LEAPS may be issued at six month intervals and new strike prices will either be near or bracketing the current Index value. Strike price interval, bid/ask differential, and continuity rules will not apply to the trading of the full-value or reduced-value Index LEAPS until their time to expiration is less than 12 months. The strike price interval for reduced-value Index LEAPS will be no less than $2.50, instead of $5.00 for full-value Index LEAPS. Lastly, additional LEAPS series may be added when the value of the underlying Index increases or decreases by ten to fifteen percent.

G. Position and Exercise Limits, Margin Requirements, and Trading Halts

Position limits for the Index options Index LEAPS will be set at no more than 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in series in the nearest expiration month.[12] Exercise limits will be set at the same level as position limits.[13] CBOE hedge exemption provisions will apply to Index options and Index LEAPS.[14] Also, for purposes of determining whether a given position in reduced-value Index options complies with applicable position and exercise limits, positions in reduced-value Index options will be aggregated with positions in the full-value Index options. For these purposes, ten reduced-value contracts will equal one full-value contract for purposes of aggregating these positions.

Exchange rules applicable to the Nasdaq Index options will be identical to the rules applicable to other broad-based index options for purposes of trading rotations, halts, and suspensions,[15] and margin treatment.[16]

H. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Nasdaq Index options and Index LEAPS. These procedures include complete access to trading activity in the underlying securities.

I. Disclaimer

The CBOE has proposed placing in its Rules a disclaimer of liability made by Nasdaq and its affiliates that Nasdaq and such affiliates do not make any warranties as to the results obtained from the Nasdaq index, any opening, intra-day or closing value therefore, any related data, or any errors or delays in calculating or disseminating the Index, in connection with the trading of option contracts based on the Index. The disclaimer is similar to other disclaimers made on behalf of Standard & Poor's Frank Russell Company, and LIFFE Administration & Management, that are currently in the CBOE's Rules.[17]

III. Commission Findings and Conclusions

The Commission has reviewed the proposal to list and trade Nasdaq Index options and Index LEAPS. As discussed below, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Index is broad-based, the proposed options are designed to reduce the potential for manipulation, and the proposal to list and trade Nasdaq Index options and Index LEAPS is consistent with the CBOE's obligation to promote investor protection.[18] The Commission finds that the trading of options on the Index, including full-value and reduced-value Index LEAPS, will permit investors to participate in the price movements of the 100 securities on which the Index is based. Further, trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission, believes the Nasdaq Index options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of 100 of the largest non-financial stocks listed on the Nasdaq National Market. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of

[7] A European-style option can be exercised only during a specified period before the option expires.

[8] For a description of the strike price intervals for full-value and reduced-value Index LEAPS, *See*, Section F, *infra*.

[9] See CBOE Rule 24.9(a)(2).

[10] See notes 5 and 6, *supra*.

[11] See CBOE Rule 24.9(b).

[12] See CBOE 24.4.

[13] See CBOE Rule 24.5.

[14] See CBOE Rule 24.4(a) and Interpretation .01 to Rule 24.4.

[15] See CBOE Rule 24.7.

[16] See CBOE Rule 24.11.

[17] See CBOE Rule 24.14.

[18] The CBOE is a member of the Intermarket Surveillance Group ("ISG"), which was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The Commission understands that the ISG Agreement, as amended, covers investigations and inquiries regarding trading activity in Nasdaq Index options and component securities.

Nasdaq Index options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[19]

The trading of options on the Nasdaq Index, including the trading of full-value and reduced-value Index LEAPS, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE has addressed these concerns adequately.

A. Index Design and Structure

The Commission finds that the Nasdaq Index and reduced-value Nasdaq Index are broad-based indices, and thus it is appropriate to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options, including Index LEAPS. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the U.S. equities market. In addition, the basic character of the reduced-value Nasdaq Index, which is comprised of the same component securities as the Nasdaq Index and calculated by dividing the Nasdaq Index by ten, is essentially identical to the Nasdaq Index.

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the Index represents and consists of the common stock values of 100 actively traded U.S. companies. Second, no one particular stock or group of stocks dominates the Index. Specifically, no one stock comprises more than 10.54% of the Index's total value and the percentage weighting of the five largest issues in the Index accounts for 33.27% of the Index's value. Third, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume of 631,631 and 407,639 shares, respectively. Fourth, the market capitalizations of the stocks in the Index are very large, ranging from a high of $26.8 billion to a low of $437 million as of October 25, 1993, with the mean and median being $2.54 billion and $1.3 billion, respectively. Fifth, the Index is comprised of stocks representing a diverse group of industries, the most heavily represented by Index weight including computer software products and service, semiconductors, telephone equipment and service, broadcasting, and retail. Sixth, 97 out of the 100 component stocks in the Index, comprising 98.82% of the weighting of the Index, currently are eligible for options trading.[20] Finally, the Commission believes that, as discussed below, existing mechanisms to monitor trading activity in those securities will help deter as well as detect illegal trading activity involving the index option.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Nasdaq Index options (including full-value and reduced-value LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Nasdaq Index options and Nasdaq Index LEAPS.

C. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[21] In this regard, the NASD, which currently is the primary market for all of the Index's component securities, is a member of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[22]

D. Market Impact

The Commission believes that the listing and trading on the CBOE of Nasdaq Index options, including full-value and reduced-value Index LEAPS, will not adversely impact the underlying securities markets.[23] First, as described above, the Index is broad-based and comprised of 100 stocks with no one stock dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, the 25,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States. Fifth, existing CBOE stock index options rules and surveillance procedures will apply to Nasdaq Index options.

Lastly, the Commission believes that settling expiring Nasdaq Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is

[19] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Nasdaq Index will provide investors with a hedging vehicle that should reflect the overall movement of 100 of the largest non-financial stocks listed on the Nasdaq National Market. The Commission also believes that these options will provide investors with a means by which to make investment decisions in the utilities equity market, allowing them to establish positions or increase existing positions in utilities stocks in a cost effective manner.

[20] The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE Rule 5.3, Interpretation .01.

[21] See Securities Exchange Act Release No. 31243, 57 FR 45849 (October 5, 1992).

[22] See note 18, *supra*.

[23] In addition, the CBOE has represented that the CBOE and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and Index LEAPS. *See* letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated January 4, 1993 and memorandum from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, CBOE, dated January 4, 1993.

reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects on the securities underlying options on the Index.[24]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–CBOE–93–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–622 Filed 1–10–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–33415; File No. SR–GSCC–93–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to the Disciplining of Members

January 4, 1994.

I. Introduction

On June 25, 1993, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the disciplining of members. Notice of the proposed rule change was published in the **Federal Register** on July 26, 1993.[2] No comments were received. This order approves the proposed rule change.

II. Description

Currently, GSCC's general disciplinary rule[3] authorizes GSCC to discipline members for violations of GSCC's rules and other actions that constitute an abuse or misuse of GSCC's processes and services or otherwise reflect "conduct detrimental to GSCC's operations." The proposed rule change amends the general disciplinary rule to provide language specific to GSCC's current operations and to allow it to fulfill better its responsibilities as a self-regulatory organization.

Under GSCC's proposal, the Membership and Standards Committee (of GSCC's Board of Directors ("Board")) ("Committee")[4] classifies rules violations or incidents of detrimental conduct as either major or minor offenses. Major offenses generally involve either misconduct involving the funds or securities obligations of a member or deliberate acts of fraud or misconduct by a member. Repeated offenses of a minor nature by a member, however, may cause the member to be deemed to have committed a major offense. A member committing a major offense is subject to disciplinary action, including termination of its membership in either or both the comparison and netting systems, having GSCC cease to act for it, the imposition of a higher minimum Clearing Fund requirement, and/or a fine of up to $5,000.[5] Disciplinary actions involving ceasing to act for or termination of membership in the comparison or netting system require Board approval.

After the Committee has determined that a member committed a major offense, a letter automatically is sent to senior management of the offending member requiring that the member explain to GSCC in writing why the offense occurred and the actions taken and/or to be taken to ensure that it will not reoccur. If appropriate under the circumstances, representatives of senior management of the member may be required to appear in person before the Committee to provide such explanation.

A member committing a minor offense is subject to a fine or other disciplinary action, not to include GSCC ceasing to act for it or termination of membership. While a minor offense may not result in the imposition of a fine or other disciplinary action, for each such offense, GSCC automatically will send a letter to the management of the member that commits the offense informing it of its commission of the offense.

If the Committee (with the Board's approval in certain cases) determines that any type of disciplinary action should be taken against a member, GSCC is obligated to notify the member of such determination. In this notification, GSCC will state the reasons for the disciplinary action and will inform the member of its right to a hearing to contest the action. After receiving this notice, a member has ten business days to file a written request for a hearing.

Hearings on disciplinary actions that, under GSCC's rules, require approval by the Board,[6] are before a panel of five directors selected by the Board. Hearings on all other disciplinary actions are before a panel of three Committee members selected by the Committee. Both panels must be composed of a majority of directors who are not also GSCC officers.

A member is able to appear before the panel in person (with its counsel, if it so chooses) to contest the planned disciplinary action. Alternatively, in lieu of a personal appearance, the member can submit to the panel documentary evidence in support of its claim that the planned disciplinary action is inappropriate. GSCC will inform the member of the panel's determination, as well as the member's right to appeal further to the full Board. If the panel's decision is adverse to the member, the sanction is effective immediately.

The Board will be presented with the record of any panel hearing at its next regularly scheduled meeting. Its determination ordinarily will be made based upon a review of that record. A member does not have the right to appear in person before the Board to contest the determination of the panel; however, the Board may permit such a personal appearance in its discretion. Any appeal of the Board decision will have to be made to the Commission.

III. Discussion

Section 17A(b)(3)(A) of the Act[7] requires a clearing agency to be organized so as to enable it to enforce compliance by its participants with its rules. Section 17A(b)(3)(G) and section 17A(b)(3)(H) of the Act[8] require the rules of a clearing agency to provide that is participants shall be appropriately disciplined for violations of any provision of those rules and to provide fair procedures, consistent with section 17A(b)(5) of the Act, for disciplining participants.[9] Section 17A(b)(5) of the Act[10] outlines the procedures to be followed by a clearing agency in

---

[24] Securities Exchange Act Release No. 30944, 57 FR 33376 (July 28, 1992).

[25] 15 U.S.C. 78s(b)(2) (1988).

[26] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b) (1990).

[2] Securities Exchange Act Release No. 32644 (July 15, 1993), 58 FR 39842.

[3] GSCC Rule 48, Section 1.

[4] The Committee, which meets monthly (as necessary), acts as a disciplinary committee to address violations of the disciplinary rule. Management is responsible for presenting to the Committee rules violations and actions that, in Management's opinion, constitute detrimental conduct for the Committee's determination as to what, if any, disciplinary action is appropriate.

[5] The maximum fine amount of $5,000 is defined so as to exclude any amounts sought by GSCC to directly recompense it for costs and expenses incurred as the result of a member's misconduct. All fines must be paid within 90 days from notice of imposition of the fine.

[6] The imposition of any disciplinary action involving ceasing to act or termination of membership in either or both the comparison system or the netting system requires Board approval.

[7] 15 U.S.C. 78q–1(b)(3)(A) (1988).

[8] U.S.C. 78Q–1(b)(3)(G) & (H) (1988).

[9] See Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

[10] 15 U.S.C. 78q–1(b)(5) (1988).

disciplining participants. A clearing agency must bring specific charges, notify the participant of the charges, provide the participant with an opportunity to defend against such charges, and keep a record. GSCC's proposal is consistent with the Act, and section 17A in particular, because it provides fair, efficient procedures for disciplining participants and enforcing its decisions as required by that section.

GSCC has specific rules governing the circumstances pursuant to which it may take certain disciplinary actions against a member, such as increasing a member's margin requirements, ceasing to act for a member, terminating a member's membership in either or both the comparison and netting systems, and/or liquidating a member's positions. Pursuant to recent changes in membership standards, GSCC also has rules governing the specific consequences of a failure of a member to maintain an applicable membership standard.[11]

By providing a more formal process, the proposed rule change allows GSCC to more effectively discipline its members. Prior to imposing a sanction, members will be informed of the Committee's determination that a major or minor offense has occurred. This procedure may prevent future violations by providing members with early notice of a violation. In the case of a major offense, members must provide GSCC with a written explanation. This explanation may give GSCC guidance in determining the appropriate sanction to be imposed. The members are, in turn, permitted a greater opportunity to participate in the internal disciplinary process. By allowing the members to provide input, GSCC may be able to resolve disputes prior to an appeal to the Commission.

The Commission believes that GSCC's proposal will enable it to discipline its members for rule violations, consistent with sections 17A(b)(3)(A) and 17A(b)(3)(G) of the Act. The Commission also believes that GSCC's proposed procedures are consistent with the fair disciplinary procedures requirement of section 17A(b)(3)(H), and with the mandatory procedures enumerated in section 17A(b)(5) of the Act. The proposal permits GSCC's Board to address rule violations fairly and efficiently. Members will be provided with notice of any disciplinary action to be taken by the Committee or the Board, including the reasons for the action. Members will be given two opportunities to have an internal hearing on the proposed sanction—before a panel of the Committee or Board, and before the full Board.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, and particularly with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–GSCC–93–06) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–562 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

[11] See Securities Exchange Act Release No. 32722 (August 5, 1993), 58 FR 42993 (order approving establishment of new categories of membership in the GSCC netting system).

[Release No. 34–33426; File No. SR–PSE–93–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Modifications of the Stock Price Maintenance Requirement for Equity Options

January 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend Commentary .04 to Rule 3.7 in order to make technical corrections involving cross-referencing. The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

[1] The Exchange previously submitted this proposal on December 13, 1993, however, in response to Commission concerns, the PSE delayed effectiveness of the rule change pending amendment and resubmission to the Commission in its current form.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 30, 1993, the Commission approved an Exchange proposal to add new Commentaries to PSE Rule 3.7.[2] The Exchange is now proposing to amend one of those, Commentary .04, by changing two internal cross-references and adding the term "this" in two places. The exchange believes that the proposed changes are technical in nature and are consistent with the Commission's order approving File No. SR–PSE–91–19.[3]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an exiting rule, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e)(1) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the

[2] See Exchange Act Release No. 33257 (November 30, 1993), 58 FR 64416 (December 7, 1993).

[3] *Id.*

proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–34 and should be submitted by February 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–624 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

January 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Greater China Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11772)

Jardine Fleming China Region Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11773)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–563 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20000; 812–8592]

Equity Strategies Fund, Inc., et al.; Notice of Application January 5, 1994

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Equity Strategies Fund, Inc. ("Fund"), Nabors Industries, Inc. ("Nabors"), and Martin J. Whitman, on behalf of themselves and all "Affected Persons," as defined below.

RELEVANT ACT SECTIONS: Order requested under section 17(b) exempting applicants from section 17(a), and under rule 17d–1 to permit certain joint transactions otherwise prohibited by section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit Nabors to purchase substantially all of the assets of the Fund in exchange for Nabors common stock. The Fund would then liquidate and distribute the Nabors stock *pro rata* to its shareholders.

FILING DATE: The application was filed on September 20, 1993, and amended and restated on November 15, 1993, and January 3, 1994.

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 January 31, 1994, and should be 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 writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 767 Third Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund, incorporated in 1981 under the laws of the state of Maryland, is an open-end, non-diversified management investment company registered under the Act. The Fund's investment adviser is EQSF Advisers, Inc. ("EQSF"). The Fund does not qualify to elect to be taxed as a regulated investment company under Subchapter M of the Internal Revenue Code, and thus pays taxes on its income in the same manner as a business corporation. As of October 31, 1993, approximately 92% of the Fund's assets consisted of the common stock of Nabors.

2. Nabors, a Delaware corporation incorporated in 1978, is principally engaged in the business of contract drilling and other oilfield services. It has one class of stock, voting common stock, which is traded on the American Stock Exchange (the "AMEX"). As of October 31, 1993, approximately 18% of Nabors' stock was held by the Fund.

3. Martin J. Whitman is Chairman, President, and Chief Executive Officer of the Fund. As of October 31, 1993, he owned approximately 7.8% of the outstanding stock of the Fund. Mr. Whitman serves as a director of Nabors and has a financial interest in Nabors

---

[4] 17 CFR 200.30–3(a)(12) (1993).

other than through the Fund by virtue of his direct and indirect ownership interests in various private partnerships that hold Nabors stock. (As of October 31, 1993, these partnerships owned in the aggregate approximately 3% of the outstanding stock of Nabors.) Mr. Whitman also controls 100% of the outstanding common stock of EQSF, the Fund's investment adviser.

4. Applicants seek relief on behalf of themselves and any individuals (other than Mr. Whitman) who require relief from section 17(a) and rule 17d–1 (collectively, "Affected Persons"). "Affected Persons" are officers, directors, or employees of Nabors, the Fund, and EQSF who own shares of the Fund.

5. Pursuant to an Agreement and Plan of Reorganization (the "Reorganization Agreement"), the Fund proposes to transfer to Nabors all of its assets, other than cash and cash equivalents equal to $1 million, but none of its liabilities. The $1 million retained by the Fund shall be placed in a "Reserve Fund" for payment of any contingent liabilities and obligations of the Fund. In exchange for the Fund's assets, Nabors will transfer to the Fund shares of Nabors stock, as described more fully in the next paragraph. The exchange of Fund assets for Nabors stock will occur on the "Closing Date." As soon as practicable after the Closing Date, the Fund will liquidate and dsitribute pro rata to its stockholders of record the shares of Nabors stock received by the Fund pursuant to the Reoganization Agreement.

6. Immediately prior to the reorganization, the Fund's assets will consist entirely of Nabors stock, cash, and cash equivalents. For purposes of the reoganization, shares of Nabors stock will be valued at the average of the closing prices of Nabors stock for the five trading days immediately preceding the Closing Date (the "Market Price of Nabors Stock").[1] Cash and cash equivalents held by the Fund will be valued in accordance with generally accepted accounting principles. The number of shares of Nabors stock to be issued to the Fund in the reorganization will be determined by dividing the aggregate value of the assets transferred from the Fund to Nabors by the Market Price of Nabors Stock.

7. The Reserve Fund is designed to satisfy any currently unknown contingent liabilities that may become actual after liquidation of the Fund. Potential contingent liabilities include the possibility that the IRS or a state tax authority would assert that the Fund has made inadequate provision for taxes on past transactions, or that the Fund's net asset value had been erroneously computed. Although the Fund currently is unaware of any such liabilities, the Reserve Fund will be established to protect Fund officers and directors, who otherwise would be personally liable for such liabilities. The Reserve Fund shall be administered by one or more of the Fund's disinterested directors. Any amounts remaining in the Reserve Fund upon its termination (which, under applicable Maryland law shall occur no earlier than three years from its inception) shall be distributed *pro rata* to the Fund's stockholders of record as of the Closing Date.

8. The Fund will bear all of the expenses associated with the reorganization, except that Nabors will bear all legal fees incurred by it related to the negotiation of the Reorganization Agreement. Applicants expect the total cost of the Reorganization to range from $400,000 to $450,000, of which the Fund will pay all but approximately $100,000.

9. The Reorganization Agreement has been approved by the Board of Directors of the Fund, including the disinterested directors thereof, and by the Board of Directors of Nabors, including the nonmanagement directors thereof. (The two boards have one common member, Mr. Whitman.) Consumation of the reorganization is subject to the Commission's issuance of the order requested by applicants and to the approval of Fund stockholders. The Reorganization Agreement will be submitted to the stockholders of the Fund for approval at a special meeting. Fund stockholders will receive a proxy statement/prospectus containing information about Nabors and describing the proposed reorganization and the reasons therefor.

10. In approving the Reorganization Agreement, the Fund Board considered a number of factors. First, and most important, the reorganization is tax-free. The Fund received an IRS ruling on May 20, 1993, to the effect that, for federal income tax purposes, the reorganization will be tax-free to the Fund, the Fund's stockholders, and Nabors. Alternatives to the reorganization, including a simple liquidation of the Fund, would result in a taxable event to both the Fund and its stockholders. In this regard, applicants note that alternatives to the reorganization would require the Fund to pay tax, estimated to be about $30.3 million (approximately 35% of the Fund's net asset value), on the capital gains attributable to the appreciation of Nabors stock held by the Fund. In addition, the Fund Board considered that (i) the reorganization will eliminate the management fee currently paid by Fund stockholders, because such individuals will own Nabors stock directly, rather than indirectly through the Fund; (ii) Fund shareholders will receive readily marketable securities, since Nabors stock is traded on the AMEX; and (iii) the costs to the Fund of engaging in the reorganization will not be significant in relation to the benefits conferred.

11. Fund stockholders who oppose the reorganization may redeem their shares at any time before the Closing Date. Redeeming stockholders, however, would forego the tax benefit of the reorganization because the elimination of the capital gains tax associated with the Nabors stock will inure only to the benefit of Fund stockholders who receive liquidating distributions.

Applicants' Legal Analysis

1. Because the Fund owns of record more than 5% of the outstanding shares of Nabors, Nabors is an "affiliated person" of the Fund within the meaning of section 2(a)(3) of the Act. Because Mr Whitman controls the Fund's investment adviser, is a director of the Fund and Nabors, and holds a substantial indirect interest in Nabors, Mr. Whitman is an affiliated person of the Fund and Nabors. The Affected Persons, by virtue of their official positions and/or employment relationships, are affiliated persons of the Fund or affiliated persons of such persons.

2. Section 17(a)d of the Act, in relevant part, makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, to purchase from or sell to such registered company any security or other property. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) if: (i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of each registered investment company concerned, and (iii) the proposed transaction is consistent with the general purposes of the Act.

3. For the reasons discussed above, the Fund Board and the Nabors Board found that the reorganization is in the best interests of the Fund and Nabors,

[1] The Boards of the Fund and Nabors believe that using a five-day average, rather than a single day's price, would decrease the possibility of manipulation of Nabors stock by third party market participants.

respectively, and will not dilute the interests of the existing stockholders of either company. In addition, each Board determined that the terms of the proposed reorganization and the consideration to be paid or received are fair and reasonable and do not involve overreaching by any person. Although the Fund has agreed to pay most of the costs associated with the reorganization, applicants aver that the benefits to the Fund, in particular the elimination of a $30 million deferred tax liability, substantially outweigh any such costs. Accordingly, applicants submit that the proposed reorganization satisfies the standards of section 17(b).

4. Section 17(d) and rule 17d–1, taken together, prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in any joint enterprise or other joint arrangement in which such registered company is a participant, without prior receipt of a Commission order. Under rule 17d–1(b), the Commission will consider whether the participation of such registered company in such joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. There are no employment contracts or other special benefits accorded to any affiliated person of the Fund or Nabors under the Reorganization Agreement. Indeed, the reorganization could be considered detrimental to Mr. Whitman and those Affected Persons who are employees of EQSF because it will eliminate the management fee currently payable to EQSF by the Fund. Accordingly, applicants submit that the proposed reorganization satisfies the standards for an order under rule 17d–1.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–625 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1930]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting Cancellation

The United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) published notices of meetings in the **Federal Register**, Vol. 58, No. 218, Monday, November 15, 1993 which included a scheduled meeting on January 11, 1994.

The CCITT meeting dealing with Preparations for the Kyoto Plenipotentiary scheduled for January 11, 1994 is hereby cancelled. Hereafter, these meetings will be held under the International Telecommunications Advisory Committee, which will incorporate the CCITT, upon completion of the steps necessary to establish and provide required notices in accordance with **Federal Register** rules and regulations. For further information, contact the Office of William Jahn (202) 647–2592.

Dated: December 27, 1993.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT.

[FR Doc. 94–594 Filed 1–10–94; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21–SCRAP; Disposition of Unsalvageable Aeronautical Parts and Materials

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–SCRAP, Disposition of Unsalvageable Aeronautical Parts and Materials for review and comments. The proposed AC 21–SCRAP provides information and guidance concerning means to dispose of unairworthy aeronautical parts and materials in manners that would prevent the parts and materials from being used in aeronautical applications.

DATES: Comments submitted must identify the proposed AC 21–SCRAP File Number, PO–220–0373, and be received by March 14, 1994.

ADDRESSES: Copies of the proposed AC 21–SCRAP can be obtained from and comments sent to the following: Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21–SCRAP provides information and guidance to persons involved in the sale or maintenance of aeronautical parts on issues and practices related to the disposition of Unsalvageable aeronautical parts and materials.

Comments Invited

Interested persons are invited to comment on proposed AC 21–SCRAP listed in this notice by submitting such written data, views, and arguments as they desire to the aforementioned address. All communications received on or before the closing date for comments will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–SCRAP may be examined before and after the comment closing date in Room 333, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC on January 5, 1994.

Michael Gallagher,

Manager, Aircraft Manufacturing Division.

[FR Doc. 94–630 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Clarification of Major/Minor Repairs or Alterations Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Clarification of Major/Minor Repairs or Alterations Working Group.

SUMMARY: Notice is given of the establishment of the Clarification of Major/Minor Repairs or Alterations Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on air carrier/general aviation maintenance issues.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Leonelli, Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee, Flight Standards Service (AFS–300), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–3546; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One are the ARAC deals with is air carrier/general aviation maintenance issues. These issues involve mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR), which are the responsibility of the FAA Director, Flight Standards Service.

Task

Specifically, ARAC tasked the working group as follows: Review Code of Federal Regulations (CFR) Title 14—Aeronautics and Space, Chapter I—Federal Aviation Administration, Department of Transportation, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue of acceptable and/or approved data. If ARAC determines rulemaking documents or advisory circulars are appropriate to resolve the major/minor problem, such documents should be developed by ARAC, along with proper justifications and any legal and economic analyses.

Reports

The working group will develop and present to ARAC for consideration any combination of the following as it deems appropriate:

1. A draft notice of proposed rulemaking proposing new requirements with regard to the issue of acceptable and/or approved date with supporting economic and other required analysis, and any other collateral documents the working group determines appropriate; or

2. If new or revised requirements standards or compliance methods are not recommended, a draft report stating the rationale for those recommendations.

The working group chair (or his designee) should:

A. Recommend time line(s) for completion of the task, including rationale, for consideration at the meeting of the ARAC to consider air carrier/general aviation maintenance issues held following publication of this notice.

B. Give a status report on this task at each meeting of ARAC held to consider air carrier/general aviation maintenance issues; and

C. Give a detailed conceptual presentation to ARAC of the working group's recommendations before proceeding with drafting of documents described in paragraphs A and B above.

The Clarification of Major/Minor Repairs of Alterations Working Group will be comprised of experts from those organizations having an interest in the task assigned. A working group member need not necessarily be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group. The request will be reviewed with the Assistant Chair of the ARAC for air carrier/general aviation maintenance issues and the Chair of the Clarification of Major/Minor Repairs or Alterations Working Group, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the ARAC to consider air carrier/general aviation maintenance issues will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Clarification of Major/Minor Repairs or Alterations Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on January 5, 1994.

Frederick J. Leonelli,

Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–631 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on January 28, 1994, at 9 a.m. Arrange for oral presentations by January 18, 1994.

ADDRESSES: The meeting will be held at the General Aviation Manufactures Association, suite 801, 1400 K Street NW., Washington DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

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 given of a meeting of the Aviation Rulemaking advisory committee to be held on January 28, 1994, at the General Aviation Manufactures Association, suite 801, 1400 K Street NW, Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Review of Action Items
- Working Group Reports
  - ICPTF
  - ELT
  - Delegation System
  - Parts
  - Production Certification
- New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 18, 1994, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on January 3, 1994.

William J. Sullivan,

Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–632 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss general aviation and business airplane issues.

DATES: The meeting will be held on February 8, 1994, at 9 a.m. Arrange for oral presentations by January 25, 1994.

ADDRESSES: The meeting will be held at the American Psychiatric Association (APA), suite 800, 1400 K Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Nininger, Small Airplane Directorate (ACE-112), 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426-5688.

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 Rulemaking Advisory Committee to be held on February 8, 1994, at the American Psychiatric Association (APA), suite 800, 1400 K Street NW., Washington DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Review of Issues
- Status Reports from the FAR/JAR Harmonizing Working Groups (Including acceptance of four NPRMs)

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 25, 1994, to present oral statements at the meeting. The public may present written statements to the committee, at any time, by providing 25 copies to the Assistant Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

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

John R. Colomy,

Assistant Executive Director for General Aviation and Business Airplane Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94-633 Filed 1-10-94; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Kentucky Railway Museum, Incorporated a request for waiver of compliance with certain requirements of Federal regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Kentucky Railway Museum, Incorporated (KRM) Waiver Petition, Docket Number SA-93-7

The KRM seeks a waiver of compliance from certain Sections of 49 CFR part 231, Railroad Safety Appliance Standards. The KRM is requesting that it be permitted to operate diesel locomotive number 32 which does not comply with 49 CFR 231.29 "road locomotives with corner stairways" in that the uncoupling mechanism cannot be operated from the bottom stairway opening and Section 231.30 "locomotives used in switching service" which requires switching steps and the removal of end foot boards.

Locomotive number 32 is an EMD, Model BL-2 locomotive built in 1948. The locomotive is equipped with end footboards and arranged with a step and handhold located on the side at each corner, front and rear, for access to the walkway and cab structure. The uncoupling mechanism is operated from ground level.

The KRM is a railroad museum which operates historical equipment for the education and enjoyment of the visiting public. The train is operated between New Haven and Boston, Kentucky, a distance of 25 miles round trip at a maximum speed of 25 mph.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number SA-93-7) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street SW., Washington, DC. 20590. Communications received before February 22, 1994 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

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

Philip Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 94-557 Filed 1-10-94; 8:45 am]

BILLING CODE 4910-06-P

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM-93-16) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before February 22, 1994 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning

these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

The Pecos Valley Southern Railway Company (PVS) Waiver Petition Docket Number RSGM–93–16

The PVS seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one locomotive. The railroad operates 34 miles of track between Pecos and Saragosa, Texas. This is a sparsely populated area and the railroad states there have been no incidents of vandalism. The locomotive, an SW900 switcher, had been rebuilt and FRA Types I and II glazing installed in all locations except the two front windows over the engine. These were covered with steel plates. The PVS needed the additional visibility provided by these two windows and has installed laminated safety glass in them. The waiver would apply to these two windows. The PVS has been operating two locomotives and one caboose under waiver RSGM–80–10.

The Dow Chemical Company (ZDCU) Waiver Petition Docket Number RSGM 93–17

The ZDCU seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one locomotive. The locomotive is used primarily inside the Dow Chemical La Porte Site plant but must utilize 2600 feet of industrial main track owned by Southern Pacific Transportation Company to access another portion of their plant. The industrial track is surrounded by industry and has no road crossings. There has been no record of vandalism.

Santa Fe Southern Railway (SFS) Waiver Petition Docket Number RSGM–93–22

The SFS seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one passenger car. The SFS operates freight service between Santa Fe and Lamy, New Mexico, a distance of approximately 18 miles. The car, which was built in 1914 and recently rebuilt, is used in excursion service on their tri-weekly mixed train and in occasional charter service. The mixed train operates at 10 mph through open country and sparsely settled suburbs.

East Portland Traction Company (EPTC) Waiver Petition Docket Number RSGM 93–23

The EPTC seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for three locomotives. Operations are conducted on private right-of-way with very few grade crossings at Portland, Oregon. The three locomotives, which were built between 1948 and 1952, are shared with the EPTC's affiliate Molalla Western Railway.

Tulsa-Sapulpa Union Railway Company (TSU) Waiver Petition Docket Number RSGM 93–24

The TSU seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for four locomotives. The TSU operates between Tulsa and Sapulpa, Oklahoma, a distance of approximately 10 miles. The railroad states there have been no incidents involving glazing.

Nobles Rock Railroad (NRRX) Waiver Petition Docket Number RSGM 93–25

Rail Equipment and Transportation, Incorporated, on behalf of NRRX seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one locomotive. The NRRX operates 41.4 miles of track between Manly and Agate, Minnesota, and has trackage rights on 3.4 miles of Chicago and Northwestern Transportation Company track between Agate and Worthington, Minnesota. Maximum speed will be 10 mph with 1 or 2 daily trains.

Hartwell Railroad Company (HRT) Waiver Petition Docket Number RSGM 93–27

The HRT seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one locomotive. The HRT operates 10 miles of track in rural Hart County, Georgia, at a maximum speed of 10 mph. An average of two or three trains are operated per week. The railroad states there is no problem with vandalism.

Beaufort and Morehead Railway, Incorporated (BMH) Waiver Petition Docket Number RSGM 93–28

The BMH seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one locomotive. The BMH operates five days per week in a confined area of approximately one mile at Morehead City, North Carolina.

Delaware-Lackawanna Railroad Company, Incorporated (DL) Waiver Petition Docket Number RSGM–93–29

The DL seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for two locomotives. The railroad operates on 58 miles of track including trackage rights on the Delaware and Hudson Railroad and Consolidated Rail Corporation, all in the general vicinity of Scranton, Pennsylvania. The ALCO C–425 locomotives are equipped with FRA glazing in the front and rear windows on both sides. The waiver is requested for the side and center front windows. The previous operator, Lackawanna Valley Railroad Corporation, reported no incidents involving glazing.

Issued in Washington, DC on January 5, 1994.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 94–558 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 79–17; Notice 40]

New Car Assessment Program; Technical Report; Correlation of NCAP Performance With Fatality Risk in Actual Head-On Collisions

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of a Technical Report concerning the New Car Assessment Program (NCAP). The report examines the Correlation of NCAP Performance with Fatality Risk in Actual Head-On Collisions. In NCAP, frontal crash tests of approximately 35 passenger vehicles are conducted each year and the test results are made available to the public, in response to the Motor Vehicle Information and Cost Savings Act of 1972. The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1992 directed "NHTSA to provide a study to the House and Senate Committees on Appropriations comparing the results of New Car Assessment Program (NCAP) data from previous model years to determine the validity of these tests in predicting actual on-the-road injuries and fatalities over the lifetime of the models." In December 1993, NHTSA submitted a report to Congress, titled Response to the NCAP FY 1992 Congressional Requirements,

summarizing the agency's analyses of head-on collisions and other types of crashes. This Technical Report documents the agency's analysis of head-on collisions. The agency seeks public review and comment on the technical report. Comments received will be used to improve future analyses of the correlation of NCAP performance and fatality or injury risk.

DATES: Comments must be received no later than April 11, 1994.

ADDRESSES:

Report: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

Comments. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building 400 Seventh Street SW., Washington, DC 20590. (Docket hours, 9:30 a.m.–4 p.m., Monday through Friday.) It is requested but not required that 10 copies of comments be submitted.

Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street SW., Washington, DC 20590, and 7 copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Ephraim, Chief, Evaluation Division, Office of Strategic Planning and Evaluation, Plans and Policy, National Highway Traffic Safety Administration, room 5208, 400 Seventh Street SW., Washington, DC 20590 (202–366–1574).

SUPPLEMENTARY INFORMATION: The New Car Assessment Program (NCAP) has gauged the performance of vehicles in frontal impact tests since model year 1979. In response to Congressional direction, the National Highway Traffic Safety Administration studied the relationship between vehicle test scores in NCAP and the fatality risk in crashes of vehicles on the road. This study is based on head-on collisions, where the effect of crashworthiness can be separated from the effects of extraneous factors that influence fatality rates (drivers, roadways, mileage). Collisions between two 1979–91 passenger cars in which both drivers were wearing safety belts were selected from the Fatal Accident Reporting System. There were 396 collisions (792 cars) in which both cars were identical with or very similar to vehicles which had been tested in NCAP. In the analyses, adjustments were made for the relative weights of the cars, and for the age and sex of the drivers—factors which substantially affect fatality risk.

There are statistically significant correlations between NCAP scores for head injury, chest acceleration and femur loading and the actual fatality risk of belted drivers. A composite NCAP score, based on the test results for all three body regions, has excellent correlation with fatality risk: In a head-on collision between a car with good composite score and a car of equal weight with poor score, the driver of the car with the better NCAP score has, on average, a 20 to 25 percent lower risk of fatal injury. Slightly smaller, but still significant fatality reductions are obtained even when the NCAP scores for just one body region (just HIC, or chest g's, or femur load) are used to partition the fleet into "good" and "poor" performance groups. The borderline between good and poor NCAP scores that optimizes the differences in actual fatality risk is close to the criteria specified in Federal Motor Vehicle Safety Standard (FMVSS) 208 for each of the three body regions.

Cars built from 1979 through 1982 had, on the average, the poorest NCAP scores. Test performance improved substantially in 1983 through 1986 models, and continued to improve in 1987 through 1991 cars. In parallel, fatality risk for belted drivers in actual head-on collisions decreased by 20 to 25 percent in model years 1979–91, with the largest decreases just after 1982. The 35 mph test speed for NCAP is 5 mph higher than the test speed for FMVSS 208. By now, most passenger cars meet the FMVSS 208 criteria at the NCAP test speed. The study shows that achievement of this enhanced level of test performance has been accompanied by a significant reduction in actual fatality risk. However, being a statistical study, it does not address what portion of the fatality reduction was directly "caused" by NCAP. Also, these results do not guarantee that any individual make-model with low NCAP scores will necessarily have lower fatality risk than another make-model with higher NCAP scores.

NHTSA welcomes public review of the technical report and invites the reviewers to submit comments about the data and the statistical methods used in the report. The agency is interested in learning of any additional data that could be used to expand or improve the analyses, such as information about the curb weights of cars and light trucks.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self—addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on: January 5, 1994.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 94–568 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 4, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0129.

Form Numbers: ATF F 4473, Part I (ATF F 5300.9).

Type of Review: Extension.

Title: Firearms Transaction Record, Part I—Over the Counter.

Description: Form is used to determine the eligibility (under the Gun Control Act) of a person to receive a firearm from a Federal firearms licensee. It is also used to establish the identity of the buyer. The form is used in law enforcement in investigations/inspections to trace firearms or to confirm criminal activity of persons violating the Gun Control Act (GCA).

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 8,000,000.

Estimated Burden Hours Per Respondent/Recordkeeping: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,316,750 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–596 Filed 1–10–94; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

January 4, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1210.

Form Number: IRS Form 8379.

Type of Review: Revision.

Title: Injured Spouse Claim and Allocation.

Description: A non-obligated spouse may file Form 8379 to request the non-obligated spouse's share of a joint income tax refund that would otherwise be applied to the past-due obligation owed to a state or Federal agency by the other spouse.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 200,000.

Estimated Burden Hours Per Respondent/Recordkeeper

	Minutes
Recordkeeping	13
Learning about the law or the form	5
Preparing the form	58
Copying, assembling, and sending the form to the IRS	31

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 356,000 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–597 Filed 1–10–94; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Medical Care Reimbursement Rates for FY 94

AGENCY: Department of Veterans Affairs.

ACTION: Correction.

In notice document 93–29366 appearing on page 63439 in the issue of Wednesday, December 1, 1993, make the following correction: On page 63439, in the third column, the line "Outpatient* . . . $150" should read "Outpatient*. . . . $158."

Dated: January 5, 1994.

Patti Viers,

Acting Director, Records Management Service.

[FR Doc. 94–581 Filed 1–10–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 7
Tuesday, January 11, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the Farm Credit System Building Association.

DATE AND TIME: The special meeting of the Board concerning the Farm Credit System Building Association will be held at the offices of the Farm Credit Administration in McLean, Virginia, from 9:30 a.m. until 9:45 a.m. on January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public. The matters to be considered at the meeting are:

OPEN SESSION

A. Reports

1. FCSBA Quarterly Report

B. New Business

1. Contracting of Services Report—Jefferson Management Group, Inc.

Dated: January 6, 1994.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94–695 Filed 1–7–94; 10:13 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 13, 1994, from 9:45 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations (Final).

2. Other

a. Review of FCA Policy Statements.

Closed Session*

A. New Business

1. Enforcement Actions.

Dated: January 1, 1994.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94–696 Filed 1–7–94; 10:30 am]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, January 18, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–804 Filed 1–7–94; 3:54 pm]

BILLING CODE 6210–01–P

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-01]

TIME AND DATE: January 14, 1994 at 10:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Invs. Nos. 731-TA-636-637 (Final) (Stainless Steel Wire Rod from Brazil and France)—briefing and vote.
5. Inv. No. 731-TA-641 (Final) (Ferrosilicon from Brazil)—briefing and vote.
6. Outstanding action jacket
   1. GC-93-133, APO breach in an investigation under section 337 of the Tariff Act of 1930.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary (202) 205-2000.

Issued: January 5, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–768 Filed 1–7–94; 2:41 pm]

BILLING CODE 7020–02–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: 58 FR 68460, December 27, 1993; 58 FR 65426, December 14, 1993.

PREVIOUSLY ANNOUNCED DATE OF MEETING: January 3, 1994.

CHANGE: Addition of the following item to the closed meeting agenda:

1. Consideration of Rate Case Filing.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

At its meeting on January 3, 1994, the Board of Governors of the United States Postal Service voted unanimously to add to the agenda "Consideration of Rate Case Filing," and that discussion on the item was closed to the public pursuant to section 552b(c) (3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39, United States Code; and section 7.3 (c) and (j) of Title 39, Code of Federal Regulations and that no earlier announcement was possible. In accordance with 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

David F. Harris,

Secretary.

[FR Doc. 94–713 Filed 1–7–94; 2:40 pm]

BILLING CODE 7710–12–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on January 3, 1994, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for February 7, 1994, in Sacramento, California. The members will discuss preparations for the rate case filing.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Mackie, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39, United States Code; and section 7.3 (c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 94–714 Filed 1–7–94; 2:40 pm]

BILLING CODE 7710–12–M

federal register

Tuesday
January 11, 1994

Part II

Federal Trade Commission

16 CFR Part 453

Funeral Industry Practices; Final Amended Trade Regulation Rule

FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practices Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Final amended trade regulation rule.

SUMMARY: The Federal Trade Commission issues final amendments to the Funeral Industry Practices Trade Regulation Rule (hereafter "the Rule" or "the original Rule"), pursuant to the review mandated by § 453.10 of the Rule. That provision required that the Commission initiate a rulemaking amendment proceeding no later than four years after the effective date of the Rule to determine whether the rule should be amended or terminated.

EFFECTIVE DATE: The amended Rule will become effective on July 19, 1994.

ADDRESSES: Requests for copies of the amended Rule and the Statement of Basis and Purpose should be sent to Public Reference Branch, room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, Division of Service Industry Practices (202–326–3291), or Carol Jennings (202–326–3010) or Sally Forman Pitofsky (202–326–3318), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The amended Rule retains the Rule's primary itemization, price and other disclosure requirements, without major, substantive modification; expressly prohibits non-declinable fees (such as so-called "casket handling fees" or "basic facilities fees") charged in addition to the non-declinable fee for basic services of funeral director and staff; deletes the affirmative telephone disclosure requirement, but retains the obligation to give price and other information to consumers who request it over the telephone; and contains a series of changes to the original Rule in the nature of fine-tuning and technical revisions designed to make the Rule more effective and to facilitate compliance.[1]

STATEMENT OF BASIS AND PURPOSE

I. Introduction

A. Overview of the Original Rule

The Commission promulgated the original Rule on September 24, 1982, making it fully effective on April 30, 1984.[2] The Commission's decision to promulgate the Rule was appealed, and was subsequently affirmed in Harry & Bryant Co. v. *FTC*.[3] The Funeral Rule declares it an unfair or deceptive act or practice for funeral providers to: (1) fail to furnish price information to funeral consumers; (2) require consumers to purchase items they do not desire to buy; and (3) embalm deceased human remains for a fee without authorization. The Rule further declares it a deceptive practice for funeral providers to misrepresent: (1) the necessity for embalming, caskets for cremation, and grave vaults or grave liners; (2) legal and cemetery requirements; (3) preservation and protection capabilities of funeral goods and services; and (4) cash advance charges for items arranged for by the funeral provider on the consumer's behalf.

To prevent those practices and to correct consumers' misimpressions, the Rule contains several remedial requirements. The Rule requires that funeral providers: (1) Disclose written price information by means of a General Price List ("GPL"), Casket Price List ("CPL"), and an outer burial container price list ("OBC–PL") to persons who inquire in person about funeral arrangements or the prices of funeral goods and services (§§ 453.2(b)(2)-(4));[4]

(2) Give purchasers a written statement, after they have selected funeral goods and services, containing the prices for each of the items selected, the total price for the funeral arrangements selected, price estimates or actual costs, if known, for cash advance items, and any legal, cemetery or crematory requirements that compel the purchase of any items or services for the particular funeral (§ 453.2(b)(5));

(3) Affirmatively disclose to telephone callers who inquire about funeral "terms, prices or conditions" that price information is available over the telephone (§ 453.2(b)(1)(i));

(4) Disclose specific price information over the telephone to persons who call and request it (§ 453.2(b)(1)(ii));

(5) Make truthful representations about legal and other requirements that compel the purchase of particular items or services (§ 453.3));

---

[1] In this document, references made to material contained in the rulemaking record, and references to particular, oft-cited documents in the record, are made in the footnotes using the following abbreviations:

Tr.—The transcript of the public hearings (Vol. I–III).

HX—Exhibits presented and accepted into the record at the hearings.

R—Materials submitted by the Commission staff or interested parties, or placed on the record by the Presiding Officer. References to documents in this written ("R") portion of the rulemaking record show the category in which the document was placed, the document number, and the internal page number of the document on which the cited reference appears. The reference number for the rulemaking record itself is 215–66.

R–B–5—The Commission's official publication of the Rule and the SBP, referred to above.

R–N–1—Bureau of Consumer Protection, Federal Trade Commission, Funeral Industry Practices, Mandatory Review (16 CFR Part 453): *Final Staff Report to the Federal Trade Commission With Proposed Amended Trade Regulation Rule*, June 1990 (hereafter cited as the "Staff Report" in text, "SR" in notes).

R–O–1—The Presiding Officer's July 1990 Report ("POR").

R–A–1—The Commission's Notice of Proposed Rulemaking ("NPR") initiating the review proceeding (53 FR 19864, May 31, 1988).

R–B–2—Market Facts, Inc., *Report on the Survey of Recent Funeral Arrangers* (1988) (the FTC-sponsored study of 1,004 consumers who arranged funerals between Dec. 1986 and June 1987, hereafter cited as the "Replication Study" in the text, or "RS" in notes).

R–B–3—Office of Impact Evaluation, Bureau of Consumer Protection, Federal Trade Commission, Market Facts—Washington, and Dr. J. Paul Peter, University of Wisconsin, *Baseline and Follow-up Studies for Evaluating the Effect of the Federal Trade Commission's Funeral Home Industry Trade Regulation Rule: Final Report*, July 1982 (The FTC-sponsored study and follow-up of 1,200 consumers who arranged funerals between Nov. 1980 and May 1981, hereafter cited as the "Baseline Study" in the text, or "BLS" in notes).

HX–122—February 1989, FTC Bureau of Economics staff report analyzing expenditure, selection and compliance data from the 1988 Replication Study (hereafter cited as the "BE Report").

HX–66—1988 study, sponsored by the American Association of Retired Persons and conducted by the Gallup Organization, of 675 consumers who arranged funerals between April 1987 and Oct. 1988 (hereafter cited as the "Gallup Study").

HX–108—Statement of Rebecca Ayers, National Research, Inc., presenting the results of a national study of 500 funeral directors.

R–B–6—1985 FTC Staff publication assisting funeral providers in Rule compliance (hereafter cited as the "Compliance Guidelines").

R–M–9—Proposed Findings of Fact, Conclusions of Law, and Recommended Decision jointly submitted by the National Funeral Directors Association and the National Selected Morticians.

R–M–11—Proposed Findings of Fact, Conclusions of Law, and Recommended Decision submitted by the American Association of Retired Persons.

[2] The Rule had two effective dates. Those portions of the Rule that prohibit certain oral or written representations became effective on January 1, 1984. 48 FR 45537 (Oct. 6, 1983). The remainder of the Rule—the portions imposing affirmative obligations on funeral providers—became effective on April 30, 1984. Id. The effective date of § 453.3(b)(1)(ii) of the Rule was changed from January 1, 1984 to April 30, 1984. 49 FR 564 (Jan. 5, 1984).

[3] 726 F.2d 993 (4th Cir. 1984), cert. denied, 469 U.S. 820 (1984). The Court held that the Funeral Rule did not, as alleged, exceed the Commission's authority under §§ 5 and 18 of the FTC Act and did not violate funeral directors' First Amendment rights of commercial free speech.

[4] The Rule permits providers to incorporate the information from the casket and outer burial container price lists in the general price list. This combined list also must be offered to persons who inquire in person about funeral arrangements or the prices of funeral goods and services.

(6) Allow consumers to select and purchase only those goods and services they desire (rather than offering goods and services only in predetermined packages) (§ 453.4(b));

(7) Seek express approval before embalming the deceased for a fee (§ 453.5));

(8) Make truthful representations about the preservative and protective value of funeral goods and services (§ 453.3(e));

(9) Disclose that they charge a fee for obtaining cash advance items, if that is the case (§ 453.3(f)); and

(10) Make unfinished wood boxes or alternative containers available for direct cremation, if the provider offers direct cremation (§ 453.4(a)(2)).

The Commission in its 1982 Statement of Basis and Purpose stated that the essential purpose of the Rule is to lower barriers to price competition in the funeral market and facilitate informed consumer choice.[5] The Rule thus seeks to ensure that consumers have access to sufficient information to permit informed purchase decisions, that consumers are not required to purchase items they do not want and are not required by law to purchase, and that misrepresentations are not used to influence consumer purchase decisions.[6]

The staff on July 9, 1985 issued Final Compliance Guidelines to assist providers in their efforts to comply with the Rule.[7] Following an initial period where the Commission sought principally through educational efforts to encourage industry compliance, the Commission to date has obtained thirty-six consent orders and one litigated order in thirty-seven completed federal district court actions filed against individual providers regarding various violations of the Rule.[8]

B. The Amended Rule

The Commission, in promulgating the amended Rule, seeks to increase the Rule's potential benefits to consumers by clarifying its requirements and reducing actual or potential compliance burdens on the funeral industry. Such action should increase provider compliance with, and consumer understanding of, the Rule's disclosure and other obligations. Based on the record in this proceeding, the Commission has concluded that the low levels of industry compliance with, and consumer awareness of, the Rule do not permit a full cost-benefit analysis of its impact, because the analysis does not capture the full effects of the Rule had there been greater compliance. Despite this finding, the Commission has determined from the record evidence that the Rule is providing pro-competitive and informational benefits to consumers that outweigh its costs to providers, and that those benefits, but not costs, are likely to increase over time as Rule compliance and consumer awareness of their rights under the Rule increase. The Commission has further concluded that the record in this proceeding does not contain a sufficient basis to overturn the Rule's presumptive validity as a legally promulgated rule.

The Commission has concluded, however, that clarifying amendments to the price disclosure and "unbundling" provisions of the Rule are necessary to clarify that it shall be an unfair or deceptive practice to impose non-declinable fees in addition to the one for "basic services of funeral director and staff," permitted under § 453.2(b)(4)(iii)(C). These amendments effectively eliminate the imposition of so-called "casket handling fees" as separate non-declinable fees charged to consumers who purchase caskets from non-funeral home sources.[9] The Commission has determined that these fees serve to frustrate the Rule's basic "unbundling" requirement by penalizing consumers who decline caskets sold by the funeral home and instead purchase them from third party sellers. The emergence of third-party casket sellers, and consequently, those fees, have developed in the market since the Rule's promulgation.

The Commission further has concluded that repeal of the affirmative telephone disclosure requirement (§ 453.2(b)(1)(i)) is warranted because its costs outweigh its actual and potential benefits. The record evidence indicates that the affirmative telephone disclosure is an inartful and unnecessary signal to consumers about the availability of price information. The Commission has determined that the Rule's other price disclosure provisions are adequate, and that this provision is unlikely to provide substantial additional benefits to consumers. Record evidence indicates that the Rule is contributing now to increased consumer "price-sensitivity" that results in some consumer shopping for lower-cost providers and services. Consumers who call to first arrange a date and time for a funeral service, however, or who request the removal of remains, likely expect an empathetic response, and may be seriously offended by the uninvited offer to discuss prices. Some consumers in that circumstance are likely to interpret the affirmative disclosure as an indication of an unwarranted provider concern with the consumer's ability to afford services. The provision's likely inability to benefit consumers does not justify the imposition of such undue awkwardness and potential offense in what is otherwise an extremely delicate business, social and personal transaction. The Commission has concluded that the integrity of the

[5] 47 FR 42260 (Sept. 24, 1982), R-B-5 (hereafter cited as "SBP").

[6] 47 FR 42260 (Sept. 24, 1982), R-B-5.

[7] R-B-6 (50 FR 28062).

[8] *U.S.* v. *Troy Suggs Funeral Home*, No. CA3-87-1258-G (N.D. Tex., May 20, 1987); *FTC* v. *Crane Rhoton Services Corporation*, No. CA-3-87-1545-T (N.D. Tex., June 13, 1988); *U.S.* v. *Ware Crest, Inc.*, No. CA4-88-437-K (N.D. Tex., July, 11, 1988); *U.S.* v. *Horton Co. Morticians*, No. 88-1828 (D.D.C., July 11, 1988); *U.S.* v. *Simon Funeral Chapel*, No. 88-874PA (D. Or., August 3, 1988); *U.S.* v. *Manning Funeral Chapel, Inc.*, No. 88-4085 (D. Idaho, August 26, 1988); *U.S.* v. *Funeral Corporation Texas*, No. CA4-8929 E (N.D. Tex., January 11, 1989); *FTC* v. *Niday Funeral Home, Inc.*, No. H-88-2808 (S.D. Tex., November 1, 1989); *U.S.* v. *Errington Memorial Chapel*, No. 89-0640M (D.N.M., August 16, 1989); *U.S.* v. *Turner Funeral Home, Inc.*, No. 89-5217 (E.D. Pa., July 21, 1989); *U.S.* v. *Eddy's Funeral Home*, No. 89-593 (D. Nev., September 14, 1989); *FTC* v. *Dudley M. Hughes Funeral Co.*, 710 F. Supp. 1524 (N.D. Tex. 1989), appeal dismissed, 891 F.2d 589 (5th Cir. 1990); *U.S.* v. *Vail-Holt Funeral Homes*, No. NA90-57-C (S.D. Ind., May 11, 1990); *U.S.* v. *J.D. & M. Investment, Inc.*, No. 90-C-476-J (D. Utah, May 30, 1990); *U.S.* v. *Allen Funeral Home, Inc.*, No. IP-90-1430-C (S.D. Ind., June 8, 1990); *U.S.* v. *Fitzhenry's Funeral Home*, No. CV-N-90-282-BRT (D. Nev., June 25, 1990); *U.S.* v. *Striffler Community Funeral Homes*, No. 90-1809 (W.D. Pa., November 5, 1990); *U.S.* v. *Moore Funeral Homes, Inc.*, No. 90-C-965-C (N.D. Okla., November 14, 1990); *U.S.* v. *Wetzel and Son, Inc.*, No. 91-2562 (E.D. Pa., April 24, 1991); *U.S.* v. *Peake Memorial Chapel, Inc.*, No. CV91-637-RE (D. Or., July 5, 1991); *FTC* v. *Perkins Funeral Home, Inc.*, No. 391-CV-00556-JAC (D. Conn., September 25, 1991); *U.S.* v. *McGann & Son Funeral Home*, No. 91-C-6517 (N.D. Ill., October 30, 1991); *U.S.* v. *Goble's Fortuna Mortuary*, No. C-91-3883-SC (N.D. Cal., November 26, 1991); *U.S.* v. *Wilhelm Funeral Home, Inc.*, No. S-91-3152 (D. Md., November 6, 1991); *U.S.* v. *Restland Funeral Home, Inc.*, No. 3-91CV-2576-G (N.D. Tex., filed December 3, 1991) (in litigation); *U.S.* v. *Scala Memorial Home, Inc.*, No. 91-5679 (D.N.J., December 30, 1991); *U.S.* v. *Montrose Valley Funeral Home, Inc.*, No. 92-Z-645 (D. Colo., April 6, 1992); *U.S.* v. *Douglass-Marsh, Inc.*, No. 92-30004-F (D. Mass., January 6, 1992); *U.S.* v. *Higgins Funeral Home, Inc.*, No. 92-10100S (D. Mass., February 19, 1992); *U.S.* v. *Elliston Funeral Home*, No. 92-C-4294 (N.D. Ill., July 6, 1992); *U.S.* v. *J.M. Posey and Sons, Inc.*, No. CA3: 92-2221-17 (D.S.C., August 17, 1992); *U.S.* v. *John Harold Davis*, No. 92-1046-CIV-ORL-22 (M.D. Fla., November 13, 1992); *U.S.* v. *Valley of the Temples Mortuaries, Ltd.*, No. 92-0073 (D. Haw., December 1, 1992); *U.S.* v. *Memorial Guardian Plans, Inc.*, No. 92-2967-MlBro (W.D. Tenn., November 25, 1992); *U.S.* v. *Macias Mortuary Services*, No. C93-0193 (N.D. Cal., January 26, 1993); *U.S.* v. *Meyer Funeral Home, Inc.*, No. 1-93-CV-10010 (S.D. Iowa, March 25, 1993); *U.S.* v. *C.A. Anderson Funeral Parlors, Inc.*, No. C93-1939-EFL (N.D. Cal., June 11, 1993); and *U.S.* v. *Ronald W. Brown d/b/a/ Comisky-Roche Funeral Home*, No. C93-2819-WHO (N.D. Cal., July 29, 1993).

[9] To the extent that these fees include a charge for provider overhead that is not allocated to other items offered for sale, the amended Rule does not prohibit their inclusion in the non-declinable services fee permitted under § 453.2(b)(4)(iii)(C).

Rule's price disclosure requirements will be maintained by retention of the requirement to provide price and other readily-available information over the telephone on request.

The Commission further has adopted a variety of minor, "fine-tuning" amendments in light of the evidence on industry compliance. Those amendments are designed to clarify the Rule's requirements and reduce actual or potential compliance burdens in order to increase provider compliance with, and consumer understanding of, the Rule's disclosures. Those amendments, which do not alter providers' basic obligations or consumers' rights under the Rule, concern the timing of giving the general price list and other disclosure requirements, the casket and outer burial container price list disclosures, and the general "unbundling" provision.

Finally, the Commission has adopted several technical Rule amendments that are necessary to correct inconsistencies or unnecessary language in certain Rule provisions, or to complement other recommended amendments.[10]

C. Background of this Proceeding

1. The Commission's Findings in 1982

The Commission required this unique review to determine, at an early date: (1) Whether the Rule is operating as expected in reducing barriers to price competition and increasing informed consumer choice, or whether some modification is necessary to facilitate those benefits; and (2) whether there is a need to continue the Rule after it has had an opportunity to work in the marketplace; termination would be considered if increased competition has largely corrected the problems addressed by the Rule.[11]

The Commission determined, however, that the Rule's effects on the funeral market may be evidenced more slowly than in other industries due to factors it found unique to the funeral transaction.[12] One of those factors was that many consumers would not have exposure to the Rule-required price lists and other provisions for many years because purchases of funerals are infrequent. Unlike other situations, consumers also are unusually susceptible to influence from the funeral director's advice because of the unique combination of emotional stress, lack of experience and information, and tight time constraints. The Commission predicted as a result that the initial stimulus for price competition would likely come from existing or new providers that begin to advertise and otherwise compete on the basis of price. The Commission concluded that it could not say how quickly the Rule's competitive impact would begin to be felt in light of traditional industry constraints on price competition and barriers to entry.

The Commission nonetheless predicted that the Rule could provide economic benefits for consumers in various ways.[13] Should greater price competition emerge, for example, the Rule could reduce or hold stable actual prices and overall consumer expenditures for funerals. This would most likely result from increased consumer price-sensitivity, which might lead some consumers to shift from higher to lower-priced providers. Expenditures could also be reduced as consumers decline items previously required in packaged funerals, and as unfair or deceptive acts or practices that induced consumer purchases decline. Finally, the Commission determined that mandatory price itemization was warranted even if some consumers knowingly chose to buy more goods and services than they would have under package-only pricing. The purpose of the Rule is to enhance consumer choice.

The Commission finally determined that, while competition induced by the Rule could reduce price levels, mandatory itemization presented opportunities for providers to voluntarily raise prices.[14] Providers could choose to raise itemized prices or the price for the lowest-priced funeral, for example, in order to increase profits or account for increased consumer declinations of certain items. The Commission reasoned, however, that itemization does not require those results because it does not preclude traditional industry pricing methods, such as package pricing and "graduated recovery" of proportionately more overhead from higher-priced funerals. The Commission further concluded that providers may not be able to raise prices simply to recoup lost revenue or increase profits as price competition increases under the Rule.

2. The Mandatory Review Proceeding

The Commission on December 9, 1987 published an Advance Notice of Proposed Rulemaking (hereafter "ANPR") describing the planned review of the Funeral Rule.[15] The ANPR notified the public that the Commission intended to conduct the rulemaking, and solicited public comments on many of the key Rule-related issues. The ANPR contained 44 questions concerning consumer and funeral provider experiences, the scope of the Rule, compliance, various Rule provisions, regulatory flexibility and the paperwork burden imposed by the Rule. The majority of the commenters[16] recommended retention of the Rule. Funeral director trade groups recommended repeal or, in the alternative, substantial modification and expansion of the Rule to cover other sellers, such as cemeteries.

Following a review and assessment of the comments, the Commission on May 31, 1988 published a Notice of Proposed Rulemaking (hereafter "NPR") initiating this review proceeding.[17] The Commission in the NPR established a schedule for three public hearings to be held in Washington, Chicago, and San Francisco, and requested comment on a number of questions set out in the notice. In all, 189 individuals and groups submitted written comments, including two funeral directors, five cemetery/crematory/third-party casket seller groups or individuals, six funeral director trade associations, 147 consumers, 27 consumer/memorial society groups, one federal official and one state group.

During the public hearings,[18] testimony was received from sixteen

[10] Little, if any, systematic or otherwise reliable evidence in the record documents industry-wide deceptive or unfair practices concerning Rule-related issues by cemeteries, crematories that do not sell funeral goods, or other sellers of funeral goods or funeral services not presently subject to the Rule. Therefore, the Commission has declined to expand the Rule to cover such entities, as recommended by some rulemaking participants. See R–N–1 (SR) at 109–121 for a full discussion of the evidence on this issue.

[11] R–B–5 (Statement of Basis and Purpose) at 42261, 42299.

[12] Id. at 42299.

[13] Id. at 42297.

[14] Id. at 42296–42298.

[15] 52 FR 46706.

[16] Over 350 persons responded to the request for public comment, including 131 consumers, 134 funeral directors, 46 memorial societies, and approximately 20 trade associations and related industries.

[17] R–A–1 (53 FR 19864).

[18] Based on requests from interested parties who wished to question witnesses at the public hearings, the Presiding Officer designated four groups for that purpose: (1) The Consumer Interest Group, including the American Association of Retired Persons and the Continental Association of Funeral and Memorial Societies; (2) the Funeral Director Group, including the National Funeral Directors Association and the National Selected Morticians (that group also included William Pierson, the owner of the Hursen Funeral Home, the Illinois Funeral Directors Association, and the Conference of Funeral Service Examining Boards; (3) the Crematory and Prearrangement Group, including the Cremation Association of North America and the Pre-Arrangement Association of America; and (4) the Special Cemetery Group, including the American Cemetery Association. The Presiding

funeral directors, five monument builders, one vault seller, sixteen cemeterians/cremationists, one individual who provides business and consulting services to industry members, seven state officials, twenty consumer advocates, nine consumers/clergy/counselors, and eight economists/survey experts or consultants (one economist testified twice).

In April 1989, Rebuttal Submissions were filed by the staff, the Cremation Association of North America ("CANA"), the Monument Builders of North America ("MBNA"), the National Funeral Directors Association ("NFDA") and National Selected Morticians ("NSM") (joint rebuttal), the American Cemetery Association ("ACA"), the American Association of Retired Persons ("AARP") and the Pre-Arrangement Association of America ("PAA"). In response to a request from the Presiding Officer, those groups other than the staff also filed Proposed Findings of Fact, Conclusions of Law and Recommended Decision in May 1989.

In addition to all of the testimonial and written information just described, the record contains three national surveys of actual funeral arrangers, conducted in 1981, 1987 and 1988. The 1981 Baseline Study (or "BLS")[19] was conceived as a benchmark for later comparison with the 1987 Replication Study (or "RS").[20] Conducted for the Commission, these studies examined: (1) Consumer purchasing behavior and expenditures for funerals; (2) consumer knowledge of the funeral market; and (3) industry practices and prices. By comparing the results of the two studies, inferences could be drawn about the Funeral Rule's impact on the funeral market. The Bureau of Economics Report of February 1989[21] contains that comparative analysis. The Gallup Organization conducted the third, and most recent, study of funeral arrangers for the AARP.[22] Viewed together, those three empirical surveys represent the most reliable and comprehensive systematic data available on consumer experiences under the Rule in shopping for and choosing funeral goods and services, and of industry Rule compliance.[23]

In addition to these empirical studies, statistical data and testimony presented by Mr. Wendell Hahn of the Federated Funeral Directors of America (hereafter "FFDA"), an independent firm that provides financial and business consulting services to some 1,500 independent funeral homes in 30 states, representing about 10% of all funerals per year, afforded evidence on changes in funeral home costs of operation and prices under the Rule. A 1988 national survey of 500 funeral directors presented by the AARP provided similar evidence.[24] A 1987 survey of state laws regulating the funeral transaction is also part of the record, as is the 1984 survey of NFDA members regarding changes in provider practices under the Rule. The record further contains two national opinion surveys concerning consumers' views about, and knowledge of, various Rule requirements, and five other surveys of cemeterians, cremationists, monument builders and memorial societies conducted by interested groups on specific, Rule-related issues.

The rulemaking staff and Presiding Officer published their respective Reports in June and July 1990, summarizing the record evidence and recommending, with minor differences, retention of the Rule, repeal of the affirmative telephone disclosure, prohibition of separate non-declinable fees, in addition to the non-declinable fee for basic services of funeral director and staff, such as so-called "casket handling fees," and the adoption of several "fine-tuning" amendments.[25] In response to the Presiding Officer's published invitation,[26] forty-nine groups and individuals submitted comments on those reports by November 1, 1990.[27]

On June 20, 1991, the Bureau of Consumer Protection forwarded its final recommendations to the Commission on this review proceeding. The rulemaking staff continued the major recommendations contained in its 1990 Report, and, together with the Bureau of Economics staff, jointly recommended a separate amendment concerning the disclosures that are necessary whenever the fee for "services of funeral director and staff" is incorporated in the price of caskets offered for sale.[28] The Bureau of Economics concurred with all of the rulemaking staff's recommendations concerning substantive Rule provisions.[29]

On November 21, 1991, representatives of the NFDA, NSM, AARP, CANA, ACA, MBNA and PAA made oral presentations to the Commission concerning this review proceeding. On January 28, 1993, after reviewing the rulemaking record as a whole, the Commission voted unanimously to retain and amend the Rule, incorporating all of the substantive changes recommended by the rulemaking staff and the Bureau of Economics.

II. Basis for the Amended Rule

A. The Legal Standard for Amending the Rule

Section 18(d)(2)(B) of the FTC Act states that "[a] substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection."[30] Thus, the standard of judicial review for amendment to, or repeal of, a section 18 rule is identical to that for any rule

Officer established the last group for the limited purpose of conducting examination on whether the Rule should be expanded to include cemeteries. See R-A-37.

[19] R-B-3, supra n. 1.

[20] R-B-2, supra n. 1.

[21] HX-122.

[22] The Gallup Study, HX-66, supra n. 1.

[23] With respect to the BLS, however, the 1982 rulemaking staff concluded from its review of a telephone validation study that the BLS data were subject to qualification and differing interpretation in four specific areas where the data appeared to conflict with evidence already on the original record—consumers' receipt of telephone price information, written itemized price information and itemized statements, and requests for permission to embalm. See R-B-70 (Memorandum from Funeral Rule Staff to Commission, "Impact Evaluation Survey, Funeral TRR," July 15, 1982). The Commission in its comparative analysis of the Baseline and Replication study data does not rely on the Baseline data in those four areas.

[24] Ayers, HX-108, supra n. 1.

[25] See R-N-1 (SR) and R-O-1 (POR).

[26] 55 FR 30925 (July 30, 1990).

[27] The commenters included 22 consumer organizations (19 local funeral and memorial societies, the CAFMS—two comments, the National Consumers League, and the AARP); three individual consumers; 12 funeral industry trade associations, including five state funeral director associations (California, Illinois, Michigan, North Carolina and South Carolina), the Funeral Director Services Association of Chicago, the ACA, the CANA, the PAA, the MBNA, the Casket Manufacturers Association, and the NFDA and NSM) (joint comment); five individual funeral directors; two casket manufacturers or distributors; one cemetery/third-party casket seller, one economist, and two funeral industry financial consultants, including the FFDA.

[28] BE also recommended a clarifying change to the definition of "services of funeral director and staff," in which the rulemaking staff concurred.

[29] The Office of the Director, Bureau of Consumer Protection, favored a limited review by the Bureau of the amended Rule to measure its impact, in particular the prohibition of "casket handling fees." See Memorandum from Gerald Caplan, Deputy Director, Bureau of Consumer Protection, to the Commission, June 20, 1991 at 5. The Bureau of Economics recommended the inclusion of a future and final mandatory review of the Rule under the rulemaking procedures of section 18 of the FTC Act. See Memorandum from Peter Vander Nat, Bureau of Economics, to the Commission, August 26, 1991 at 3. The Commission has not adopted either recommendation, but has scheduled the Funeral Rule for a mandatory "notice and comment" review in 1999, in accordance with its ten-year review schedule adopted for all Commission rules and guides. See 58 FR 11554 (Feb. 25, 1992).

[30] The Commission's rulemaking standards applicable to promulgation and amendments of a Section 18 rule require a preponderance of reliable evidence. See Statement of Basis and Purpose, Credit Practices TRR, 49 FR 7740 (March 1, 1984).

prescribed pursuant to section 18. Upon judicial review, a section 18 rule may be set aside if it is "arbitrary, capricious" or otherwise not in accordance with law upon any of the grounds set forth in the Administrative Procedure Act (APA) at 5 U.S.C. 706(2)(A)–(D), or if the factual determinations upon which the rule is based are not supported by "substantial evidence" in the rulemaking record as a whole.[31]

In their Proposed Findings, funeral director groups assert that the current rulemaking is subject to the same standards and procedures as a de novo rulemaking. Therefore, they appear to contend that the Commission must support any decision, including the retention of the Funeral Rule, on a new administrative record compiled afresh.[32]

This view is incorrect. A decision to retain any portion of the current Rule may be based upon evidence gathered during the original rulemaking and the Commission's subsequent enforcement experience, as well as evidence adduced during the current rulemaking. Indeed, to the extent that nothing supplements evidence from the initial rulemaking, there is a presumption that the existing rule should be retained.[33]

As discussed elsewhere in this Statement of Basis and Purpose, the Commission has evaluated the relative costs and benefits of the Rule, industry compliance, the Rule's effect on competition and consumer awareness, and a number of other factors, to determine whether to retain, amend, or repeal the Rule. In making that determination, the Commission has taken into account, among other things, the comments received in this rulemaking as well as the record established in the original rulemaking proceeding and the Commission's experience in enforcing the existing Rule. The Commission believes that its decision to retain certain provisions of the Rule while supplementing or amending others, as described in this Statement of Basis and Purpose, comports with the legal standards discussed earlier governing Section 18 rules.

B. Overall Costs and Benefits of the Rule

1. Repeal vs. Retention: Participants' Views

The vast majority of rulemaking participants supported the Rule's retention, or its expansion to cover other sellers. Of the 189 NPR commenters and 83 public hearing witnesses, only eight unequivocally advocated repeal of the Rule.[34] Two participants suggested repeal as an alternative, if the Commission declined to make various substantive amendments; two advocated repeal because, in their view, existing state laws were deemed adequate to protect consumers.[35]

The NFDA, the largest association of funeral industry firms, was the major proponent of repeal,[36] asserting that repeal is warranted because the Rule has imposed significant costs but failed to provide its promised benefits of increased competition and altered patterns of consumer behavior. According to the NFDA, the evidence shows that consumers in selecting funeral providers and types of funeral service still place a higher importance on social, moral and practical factors (such as provider reputation and quality of service) than they do on price.[37] The NFDA concluded that the evidence logically demonstrates that consumers under the Rule spend no less for funeral arrangements, comparison shop no more, and purchase no fewer items and no different types of service than they did before the Rule. The NFDA asserted that the Rule has imposed various monetary costs on providers that have been passed on to consumers in the form of higher prices, as well as non-monetary costs that interfere with providers' ability to give caring, quality service. The NFDA thus concluded that the Rule should be repealed in its entirety because its costs outweigh its benefits.[38]

In contrast to the NFDA's view, the AARP provided the most vigorous support for retention of the Rule.[39] The AARP advocated that a decision to repeal the Rule must be founded on substantial evidence demonstrating that: (1) The acts and practices addressed by the Rule are no longer prevalent; (2) the harm resulting from those practices has been removed; (3) repeal would not permit the return of that harm; and (4) the benefits of repeal exceed the costs of continuing the Rule. According to the AARP, those questions cannot be answered, and the Rule's full impact cannot be assessed, because the record evidence reveals unacceptably low levels of industry compliance and consumer awareness of the Rule's provisions. Because the Rule's full impact cannot be gauged, the AARP

[31] 15 U.S.C. 57a(e)(3); *Consumers Union of the United States, Inc. v. FTC*, 801 F.2d 417, 422 (D.C. Cir. 1986).

[32] R–M–9 (NFDA/NSM) at 213–214. The NFDA/NSM further suggest that any change in the Rule's requirements (other than repeal) must be based on new evidence that current practices are unfair or deceptive, in accordance with the Commission's regulatory authority. Id. at 220–221. The amended Rule, however, except as noted, covers no other new acts, practices, or sellers of funeral goods or services. Moreover, the Commission concludes that the NFDA/NSM position is inaccurate. The Commission when it promulgated the Rule determined that the covered practices were unfair or deceptive, as the Rule states. The Rule, however, also contains many "preventive requirements" designed to remedy those practices. Those preventive requirements may be modified without an entirely new record, as discussed in the accompanying text. As the Commission stated in mandating this review, one of its purposes was to determine whether the Rule is operating as expected in reducing barriers to price competition and increasing consumer choice, or whether some modification is necessary to facilitate those benefits. R–B–5 (SBP) at 42299.

[33] See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).

[34] Those eight were: The NFDA (R–G–6, R–M–9); the Funeral Directors Service Association of Chicago (R–G–5)(repeal or sunset); Mr. Ninker, funeral director (R–G–1); the Conference of Funeral Service Examining Boards (R–J–1); the National Concrete Burial Vault Association (R–E–2); Mr. Hahn, FFDA, Tr. Vol. II, 674–675, 678 (because he believes the marketplace will not change significantly as a result, even though the Rule has made providers more aware of their cost components and those few consumers who are interested more aware of funeral prices); Mr. Yurs, funeral director, Tr. Vol. II, 554; and the Illinois Funeral Directors Association (R–G–2).

[35] Those four include: The NSM (R–G–3; R–M–9 at 224) (repeal unless major amendments are adopted as proposed and a "sunset" date is mandated); the NYS Funeral Directors Association (R–G–4) (Rule is redundant to New York law); Mr. Hocker, President, NFDA, Tr. Vol. III, 1399, 1400, 1444–1445 (NFDA advocates repeal, but his personal objections are limited to three areas—affirmative telephone disclosure, GPL timing and distribution, and prior permission to embalm; otherwise, the Rule has educated consumers about the funeral process and many providers say they are not overly burdened by the Rule); and Mr. Farrow, Exec. Dir, Texas Funeral Service Commission, Tr. Vol. III, 550–551, 573 (Rule is unnecessary in light of Texas funeral law, which is patterned after the Rule and benefits consumers).

[36] One issue raised during the proceedings was whether individual members of the NFDA or other trade groups agree that the Rule warrants repeal. Several surveys and other evidence introduced into the record indicated that many funeral directors may not wholly agree with the NFDA view. See, e.g., HX–32 (American Funeral Director magazine survey asked its funeral director readers "How would you recommend that the NFDA deal with the Funeral Rule during the forthcoming Review?" 70% responded that the Rule should be accepted as is or partially modified, 12% suggested substantial modification, and 20% repeal; 88% of firms represented by respondent funeral directors were NFDA members); See also, Hocker, President, NFDA, Tr. Vol. III, 1400 (many funeral directors say they are not overly burdened by the Rule); Hunter, President, NSM, Tr. Vol. I, 790–791 (majority of NSM members do not advocate repeal; parts of it have been very helpful); Ayers, HX–108 at 3 (68% of 500 funeral directors surveyed agreed that the Rule's required information was beneficial to consumers).

[37] However, the NFDA suggested that price plays a greater role in consumers' selections of individual items involved in the funeral, such as caskets and outer burial containers. R–M–9 at 20.

[38] See, e.g., R–G–6 (Comment on the NPR) at 5–7, 35, 114–121 and R–M–9 (Proposed Findings) at 216–220, 224.

[39] The other major participants in the rulemaking proceeding and consumer groups that addressed the issue all supported retention as well. These groups included the PAA, CANA, CAFMS, and Consumers Union.

concluded, repeal is unwarranted. The AARP further asserted that the evidence indicates that the Rule has not increased funeral providers' costs, funeral prices, or consumer expenditures, but has begun to provide a variety of consumer benefits. The AARP thus further concluded that, although the Commission need not meet a specific evidentiary burden to retain the Rule, such evidence exists to support the conclusion that the Rule's benefits exceed its costs.[40]

2. Costs and Benefits Compared

The Commission has concluded, based on its review of the rulemaking record viewed as a whole, that the Rule warrants retention because its actual and potential benefits to consumers outweigh its costs to providers, and that those benefits are likely to increase over time as the Rule continues to operate. The Commission finds that, at the time of this review:

(1) The Rule has not been effective in the funeral market for a sufficient period to permit a full assessment of its benefits;

(2) The market is increasingly price-sensitive for the selection of funeral providers, types of service, and individual goods and services, particularly caskets, when price and options information is readily available during the selection process;

(3) Despite a documented, low overall compliance level, pro-competitive and informational benefits attributable in part to the Rule appear to be manifesting in the market and are likely to increase over time;

(4) The Rule overall imposes minimal compliance burdens on providers that do not significantly raise their business costs or prices, or reduce consumers' satisfaction with the funeral services they receive; and

(5) Most states have not adopted laws similar to the Rule in scope and coverage, and such action is not likely in the near future.

a. Levels of compliance/price competition/consumer Awareness. The evidence in the record indicates, at the time of this review, a low level of industry compliance with the Rule. Systematic, empirical data from two independent surveys—the Commission-sponsored, 1987 Replication Study and the 1988 Gallup Study conducted for the AARP—show that 36% of funeral providers simultaneously complied with the Rule's two key requirements to give consumers a general price list ("GPL") and an itemized final statement of goods and services selected.[41] Using the more comprehensive Replication Study results, that overall compliance level dropped to 31% when misrepresentation provisions about the necessity for embalming and caskets for cremation are added to the analysis,[42] and to 9% when the GPL timing requirement is viewed strictly and several other Rule provisions are considered.[43] Most rulemaking participants opined, when asked, that a 30% level of compliance would be insufficient to assess adequately the Rule's benefits.[44]

In addition to the relatively low level of overall industry Rule compliance, the rulemaking record demonstrates that funeral providers have not provided the initial stimulus for "increased competition" on the basis of price considered necessary by the Commission. The few funeral home entrants that aggressively compete on price, documented in the record, appear to be former, more traditional funeral directors who reentered the market as "discount" providers, and who are considered to be "mavericks" by the funeral industry as a whole. More traditional funeral homes, by industry representatives' own admission, generally do not price advertise or otherwise compete on the basis of price.[45] The record further indicates that funeral providers show little support for unfettered competition in the sale of pre-need funeral services,[46] and that many affirmatively attempt to discourage potential price competition from third-party cemeteries and other non-funeral home retailers who sell caskets on a pre-need basis, by imposing so-called "casket handling fees," averaging $300–$500 per funeral on consumers who patronize those sellers.[47]

Finally, the empirical data and record testimony documents that a majority of consumers exhibit low levels of awareness concerning their rights under the Rule[48] and funeral prices and service options,[49] as a result of a general

[40] R–M–6 (Comment) at 10, 12–14 and R–M–11 (Proposed Findings) at 85–95, 144–145.

[41] HX–122 (BE Report) at 25–27; R–M–5 (Staff Rebuttal Statement) at 25, Table 7. Looking at these obligations individually, 23% of RS providers gave consumers the GPL—the key price disclosure document required by the Rule—at the outset of arrangements discussions as required, and 62% gave consumers who purchased a funeral on an item-by-item basis a properly itemized final statement. See HX–122 at Table VIII, p.20 and Table X, p.24.

[42] Id. at 26.

[43] R–M–5 (Staff Rebuttal) at 27, Table 8; R–B–2 (Replication Study/Market Facts Report) data tapes. In the BE analysis (HX–122), RS respondents were considered to have been the beneficiaries of "compliance" with respect to receipt of the GPL if they reported its receipt after discussions had begun but before selection of a casket or other container. BE staff, at the rulemaking staff's request, re-computed the compliance index using the Rule's definition of when a GPL must be given to consumers —"upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services." The result was that compliance with four of the Rule's provisions fell from 31% to 15% (timely receipt of the GPL and a properly-itemized statement, and no misrepresentations about the necessity for embalming and caskets for cremation). Overall, simultaneous compliance continued to drop from a "high" of 29% (using the most stringent BE compliance index, which added receipt of the GPL "in writing" to the four requirements stated above) to a "low" of 9% as other Rule provisions were added to the analysis.

[44] See R–N–1 (SR) at 51–56, notes 200–207.

[45] R–G–6 (NFDA/NSM Comment) at 5, 109–110, 113–114; R–M–9 (NFDA/NSM Proposed Findings) at 8–9, 31, 17–19, 199–200, 202–204; Krause, Tr. Vol. II, 12–13 (majority of Wisconsin providers do not compete); R–M–7 (PAA Rebuttal) at 21 (entry in the funeral market is virtually unheard of without a prior affiliation with a funeral home or cemetery, or the entrant is chain-related).

[46] The testimony of various funeral directors and cemeterians indicates that funeral providers as a group have supported state 100 percent pre-need "trusting" laws. The major impact of a "100 percent" trusting requirement—all moneys received from the consumer for a pre-need purchase must be placed in trust until the time of need—is to leave the pre-need seller without current funds to pay for the expenses associated with pre-need sales, such as an active sales force. See, e.g., Krause, Tr. Vol. II, 8, 13, 31, 34; Starks, Tr. Vol. II, 362–363, 367; Graf, Tr. Vol. II, 593, 649; Nelson, Tr. Vol. II, 180; and Barr, Kansas state representative/cemeterian, Tr. Vol. III, 1513.

[47] Record evidence concerning the widespread existence and effects of so-called "casket handling fees" is fully discussed in Section II.C.3, infra.

[48] Messer, trade embalmer, R–F–60 at 1; Carlson, author/lecturer, HX–22 at 7; Blake, Memorial Society of Door County, Wisconsin, Tr. Vol. II, 1119; Rouillard, Calif. Rural Legal Assistance Foundation ("CRLAF"), Tr. Vol. III, 1343–1344); Rev. Wasielewski, Inter-Faith Funeral Information Committee, Phoenix, Tr. Vol. III, 1619; Klein, consumer member, New York State Funeral Directing Advisory Board ("NYSFDAB"), Tr. Vol. II, 1060 (consumers don't expect a GPL at the beginning of arrangements or know that it's required); Botimer, Phoenix funeral director, Tr. Vol. III, 1283; Barr, Kansas state representative, Tr. Vol. III, 1537; Klugman, President, California Fed'n of Funeral and Memorial Societies, Tr. Vol. III, 924, 931; Rev. Bell, Inter-Faith Ministries of Wichita, Tr. Vol. III, 232, 247–248; Clark, Ark. A.G., Tr. Vol. III, 38; Rev. Dr. Biddle, Tr. Vol. III, 312, 337 (even "informed" consumers are unaware); Elvig, California State Cemetery Board, Tr. Vol. III, 439; Dr. Reveley, former funeral director, Tr. Vol. III, 879; Showalter, Tr. Vol. II, 105; Neel, Pittsburgh funeral director/cemeterian, Tr. Vol. I, 631; and CAFMS, R–H–12 (Comment) at 2.

[49] Hennessy, FDSA, Tr. Vol. II, 994; Showalter, Tr. Vol. II, 105, 107, 126–127 (consumers do not have basic knowledge to discriminate between products and services or know what to ask, or that a funeral is an item that one can price-shop for); SW Florida Funeral and Memorial Society, R–F–64 at 6 (purchase/embalming options and availability of published price data); Neel, funeral director/cemeterian, R–E–1 at 1; Carlson, author, Tr. Vol. I, 516, 524 (consumers are dissatisfied when they learn that they had a choice); Nelson, PAA, Tr. Vol. II, 228, 233 (especially the less expensive options); Prof. Sommer, Center for Consumer Research, Tr. Vol. III, 617, 624, 628–629 (local or national prices because no published price data/prices); Schwarcz,

Continued

lack of "visibility" of the Rule and of readily-available, comparative price information.[50] Other empirical evidence indicates that consumers' "experience" with funerals is low by any measure[51] and that, regardless of their level of experience, consumers are not "familiar" with the funeral transaction.[52] Most rulemaking participants concluded that the documented low levels of overall industry compliance and consumer knowledge, viewed together, indicate that the Rule has not been in place long enough to adequately assess its impact on the funeral market.[53]

b. Market price-sensitivity. Consumers' demand for funerals, of course, is price inelastic. Record evidence indicates, however, that consumers' selections of individual funeral providers, overall types of funeral service, and individual funeral goods and services are price-sensitive.

Consumers value available price information in selecting a funeral home and in making specific funeral arrangements, particularly when they receive the price information early in selecting funeral goods and services. With respect to the selection of a provider, 52% of NSM survey respondents in the years 1983–1988 said that they considered price "very important" in their funeral home selection, although other factors appeared to be more important; only 19% considered price unimportant.[54] Similarly, "low-cost" funeral homes, where they exist, have increased their business substantially in recent years as a direct result of their competitive pricing practices.[55] Regarding the selection of specific goods and services, many consumers are purchasing competitively-priced caskets from third-party sellers when they are available,[56] are increasingly choosing the significantly less-expensive cremation alternative,[57] are purchasing significantly fewer caskets and requesting embalming for cremation less frequently than in 1981,[58] and are declining items that used to be included in funeral "packages."[59] Replication Study consumers who received price information early in the transaction spent $252 less for their specific arrangements than those who did not get that timely information;[60] the earlier consumers received price information, the more likely they were to consider the information important to their choices in making funeral arrangements.[61]

c. Pro-competitive/informational benefits. Despite the 31% overall industry compliance level with four of the Rule's key requirements[62] and the

---

focus group, Tr. Vol. III, 460 (embalming option); Blake, memorial society, Tr. Vol. II, 1109, 1119, 1131 (cremation options/declination options); Wertheimer, NAEL, Tr. Vol. III, 964 (consumers blame their inexperience for lack of knowledge); Clark, Ark. A.G., Tr. Vol. III, 38; Buchanan, President, CAFMS, Tr. Vol. III, 1107; Dr. Biddle, Tr. Vol. III, 347; Klein, NYSFDAB, Tr. Vol. II, 1068, 1082 (don't know what to ask over the phone/ memorial societies exist to increase consumers' awareness of funeral options); Graf, cemeterian, Tr. Vol. II, 625 (don't know they can move the remains if they wanted to); Snyder, CU, Tr. Vol. III, 1261; Botimer, funeral director, Tr. Vol. III, 1284, 1289, 1311 (price variance); Rev. Wasielewski, Tr. Vol. III, 1620, 1634–1635 (casket prices/price variance); Bejarno, funeral consumer, Tr. Vol. III, 1588, 1597 (price variance); and Dr. Reveley, former funeral director, Tr. Vol. III, 898 (cremation options). But see, Yurs, funeral director (for NFDA), Tr. Vol. II, 559 (consumers with prior experience will have some idea of funeral costs); and Hahn, Federated Funeral Directors of America ("FFDA"), Tr. Vol. II, 709 (consumers are no more aware of prices because they don't price shop).

[50] Although not uncontroverted by the rulemaking staff and funeral industry representatives, the results of two national, consumer opinion surveys indicated that: (1) When asked whether they were "familiar with the FTC's Funeral Rule and what it requires," 90 percent of the 782 respondents aged 45 and above surveyed in the first of these "Excel" surveys said "no" and 10 percent answered "yes;" and (2) when asked whether each of several declarative statements about funeral director obligations and funeral consumer rights was "required by federal law or not," a majority (54 percent-75 percent) of the 916 consumer-respondents aged 21 and over said that, to the best of their knowledge, federal law does not require the rights and obligations actually mandated by the Funeral Rule, or said that they do not know. See McFadden, HX–8 at 3 and Exhibit B, Table 001; Soulas, HX–76 at 3. The "McFadden" survey results also provided evidence that older consumers aged 65 or over are significantly less likely to be aware of the Rule's protections than are younger consumers aged 18–34. HX–8 at Exhibit B, tables 002–004, 006–007.

[51] Thirty-six percent of the RS respondents reported that they had no prior experience arranging funerals; another 30 percent said that they had participated in planning arrangements once before, and the remaining third said they had done so twice before or more. R–B–2 at III–9, Table III–7. Because the RS surveyed recent funeral arrangers, however, and not the general public, the level of respondents' prior experience may not be representative of the population as a whole. The Commission found, for example, that, at the time it promulgated the Rule, about 50 percent of the adult population had never arranged a funeral and another quarter had done so only once. See R–B–5 (SBP) at 42265.

[52] The Bureau of Economics staff performed an analysis of the RS data to determine whether there was any link between respondents' degree of experience in making funeral arrangements (Question 10. of the study) and their level of knowledge about the funeral transaction (Question 55 asked whether embalming is required by law and whether a sealed casket/vault preserves remains indefinitely). BE staff divided respondents into two categories—those with arrangements experience prior to the one surveyed and those without such prior experience. BE staff then performed a statistical test to determine whether there was any relationship between those two categories and their answers to Question 55. BE staff found no relationship between the degree of respondents' reported prior experience and their level of knowledge. See R–N–1 (SR) at n. 124. In addition to BE's statistical test, the RS results show that 50 percent and 42 percent, respectively, of the RS respondents, all of whom had arranged a funeral at least once, reported incorrectly that embalming was always required as a public health measure and that a sealed casket/vault preserves remains for an indefinite time. R–B–2 at Table III–54, p. III–85.

[53] See R–N–1 (SR) at notes 115, 200–207; R-O–1 (POR) at 48–49, 223–224.

[54] The analysis is based on R–J–11, NSM Summary sheets, Question 1.f. See also, R–M–5 at 7–8. The NSM Survey results are remarkably similar to those of the RS concerning the importance of price. That data indicate that 56% of the survey respondents reported that the cost of funeral arrangements was "very" or "somewhat" important in their decision to select the funeral home they used; 15% reported that cost was somewhat or very unimportant. R–B–2 at Table III–28, p. III–39, and data tapes.

[55] Botimer, Tr. Vol. III, 1269, 1325 (based on the surveys his firm conducts, 85% of his clients choose his funeral home because of its low prices); Peebles, Tr. Vol III, 1551–1552 (the majority of his customers come to his funeral home because of its competitive prices); Heffner, HX–33 at 11 and Ex. T (annual funeral calls at the firm he recently purchased have increased 400% as a result of his discount price advertising); and Showalter, Tr. Vol. II, 130 (two discount funeral homes have captured 10% of the market in Phoenix, even though there are some 50 homes in that area, because they offer "traditional" funerals for less than $1,200).

[56] See R–N–1 (SR) at 124–127.

[57] The BE analysis showed that cremation selections increased from 11% in 1981 to 14% in 1987, and that the average cremation cost to 1987 respondents was about one-third of the cost of open-casket funerals ($1,054 vs. $2,818). HX–122 at Table II, p. 6, Table III, p. 7. BE staff noted that the close similarity of the survey results to cremation statistics provided by the CANA suggests that the BLS and RS are representative of the national population. *Id.* at n. 9.

[58] Thirty-four percent of cremation buyers in 1981 also purchased caskets, and 35 percent bought embalming services; those selections dropped in 1987 to 19% (caskets) and 25% (embalming). R–B–3 (BLS) at Table 3, p. 23; R–B–2 (RS) at Table III–44, p. III–71 (caskets) and Table III–42, p. III–67 (embalming). Similarly, CANA member surveys indicate a reduction in the purchase of caskets for cremation from 22% to 17% between 1983 and 1987, a reduction which the CANA attributed to the Rule. See Kelsey, Tr. Vol. II, 310–312, Purdy, Tr. Vol. III, 158.

[59] Hahn, FFDA, Tr. Vol. II, 684–685.

[60] HX–122 (BE Report) at 37 and Table XI, p. 38 (variable noted as "pinferly").

[61] Seventy-six percent of consumers who received price information "at the beginning" of arrangements discussions said that price information was very or somewhat important; 75% said so when they got price information "before casket selection;" 62% who reported that they received such information "when finalizing arrangements" said that it was very or somewhat important at that time; 67% said so when they got the information "after decisions had been made;" and 53% said so when there was "no discussion of price." In the first three periods above, 41%, 31%, and 22% of respondents, respectively, said that price information was "very" important. The analysis is based on consumers' answers to RS questions 27 (when price information was first received) and 35(c)(5) (importance of price information in arranging the funeral). R–B–2 at APPENDIX: Questionnaire, and data tape. See also, R–M–5 (Staff Rebuttal) at 6–7.

[62] Those four requirements are: to give consumers a timely general price list (§ 453.2(b)(4)) and itemized statement of goods and services selected (§ 453.2(b)(5)), and to refrain from misrepresenting the necessity for embalming and caskets for cremation (§ 453.3(a) and 3(b), respectively).

lack of price competition among funeral homes, competitive and informational benefits that are at least partially attributable to the Rule have begun to manifest in the funeral market. Testimonial evidence establishes that the Rule's "unbundling" and price disclosure provisions have encouraged third-party casket sellers and low-cost funeral homes to enter the market and have helped them compete,[63] in part because the GPL and telephone disclosure requirements permit non-industry entities to gather and publish comparative price data.[64] Many consumers have used that data to select those lower-cost funeral providers and purchase caskets from third-party sellers where they exist.

Other testimonial evidence presented by the FFDA, which provides financial and accounting services to 1,500 independent funeral home clients in 30 states, indicates that the Rule—through the availability of the GPL—has raised the industry's "price consciousness," which may be partly responsible for the tempering of price increases in recent years.[65] Mandatory itemization may have helped retard the growth of funeral prices and consumer expenditures, a goal fully intended by the Commission.[66] Statistical data provided by the FFDA and the Replication Study, and analyzed by an economist for the AARP and the BE staff, also establish that, although overall prices and consumer expenditures for funerals increased since 1981 by more than the general price level (the "CPI–U"), which includes all goods and services, the increase was comparable to the increase in service prices (the "CPI–US," which excludes medical services); that is, compared to other service industries,[67] funeral prices and expenditures in the period 1981–1987 did not increase above the rate of inflation.[68] In 1988, expenditures and prices for funeral services increased by even less than the rate of inflation for the general economy (the "CPI–U").[69]

In addition to these benefits, record evidence discussed above suggests that the Rule has helped increase consumers' awareness of prices and service options as factors to consider in making funeral purchase decisions. Many consumers choose low-cost funeral homes and caskets competitively offered by third-party providers, and consumers who chose cremation in 1987 purchased fewer caskets and embalming than in 1981. Finally, that evidence indicated that consumers now decline items once included in packaged funerals, and increasingly choose less-expensive cremation alternatives.[70]

Other empirical evidence indicates that, since 1981, the proportion of consumers who receive price information early in the funeral transaction, and use that information to spend less for their arrangements, has increased by 7%.[71] Consumer purchases of "unneeded" caskets and embalming for cremation have decreased,[72] as have provider misrepresentations about casket requirements,[73] and the accuracy of consumers' knowledge regarding casket for cremation and embalming requirements and the preservative value of sealed caskets has increased slightly.[74] The great majority of rulemaking participants expressed the view that the actual and potential Rule benefits just enumerated will tend to increase over time, as compliance with, and consumer awareness of, the Rule increases.[75]

Although not directly related to pro-competitive and informational benefits, other empirical evidence based on the Replication Study data and BE staff's compliance indices indicates that the proportion of consumers reporting satisfaction with their arrangements steadily increases as simultaneous provider compliance with the Rule's provisions increases.[76] That evidence indicates that compliance with the Rule benefits consumers and funeral

---

[63] Radovich, PAA, Tr. Vol. III, 1026, 1029 (virtually no third-party casket sellers existed before the Rule; casket retailers owe their existence primarily to the enactment of the Funeral Rule, which effectively allows the consumer to use a casket from an outside source); Drozda, Tr. Vol. II, 894 ("Sale of caskets through cemeteries is a relatively recent innovation. Prior to the enactment of the Funeral Rule in 1984, we were hardly aware of any cemeteries that sold caskets on their own because of the difficulty in obtaining a funeral home which would accept them and provide funeral services").

[64] Memorial society members, journalists and others testified that collecting comparative funeral price data was, at best, a difficult task before the Rule. See, e.g., R–N–1 (SR) at 86–88.

[65] Hahn, FFDA, Tr. Vol. II, 678 (funeral homes refrained from increasing prices for professional services even more than they did because of the GPL).

[66] See R–B–5 (SBP) at 42297.

[67] The funeral home industry is classified by the U.S. Dept. of Commerce in the standard industrial classification scheme (SIC) as a "service" industry, because, like other service industries, it sells services as well as goods.

[68] See R–N–1 (SR) at 76, 79–80. Even if overall industry compliance were higher and consumer expenditures still remained unchanged, the level of expenditures is not the sole test of the Rule's benefits. As the BE staff stated in its report, expenditures may rise as a result of price increases related to funeral homes' fixed costs that are not associated with any costs of Rule compliance. The record evidence indicates, in fact, that Rule compliance has not significantly increased funeral providers' costs or prices, that consumer expenditures and funeral prices, when compared to other service industries, have not increased above inflation, and that an industry "price consciousness" induced by the availability of the GPL may have tempered price increases. If the Rule's only benefit were to increase informed consumer choice (without imposing substantial costs on industry), regardless of whether some chose to spend more for their arrangements than they would have without the Rule, that benefit would likely justify retention of the Rule because other consumers would have the right to choose to spend less. The Commission in its 1982 SBP for the Rule so stated the Rule's purpose. The record evidence in fact indicates that many consumers will purchase fewer funeral items or less-expensive services as a result of informed choice.

[69] See *Funeral Service Insider*, March 20, 1989, at 2.

[70] Although the record evidence supports the conclusion that the Rule facilitates consumers' choice of cremation, the degree to which the Rule has affected the cremation rate is unclear from the record evidence. The NFDA suggested that the Rule has not played an important role in the steadily increasing cremation rate, because the increase began in the early 1970s and is based primarily on changing social and moral values, as well as on the wishes of the deceased, and not on price concerns. The CANA and the AARP, in contrast, asserted that the Funeral Rule proceedings, which also began in the early 1970s, as well as the Rule itself, substantially increased publicity about the cremation alternative, and that many consumers do choose cremation based on price and other considerations. The CANA also provided evidence that the marketing of cremation options has dramatically increased since the Rule's inception. See R–N–1 (SR) at 68–71.

[71] HX–122 (BE Report) at 15 and Table VI, p. 14.

[72] That data show that, in 1981, 18% and 11% of "direct cremation" purchasers, respectively, appear to have bought embalming services and caskets that were unnecessary, because the body is not present during the service (making embalming unnecessary) and is not buried (making a casket unnecessary). In 1987, those figures declined to 9% (unneeded embalming) and 2% (unneeded caskets), respectively. See R–M–5 (Staff Rebuttal) at 9; R–B–2 (RS) and R–B–3 (BLS) data tapes. The decline in unneeded casket purchases is statistically significant.

Record data also indicate that those arguably "unneeded" casket purchases occurred in many cases as a result of funeral director misrepresentations. Those data show that in all but one case, in instances where cremation was selected, consumers purchased a casket when told that one was required—8 of 9 instances in 1981, and 2 of 2 in 1987. Id.

[73] Seven percent of those 1987 RS respondents who purchased cremations said that the providers they used represented that a casket was required, as opposed to 26% of 1981 cremation buyers. See R–B–2 at IV–8; R–N–1 (SR) at 39, n. 149. The 26% figure may be somewhat overstated, however, because, unlike the RS, the 1981 BLS question did not include a response category permitting the compliant statement that an unfinished wood box (an alternative container that is arguably a type of casket) was required. Eleven percent of the 1987 RS respondents answered the question that way.

[74] In 1981, 19% of BLS respondents thought that caskets were required for cremation (vs. 13% in 1987); 61% said that embalming was always required (vs. 50% in 1987); and 60% in 1981 believed that a sealed casket preserved remains for an indefinite time (vs. 42% in 1987). See R–B–3 (BLS Report) at Table 9, p. 32; R–B–2 (RS Report at Table III–54, p. III–85.

[75] See R–N–1 (SR) at notes 116, 200–207.

[76] See HX–125. The analysis demonstrated that, although "satisfaction" is over 80% even when consumers report no compliance with individual measures, the proportion of satisfied consumers increases steadily as compliance with the Rule increases.

providers by increasing consumer satisfaction with funeral service, and that the level of satisfaction might continue to increase if compliance with the Rule were greater.

d. Costs to providers. While the Rule has begun to provide benefits to consumers, empirical evidence demonstrates that its requirements have not been a significant contributing factor to increases in funeral home costs of doing business or funeral home prices, or to any reduction of overall consumer satisfaction with funeral services. Funeral provider groups, however, asserted that the Rule has imposed on providers a variety of increased costs, most notably for personnel as a result of a 23-minute average increase in the duration of the arrangements conference, and for business expenses such as printing, accounting and legal services. These costs, those groups said, have been passed on to consumers in the form of higher prices, particularly for professional services.[77]

Statistical business expense data for the years 1977–1987 presented by the FFDA,[78] and analyzed by an economist for the AARP, indicates that funeral home costs arguably most related to the Rule (such as legal, accounting and consulting costs) have increased at lower rates than other expenses (such as depreciation and casket cost),[79] and that overall cost increases have resulted more from a general increase in all business expenses than from a dramatic increase in any one expense category.[80] Mr. Hahn of the FFDA further testified that the Rule has played a very minor role in business expense and price increases,[81] which he and other witnesses attributed generally to inflation and individual funeral home business decisions.[82]

Further record analysis of the FFDA statistical data by BE staff indicates that funeral homes' personnel expenses appear to have increased very slightly since 1984, but that personnel expense as a proportion of overall business expense has not significantly changed in many years, including the period covered by the Rule. Similar analysis shows that salary expense as a proportion of personnel cost has likewise remained stable.[83] Mr. Hahn of the FFDA testified that significant changes in those areas should have occurred if the Rule were significantly increasing funeral homes' personnel costs.[84]

e. State Regulation of Funeral Providers. The rulemaking record finally documents that most individual states favor the continued existence and strong enforcement of the Funeral Rule to protect funeral consumers, rather than reliance on the states to adopt comprehensive, state-specific legislation. A 1987 staff survey of the states' funeral industry statutes, regulations and rules revealed that ten states have incorporated the Rule by reference into their laws or adopted provisions similar to six of the Rule's most salient requirements; six have enacted at least four of those provisions, and, overall, thirteen to twenty-five states have laws that include one or more provisions similar to the Rule.[85] No party presented evidence during the review that additional states have adopted relevant funeral laws or that existing laws have been significantly strengthened.

Testimonial evidence presented by state legislators and officials further indicates that, although the Rule has helped stimulate the enactment of similar funeral industry laws in several states, such reform is unlikely in their or other states because of industry opposition. Those witnesses expressed their views that the Funeral Rule needs to be retained as a result, and is beneficial to consumers, funeral providers, and state enforcement officials.[86]

C. Section-by-Section Analysis

1. Introduction

The Rule as amended contains two major changes—deletion of the affirmative telephone disclosure requirement and the prohibition of non-declinable fees (such as so-called "casket handling fees" and "basic facilities fees") charged in addition to the non-declinable fee for basic professional services of the funeral director and staff. These primary changes, and a number of "fine-tuning" amendments, are intended to increase the Rule's benefits and reduce its costs by facilitating funeral providers' compliance with, and consumer understanding of, the Rule's requirements, while preserving the integrity of the Rule's "unbundling" and price disclosure requirements. Finally, the Commission has made several technical amendments to the Rule that are necessary to correct inconsistencies or unnecessary language in certain Rule provisions, or to complement other amendments.

2. Affirmative Telephone Disclosure Repeal: Section 453.2(b)(1)(i)

Section 453.2(b)(1)(i) of the original Rule required funeral providers to affirmatively tell persons who call and ask about the "terms, conditions, or prices" at which funeral goods or funeral services are offered that price information is available over the telephone. The Commission has decided that the affirmative telephone disclosure provision should be deleted from the Rule because its costs outweigh its actual and potential benefits to consumers, and because the integrity of the Rule's price disclosure requirements will be maintained by retaining the requirement to provide price information over the telephone on request.

The Commission designed this provision to help consumers in two ways. First, it would alert them to the availability of price information over the telephone, and, second, it might diminish consumers' reluctance to seek such information. The Commission intended that affirmative disclosure

[77] See, e.g., R–M–9 (NFDA/NSM) at 62–76, 89–96 and McChesney, HX–126–A at 52–53, 86–89.

[78] Federated Funeral Directors of America (FFDA) processes records from 1,500 funeral home clients in 30 states that conduct about 181,000 funerals a year, representing just under 10% of all deaths. FFDA is the largest company of its type in the country. Hahn, Tr. II, 662–663.

[79] Dr. Barnow, speaking on behalf of the AARP, reported that his review of the FFDA data showed that accounting, consultants and legal costs were responsible for 2.6% of the real increase in overall funeral home costs since 1981, whereas depreciation and casket cost respectively accounted for 14.9% and 9.3% of the real increase in costs. See Dr. Barnow, HX–118 at 14 and Exhibit 2, pp.12–13. Dr. Barnow further stated that increased compliance would not substantially increase the Rule's costs, because there are no identifiable, major costs imposed by the Rule now on providers. Tr. Vol. I, 880, 883.

[80] HX–118 at 14. Dr. Berry, an economist and industry observer appearing on his own behalf, agreed that the Rule has not had a significant influence on funeral home costs. Tr. Vol. I, 151.

[81] Tr. Vol. II, 681, 683–85, 689–90.

[82] Id. at 678–80, 683, 688–689, 709; R–C–7 (*American Funeral Director* magazine interview with Mr. Hahn) at 3; Pierson, R–D–1 at 2; Ninker, R–G–1 at 3; Davis, Illinois FDA, R–G–2 at 1; Botimer, Tr. Vol. III, 1292; and FDSA of Chicago, R–G–5 at 25;; Krause, Tr. Vol. II, 24; and Longmire, R–D–2 at 5; see also, R–N–1 (SR) at 83, n. 402 and McChesney, HX–126–A at 53, which contains the following quote from *Business Trends Analysts:*

When first proposed, many believed the Funeral Rule would lower funeral and cremation service prices because lower-priced options would be made known to the consumer. However, when put into effect, the Funeral Rule caused funeral directors to examine their costs. In doing so, many realized that they had been "giving away" some services. In effect, funeral directors became more business-oriented as a result of the FTC rulings, and found that they could actually raise prices.

[83] See HX–50 (BE Personnel Expense Data Analysis).

[84] Tr. Vol. II, 688.

[85] See R–C–12 (staff survey); R–J–1 (Conference of Funeral Service Examining Boards survey) at 4–6.

[86] See the testimony cited in R–N–1 (SR) at 97–100.

provision to facilitate consumers' comparison shopping for a provider.[87]

Empirical evidence presented by the Replication Study, however, indicated that few consumers comparison shop before selecting a provider. The Commission in the NPR thus requested public comment on whether: (1) Consumers are aware of their right to seek price information over the telephone; (2) compliance with this provision is costly; and (3) it should retain the affirmative telephone disclosure provision in view of the study results.[88]

Empirical and testimonial evidence in the record provided insights into the delicate relationship between consumers and funeral providers that appear to affect the degree to which consumers seek price information directly from providers. Results from the Baseline, Replication and Gallup Studies indicated that consumers seldom seek price information or comparison shop by calling providers directly. In 1981, 7.2% of the Baseline Study respondents comparison shopped by contacting more than one funeral home;[89] 4.2% of the 1987 Replication Study respondents did so,[90] and 11% of the 1988 Gallup Study consumers contacted more than one provider.[91] Most 1987 Replication Study respondents knew which funeral provider they intended to use,[92] and those who had not decided on a funeral provider usually contacted only one at the time of need.[93] In the initial telephone contact, RS respondents asked about "prices, terms or conditions" only 9.2% of the time.[94]

Record evidence indicated that both consumers and providers are reluctant to initiate price discussions during funeral arrangements.[95] The evidence indicates that, unlike a visit to the funeral home, where the general price list facilitates the actual review of services and merchandise, the offer to discuss prices over the telephone is helpful only if the consumer is prepared to do so. The weight of the evidence demonstrates that the initial telephone contact is a tentative encounter in which the consumer is relying on the funeral provider to set the tone of the interaction. The funeral provider at that delicate time, however, reasonably wishes to avoid the appearance of insensitivity by raising price issues when the callers' typical concerns are whether and how to arrange the funeral with the particular provider.

Several provider witnesses[96] testified that the affirmative telephone disclosure has offended callers, who interpret the disclosure as an indication of the funeral provider's preoccupation with the consumer's ability to afford services.[97] For example, a state funeral board member observed that, whenever a client calls first to arrange a date and time for a funeral service, expecting an empathic response, the consumer is offended by the funeral director's uninvited statement that price information is available, and the funeral provider resentful about having to make such a statement at this early juncture.[98] Other providers distinguished between the accepted practice of giving price information that is requested, and the difficulty of telling the caller who has not requested it that the funeral provider is prepared to talk about prices.[99] Funeral director representatives concluded that providers' goodwill is harmed as a result of the offense generated by the unsolicited affirmative disclosure, which providers under the Rule must make during the initial telephone contact.[100]

The evidence further shows that providers experience difficulty in understanding their obligation under § 453.2 (b)(1)(i). Under that affirmative disclosure provision, a funeral provider must either tell every caller that price information is available, or determine whether an inquiry concerns a "term," "condition," or "price" of funeral goods or funeral services offered, thus triggering the disclosure. The original staff Compliance Guidelines illustrated that problem; the Guidelines told funeral providers that a call asking whether the provider will perform a funeral for a particular religion does not trigger the disclosure, whereas a call asking whether the provider will remove the deceased from a hospital does.[101] The difficulty of determining whether an inquiry concerns a "term" or "condition" thus places a clear burden on the provider, without a commensurate benefit to the caller.[102]

Other empirical data indicate that the disclosure does not affect consumers' expenditures for funeral arrangements. Economic analysis of the Replication Study data indicated that those consumers who called the provider and received the Rule-required affirmative disclosure spent no less for their arrangements than other respondents.[103]

Consumer group participants, however, suggested that the affirmative disclosure was meant to signal

---

[87] R–B–5 (SBP) at 42273.

[88] R–A–1 at 19869 (Question 7).

[89] HX–122 (BE Report) at 14, Table VI.

[90] Id. (42 of 991) Eighty-five percent of respondents had already decided on a funeral home before contacting any. R–B–2 at Table III–18, p. III–24. Eighty-two percent of those who had not decided on a particular funeral home contacted only one funeral home. Id. at III–25.

The study contractor, Market Facts, in its report stated that these results "must be viewed with extreme caution" because so few respondents (43) contacted multiple funeral homes and even fewer (35) contacted any by telephone. Id.

[91] Colasanto, HX–66 at Ex. B, p. 7 and Tabs, p. 19 (68 of 607).

[92] R–B–2 at Table III–18, p. III–24 (85% had already selected the provider).

[93] Id. at III–25 (95% of the respondents who had not decided on a funeral provider before contacting one still contacted only one).

[94] HX–122 (BE Report) at 16.

[95] See R–N–1 (SR) discussion at 61; Hocker, Tr. Vol. III, 1435; Johnson, Tr. Vol. I, 744; Starks, Tr. Vol. II, 402–403; and Hennessy, Tr. Vol. II, 1024.

[96] None of the systematic, empirical evidence in the record addressed the question whether the unsolicited disclosure during the initial telephone discussion that price information is available was offensive or confusing to consumers. The Gallup results indicated that most arrangers (83%) are not offended "when funeral directors give them information about the cost of funeral services when they first begin making arrangements." See Colasanto, HX–66 at Appendix B, Tabulations, p. 24. That question, however, refers more specifically to consumers' feelings about actual price information offered by providers during the arrangements conference, such as providers' offer of the GPL, and not to consumers' views about the affirmative telephone disclosure that price information is available.

[97] Hocker, Tr. Vol. III, 1400–1401 ("It's very difficult sometimes to tell people price information is available on the telephone when they don't ask for it and when it's the furthest thing from their mind. It creates a real awkwardness for us. There are many times people want to have an idea of when they can have the service, how long they can wait, Joey's in Germany in the service and he has to come back home, and to tell them that price information is available on the telephone is sometimes an intrusion when it's not called for."). See also, Nilsen, Tr. Vol. III, 1482; and Keith, Tr. Vol. III, 1459.

[98] J. Hunter, Tr. Vol. III, 603–604. See also, Nilsen, Tr. Vol. III, 1482 ("It just simply makes it look to callers that instead of caring individuals we're money-hungry professional or business people out there; that's what it does to the consumer at that point in time.").

[99] See Keith, Tr. Vol. II, 1459 ("We're objecting to the disclosure at that moment, that triggering event, not to the disclosure of the prices over the telephone upon request"); and Hocker, Tr. Vol. III, 1464, 1480 ("I would rather not have to make an affirmative statement unless people asked for price information, and then you know that they're interested in it, and so there's no problem.").

[100] See, e.g., Hennessy, HX–61 at 7–8; Farrow, HX–85 at 4; and Johnson, Tr. Vol. I, 748.

[101] R–B–6 at 28062, 28064 (Illustrations #2 and #6).

[102] The Commission, however, has not adopted the AARP-suggested modification that would resolve this compliance problem by requiring funeral providers to inform all callers that price information is available over the telephone. The record contains substantial evidence that some consumers would be offended unnecessarily by such unsolicited remarks, and that substantial harm to funeral providers' reputations could occur, without significant consumer benefit. These possibilities further may increase the likelihood of non-compliance, which the evidence suggests may be no greater than 50% at this time. On balance, ensuring that those callers who seek price information can obtain it would better assist consumers in making informed selections.

[103] HX–122 (BE Report) at 17.

consumers who are reluctant to raise price issues that it is acceptable to do so, and that providers can find ways to make that disclosure without offending consumers.[104] Although the empirical evidence is not conclusive on the issue, the preponderance of the reliable anecdotal evidence provided by many funeral directors who must make the disclosure to consumers supports the conclusion that the requirement's potential to overcome consumers' inhibitions and benefit additional consumers is unlikely, and does not justify the imposition of awkwardness and potential offense in a transaction already fraught with delicate business, social and personal issues.

In summary, the record evidence shows that consumers rarely price shop for a funeral home or seek price information directly from providers because of their reluctance to do so and their general lack of awareness about prices charged by providers, and not because of a conviction that price information cannot be requested over the telephone. The affirmative disclosure that price information is available thus does not appear to give consumers new information that is likely to increase their desire to ask about prices or to encourage price shopping.

The record evidence further indicates, however, that the Rule overall is contributing to increased consumer "price sensitivity" that leads some additional consumers to use the telephone to shop for lower-cost providers, or to seek comparative price information from non-industry sources. Consequently, consumers who want price information will affirmatively use the telephone to seek such information from providers who advertise prices, or to engage in alternative shopping methods, such as calling memorial societies, media price "hotlines," or state agencies that make comparative price information available.[105] The Commission has concluded that consumers will increasingly seek price information as their awareness, and the availability, of comparative price information increases.

The preponderance of the evidence in the rulemaking record indicates that the affirmative telephone disclosure is an inartful and unnecessary signal to consumers about the availability of price information that is unlikely, over time, to provide substantial benefits to consumers not afforded by the Rule's other price disclosure provisions.[106]

In light of this evidence, the Commission has determined to repeal the affirmative telephone disclosure provision because its potential to benefit additional consumers is unlikely, and does not warrant the intrusion of potential offense in what is otherwise an extremely delicate business, social and personal transaction. The Commission further concludes that the integrity of the Rule's price disclosure requirements will be maintained by retention of the general requirement to provide price and other readily-available information over the telephone on request (§ 453.2(B)(1)).

Funeral provider representatives, however, suggested that such action would concede what they consider the Rule's premise that increased comparison shopping was necessary to cure "supracompetitive" prices.[107] That suggestion, however, overstates the importance of the disclosure to achieve the goal of increasing comparison shopping, and fails to acknowledge record evidence indicating that the Rule overall already has contributed to increased price competition.[108]

The Commission in its Statement of Basis and Purpose for the Rule clearly expressed its view that the general telephone requirement to give price information on request, and the requirement to give the GPL to any person seeking in-person information about funeral arrangements, in addition to the affirmative telephone disclosure, would all contribute to increased comparison shopping.[109] Nevertheless, the Commission did not base the Rule's entire success in reducing barriers to price competition on the affirmative telephone disclosure or on comparison shopping, because it fully recognized that such behavior might always be infrequent.[110] As described above, the Rule's provisions already are providing pro-competitive benefits to consumers, including increased price sensitivity, despite the low overall levels of industry compliance, price competition and consumer knowledge demonstrated by the record. Those benefits are likely to increase over time as industry compliance with, and consumer awareness of, the Rule's other provisions increases.

3. "Casket Handling Fees:" Section 453.4(b)(1)(ii)

One benefit the Commission ascribed to the Rule in its 1982 Statement of Basis and Purpose was that "the greater availability of price information may encourage entry into the funeral market of new competitors seeking to attract business by offering lower prices."[111] That prospective benefit was important to the Rule's remedial intent, because the Commission found that the funeral industry had historically opposed price advertising.[112] The Commission concluded that, as a result of that reluctance to make price information readily available, consumers purchased unwanted items and paid higher than competitive prices for items they selected.[113]

The Commission further recognized that easy access to the market and a fair chance to compete were prerequisites to the entry of new retailers into the funeral market.[114] The Rule's general "unbundling" provision, § 453.4(b), afforded that opportunity to new entrants by removing the primary industry restraint on consumer choice—package-only pricing.[115] The Commission found that, by "bundling" all funeral goods and services in a package, funeral providers had effectively forced consumers to buy unwanted items as a condition of providing a necessity that only they can provide: disposition of the remains.[116] Section 453.4(b) of the Rule prohibits funeral providers from conditioning the furnishing of one funeral product or service upon the purchase of another product or service unless required by law, such as embalming for interstate

[104] P–39 (AARP) at 31–39; P–36 (National Consumers League) at 2.

[105] See, e.g., R–N–1 (SR) discussion at 58–59, 66–67.

[106] Nor does the evidence support a conclusion that industry compliance with the affirmative telephone provision is too low to permit a conclusion about its potential benefits. The evidence on compliance with § 453.2(b)(1)(i) is inconclusive. The RS data show that about half of all providers (49%) who were asked about funeral "prices, terms, or conditions" over the telephone made the required disclosure. However, an unusually large proportion of the respondents—29%–31%—could not recall whether they received the disclosure, and the study contractor warned that the results should be viewed with extreme caution because of the small cell size (93 respondents called and asked about "prices, terms, or conditions"). Excluding from the analysis those who could not recall increases the compliance level to about 72%. See R–B–2 (RS) at III–36, Table III–26; HX–122 (BE Report) at 16–17 (compliance results); R–B–2 at III–25, III–31 (Market Facts concern).

[107] P–37 (NFDA/NSM comment) at 23–24.

[108] See the evidence cited at notes 63–65, supra.

[109] R–B–5 at 42272–42273.

[110] Id. at 42273, n. 140.

[111] R–B–5 at 42293.

[112] Id. at 42266.

[113] Id. at 42269.

[114] R–B–5 at 42291.

[115] The Commission's major finding in the original proceeding was that funeral providers had denied consumers the privilege of freely choosing the goods and services they wanted by failing to disclose itemized price information and by "bundling" their funeral offerings together in predetermined packages; consumers' only choice was between packages. R–B–5 at 42260, 42279–42282.

[116] Id. at 42281.

shipping, or as a "practical necessity," such as embalming where the consumer wants a viewing of the remains for several days.

Some ANPR commenters asserted that funeral providers, in response to emerging competition in the sale of caskets from cemeteries and other third-parties, charge high "casket handling fees" for arrangements where consumers supply their own caskets purchased from those third parties.[117] The alleged purpose of these fees was to recoup overhead costs and profits built into casket prices but lost on the third-party casket sales. The Commission in the NPR thus sought comment on the existence and impact of so-called "casket handling fees," and on whether, and how, the Rule should address that practice.[118]

a. Existence and impact. Members of the third-party, casket seller industry[119] provided empirical and other evidence on the purpose, widespread existence and impact of these "casket handling fees." Casket seller representatives asserted that the emergence of third-party casket sellers is directly attributable to the Funeral Rule's "unbundling" provision; those sales were virtually non-existent before the Rule.[120] A PAA official who presented the results of a PAA membership survey (the "PAA Survey") on handling fee issues, Mr. Duke Radovich, estimated that there are between 100 and 200 casket retailers in the country.[121]

The PAA Survey provided empirical evidence on the widespread existence and amount of "casket handling fees," as reported by the respondent retailers. Eighty-six percent of the respondents said that at least 60% of the funeral homes in their market area assess handling fees, about two-thirds said that 80% to 100% charge the fees, and one-quarter reported that all of the homes impose the casket handling fee.[122] Mr. Radovich concluded that a substantial number of providers assess "casket handling fees" wherever third-party sellers exist.[123] Individual casket retailers agreed with that finding,[124] and further testified that funeral providers began imposing handling fees when third-party casket sellers entered the market.[125]

Concerning the amount of "casket handling fees" assessed, 81% of the PAA Survey respondents said that the average handling fee was over $300; 74% reported an average fee between $300 and $500.[126] Sixty-two percent of the PAA Survey respondents further reported that the highest fee charged was over $500; 35% said that the largest fee was over $700.[127] A "handling fee" of $500 was nearly equal to the average wholesale cost of a casket in 1988 ($517) and 60% of the average casket mark-up in that year ($821).[128] Wendell Hahn of the FFDA, which provides financial advising services to 1,500 providers in 30 states, testified that handling fees are assessed because providers, who typically charge professional service fees "hundreds of dollars" below their true operation cost, will try to recoup those costs that are lost by the third-party casket sale. Mr. Hahn concluded that handling fees are thus roughly equal to the amount that providers' non-declinable service fees are underpriced.[129]

Record evidence indicates that "casket handling fees" prevent potential price competition and reduce consumer choice. Ninety-two percent of the casket seller respondents to the PAA Survey reported that their casket sales have declined since the imposition of handling fees; about one-third said that they have reduced or eliminated their casket marketing efforts as a result of those fees.[130] One industry observer testified that "casket handling fees" have caused the exit from the casket market of five small businesses who thought that they could gain market share by offering third-party caskets at lower prices.[131] Several casket retailers and others also asserted that these so-called "handling fees" impede price competition by removing consumers' incentive to price-shop for less costly caskets, and penalize consumers who do shop.[132]

Finally, third-party sellers testified that market forces will not effectively regulate "casket handling fees," and that the elimination of those discriminatory fees would result in increased competition in the sale of caskets and reduced casket prices.[133] Mr. Royal Keith, a funeral provider appearing for the NFDA, when asked on cross-examination about the effect of market forces on handling fees, responded that he was not aware of any cases where market forces have successfully reduced

---

[117] See R-A-1 (Notice of Proposed Rulemaking) at 19867.

[118] Id. at 19870 (Question 14).

[119] Third-party casket sellers generally were represented during this review by the PAA.

[120] R-M-12 (PAA) at 18, 82. See also, Radovich, Tr. Vol. III, 1029 (Casket retailers owe their existence primarily to the enactment of the Funeral Rule, which allows the consumer to use a casket from an outside source); and Drozda, Tr. Vol. II, 894 (few casket retailers before the Rule because providers would not accept the outside casket and provide funeral service).

[121] Radovich, Tr. Vol. III, 1057 (31 of the 90 survey respondents were active third-party casket sellers at the time of the survey). He reported that these thirty-one active casket retailers are located in Florida, Illinois, Iowa, Maryland, Michigan, Mississippi, Nebraska, Ohio, Pennsylvania and Wisconsin; 74% of those sellers exist in Pennsylvania, Michigan, and Ohio. Id; HX-101 at Exhibit "A-3."

[122] Radovich, HX-101 at 17 and Ex. B, p. 5.

[123] Id. at 12, 17, 20.

[124] See Neel, HX-25 at 4 and Exhibit 2; Teck, HX-58 at 5-6 and Ex. B; and Heffner, HX-39 at 8 and Ex. J-1.

[125] Graf, Tr. Vol. II, 647; Neel, Tr. Vol. I, 582-584; and Teck, Tr. Vol. II, 861-862. See also, Showalter, Tr. Vol. II, 118. One funeral provider witness who did not charge handling fees stated on the record that, if he got competition from casket retailers, he would begin to assess fees. Hennessy, Tr. Vol. II, 997.

[126] Radovich, HX-101 at 18 and Ex. B, p. 6.

[127] Id.

[128] See Hahn, FFDA, HX-49 at 2. The average mark-up in 1988 was $1,338 (average retail casket price) minus $517 (average wholesale cost), or $821. By definition, a handling fee must be "high" if its purpose is to recoup overhead costs and profit lost on the casket sale.

[129] Tr. Vol. II, 692-693. Mr. Hahn further suggested that by failing to disclose the amount of overhead not included in the non-declinable professional services fee, providers may be engaged in deceptive pricing. Id. at 671.

Several local surveys conducted by individual casket retailers provided further evidence on the range of "casket handling fees" in given market areas. Those surveys found that handling fees ranged from $100 to $700 in Chicago; DeSoto, R-B-42; and Hennessy, HX-61 at 8; from $150 to $1000 in Greater Pittsburgh; Neel, HX-25, Exhibit 2 at 1; and from $100 to $800 in Detroit, Michigan; Teck, HX-58, Exhibit A. Wendell Hahn of the FFDA reported six instances among a sampling of funeral home records he reviewed for the month of August 1988 where handling fees ranging from $75 to $480 were disclosed on providers' GPLs. HX-49 at 5, Tr. Vol. II, 673, 719-720. Other witnesses, including two funeral directors, testified to the existence of handling fees ranging from $425 to $2,500. See Showalter, Tr. Vol. II, 120; HX-36, at 17 (citing an open letter from Steve Shurden, President of the Oklahoma Funeral Directors Association, printed in *The Oklahoma Director*, Vol. XV, No. 9 (Sept. 1985) at 1) ($1,000-$2,500); Starks, Tr. Vol. II, 412 ($700); and Drozda, Tr. Vol. II, 896-897 ($425).

[130] Radovich, HX-101 at 20-22 and Ex. B, pp. 8-9 (sales decreased by 20% for 54% of respondents, by 40% for 29% of sellers, and by 80% for 13% of respondents; although other market factors could have contributed to the decreases, the PAA attributed them to handling fees).

[131] Showalter, Tr. Vol. II, 107-108.

[132] See, e.g., Teck, Tr. Vol. II, 867; Neel, Tr. Vol. I, 568, 572-573, 615; Drozda, Tr. Vol. II, 923, 944; Radovich, Tr. Vol. III, 1063; Showalter, Tr. Vol. II, 109, HX-36 at 16-17; and R-B-27 (CAFMS Comment) at 5.

Casket retailers and others provided evidence that many third-party sellers offer caskets at prices lower than those charged by funeral homes. About half of the seventeen PAA Survey respondents who answered the survey's price question said that their price for the "same or similar" casket was at least $250 less than funeral home prices in their market area. About one-quarter said that their prices were between $100 and $250 less, and another quarter said that their prices were comparable (within $100). See, Radovich, HX-101 at Ex. B, p. 10. One retailer who commented on the ANPR reported that a small casket manufacturer in Chicago was selling 90% of its retail caskets on an at-need basis, charging about half that of Chicago funeral homes—$250 for a cloth-covered casket and $650 for a sealed, metal casket. See, DeSoto, R-B-42.

[133] See, e.g., Teck, Tr. Vol. II, 872-873; Drozda, Tr. Vol. II, 944, 974.

the amount of handling fees charged in a particular area.[134]

b. Providers' basis for imposing "casket handling fees". Proponents of handling fees did not provide evidence to refute that offered by casket retailers and others on the purpose, prevalence and impact of "casket handling fees" on the casket market. Funeral provider representatives, for example, did not dispute that "casket handling fees" are used to recoup profits and overhead costs lost to third-party casket sales, but defended that purpose on several grounds.[135] Providers' responses to third-party casket sales arise, the trade groups asserted, due to the industry's long-standing tradition of recovering much of its overhead costs and profits through the casket mark-up, and not by increasing service fees; lower service fees allow funeral homes to provide full service funerals, including lower-priced caskets, to those who might not otherwise be able to afford them. Although providers in recent years have shifted some of that casket mark-up to service fees, the shift has been very gradual. The industry groups concluded that providers who lose casket sales to third parties must, as a result, still forego the recovery of much of their costs and profits that would have been included in the casket sale.

Those groups asserted that the imposition of "casket handling fees" is an isolated, non-discriminatory practice that fairly allocates providers' overhead costs and profits; the purpose of the fee is to obtain from consumers who buy third-party caskets consumers' proportionate share of providers' costs and profits for rendering the funeral service. Providers' only alternative to handling fees, the industry groups argued, would be to raise service fees charged to all consumers, which, in effect, would require regular clients who purchase providers' caskets to subsidize the funerals of consumers who purchase their caskets elsewhere—by paying the mark-up on the casket as well as the higher service fee that would result from other consumers supplying their own caskets.

Those groups further asserted that handling fees are not assessed for ship-ins, outer burial container sales traditionally lost to competing cemeteries, or for direct cremation/immediate burials where the consumer supplies the alternative container because, unlike the unexpected loss of a casket sale to a third-party seller, providers set prices for those services with the knowledge that they will not make a sale in those cases. Finally, the funeral groups concluded that the amount of "casket handling fees" is sufficiently regulated by the market, because providers that charge unreasonably high fees will offend consumers and lose market share.[136]

c. Commission's conclusion and amendment. The Commission has concluded that substantial "casket handling fees" are imposed on consumers by a significant proportion of providers wherever third-party casket sellers exist, and, as a result, frustrate the Rule's "unbundling" requirements and result in the reduction of potential competition in the sale of caskets fostered by the Funeral Rule.[137] Some providers are forced to impose handling fees because of their competitive reluctance to shift overhead costs and profit from the casket mark-up to professional service fees.[138] Others may use handling fees as a direct response to third-party competition. In either case, the issue to be determined in this proceeding was whether the Rule should allow providers to condition a consumer's right under the Rule to obtain a funeral service with a consumer-supplied casket upon the payment of a non-declinable fee, charged in addition to the basic professional services fee (already permitted under the Rule to be non-declinable), or whether the Rule should require providers to recoup costs and profits lost to third-party casket sales in ways that do not violate the intent of the Rule's "unbundling" provision. For example, providers under the Rule may recoup any unallocated costs or profits lost to third-party casket sales in the non-declinable professional services fee permitted by § 453.2(b)(4)(iii)(C). The Commission has determined that the latter course is warranted to affirm the Rule's intent to increase consumer choice and reduce barriers to price competition.

Section 453.4(b) of the Funeral Rule was intended to address all "bundling" arrangements imposed on consumers by funeral providers. Under that provision, consumers have the right to decline the purchase of any item, including a casket, from a funeral provider, and may elect to supply their own. That right, however, is illusory if funeral providers can condition consumers' choice on the payment of an additional, non-declinable fee. The fee, in any amount, penalizes consumers for exercising their choice afforded by the Rule.[139]

"Casket handling fees" require consumers to pay two substantial mark-ups, one on the casket they purchase from the third-party seller, and another on the casket they did not buy from the funeral provider. The evidence indicates that handling fees average between $300 and $500, and often are higher. That burden, the evidence shows, effectively removes consumers' economic incentive to purchase a casket from anyone but the funeral provider. Casket sales by third parties have declined as a result, and several retailers have curtailed their marketing efforts or withdrawn from the market. Handling fees thus frustrate the purpose of the Funeral Rule—to ensure informed consumer choice and foster a competitive funeral market. The Commission thus concludes that casket handling fees are unfair conditions on a consumer's right to decline unwanted items he or she may wish to purchase elsewhere, in violation of section 5 of the FTC Act, and the spirit of the Rule's "unbundling" provision (§ 453.4(b)).[140]

---

[134] Tr. Vol. III, 1422.

[135] Nor did the NFDA and NSM argue that "casket handling fees" are imposed for actual services rendered in "handling" consumer-supplied caskets. Many witnesses, including funeral directors, testified that providers incur no additional labor or insurance costs when third-party sellers provide a casket, and that the actual labor time spent handling any casket is minimal; the cost for that service is normally included in the non-declinable professional services fee. See R–M–9 (NFDA/NSM) at 182; Hahn, FFDA, Tr. Vol. II, 692–693; Bates, NSM Executive Director, Tr. Vol. I, 706–708; Simms, funeral director, R–J–9 (supplementing HX–42); Dr. Nelson, AARP, Tr. Vol. I, 77–78; Showalter, industry analyst, Tr. Vol. II, 116–117, 120–122; Graf, Tr. Vol. II, 652; Hennessy, funeral director, Tr. Vol. II, 1009–1014; Radovich, funeral director/casket retailer, Tr. Vol. III, 1044–1045; Starks, funeral director, HX–41 at 11, Tr. Vol. II, 369; and Drozda, funeral director/casket retailer, Tr. Vol. II, 897.

[136] R–M–9 at 181–189; R–G–6 at 80–83. Individual providers agreed with the NFDA and NSM position. See Hocker, HX–111 at 13; Franzen, Tr. Vol. II, 819–820, Tr. Vol. III, 1408; Hennessy, Tr. Vol. II, 997–998; Keith, Tr. Vol. III, 1419; Yurs, Tr. Vol. II, 530, 563; and Nilsen, Tr. Vol. III, 1414–1415. See also, Hahn, FFDA, Tr. Vol. II, 692–694.

[137] Even if "casket handling fees" were not widespread, their coverage in the Rule would be necessary because they frustrate the original Rule's "unbundling" provision and impose substantial, unavoidable costs on consumers who make purchase decisions based on their rights under that provision.

[138] The Commission disagrees with arguments made by funeral provider groups during the proceeding that regulation of handling fees would amount to "price regulation." The primary issue is the propriety of the handling fee cost and profit adjustment, through the imposition of a separate, non-declinable fee charged in addition to the non-declinable fee for "services of funeral director and staff," and not the amount of the handling fee.

[139] Section 453.4(b)(2)(ii) of the Rule permits providers to refuse a request for goods and services that would be "impossible, impractical, or excessively burdensome" to provide. That provision, however, does not permit a funeral provider to refuse service to a consumer because the consumer supplied the casket. See, e.g., Staff Opinion Letter to George W. Lemke, Executive Director, Casket Manufacturers Association of America (March 18, 1985), FTC File No. 215–46, No. XXVIII–211.

[140] Conditioning the furnishing of any funeral good or service upon the payment of a so-called

Section 453.4(b), however, does not specifically address the practice of conditioning the furnishing of any funeral goods or services on the payment of fees, such as "casket handling" fees, because those fees have developed since the Rule's implementation, and because they are not conditioned charges for "goods" or "services"—the conditioned products referred to in that provision. The Commission thus has concluded that so-called "casket handling" fees, and other non-declinable fees that are more aptly referred to as "recovery of overhead and profit" fees, need to be separately addressed in the Rule.[141]

The Commission recognizes the legitimate desire and expectation of funeral industry members to recover overhead costs and realize a profit. The Rule, however, permits consumers to select and buy only the items wanted unless state or local law require otherwise. The Funeral Rule is designed to permit funeral providers to have one non-declinable fee to recover general overhead costs—the fee for the basic services of funeral director and staff. Permitting funeral providers to have additional surcharges, whether they are called "casket handling fees," or something else, would frustrate the Rule's aim to promote full itemization and informed consumer choice.

To prevent that result and clarify the current requirements of the Rule, the Commission has added paragraph (b)(1)(ii) to § 453.4 of the Rule. That amendment prohibits as an unfair or deceptive act or practice the furnishing of funeral goods or services upon payment of any conditional "fees" not otherwise permitted by the Rule. The amendment, however, permits funeral providers to recover overhead in the two ways permitted by the original Rule—by marking up the items offered for sale to the public, and by having the non-declinable fee for basic services of funeral director and staff, permitted by §§ 453.2(b)(4)(iii)(C) and 453.4(b)(2)(i)(A) of the Rule.

The Commission also has amended § 453.2(b)(4)(iii)(C)(2) of the Rule to require, among other things, disclosure of: (1) The dollar amount charged for any non-declinable basic professional services when that charge is included in the price of the provider's caskets; and (2) the statement "This same fee shall be added to the total cost of your funeral arrangements if you provide the casket." These amendments are intended to have the same effect as the amendment to § 453.4(b) above—they prohibit funeral providers (who choose not to itemize the charge for basic professional services) from charging consumers who purchase caskets from third parties a non-declinable fee for recovery of overhead and profit in addition to the professional services fee charged to all customers.

These two amendments are not intended to impede funeral providers from recovering overhead costs and earning profits from their operations. Efficient providers can structure their prices charged to all consumers to recover the revenue lost to third-party casket (or other merchandise) sales. The evidence indicates that providers for many years have so adjusted their pricing structure to account for consumer-supplied caskets (in ship-in cases), outer burial containers, and alternative containers.[142]

Providers asserted that the impact of a ban on imposing separate, non-declinable casket handling fees, in addition to the non-declinable professional services fee, would be increased professional service fees to all consumers. The funeral provider industry made the same argument in the original proceeding regarding the effect of consumer declinations caused by Rule-required itemization.[143] As the Commission reasoned at that time, providers under the Rule can set or shift prices as they wish, but the long-term competitive impact of the Rule's price availability provisions might not permit providers to recover lost revenue from casket declinations simply by raising professional service fees. In the short-term, some consumers might spend more and some less than they would without the right to decline if providers actually raise service fees in order to recoup revenue lost to third-party casket sales. As discussed earlier, however, the evidence in this proceeding indicates that, although service fees generally are underpriced by roughly the average handling fee amount, providers are reluctant to raise service fees even under current competitive conditions. In any event, the evidence indicates that the impact of a ban on handling fees would more likely be increased competition in the sale of caskets, and, in turn, an overall reduction in casket prices over time.[144]

4. GPL Timing/Distribution Requirements. Section 453.2(b)(4) of the Rule required providers to give for retention a General Price List to persons who inquire in person about funeral arrangements or the prices of funeral goods and services. The GPL must contain, among other things, several disclosures about consumers' right to select only those items they desire and the retail prices for 17 specified items, if offered for sale. Providers under § 453.2(b)(4)(i) of the original Rule were required to offer the GPL "*upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services.*" (Emphasis added.)

Many funeral providers, however, erroneously believe that the GPL must be given immediately upon initiation of preliminary arrangements discussions that do not involve price or specific goods or services. That misinterpretation leads them to offer the GPL at arguably inappropriate times, such as during preliminary discussions of death certificates or veterans benefits, or, in the case of an out-of-town death, the location of the deceased.[145]

To remedy their concerns, provider groups proposed repeal of the GPL timing and distribution requirements, or, in the alternative, amendments that would require providers to:

(1) "Make available" to consumers a GPL;

(2) Offer the GPL to consumers who inquire only about prices;

(3) Offer the GPL to consumers before "specific" funeral goods or funeral services are "selected" or prices discussed; and

(4) Give a GPL for retention only to those consumers who request to keep it.[146]

The Commission has determined, however, that the preponderance of the evidence does not warrant the sweeping amendments to, or repeal of,

"casket handling fee," or any other non-declinable fee not otherwise permitted by the Rule, is an unfair practice for the same reasons articulated by the Commission in declaring "package-only" pricing unfair when it promulgated the Funeral Rule and its general "unbundling" section—453.4(b) (the practice is prevalent and imposes substantial and unavoidable injury on consumers). See R–B–5 (SBP) at 42269–71.

[141] The Commission prohibits fees that are similar in purpose to "casket handling fees" in its Advertising of Ophthalmic Goods and Services Trade Regulation Rule, 16 CFR Part 456. That Rule requires eye doctors to give consumers a copy of their eyeglass prescription, so that consumers can shop for eyeglasses. Section 456.7(c) of that Rule further prohibits eye doctors from charging consumers a fee "as a condition for releasing the prescription," other than the examination fee. The section thus prevents eye doctors from charging a fee for goods and services not provided that, in effect, would penalize consumers who wish to comparison shop for ophthalmic goods. Like the non-declinable "casket handling fee," the conditional fee prohibited by this Ophthalmic Goods and Services Rule frustrates a consumer's right under the Rule to exercise free choice.

[142] See, e.g., the evidence cited at note 136, supra.

[143] See R-B–5 at 42298.

[144] See, e.g., the evidence discussed at notes 135–138, supra.

[145] See R–N–1 (SR) at 151–153.

[146] R–G–3 (NSM) at 43; R–G–6 (NFDA) at 66; R–M–9 (NFDA/NSM) at 277.

§ 453.2(b)(4)(i) as proposed by funeral provider groups. The Commission draws that conclusion particularly in light of the empirical evidence on the level of providers' compliance with the current GPL requirements (23% give the GPL at the outset of arrangements discussions), and the evidence that consumers want price and options information about funeral goods and services and value price information that they receive early in the funeral transaction.

The Commission is persuaded by that compliance evidence, however, that some fine-tuning is necessary to clarify the Rule and promote increased compliance, thereby enhancing the Rule's opportunity to provide benefits to consumers. The amendment discussed below thus is intended to remove any ambiguities and unnecessary rigidity in § 453.2(b)(4)(i) that appear to cause funeral directors to misinterpret their obligations under that provision.

Provider group proposals would have unacceptably narrowed the circumstances in which providers would be required to provide a GPL to consumers. First, the suggestion that providers "make available" a GPL might have been tantamount to effective repeal of the entire GPL requirement if such language means something other than physically giving the GPL to consumers.[147] Consumers might receive no GPL disclosures about funeral service prices or options, or concerning their rights in the funeral transaction under the Rule or other laws, unless they asked to see the GPL and providers voluntarily complied with their request. Such a change is not warranted, given record evidence on relatively low, overall levels of Rule compliance. Other evidence—that consumers are reluctant to raise price issues after the death of a loved one, that consumers, nonetheless, desire price and service options information, and that consumers benefit from price information they receive early in the funeral transaction—also supports this conclusion.

Second, the NFDA suggestion that providers need only give a GPL to persons who inquire in person about the "price" of funeral goods or services would eliminate the obligation to give a GPL to those who ask about prices *or* "funeral arrangements." In light of the evidence just mentioned, this proposed narrowing of the GPL distribution requirement is not supported by the record. Although one of the Rule's goals is to increase price competition, and, in turn, reduce overall consumer expenditures, the Commission also intended the provision of itemized price information to alert consumers to their various options and to permit them to select only those items they desire, whether or not expenses would be reduced as a result.[148] Lacking record evidence to support a change, consumers who inquire about providers' offerings, and not their prices, should thus be entitled to receive a GPL.

Third, the NFDA proposal that providers make the GPL available at the funeral arrangements conference before "specific" funeral goods and services are selected or prices discussed would remove the requirement that providers give the list at the beginning of arrangements discussions, wherever they take place. Record evidence shows that consumers benefit from price and service options information, including the GPL, that they receive early in selecting funeral goods and services, and that at least some funeral arrangements, short of a formal "arrangements conference," often can and do occur away from the funeral home premises.[149] Other evidence discussed earlier demonstrated that consumers' knowledge generally about the funeral transaction, although somewhat improved, is still relatively low. As a result of adopting the NFDA suggestion, consumers' opinions about the overall type of funeral service or individual items could thus be formed, or actual selections made, without the benefit of the GPL disclosures concerning prices, options and consumer rights under the Rule. In that event, the preponderance of the record evidence supports the conclusion that the GPL's purpose to provide ready price and service options information for consultation while consumers are considering what goods to purchase, before they make selections, would be unnecessarily defeated.

Finally, the NFDA-NSM proposal that the GPL's "give for retention" requirement be changed so that only consumers who request to keep the GPL may do so is not supported by the record. The evidence indicates that most consumers value the GPL enough to keep it when it is offered for retention.[150] The Commission might not disagree with the NFDA suggestion if there were evidence that consumers are aware of their right under the Rule to retain the GPL. The record does not contain that evidence, however, and instead shows that consumers generally are unaware of their rights under the Rule.[151] There is no record basis from which to conclude, therefore, that consumers would think to ask to retain the GPL. Consumers, as a result, would be denied the opportunity to use the GPL to comparison shop in at-need or pre-need situations,[152] or to compare authorized selections with final funeral home charges.

The Commission has amended § 453.2(b)(4)(i) to effect two changes to its original, preventive requirements. This amendment remedies providers' stated concerns about the timing of the GPL without limiting consumers' ability to use the information provided by GPL disclosures effectively. First, the amendment clarifies the GPL "timing"

[147] The proponents of this change did not specifically explain or define the term "make available," or how this and other suggested amendments would change the current requirements of § 453.2(b)(4)(i).

[148] R–B–5 at 42297.

Virtually every funeral director who advocated a change in the GPL timing requirements expressed concern about when in the arrangements discussions might be the sensitively correct time to discuss "price" with consumers. None spoke of the correct time to provide or discuss information about funeral service "options" and their relative cost. The record evidence, however, suggested that because price issues may not specifically arise early in the transaction, due to mutual provider and consumer reluctance, consumers may choose particular types of arrangements, or specific items, without the benefit of information about the available alternatives unless they receive a timely GPL.

[149] See, e.g., Hennessy, funeral director, Tr. Vol. II, 1026–1027 (timing of visitation and service often likely to be among first topics of concern to a family during removal); Hunter, Tx. Funeral Service Comm'n, Tr. Vol. III, 602–603 (discussing funeral arrangements away from the funeral home is a very common practice); Johnson, NSM, Tr. Vol. I, 744 (conversations away from the funeral home border on making funeral arrangements); Simms, NFDA, Tr. Vol. II, 452, 470–471, 473 (various arrangements discussions during removal have occurred); Hocker, NFDA, Tr. Vol. III, 1402, 1479 (problem during removal when the family says something like "can we have the funeral on Wednesday" that triggers presentation of the GPL); Dr. Nelson, AARP, Tr. Vol. I, 91 (preliminary arrangements can occur in consumers' homes where their concept of the funeral may be discussed and formed); and Klein, NYSFDAB, Tr. Vol. II, 1067 (not all arrangements are made in the funeral home).

Empirical evidence from the Replication Study on that issue indicated that 14% of consumers said that in-person arrangements discussions took place at a hospital or nursing home, or at the home of the respondent, the deceased, or a relative. See R–B–2 at Table III–24, p. III–33. The extent to which some of those respondents may also have participated in discussions at the funeral home is not clear from the data.

[150] Eighty-seven percent of RS respondents and 82% of Gallup respondents who were offered a GPL to keep said that they took it with them. See R-B-2 at Table III–32, p. III–46, and HX–66, Ex. B, p. 7 and Tabulations, p. 29.

[151] A majority of consumer respondents to the AARP's "Excel" Study were unaware that providers are required to give consumers written price lists when they come in to make arrangements. See Soulas, HX–76 at 3.

[152] Record evidence indicates that consumers may increase their comparison shopping before selecting a funeral provider as the marketing of pre-need funeral services increases, because the time constraints surrounding at-need arrangements are not present to the same degree. See, e.g., Neel, R–E–1 at 3.

requirements by breaking down the triggering term "funeral arrangements" into its component parts, namely, discussions of prices, the overall type of funeral service or disposition, or specific funeral goods or services. This change should eliminate the apparent provider misinterpretation that the GPL must be given immediately upon initiation of preliminary arrangements discussions that do not involve price or specific goods or services. It clarifies, however, that discussions about the overall type of service trigger the GPL requirement, and that providers must give the GPL at the beginning of any discussion involving prices, the overall type of funeral service or disposition, or specific funeral goods or services.[153]

Second, the amendment clarifies the GPL "distribution" requirement contained in an original compliance guidelines interpretation that requires that providers must give consumers the GPL whether discussions occur in the funeral home "or elsewhere." Record evidence shows that arrangements may occur away from the funeral home premises. However, the amendment exempts from the GPL requirement in-person provider requests for prior embalming authorization if the provider makes essentially the same GPL disclosure required by § 453.3(a)(1)(ii) of the Rule concerning the legal necessity for embalming.[154]

Record evidence indicates that providers often may be placed in the uncomfortable position of responding to consumers' requests to discuss selections during removal of remains. If providers are willing to commit consumers to financial obligations at that time by making arrangements, record evidence supports consumers' right to receive a GPL. Record evidence also shows, however, that giving the GPL during removal may be awkward, offensive, and unnecessary if no other arrangements discussions occur at that time. Such evidence further indicates that a provider's request for prior embalming authorization, by itself, may be the most potentially offensive situation for both consumers and funeral directors, because it is a request to perform an intrusive procedure so soon after the survivors' loss.[155]

The original and amended Rule resolve this issue for embalming requests made over the telephone by not requiring any disclosure in that case. But the original Rule required that the GPL must be given if the request is made in person.[156] If no other selections are made when the provider seeks prior permission, arguably the most important information consumers need to make an informed response at that time concerns whether embalming is necessary. The required disclosure that embalming is not required by law except in certain special cases should trigger that discussion if the consumer so desires. The Rule's embalming provisions are predicated on that basis. The amendment simply substitutes the disclosure of that information for the provision of the entire GPL, to reduce the burden on providers and consumers and to promote compliance with the Rule. Under the amendment, providers would be in compliance if they either provided a GPL when seeking prior permission, or made the required embalming disclosure.

5. Fees for Basic (Non-declinable) vs. Other Services

Section 453.4(b) of the Rule imposes the general legal requirement that consumers' selection of funeral goods and services be permitted on an itemized basis. However, § 453.4(b)(2)(i)(A) permits an exception to that general right to select. Under that provision, consumers may not decline the basic services of the funeral provider if the provider so requires. The provision in that event further requires that providers place on the GPL the following statement: "However, any funeral arrangements you select will include a charge for our services." Providers under § 453.2(b)(4)(iii)(C) must also place the following disclosure on the GPL in conjunction with the price for the services of funeral director and staff, if the fee cannot be declined: "This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charge for direct cremations, immediate burials, and forwarding or receiving remains.)"

The Commission, in promulgating that exception, reasoned that the process of selection itself involves use of the provider's services, irrespective of the actual goods and services chosen by consumers. The Commission thus permitted providers to make the services of the funeral provider non-declinable.[157]

The Commission also intended that the non-declinable fee for professional services would include only the charge for providers' basic services in arranging and planning the funeral, and not charges for services associated with providing any of the other sixteen items for which itemization is required on the GPL.[158] The Commission, for example, specifically used the term "basic services" in referring to those services that consumers could not decline under § 453.2(b)(4)(iii)(C) (the GPL service fee disclosure requirement).[159] The definition in the original Rule itself stated that the services of funeral director and staff "are the services, not included in prices of other categories in § 453.2(b)(4) which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices."[160]

The Commission, however, did not codify in the Rule its intent regarding basic services other than in the definition. No substantive Rule provision thus clarifies that providers in disclosing itemized fees on the GPL must separate "basic," non-declinable services from services associated with providing the other, declinable GPL goods and services, including such items as "use of facilities for viewing," and "use of facilities for funeral ceremony." The original staff compliance guidelines for the Rule, as a result, contained lengthy interpretations of the Rule on that issue, concluding that the non-declinable fee for "services of funeral director and staff" may not include a charge for those services involved in providing any of the other items required to be separately listed on the GPL. Charges for those services, the Guidelines stated, must be included in the price for each of those items. The Guidelines further concluded that the non-declinable fee for services may include the services listed in the Rule's

[153] Record evidence indicates that some providers have construed the term "selection" in the original provision to mean choosing individual items, such as the casket or vault. See, e.g., F. Hunter, Tr. Vol. I, 801 ("as long as before they sign the contract, before they look at the caskets and select the vault and the exact kind of funeral"); J. Hunter, Tr. Vol. III, 604–605 ("after we have discussed some basic funeral plans, when the arranger has determined a feel for the families' wishes and desires, and prior to the selection of any services and/or goods"); Pierson, R-G-1 at 2–3; Starks, Tr. Vol. II, 402; Franzen, Tr. Vol. II, 818). Other providers are reluctant to discuss the GPL until price issues are raised. See, e.g., Hocker, Tr. Vol. III, 1435; Johnson, Tr. Vol. I, 744; Starks, Tr. Vol. II, 402–403; and Hennessy, Tr. Vol. II, 1024.

[154] Any other discussion during that time about price or the selection of funeral goods or services would trigger the requirement that providers give consumers the GPL.

[155] See R-N-1 (SR) at 207–218 for a full discussion of prior embalming approval issues raised during the proceeding.

[156] See R-B-6 at 28078 (Illustration #8).

[157] See R-B-5 at 42282.

[158] Under § 453.2(b)(4)(iii)(C), the non-declinable professional services fee also may include charges for unallocated provider overhead.

[159] Id; see also, R-B-5 at 42285.

[160] Section 453.1(o).

definition of "services of funeral director and staff."[161]

The only fee permitted by the Rule to be non-declinable at the outset of the funeral transaction is the charge for "services of funeral director and staff" and items that are required by law.[162] Several public hearing witnesses expressed their view, however, that the original disclosure requirement for the non-declinable services fee permitted the inclusion of service items that all consumers do not receive with their arrangements, so that consumers may be paying for services not received,[163] or that the services fee should be broken down to separate fees for arranging all funerals and fees for optional services.[164] These and other witnesses further suggested that consumers are unaware of that potential overpayment problem.[165]

Still other witnesses identified another problem with the original services fee disclosure. Those participants testified that, although consumers who "shop" among providers rely on quotes for service fees as a basis for comparison, providers in fact appear to include different items in their service fee charges. Price comparison among funeral homes is difficult as a result.[166] The record contains no evidence or views specifically controverting this.

In addition to these services fee difficulties, funeral provider groups asserted that the exclusion of a separate, non-declinable "basic facilities fee" from the required GPL listing misinforms consumers about the cost of funeral services.[167]

Four witnesses expressed views on the facilities fee issue presented by the NFDA. The then-President of the NSM testified that a non-declinable facilities fee is a legitimate charge to inform consumers that they are purchasing the use of a facility to shelter and care for the remains.[168] Similarly, Wendell Hahn of the FFDA asserted that providers' inclusion of the cost of providing a special-purpose facility in other charges, rather than showing it separately, violates proper accounting practice and may be deceptive pricing. Mr. Hahn concluded that the Rule should permit a separate basic facility charge that is non-declinable.[169] Some funeral providers, in fact, currently include items on their GPLs that could be viewed as non-declinable facility fees, such as fees for "parking lot use."[170]

The Commission agrees that the original requirements for the disclosure of the non-declinable and other service charges likely are causing compliance difficulties for some providers and informational problems for consumers.

The evidence indicates that some providers on their GPLs may not be fully separating non-declinable services from services associated with providing other items on the GPL. To the extent that is occurring, consumers who decline other items may be purchasing more services than they actually receive. Other consumers may be "double charged" for some services if providers, confused about which services are declinable and which are not, include some portion of the services associated with declinable items, such as "use of facilities for viewing," in that charge, as well as the non-declinable services fee. Still other consumers (or groups such as memorial societies that obtain and publish comparative price data) who attempt to comparison shop may not readily be able to do so.

The Commission has concluded that the service disclosure requirements need to be clarified to implement fully the Commission's intent in permitting a non-declinable services fee. Amendment of the Rule, however, to permit a non-declinable "basic facilities fee" charge is not warranted by the evidence or the original Rule requirements. The Rule's core purpose is to permit itemization so that consumers may select only the funeral items they desire, and decline unwanted items. The Rule allows providers to recover overhead for facilities by allocating a portion of those costs to each item offered or by including them in the non-declinable services fee. A second, non-declinable fee would signal a return to package pricing, where all consumers would pay for the use of all facilities (and, presumably, other overhead costs) irrespective of the degree to which consumers choose to use them. Itemization permits consumers to decline the use of various provider facilities. The testimony of at least one funeral director suggested, however, that some providers currently may be imposing in some form a "non-declinable" facilities fee on consumers, in apparent violation of the Rule.

Accordingly, the Commission has adopted the following amendments to clarify the Rule's intent and requirements with respect to service fees and non-declinable charges:

(1) Revision of the "services of funeral director and staff" definition in § 453.1(o) to clarify that these are the basic services that cannot be included in prices of other, declinable GPL categories, and that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices;

(2) Addition of the term "basic" before the word "services" where the latter term appears in §§ 453.2(b)(4)(iii)(C) (1) and (2) and 453.4(b)(2)(i)(A), so that all GPL disclosures regarding the non-declinable services fee refer to "basic services" rather than simply "services";

(3) Addition of the phrase "and staff" after the phrase "use of facilities" to §§ 453.2(b)(4) (H) and (I), to clarify that providers are required to disclose the prices for use of facilities and the services of staff associated with viewing and a funeral ceremony;

(4) Replacement of the "other use of facilities" price disclosure requirement, § 453.2(b)(4)(J), with the more specific disclosures "use of facilities and staff for memorial service" and "use of equipment and staff for graveside service";

(5) Addition to § 453.1 of the definitions of a "memorial service" and a "funeral ceremony" to distinguish those services for purposes of listing them separately on the GPL;

(6) Addition of the express requirement to the disclosure requirements of §§ 453.2(b)(4)(iii)(C) (1) and (2) that, if the services fee cannot be declined, it must include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required

[161] R-B-6 at 28068-28069, 28076, and 28087.

[162] Id. at 28077 (Illus. # 12). Cemetery or crematory requirements, embalming as a "practical necessity," and requests that are "impossible, impractical or excessively burdensome" to provide may result in "non-declinable" charges under certain conditions. Generally, however, those items are not considered "non-declinable" in the sense that consumers, at the outset of planning arrangements, have no choice but to purchase them.

[163] Morrison, Tr. Vol. II, 771, 778; Karklin, consumer, Tr. Vol. I, 553; Carlson, Tr. Vol. I, 501-502; Snyder, Tr. Vol. III, 1252; Perguson, Tr. Vol. III, 1180; and Showalter, journalist/hospice counselor, Tr. Vol. II, 121, 148.

[164] Klein, New York State Funeral Directing Advisory Board, Tr. Vol. II, 1040, 1062; Morrison, industry observer, Tr. Vol. II, 771, 778; Carlson, author, Tr. Vol. I, 500-502; Snyder, West Coast Director, Consumers Union, Tr. Vol. III, 1252-1253; Perguson, Seattle memorial society, Tr. Vol. III, 1219; and Blake, Wisconsin memorial society, Tr. Vol. II, 1121.

[165] See, e.g., Bennett, Tr. Vol. I, 355; Carlson, Tr. Vol. I, 500-501; and Snyder, Tr. Vol. III, 1252.

[166] Simms, funeral director, Tr. Vol. II, 495 (consumers rely on professional service price); Johnson, funeral director, Tr. Vol. I, 755-756; Botimer, funeral director, Tr. Vol. III, 1287; Starks, funeral director, Tr. Vol. II, 423-424); and Perguson, Seattle memorial society, Tr. Vol. III, 1177, 1180, 1219 (1987 Seattle survey for publication showed "services" vaguely and variously described).

[167] R-M-9 (NFDA/NSM) at 128.

[168] R. Johnson, Tr. Vol. I, 745-746, 759.

[169] Tr. Vol. II, 671.

[170] Starks, Tr. Vol. II, 424.

disclosure (and in the GPL disclosure required by 453.4(b)(2)(i)(A)) the phrase "and overhead" after the word "services," so that disclosures regarding non-declinable services fees refer to "basic services," and to "basic services and overhead," if providers wish; and

(7) Addition of paragraph (b)(4)(iv) to § 453.2 to make clear that the Rule permits only one non-declinable fee for services, facilities or unallocated overhead, unless otherwise required by law.

These amendments clarify the Commission's intent and providers' obligations in distinguishing non-declinable service fees from other service charges associated with providing separately listed, declinable goods and services. The changes are designed to promote industry compliance and consumer understanding of the services they must purchase and those they may decline, without substantially altering providers' obligations. The amendment permitting providers to add the phrase "and overhead" to the non-declinable service fee disclosure responds to industry's stated concern that consumers may be deceived by service fee price disclosures that fail to disclose a charge for overhead,[171] and clarifies for providers that the non-declinable fee can include overhead not allocated to other charges.

The Commission further has determined, to reduce stated and potential GPL compliance burdens, to: (1) remove "other automotive equipment" (flower car/family car) [172] and "acknowledgment cards" [173] from the required GPL listing; (2) delete as unnecessary the required GPL disclosure that the GPL does not include cash advance items, § 453.2(b)(4)(i)(D), and move from the GPL to the statement of goods and services selected the cash advance mark-up disclosure required by § 453.3(f)(2); [174] (3) decline to adopt the required use of a "standardized general price list," which the Commission finds is unnecessary in light of the relatively standardized GPL the Rule now requires, and the amendment, discussed below, prohibiting any language in any of the Rule-required price lists that alters or contradicts the information provided therein.[175]

6. Misrepresentation/Disclosure Provisions

Section 453.3 of the Rule currently requires funeral providers to make specific written disclosures on the price lists and the itemized statement of goods and services selected. The Commission in its 1982 Statement of Basis and Purpose determined that, due to funeral providers' false claims or failure to disclose accurate information, many consumers erroneously believed that certain procedures (such as embalming) or particular goods (such as caskets for cremation and outer burial containers) were required purchases not subject to individual choice, and that goods and services had certain protective and preservative qualities when such was not the case.[176]

Section 453.3 thus declares that it is a deceptive act or practice for funeral providers to misrepresent: embalming requirements, casket for cremation requirements,[177] outer burial container requirements, legal and cemetery requirements, preservative and protective value of funeral goods and services, and cash advance charges. The provisions of § 453.3 were designed to prevent those deceptive practices and to correct consumers' misconceptions by requiring written disclosures on both the price lists and the itemized statement.

Funeral provider groups recommended that the twelve affirmative disclosure requirements be deleted, or, in the alternative, that the Rule permit providers to use their own disclosure language.[178] The Commission has determined, however, that the record does not provide a substantial basis to repeal the twelve affirmative disclosures. Although the empirical data indicate that consumers' knowledge has increased somewhat under the Rule, and that some misrepresentations have declined, the data also show that misrepresentations are still occurring, particularly in areas where consumer knowledge is still low, such as embalming. The evidence further demonstrates that consumer knowledge of funeral requirements and products is still at a minimal level. Viewed together, those facts warrant the retention of the disclosure provisions.[179] Nor is there sufficient evidence to warrant an amendment allowing funeral providers to use their own disclosure language. That change would make it more difficult to monitor compliance, whereas the required, standardized language ensures that all consumers are receiving identical information.

The Commission agrees, however, that the language of several of the disclosures has created some potential compliance problems for funeral providers. The Commission therefore has adopted the following changes to the embalming, casket for cremation, outer burial container, and cash advance disclosure provisions in order to clarify the Rule's scope and requirements, and to reduce potential disclosure burdens:

(1) Deletion of the portion of § 453.3(a)(2)(i) that prohibits representations that embalming is required for a funeral using a sealed casket; substantial evidence indicates that, because sealed (i.e., "gasketed") caskets cannot prevent the escape of gases any more than other caskets, embalming may be necessary for a

---

[171] Funeral provider groups asserted during the proceeding that consumers should be informed that providers' non-declinable fees include a charge for overhead. Providers may do so under this amendment. See, e.g., P–37 (NFDA/NSM) at 240–242; P–30 (FFDA) at 2.

[172] These items are not as frequently chosen by consumers in today's market as are a hearse or limousine, and providers, of course, may include the flower/family car on the list if they so desire.

[173] To the extent that the Rule's listing provision has caused providers to charge for acknowledgment cards that were previously provided free of charge, as funeral provider groups suggested, the Rule may have had the unintended result of contributing, at least in some small sense, to increased consumer costs. To the extent that the costs are recouped elsewhere, those costs appear to be so incidental as to be tangential to the Rule's primary purpose. In either case, the benefits of requiring acknowledgment cards on the GPL appear to be outweighed by the harm to funeral providers' reputations and consumer satisfaction. The Commission thus has concluded that the better course is to remove the provision from the Rule.

There is no record evidence to support, however, a general right for the provider to list any of the other items now required to be on the GPL as "no charge" items, as industry groups suggested. The Commission is concerned, for example, that if the Rule were to permit the listing of embalming or transportation as "no charge" items, their costs, which can amount to several hundreds of dollars, would be recovered in the prices of other items. As a result, consumers would, in effect, not have the opportunity to decline the costs associated with important items. Such a change could thus result in the diminution of itemization and the return of package-only pricing, which the Rule was primarily designed to prevent. See the discussion at R–N–1 (SR), 172–173.

[174] See R–N–1 (SR) at 201. These amendments appropriately shorten the GPL and give consumers adequate notice of mark-ups.

[175] The AARP and others recommended the adoption of a required format and disclosure language for the GPL more detailed than that required by the original Rule, because of potential provider non-compliance and consumer confusion. See R–N–1 (SR) at 169–172 for a full discussion of the standardized price list issue.

[176] R-B–5 at 42274–42279. Although the record did not contain evidence that certain misrepresentations (such as the protective and preservative claims of goods and the requirement of a casket for cremation) were widespread, the Commission determined that their inclusion in the Rule was necessary because of their pernicious nature, or because of the substantial, potential cost that could be incurred by consumers who make purchase decisions based upon incorrect assumptions of material facts. Id. at 42276–42278.

[177] The companion § 453.4(a)(2) required providers who arrange direct cremations to "make available" unfinished wood boxes or alternative containers so that consumers will not have to buy a casket for that purpose.

[178] R-M–9 (NFDA/NSM) at 225; R-G–6 (NFDA) at 78–79; and R-G–3 (NSM) at 45.

[179] See the discussion and evidence cited at R-N–1 (SR), 180–181.

funeral service using a sealed casket where refrigeration is not available;[180]

(2) Amendment of the deceptive acts or practices definition concerning the necessity for embalming, § 453.3(a)(1)(ii), to include the modifying phrase "if any" after the phrase "except in certain special cases," and amendment of the GPL disclosure required by § 453.3(a)(2)(ii) to permit providers to delete from the disclosure that embalming is not required by law the phrase "except in certain special cases," if state or local law in the areas where the provider does business does not require embalming under any circumstances. These changes are appropriate to reduce compliance burdens and accommodate the situation where state laws do not require embalming under any conditions;[181]

(3) Amendment of the GPL alternative container disclosure required by § 453.3(b)(2) to: (a) Delete the required references to: (i) An "unfinished wood box," in addition to references to an "alternative container," because the former in today's market is considered a type of alternative container, and (ii) "pouches of canvas," which is not a type of container generally available and accepted by crematories; (b) include the phrase "encase the body" after "Alternative containers;" (c) include the statement "The containers we provide are (specify containers)."; and (d) substitute "fiberboard" for "heavy cardboard" to conform to market terminology.

These amendments[182] more accurately describe the purpose of alternative containers and reduce any potential for confusion and misrepresentation concerning the types of containers that are available for use in cremations;[183]

(4) Amendment of the OBC–PL disclosure required by § 453.3(c)(2) to permit providers in disclosing that grave liners or vaults are not required by law to delete the phrase "in most areas of the country," to accommodate situations where state and local laws do not require outer burial containers;[184] and

(5) Amendment of the substance of the cash advance mark-up disclosure, required by § 453.3(f)(2), to require only that providers specify those cash advance items for which the provider charges a mark-up. The Commission has determined that the original disclosure may have caused the misimpression that providers markup all cash advance items, because it broadly referred to all cash advance items, when that is not the case.[185]

7. Other Minor/Technical Amendments

The Commission has made a slight modification to § 453.4(b)(2)(i)(B), a provision designed to enforce the Rule's unbundling provisions. The purpose for this provision was to inform consumers, before they sign the funeral contract, that they may only be charged for those items selected or for items that are required by law. If purchases are required by law or otherwise, this provision further provides consumers with an explanation in writing, together with the reason the requirement applies to their selections. The provision was intended to provide consumers with a final reminder that they need only pay for items that they have selected.[186]

The Commission has amended the required language in order to clarify for consumers the original purpose of the provision. It alerts consumers that they may only be charged for the goods and services that they choose, or that are required by law or by a cemetery or crematory (such as an outer burial container or a certain type of alternative container).[187]

The Commission further adopts a technical change to § 453.6 concerning providers' retention of documents, to clarify its requirements. The original section required the funeral provider to retain a copy of the "signed" statement of goods and services selected. The Rule, however, does not contain any express requirement that the final statement be signed, either by the consumer or the provider. The Commission in its 1982 Statement of Basis and Purpose made no mention of the signature requirement. Earlier drafts of the Rule included a requirement that the funeral provider ask the consumer to sign the itemized statement, but it was not adopted in the final version. The "signed" language of § 453.6 was apparently inserted to complement the earlier draft of the Rule that contained the itemized statement requirement; however, when the signature requirement was deleted, the language of § 453.6 was inadvertently left intact. This language, however, is susceptible to different interpretations, and may lead some funeral providers to believe that they must obtain the signature of the consumer on the statement.

The Commission therefore has amended the language of § 453.6 by deleting the phrase "on which the statement was signed," and substituting the phrase "of the arrangements conference," so that the provision now requires providers to maintain a copy of each statement of funeral goods and services selected "for at least one year from the date of the arrangements conference."[188]

The Commission, in addition, has added clarifying language to the required "clear and conspicuous" disclosure standard contained in § 453.7 of the Rule. That language clarifies that providers may not add statements or information to the Rule-required price lists that alter or contradict the information required to be included in those lists.

This specific prohibition is necessary to prevent violations of the "clear and conspicuous" standard that relate to provider detraction and potential consumer confusion problems demonstrated in the record.[189]

Finally, the Commission has:

(1) Deleted the definition of "Accounting year" (§ 453.1(a)), because that phrase does not appear elsewhere in the Rule;

(2) amended the definition of a "casket" (§ 453.1(d)), to include those constructed of "fiberglass" and "plastic", because those types of caskets represent a significant portion of caskets produced in today's market;[190] and

(3) made a slight grammatical change to the definition of "Funeral services" (§ 453.1(j)), to make it clear that the Rule only covers services that involve both the preparation of remains and the supervision of disposition.

III. Other Matters

A. Final Regulatory and Regulatory Flexibility Analyses

The Commission has determined that these amendments to the Funeral Rule will not have an annual effect on the national economy of $100 million or more, or otherwise have a significant economic impact on a substantial number of small business. The preponderance of the evidence in the

[180] See the discussion and evidence cited at R-O–1 (POR), 204–206.

[181] See R-N–1 (SR) at 187.

[182] These changes require complementary ones to conform related Rule sections—references to an "unfinished wood box" in §§ 453.1(p) (definition), 453.3(b), and 453.4(a) also are deleted, as is the reference to "pouches of canvas" in the definitional section, and "unfinished wood box" is added to the definition of an "alternative container" (§ 453.1(b)).

[183] See R–N–1 (SR) at 188–195 for a full discussion of the evidence on these amendments.

[184] See R–N–1 (SR) at 198.

[185] See R–N–1 (SR) at 200–202.

[186] R–B–5 at 42292 ("Section 453.4(b), the 'optional purchase' provision, ensures that consumers can make use of such price information by making a decision to decline items which they do not wish to purchase.").

[187] See R–N–1 (SR) at 205.

[188] See the discussion at R–N–1 (SR), 218–219.

[189] See R–N–1 (SR) at 219–220 for a full discussion of the evidence, and Commission precedents, relating to consumers' comprehension of Rule-required disclosures.

[190] See R–N–1 (SR) at 223; R–O–1 (POR) at 207.

record indicates that the Rule overall has not significantly increased funeral providers' costs of doing business, and that the amendments will reduce any costs to providers imposed by the Rule's requirements, by making it easier for them to comply. Therefore, pursuant to the exception for Rule amendments contained in section 22(a)(1)(A) of the FTC Act, and the provisions of the Regulatory Flexibility Act, 5 U.S.C. 604, 605, section 22 of the Act requiring that the Commission issue a final regulatory analysis with the promulgation of a final rule does not apply to this amended Rule.

List of Subjects in 16 CFR Part 453

Funeral homes, Price disclosure, Trade practices.

Accordingly, title 16, part 453 of the Code of Federal Regulations is revised to read as follows:

PART 453—FUNERAL INDUSTRY PRACTICES

Sec.
453.1 Definitions.
453.2 Price disclosures.
453.3 Misrepresentations.
453.4 Required purchase of funeral goods or funeral services.
453.5 Services provided without prior approval.
453.6 Retention of documents.
453.7 Comprehension of disclosures.
453.8 Declaration of intent.
453.9 State exemptions.

Authority: 15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

§ 453.1 Definitions.

(a) *Alternative container.* An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) *Cash advance item.* A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) *Casket.* A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(d) *Commission.* "Commission" refers to the Federal Trade Commission.

(e) *Cremation.* "Cremation" is a heating process which incinerates human remains.

(f) *Crematory.* A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(g) *Direct cremation.* A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(h) *Funeral goods.* "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(i) *Funeral provider.* A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(j) *Funeral services.* "Funeral services" are any services which may be used to:

(1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and

(2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(k) *Immediate burial.* An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(l) *Memorial service.* A "memorial service" is a ceremony commemorating the deceased without the body present.

(m) *Funeral ceremony.* A "funeral ceremony" is a service commemorating the deceased with the body present.

(n) *Outer burial container.* An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(o) *Person.* A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(p) *Services of funeral director and staff.* The "services of funeral director and staff" are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

§ 453.2 Price Disclosures.

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) *Preventive requirements.* To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) *Telephone price disclosure.* Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.

(2) *Casket price list.* (i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) *Outer burial container price list.* (i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) *General price list.* (i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(1) The prices of funeral goods or funeral services;

(2) The overall type of funeral service or disposition; or

(3) Specific funeral goods or funeral services offered by the funeral provider.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required in paragraph (b)(4)(i)(A) of this section must contain at least the following information:

(1) The name, address, and telephone number of the funeral provider's place of business;

(2) A caption describing the list as a "general price list"; and

(3) The effective date for the price list;

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with:

(1) A separate price for a direct cremation where the purchaser provides the container;

(2) Separate prices for each direct cremation offered including an alternative container; and

(3) A description of the services and container (where applicable), included in each price;

(D) The price range for the immediate burials offered by the funeral provider, together with:

(1) A separate price for an immediate burial where the purchaser provides the casket;

(2) Separate prices for each immediate burial offered including a casket or alternative container; and

(3) A description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities and staff for viewing;

(I) Use of facilities and staff for funeral ceremony;

(J) Use of facilities and staff for memorial service;

(K) Use of equipment and staff for graveside service;

(L) Hearse; and

(M) Limousine.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and

(B) Either of the following:

(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(2) The following statement: "Please note that a fee of (*specify dollar amount*) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)*(1)* of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)*(2)* of this section.

(iv) The services fee permitted by § 453.2(b)(4)(iii)(C)*(1)* or (C)*(2)* is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) *Statement of funeral goods and services selected.* (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or

reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) *Other pricing methods.* Funeral providers may give persons any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

§ 453.3 Misrepresentations.

(a) *Embalming provisions.*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for:

(A) Direct cremation;

(B) Immediate burial; or

(C) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) *Casket for cremation provisions*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations;

(ii) Represent that a casket is required for direct cremations.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) *Outer burial container provisions*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) *Preventive requirement.* To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements." The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) *General provisions on legal and cemetery requirements*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) *Provisions on preservative and protective value claims.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) *Cash advance provisions*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by § 453.2(b)(5)(i)(B): "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§ 453.4 Required purchase of funeral goods or funeral services.

(a) *Casket for cremation provisions*—(1) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral

goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) *Preventive requirement.* To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) *Other required purchases of funeral goods or funeral services*—(1) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

(ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).

(2) *Preventive requirements.* (i) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4) (ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by § 453.2(b)(5)(i): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§ 453.5 Services provided without prior approval.

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) *Preventive requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of documents.

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

§ 453.7 Comprehension of disclosures.

To prevent the unfair or deceptive acts or practices specified in § 453.2 through § 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)–(4), any statement or information that alters or contradicts the information required by this Part to be included in those lists.

§ 453.8 Declaration of intent.

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–393 Filed 1–10–94; 8:45 am]

BILLING CODE 6750–01–P

federal register

Tuesday
January 11, 1994

Part III

Department of Education

Office of Postsecondary Education

Availability of the 1993–94 National Direct and Federal Perkins Loan Programs Directory of Designated Low-Income Schools; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Availability of the 1993–94 National Direct and Federal Perkins Loan Programs Directory of Designated Low-Income Schools

AGENCY: Department of Education.

ACTION: Notice of availability of the 1993–94 National Direct and Federal Perkins Loan Programs Directory of Designated Low-Income Schools.

SUMMARY: The Secretary announces that the 1993–94 National Direct and Federal Perkins Loan Programs Directory of Designated Low-Income Schools (Directory) is now available. Under the National Direct and Federal Perkins Loan programs, a borrower may have repayment of his or her loan deferred and a portion of his or her loan cancelled if the borrower teaches full-time for a complete academic year in a selected elementary or secondary school having a high concentration of students from low-income families. In the 1993–94 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1993–94 school year to qualify for deferment and cancellation benefits.

DATES: The Directory is currently available.

ADDRESSES: Information concerning specific schools listed in the Directory may be obtained from Ronald W. Allen, Systems Administration Branch, Campus-Based Programs Systems Division, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4621, ROB–3), Washington, DC 20202–5453, Telephone (202) 708–6730. Information concerning deferment and cancellation of a National Direct or Federal Perkins loan may be obtained from Susan M. Morgan, Section Chief, Campus-Based Loan Programs Section, Loans Branch, Division of Policy Development, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4018, ROB–3), Washington, DC 20202–5453, Telephone (202) 708–8242. 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.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the Federal Perkins Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary selects the schools that qualify the borrower for deferment and cancellation benefits under the procedures set forth in 34 CFR 674.53 and 674.54 of the Federal Perkins Loan Program regulations.

The Secretary has determined that, for the 1993–94 academic year, full-time teaching in the schools set forth in the 1993–94 Directory qualifies a borrower for deferment and cancellation benefits.

The Secretary is providing the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1993–94 academic year. The Office of Postsecondary Education retains, on a permanent basis, copies of past Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Direct, and Federal Perkins Loan Cancellations.)

Dated: January 5, 1994.

David Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94-559 Filed 1–10–94; 8:45 am]

BILLING CODE 4000-01-P

Reader Aids

Federal Register

Vol. 59, No. 7

Tuesday, January 11, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, and Federal Register finding aids.	202–275–1538, or 275–0920

FEDERAL REGISTER PAGES AND DATES, JANUARY

1–240.....3
241–498.....4
499–652.....5
653–946.....6
947–1262.....7
1263–1446.....10
1447–1616.....11

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6644.....1261
Executive Orders:
12864 (Amended by EO 12890).....499
12890.....499
Administrative Orders:
Memorandums:
January 1, 1994.....653
Presidential Determinations:
No. 94–7 of December 18, 1993.....1

7 CFR

58.....1263
201.....655
253.....1447
254.....1447
322.....656
906.....1266, 1449, 1450
907.....241, 1268
908.....241, 1268
910.....1269
928.....1266
932.....1270
944.....1270
959.....1452
966.....1453
984.....1453
1106.....1273
1464.....1274
1710.....494
1773.....657
Proposed Rules:
51.....1490
701.....1293
723.....1493
1005.....1305
1007.....1305
1011.....1305
1030.....260
1046.....1305
1065.....260
1068.....260
1076.....260
1079.....260
1094.....1307

8 CFR

103.....1455
204.....501
212.....1467
214.....1455, 1468
223.....1455
223a.....1455
245a.....1470
248.....1455
264.....1455
292.....1455
Proposed Rules:
103.....1308, 1317
211.....1317
216.....1317
235.....1317
242.....1317

9 CFR

Proposed Rules:
Ch. III.....1499
318.....550
381.....551

10 CFR

26.....502
73.....661
Proposed Rules:
50.....979

12 CFR

Proposed Rules:
960.....1323

13 CFR

Proposed Rules:
121.....1360

14 CFR

39.....3, 4, 507, 509, 511, 514, 1471
71.....662, 947, 1472
Proposed Rules:
Ch. I.....31, 554, 1362
27.....554
29.....554
33.....703, 704, 984
39.....35, 265, 266, 555, 556, 1500, 1501, 1503, 1505
71.....706

15 CFR

295.....663
1180.....6
Proposed Rules:
990.....1062, 1189, 1190

16 CFR

453.....1592

17 CFR

239.....242
Proposed Rules:
1.....1506
30.....1506
33.....01506
190.....1506
201.....1509
202.....1509
229.....1509
240.....1509

18 CFR

161.....243

250....243
284....516
341....12
342....12
343....12
344....12
345....12
347....12
360....12
361....12
375....12
Proposed Rules:
161....268
250....268

19 CFR
12....110
102....110
134....110
356....228
Proposed Rules:
4....141
10....141
12....141
102....141
134....141
177....141

20 CFR
404....670, 1274, 1416
416....1274
617....906
621....874
655....874
Proposed Rules:
422....1363

21 CFR
20....350, 395, 531
100....536
101....350, 354, 378, 395, 423, 436
1308....671
Proposed Rules:
101....427

22 CFR
41....1473

24 CFR
251....1474
252....1474
255....1474
Proposed Rules:
945....1244
960....1244

26 CFR
1....12, 947, 1476
602....12
Proposed Rules:
1....807

27 CFR
9....537
Proposed Rules:
9....1510

28 CFR
571....1238
572....1238
Proposed Rules:
65....558
81....37
545....1240
550....1240

29 CFR
504....874
1650....23
1915....146
1926....146

30 CFR
904....540
Proposed Rules:
870....278
886....278
887....278
888....278

33 CFR
2....947
3....947
100....673
147....674
165....675, 676, 948, 949
Proposed Rules:
117....986

34 CFR
462....1418
472....1418
685....472

37 CFR
2....256

38 CFR
4....677
Proposed Rules:
3....278

39 CFR
Proposed Rules:
111....1512

40 CFR
13....650
52....1476, 1485
61....542
180....950, 951
260....458
261....458
271....1275
305....25
600....677
Proposed Rules:
52....278, 707, 988, 1513
55....994
63....1515
81....707
131....810
261....709
300....714
430....1515
721....38

41 CFR
105–57....1277
201–17....952
201–20....952
Proposed Rules:
201–1....39
201–3....39
201–20....39
201–39....39

42 CFR
401....108
405....1278
410....1278
413....1278
414....1278
421....679
488....108
489....108
493....682
Proposed Rules:
406....714

43 CFR
4....1486
Public Land Order:
6986....108
7026....1489
Proposed Rules:
403....40
426....997
3160....718

44 CFR
10....953

45 CFR
Proposed Rules:
2510....1194
2513....1194
2515....1194
2516....1194
2517....1194
2518....1194
2519....1194
2520....1194
2521....1194
2522....1194
2523....1194
2524....1194
2530....1194
2531....1194
2532....1194
2540....1194

46 CFR
501....954
Proposed Rules:
67....725
514....1515
580....1515
581....1515

47 CFR
0....542
1....542
22....1285
25....1285
80....1285
87....1285
90....1285
95....1285
97....542
99....1285
Proposed Rules:
15....280
73....41, 42, 43, 44, 726, 1365, 1366
90....280
97....558

48 CFR
5....544
14....544
15....544
17....544
25....544
52....544
225....1288
252....1288

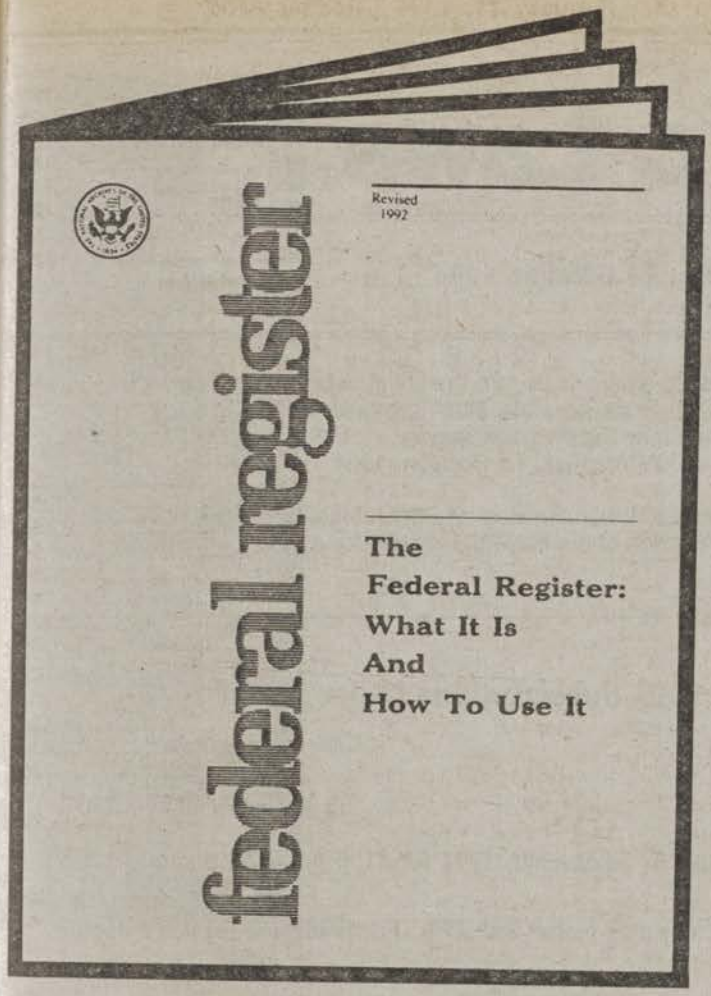
49 CFR
391....1366
392....1366
396....1366
Proposed Rules:
571....281

50 CFR
222....440
227....440
611....685
625....257
641....966
642....257
651....26
663....258, 685, 698
676....701
Proposed Rules:
17....44, 48, 53, 288, 852, 862, 869, 997

LIST OF PUBLIC LAWS

Note: The list of Public Laws for the first session of the 103d Congress has been completed and will resume when bills are enacted into law during the second session of the 103d Congress, which convenes on January 25, 1994.

A cumulative list of Public Laws for the first session of the 103d Congress was published in Part IV of the **Federal Register** on January 3, 1994.



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

Order processing code:
*6173

P3

☐ **YES** please send me the following:

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202)-512-2250

_____ copies of **The Federal Register - What it is and How To Use It**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Public Laws

103d Congress, 2d Session, 1994

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 2d Session, 1994.

(Individual laws also may be purchased from the Superintendent of Documents, Washington, DC 20402-9328. Prices vary. See Reader Aids Section of the Federal Register for announcements of newly enacted laws and prices.)

Superintendent of Documents **Subscriptions** Order Form

Order Processing Code:
*** 6216**

☐ **YES**, enter my subscription(s) as follows:

Charge your order. It's Easy!
To fax your orders (202) 512-223

_____ subscriptions to **PUBLIC LAWS** for the 103d Congress, 2d Session, 1994 for $156 per subscription.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

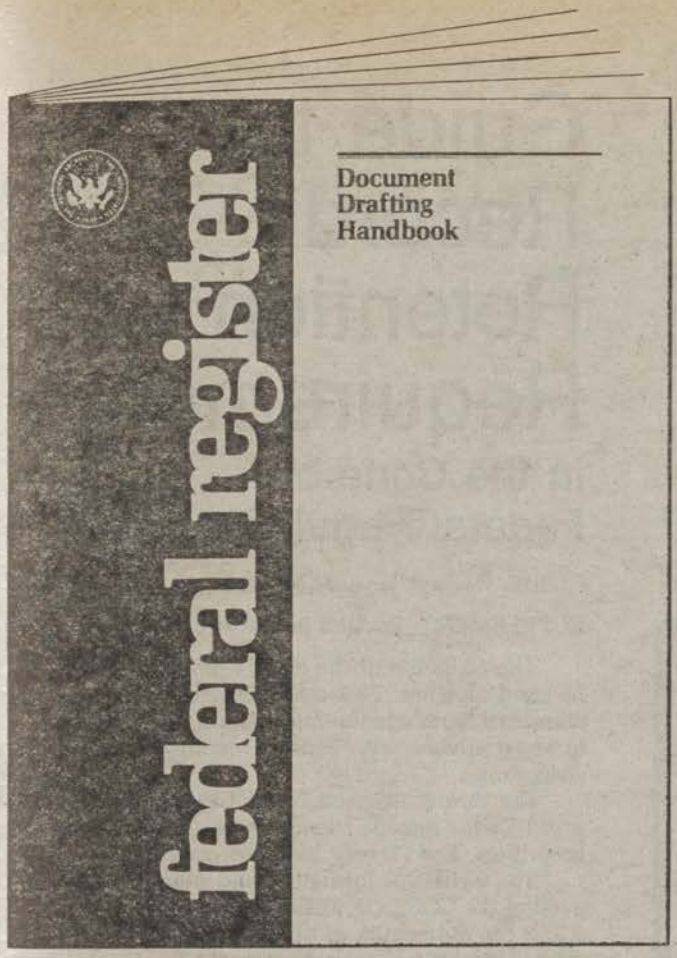
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you fo your order

(Authorizing Signature)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954



Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: ***6133**

Charge your order. It's easy!

To fax your orders and inquiries—(202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069-000-00037-1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%.
All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

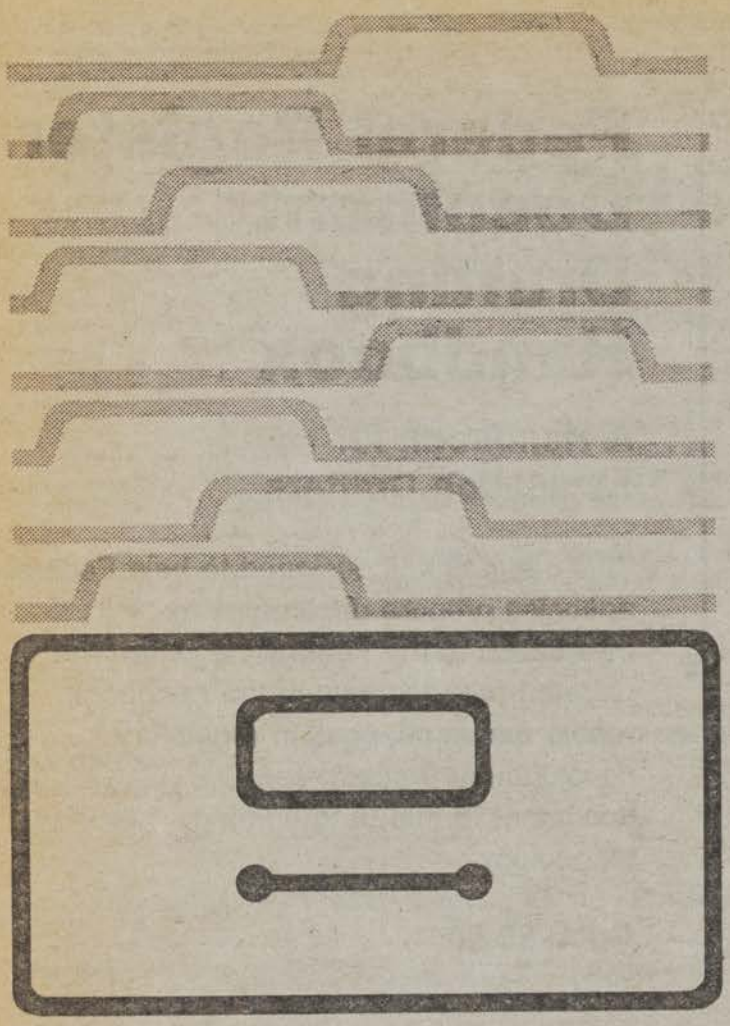
_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev 12/91)

4. **Mail To:** New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents **Publications** Order Form

Order Processing Code:
*

P3

Charge your order. It's Easy! MasterCard VISA

To fax your orders (202) 512-2250

☐ **YES**, please send me the following:

_____copies of the 1992 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR S/N 069-000-00046-1 at $15.00 each.

_____copies of the 1993 SUPPLEMENT TO THE GUIDE, S/N 069-001-00052-1 at $4.50 each.

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (5/93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Printed on recycled paper