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Contents

Federal Register

Vol. 59, No. 103

Tuesday, May 31, 1994

Agency for International Development
NOTICES
Meetings:
International Food and Agricultural Development and Economic Cooperation Board, 28117–28118

Agriculture Department
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
NOTICES
Alternative Agricultural Research and Commercialization Center; proposal request, 28050–28051

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Animal casings from countries with African swine fever or bovine spongiform encephalopathy, 27966–27970
Plant-related quarantine, domestic:
Pink bollworm, 27965–27966

Army Department
See Engineers Corps

Centers for Disease Control and Prevention
NOTICES
Grant and cooperative agreement awards:
International Centre for Birth Defects, 28107–28108
Meetings:
Preventing spread of vancomycin resistance, 28108

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities under OMB review, 28051–28052

Defense Department
See Engineers Corps
NOTICES
Meetings:
Science Board task forces, 28062

Education Department
NOTICES
Meetings:
Student Financial Assistance Advisory Committee, 28064–28065

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Atomic energy agreements; subsequent arrangements, 28065

Engineers Corps
NOTICES
Grants and cooperative agreements; availability, etc.:
Construction productivity advancement research program, 28062–28064

Environmental Protection Agency
RULES
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 27989–28013
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 28036–28038
Illinois, 28038
NOTICES
Drinking water:
Underground injection control program—
Texas, 28077
Meetings:
Environmental Policy and Technology National Advisory Council, 28077
Superfund; response and remedial actions, proposed settlements, etc.:
Acaconda Smelter Site, MT, 28077–28078
Garner Road Drum Dump Site, AL, 28078
Toxic and hazardous substances control:
Asbestos—
National Directory of AHERA Accredited Courses; availability, 28078
Water pollution; discharge of pollutants (NPDES):
Placer mining in Alaska; general permit, 28079–28096

Equal Employment Opportunity Commission
NOTICES
Agency information collection activities under OMB review, 28096

Executive Office of the President
See Presidential Documents

Family Support Administration
See Refugee Resettlement Office

Farm Credit Administration
RULES
Organization, functions, and authority delegations:
Miscellaneous amendments
Effective date, 27970

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 27970–27972
McDonnell Douglas, 27972–27974
PROPOSED RULES
Airworthiness directives:
Pacific Scientific Co., 28031–28032

Federal Communications Commission
RULES
Radio stations; table of assignments:
Wisconsin, 28014
PROPOSED RULES
Radio services, special:
Mobile services; regulatory treatment, 28042–28047

Television stations; table of assignments:
Iowa, 28047
NOTICES
Agency information collection activities under OMB review, 28096–28097
Common carrier services:
Public mobile services—
Personal communications service licenses in 900 MHz band (narrowband PCS); auction, 28097–28100
Radio services, special:
Private Radio Bureau; interactive video data service licenses; auction, 28100–28103

Federal Crop Insurance Corporation
PROPOSED RULES
Crop insurance regulations:
Coarse grains, 28016–28022
Cotton, 28022–28027
Extra long staple cotton, 28027–28031

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Maine, 28103
Missouri, 28103

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
1069284 Ontario Inc. et al., 28065–28067
Cambridge Electric Light Co. et al., 28067–28068
Northern States Power Co. et al., 28068–28071
Hydroelectric applications, 28071–28075
Applications, hearings, determinations, etc.:
Granite State Gas Transmission, Inc., 28075
National Fuel Gas Supply Corp., 28075
Panhandle Eastern Pipe Line Co., 28075

Federal Highway Administration
NOTICES
Intelligent vehicle-highway systems (IVHS):
Early deployment planning program, 28126–28129

Federal Reserve System
NOTICES
Federal Open Market Committee:
Domestic policy directives, 28103–28104
Applications, hearings, determinations, etc.:
Bellevue State Bank Employee Stock Ownership Plan et al., 28104–28105
FNB Financial Services Corp. et al., 28105
Norwest Corp., 28105–28106
Provident Bancorp, Inc., et al., 28106
Rurban Financial Corp. et al., 28106–28107

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Aegis Security Insurance Co., 28130–28131

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 28109
Environmental statements; availability, etc.:
Hanalei National Wildlife Refuge, HI; building reconstruction, 28109–28110
Grants and cooperative agreements; availability, etc.:
Sport fish and wildlife restoration projects; policy and procedures for selecting and funding Federal aid, 28110–28115

Food and Drug Administration
NOTICES
Meetings:
Advisory committees, panels, etc., 27108–28109

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Michigan
Dane Company, Inc.; dairy product/sugar blending, 28052
New Jersey
Merck & Co., Inc.; pharmaceutical manufacturing facility, 28052–28053

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Public Health Service
See Refugee Resettlement Office
See Social Security Administration

Health Care Financing Administration
NOTICES
Medicaid:
Disproportionate share hospitals; 1994 FY aggregate payments limitations; correction, 28133

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
PROPOSED RULES
Community development block grants:
Project costs and financial requirements; economic development guidelines, 28176–28197

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Sebacic acid from—
China, 28053–28061
Foreign buyer program; domestic trade shows support, 28200–28201

Interstate Commerce Commission
NOTICES
Meetings; Sunshine Act, 28132
Railroad services abandonment:
Norfolk & Western Railway Co., 28118

Justice Department
NOTICES
Agency information collection activities under OMB review, 28118–28119

Land Management Bureau
RULES
Public land orders:
Nevada, 28013–28014
NOTICES
Closure of public lands:
Montana, 28115
Coal leases, exploration licenses, etc.:
Oklahoma, 28115–28117
Oil and gas leases:
Wyoming, 28117
Recreation management restrictions, etc.:
McCain Valley Cooperative Wildlife Management Area, CA; campground daily recreation use fee adjustment, 28117

National Archives and Records Administration
PROPOSED RULES
Records management:
Vital records; records disaster mitigation and recovery, 28033–28036
NOTICES
Agency records schedules; availability, 28120

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 28129–28130

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Ocean salmon off coasts of Washington, Oregon, and California, 28014–28015
Ocean and coastal resource management:
Coastal zone management program, 27974–27985
PROPOSED RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, etc.; limited access management of Federal fisheries in and off of Alaska, 28048–28049
NOTICES
Coastal zone management programs and estuarine sanctuaries:
Consistency appeals—
Virginia Power, 28061

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Nebraska State Historical Society; Pawnee Phase, etc., items, 28104

Nuclear Regulatory Commission
NOTICES
Petitions; Director's decisions:
Northeast Utilities, 28120–28121
Applications, hearings, determinations, etc.:
Miami Valley Hospital, OH, 28121–28122

Presidential Documents
PROCLAMATIONS
Special observances:
Pediatric and Adolescent AIDS Awareness Week (Proc. 6694), 27963–27964
EXECUTIVE ORDERS
Rwanda; arms embargo (EO 12918), 28203–28206

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
NOTICES
Organization, functions, and authority delegations:
Health Resources and Services Administration
Communications and Information Resources Management Office, 28109
Veterans Health Care Act:
Limitation on prices of drugs purchased by covered entities; correction, 28133

Refugee Resettlement Office
PROPOSED RULES
State legalization impact assistance grants, 28038–28041

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 28122–28123
Applications, hearings, determinations, etc.:
First Xerox Life Insurance Co. et al., 28123–28125
McDonald Tax Exempt Money Market Fund, Inc., 28125–28126

Social Security Administration
RULES
Supplemental security income:
Financial institution account policy; implementation, 27985–27989

State Department
NOTICES
Meetings:
International Telecommunications Advisory Committee, 28126

Surface Mining Reclamation and Enforcement Office
RULES
Abandoned Mine Land Reclamation Fund reauthorization; implementation, 28136–28174
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Missouri, 28032–28033

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 28130
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 28130

Treasury Department
See Fiscal Service

Western Area Power Administration
NOTICES
Power rate adjustments:
Boulder Canyon Project, AZ and NV, 28075–28077

Separate Parts In This Issue

Part II
Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 28136–28174

Part III
Department of Housing and Urban Development, 28176–28197

Part IV
Department of Commerce, International Trade Administration, 28200–28201

Part V
The President, 28203–28206

Reader Aids

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

Electronic Bulletin Board

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:
12918.....28205

Proclamations:
6694.....27693

7 CFR
301.....27965

Proposed Rules:
457 (3 documents).....28016, 28022, 28027

9 CFR
96.....27966

12 CFR
600.....27970
604.....27970
605.....27970
611.....27970
615.....27970

14 CFR
39 (2 documents).....27970, 27972

Proposed Rules:
39.....28031

15 CFR
923.....27974
926.....27974
927.....27974

20 CFR
416.....27985

24 CFR

Proposed Rules:
570.....28176

30 CFR
795.....28136
870.....28136
872.....28136
873.....28136
874.....28136
875.....28136
876.....28136
886.....28136

Proposed Rules:
925.....28032

36 CFR

Proposed Rules:
1236.....28033

40 CFR
300.....27989

Proposed Rules:
52 (2 documents).....28036, 28038

43 CFR

Public Land Order:
7055.....28013

45 CFR

Proposed Rules:
402.....28038

47 CFR
73.....28014

Proposed Rules:
20.....28042
22.....28042
73.....28047
90.....28042

50 CFR
661.....28014

Proposed Rules:
676.....28048

Federal Register
Vol. 59, No. 103
Tuesday, May 31, 1994

Presidential Documents

Title 3—

The President

Proclamation 6694 of May 25, 1994

Pediatric and Adolescent AIDS Awareness Week, 1994

By the President of the United States of America

A Proclamation

Ten thousand children in the United States today are living with the human immunodeficiency virus (HIV). Ten million children worldwide will become infected with HIV before the millennium. Over 5,000 cases of pediatric AIDS and 1,500 cases of AIDS in adolescents ages 13 through 19 have been reported in this country alone. The tragedy is magnified for our youth, as the epidemic reaches far beyond those actually infected—it will leave up to 125,000 children and teenagers orphaned in this country by the end of this decade. By the year 2000, AIDS will be one of the five leading causes of death among American children ages one to four.

It is agonizing to watch our young suffer and die. It is all the more painful because we have been frustrated thus far in our efforts to find a cure. But we must not give up hope nor stand by idly. With hard work, we will find that cure. Moreover, HIV and AIDS are preventable. Americans can stop AIDS with targeted, linguistically specific, and culturally based prevention education for people in all age groups. If we are to overcome the HIV epidemic, communities must address difficult and controversial issues surrounding sexuality, drug abuse, and health care delivery.

The effects of infection by HIV are different in children than in adults. Infected infants get sicker faster, their immune systems may deteriorate more rapidly, and treatments that are helpful to adults may not be helpful for children.

It is imperative to continue the research now being done to study ways to prevent transmission of HIV from mother to infant. We must also develop and refine treatments that increase the survival time and quality of life of HIV-infected infants, children, and adolescents.

As a people, we must see to it that those among us living with HIV and AIDS are allowed to enjoy productive lives for as long as possible. We must put aside our differences and recognize the necessity of working together to defeat our common enemy—HIV. I challenge all Americans to join the fight. And we must educate people about the true nature of HIV so that the discrimination and fear born of ignorance and translated into ostracism and discrimination can be stopped.

Many communities across the country have already realized the grave dangers posed to our society by HIV and have responded by reaching out to battle the disease. More people must become involved now, or many more lives will be needlessly lost. This Administration, through the Office of National AIDS Policy and its Cabinet agencies, has joined with community-based AIDS organizations, families, businesses, professional associations, churches, schools, and universities to fight HIV and AIDS. Early intervention and educational resources must be made available, especially to youth and other high-risk groups. One in five of all reported AIDS cases is diagnosed in the 20–29 year old age group, meaning that these people were adolescents when they became infected.

The single most important step taken by my Administration in the fight against HIV and AIDS is the introduction to the Congress of the Health Security Act of 1993. All people living with HIV and AIDS, especially our children, must often fight not only the disease, but also a health care system likely to deny them coverage in their moment of greatest need. This Administration is absolutely committed to ensuring every American adequate health care coverage that will never be taken away. To do any less in a nation as resourceful as ours would be unacceptable.

Remembering that every person living with HIV and AIDS is someone's child, we must work together tirelessly to find a cure. We must distribute our human and financial resources across the Nation to strengthen and expand programs for HIV and AIDS education, treatment, research, and prevention.

We can stop the terrible harvest of children and adolescents wrought by HIV and AIDS. Working together we have the power to stop this plague.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of May 29 through June 4, 1994, as Pediatric and Adolescent AIDS Awareness Week. I call on the people of America, the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and officials of other areas under the flag of the United States of America, to join with me in the continuing fight against HIV and AIDS and to remember especially during this week children and young people living with HIV and AIDS and their families.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–13324
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Rules and Regulations

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Vol. 59, No. 103
Tuesday, May 31, 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

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 94–034–1]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pink bollworm regulations by removing Craighead, Cross, Greene, Monroe, Poinsett, and St. Francis Counties in Arkansas; Concordia Parish in Louisiana; and Washington County in Mississippi from the list of suppressive areas and removing Louisiana and Mississippi from the list of States quarantined because of the pink bollworm. This action relieves unnecessary restrictions on the interstate movement of regulated articles from certain previously regulated areas.

DATES: Interim rule effective May 31, 1994. Consideration will be given only to comments received on or before August 1, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–034–1. Comments received may be inspected at USDA, room 1141 South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney E. Cousins, Senior Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6365.

SUPPLEMENTARY INFORMATION:

Background

The pink bollworm, *Pectinophora gossypiella* (Saunders), is one of the world's most destructive pests of cotton. This insect spread to the United States from Mexico in 1917 and now exists throughout most of the cotton-producing States west of the Mississippi River.

The pink bollworm regulations, contained in 7 CFR 301.52 through 301.52–10 (referred to below as the regulations), quarantine certain States and restrict the interstate movement of regulated articles from regulated areas in quarantined States for the purpose of preventing the interstate spread of pink bollworm.

Regulated areas for the pink bollworm are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both types of areas in order to prevent the movement of pink bollworm into noninfested areas. However, the management and containment of pink bollworm is undertaken as an objective only in places that are designated as suppressive areas.

Prior to the effective date of this document, Craighead, Cross, Greene, Monroe, Poinsett and St. Francis Counties, AR; Concordia Parish, LA; and Washington County, MS, were designated as suppressive areas. Based on 2 years of negative trapping surveys conducted by inspectors of Arkansas, Louisiana, and Mississippi State and county agencies, and by inspectors of the Animal and Plant Health Inspection Service (APHIS), we have determined that pink bollworm has been eradicated from these counties. We are, therefore, removing these areas from the list of suppressive areas in § 301.52–2a.

As of the effective date of this document, there will be no areas in Louisiana or Mississippi regulated because of the pink bollworm. We are, therefore, also removing Louisiana and Mississippi from the list of States in § 301.52–2a quarantined because of the pink bollworm.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to relieve unnecessary restrictions on the interstate movement of regulated articles from areas where the pink bollworm no longer exists.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register** including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This regulation relieves restrictions on the interstate movement of regulated articles from certain previously regulated areas in Arkansas, Louisiana, and Mississippi. There are 114 cotton related commercial activities in the eight counties, including cotton producers, cotton gins, equipment dealers, equipment auction companies and storage facilities. Approximately 95 percent are small entities according to standards set by the Small Business Administration. They will experience a modest economic benefit as a result of this rule, since they will no longer be required to comply with the treatment and handling requirements contained in the pink bollworm regulations. We estimate that each of these entities will save approximately $150 to $930 annually.

Further, since the total production of cotton and cottonseed by the affected counties is small (less than 4 percent of

U.S. production), the effect on national prices is expected to be insignificant.

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

Executive Order 12372

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

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.52–2a is amended as follows:

a. The entry for Arkansas is revised to read as set forth below.

b. The entry for Louisiana and all of the material pertaining to Louisiana are removed.

c. The entry for to Mississippi and all of the material pertaining to Mississippi are removed.

§ 301.52–2a Regulated areas; suppressive and generally infested areas.

* * * * *

Arkansas

(1) *Generally infested area.* None.

(2) *Suppressive Area.*

Clay County. The entire county.

Crittenden County. The entire county.

Mississippi County. The entire county.

* * * * *

Done in Washington, DC, this 23rd day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13057 Filed 5–27–94; 8:45 am]

BILLING CODE 3410–34–P

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9 CFR Part 96

[Docket No. 92–133–2]

Animal Casings From Countries Where African Swine Fever or Bovine Spongiform Encephalopathy Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the regulations by prohibiting the importation of ruminant casings from countries where bovine spongiform encephalopathy exists, and by prohibiting the importation of swine casings from countries where African swine fever exists. As amended by this document, the rule prohibits the importation of bovine casings, except bovine casings made from stomachs, from countries where bovine spongiform encephalopathy exists, and prohibits the importation of swine casings from countries where African swine fever exists. This action is necessary to prevent imported casings from introducing these diseases into the United States.

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Gray, Senior Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7885.

SUPPLEMENTARY INFORMATION:

Background

Animal casings are intestines, stomachs, esophagi, and urinary bladders from cattle, sheep, swine, or goats that are used to encase processed meats, such as sausage. The regulations in 9 CFR part 96 (referred to below as "the regulations") govern the importation of animal casings into the United States to prevent the introduction of contagious livestock diseases.

Among the most destructive communicable diseases of ruminants and swine, respectively, are bovine spongiform encephalopathy (BSE) and African swine fever (ASF). BSE, a neurological disease first identified in 1986, appears to be caused by the same agent as scrapie, a destructive disease of sheep and goats. ASF, a hemorrhagic disease, is caused by a virus.

ASF virus may be present in, and spread by, swine, pork, and pork products; BSE may be present in, and spread by, ruminant products used for animal feed and by veterinary biological products containing BSE-infected ruminant byproducts. ASF or BSE could become established in the United States if materials carrying the ASF virus or BSE agent, such as certain meat, animal products, and animal byproducts from swine or ruminants in countries where the respective diseases exist, were imported and fed to or injected into swine or ruminants in the United States. Because the importation of those materials would pose a risk of introducing ASF and BSE into the United States, the regulations in 9 CFR parts 94 and 95 prohibit or restrict the importation of animal products and byproducts into the United States from countries where these diseases exist.

In an interim rule effective and published in the **Federal Register** on September 7, 1993 (58 FR 47029–47031, Docket No. 93–133–1), we amended the animal casings regulations in 9 CFR part 96 to prohibit the importation of ruminant casings from countries where BSE exists, and to prohibit the importation of swine casings from countries where ASF exists. This action was necessary to prevent imported casings from introducing these diseases into the United States.

We solicited comments concerning the interim rule for a 60-day comment period ending November 8, 1993. We received 7 comments by that date. They were from foreign governments and commissions, trade associations, and a U.S. veterinary medical association. We have carefully considered all of the comments we received. They are discussed below by topic.

African Swine Fever

Only two of the comments directly addressed the interim rule prohibition on swine casings from countries where ASF exists. One commenter supported the entire interim rule, including the ASF-related portion; the other commenter supported only the ASF-related portion of the rule. Neither commenter suggested any changes in the ASF-related portion of the rule.

One other commenter perceived discrepancies between the ASF rules and the BSE rules. However, the

commenter did not object to the ASF-related portion of the rule or suggest any changes in that portion of the rule.

Therefore, we are not making any changes in the portion of the interim rule concerning ASF.

Covering Additional Diseases

One commenter suggested that a rule similar to the interim rule be adopted for casings from countries where foot-and-mouth disease, rinderpest, Rift Valley fever, and other exotic diseases exist. Another commenter suggested that casings from countries where scrapie exists should be restricted "if new findings would lead the scientific community to raise the level of BSE transmission risk due to sheep proteins * * * ." A third commenter stated that the rule was "inappropriate" because it prohibited all ruminant casings "irrespective of the scrapie status of the country of origin * * *."

We are not making any changes based on these comments. The regulations in 9 CFR part 96 currently apply to casings from all countries, and thereby apply to casings from countries where foot-and-mouth disease, rinderpest, scrapie, Rift Valley fever, and other diseases exist. Based on our experience over the years casings have been imported into the United States, we believe the regulations in part 96 are adequate to prevent importation of the diseases named by the commenters. Of course, if new findings about any disease indicate that the regulations are not adequate to prevent importation of a disease, we will consider amending the regulations.

Scrapie in the United States

Several commenters implied that casings from countries where BSE exists should not be regulated, or should be regulated differently, because scrapie exists in the United States. The commenters are correct that scrapie exists in the United States. It is also true that scrapie appears to be caused by the same agent that causes BSE. However, scrapie infects only sheep and goats, and there is, as discussed elsewhere in this document, no evidence for cross-species transmission of scrapie. Therefore, the presence of scrapie in the United States is not, we believe, relevant to our regulating casings which could transmit BSE. For this reason we are making no changes based on these comments.

Scientific Basis or Justification for Rule

Several commenters stated that the interim rule, as it relates to BSE, is without scientific basis. One commenter stated that the scientific evidence does not justify a rule of "its broad scope." Another commenter contrasted our interim rule with our regulations in 9 CFR 94.18. The regulations in § 94.18 allow meat and other edible animal products to be imported for human consumption from countries where BSE exists if the bone and visible lymphatic and nerve tissue have been removed. The commenter asked why we do not allow casings to be imported for human consumption if the major lymphoid tissues (Peyer's patches) have been removed.

We acknowledge that the scientific knowledge about BSE is, as one commenter put it, modest. However, there is enough information to establish that BSE is an insidious and devastating disease. Unfortunately, there is not enough information to demonstrate that completely removing Peyer's patches from bovine casings would be adequate to prevent the spread of BSE. And there is doubt that Peyer's patches could be completely removed. According to the minutes of a World Health Organization meeting held in November, 1991, "Peyer's patches may be partially retained after processing." [1] Therefore we are not making any changes in the rule based on these comments.

Interspecies Transfer of BSE

The issue of interspecies transfer of BSE was also raised by commenters. One commenter stated that interspecies transfer is "highly rare and mostly undocumented." Several other commenters stated that there is no scientific evidence that BSE-infected bovine material can contaminate ovine material or that ovine material can be infected with BSE.

We have carefully considered these comments. We agree with the comments that there is no evidence at this time that bovine material can contaminate ovine material. Among ruminants, BSE appears to affect mainly bovines. We are therefore amending the interim rule to change the word "ruminant" to "bovine" in § 96.2(b). The effect of this terminology change is to remove restrictions on importation of ovine casings, while retaining restrictions on importation of bovine casings.

Bovine Stomachs

One commenter specifically objected to banning importation of bovine stomachs used as casings.[2] According to the commenter, there is no scientific support for such a ban.

We have reviewed available data on this subject. According to the minutes of a World Health Organization meeting in November, 1991, stomachs do not need to be regulated "because these organs, when prepared for food, do not contain significant quantities of lymphoid tissue." [3] For this reason we are removing bovine stomachs from our rule.

Rendered Products

One commenter stated that there is no longer any risk from rendered products because of changes in rendering procedures, and implied that we should amend our rules because of this. We are not making any changes based on this comment. Casings are not rendered products. It is therefore not relevant to our interim rule whether there is a risk from rendered products.

Banning Ruminant Protein in Ruminant Feed

One commenter stated that banning feeds which contain ruminant proteins is adequate to keep BSE out of the United States. It is believed that the spread of BSE in the United Kingdom was due to the practice of using ruminant protein in ruminant feedstuffs. In 1988 this practice was prohibited in the United Kingdom. However, BSE cases continued to increase in the United Kingdom until 1992. There has been an insignificant reduction since that time, and 700 to 800 cases continue to be diagnosed weekly.

Because of the long incubation period for BSE, enough time has not yet elapsed since the feed ban was instituted to ensure that such a ban is adequate to stop, not just slow, the spread of the disease. If the ban is adequate, there are still numerous sources of infection in all countries where BSE exists. We anticipate that new cases of BSE will continue to be identified. For this reason, we do not believe that banning ruminant feeds containing ruminant protein, by itself, is adequate to prevent BSE from being introduced into the United States.

Casings Collected in BSE-Free Countries but Processed in Countries Where BSE Exists

Several commenters objected to our prohibiting the importation of ruminant casings collected in BSE-free countries but processed in countries where BSE exists.

We have carefully considered these comments. However, we are not making

[1] See p. 8 of November 19, 1991, minutes, draft 4, of World Health Organization "Consultation on Public Health Issues Related to Animal and Human Spongiform Encephalopathies," held in Geneva, Switzerland, November 12 through 14, 1991.

[2] Animal casings are intestines, stomachs, esophagi, and urinary bladders from cattle, sheep, swine, or goats that are used to encase processed meats, such as sausage.

[3] *Ibid.*

any changes based on them. We are not aware of any demand for processing bovine casings from BSE-free countries in a country where BSE exists. Moreover, criteria for establishments processing bovine products from BSE-free countries in countries where BSE exists, to prevent their possible exposure to BSE, have not been developed. There is demand for processing ovine casings from BSE-free countries in a country where BSE exists. However, as explained elsewhere in this document, we are amending our interim rule to remove restrictions on ovine casings from countries where BSE exists. This will allow ovine casings from BSE-free countries to be processed in countries where BSE exists for importation into the United States.

Area-Wide vs. Country-Wide Restrictions

One commenter urged us to impose restrictions only on casings from specific areas where BSE exists, not on casings from entire countries. We are not making any changes in the rule based on this comment. We do not believe that approach is appropriate with regard to BSE. BSE has an extremely long incubation period. There is little evidence as to how the disease is spread. Within any given country, livestock move freely and constantly. On the other hand, livestock movements across international borders are usually controlled. In addition, restrictions on the movement of animals, designed to prevent the spread of disease, are generally more effectively enforced at the borders of a country, than between areas within a country. For these reasons, at this time we believe country-by-country restrictions are most effective in preventing the spread of BSE.

Distinguishing Between Countries Where BSE Exists

Two commenters addressed whether we should distinguish in our regulations between importations from countries with a high incidence of BSE and countries with lower incidences of the disease. One commenter stated that:

> * * * no difference is made between countries of a high BSE incidence * * *, a low incidence * * *, and cases found only in imported cattle * * *. This would seem to be contradictory to the EC/US Agreement on veterinary issues, in particular, * * * in issue 59 of this Agreement USDA recognizes the different BSE epidemiological situations in EC Member States and the consequently variable risks of importation in relation to these situations.

The other commenter states that the interim rules do not refer to any study to assess the risk of introducing BSE into the United States, and suggested that we have violated Annex I of the European Economic Community Council Directive 72/462/EEC, issue 59. Issue 59, as it applies to the United States, states:

> The USDA recognizes that BSE is of low incidence in Ireland and France and presents a different epidemiological situation to that in the United Kingdom. The USDA accepts that a different incidence of a specific disease may exist between different countries and that the risk of importation from countries with a low incidence is less than from those with a high incidence, and will evaluate BSE and Scrapie research available, study OIE recommendations, and implement risk assessment studies with view to modify import procedure.

In response to both these commenters, we would like to point out that our regulations already distinguish between imports from different countries, if the disease situation or risk posed by imports justifies different treatment. For example, ruminant meat imported from different countries is prohibited or must meet different requirements, depending on the diseases present in the country of origin. In the interim rule we distinguished only between countries where BSE exists and countries where BSE is not known to exist. Based on current knowledge, we do not believe the risks posed by casings imported from various countries where BSE exists are different enough to justify distinct regulations for casings from each country.

In addition, under Annex I of the European Economic Community Council Directive 72/462/EEC, issue 59, we acknowledge that there may be a different risk of BSE between different countries where BSE exists. However, USDA does not agree under appendix I to necessarily change APHIS regulations. USDA will study the situation in each country and review OIE recommendations. If it appears justified, based on the results of that study and review, we may modify our import procedures.

One commenter also stated that our interim regulations violate a November 14, 1992 "Agreement in the Form of an Exchange of Letters between the United States of America and the European Economic Community Concerning the Application of the Community Third Country Directive, Council Directive 72/462/EEC, and the Corresponding United States of America Regulatory Requirements with Respect to Trade in Fresh Bovine and Porcine Meat." The commenter appears to be suggesting that the United States has failed to amend its legal and/or administrative requirements as agreed to in the letters. However, the letters, and any agreement contained in them, concern only bovine and porcine meat, not casings. For this reason we are not making any changes based on this comment.

Effect on International Business and Trade

One commenter expressed concern that the interim rule would negatively impact companies in both the United States and abroad, that "unscientific-based" regulation would cause trade restrictions on casings from numerous countries, including the United States, to spread, possibly leading to reciprocal restrictions, and that world trade would thereby be significantly lessened. Another commenter stated that we should be careful not to enact regulations which place an "undue strain on the trade of concerned products."

We agree with these commenters that our interim rule has some negative impacts. We also agree that regulations which place an "undue strain" on trade should be avoided.

It is unfortunate that so little is known about the etiology and spread of BSE. Regardless, it is clear that BSE is a devastating disease with far-reaching and long-lasting economic consequences. At this time there is no known treatment for BSE. There is some evidence, mainly anecdotal, that feed bans and restrictions on the movement of animals are helping to contain the disease. However, the long incubation period of BSE makes it impossible, at this time, to determine the degree to which these measures prevent spread of the disease.

We believe it would be foolish, and possibly disastrous to U.S. interests, to do nothing in the face of such a devastating disease. However, we do not want our requirements to be unduly burdensome, and we are concerned that restrictions we impose be fully supported, where relevant information is available. For these reasons, as explained fully elsewhere in this document, we are amending our interim rule to relieve restrictions placed on the import of ovine casings and bovine casings made from stomachs.

We acknowledge that the remaining restrictions impact trade by limiting certain imports into the United States. However, if BSE were to spread to the United States, restrictions would be placed on exports from the United States. These restrictions would be devastating to U.S. producers and exporters. Countries which depend on imports from the United States would also be harmed.

For these reasons, we believe our interim rule, as amended by this document, is appropriate to the situation and does not place an "undue" strain on trade. If new evidence is produced demonstrating that less restrictive measures would be adequate to prevent spread of the BSE, then we will review our regulations.

General Agreement on Tariffs and Trade

Two commenters raised issues concerning the General Agreement on Tariffs and Trade (GATT). According to one commenter, we failed to notify the GATT Committee on Technical Obstacles to Trade of our interim regulations, as required by Article 10.4 of the Agreement.

We have carefully reviewed Article 10.4 of the GATT. It states that GATT members will make copies of documents available and will do so at an equitable price. Copies of our interim rule are available either through the **Federal Register** or directly from APHIS. The **Federal Register** charges every purchaser the same amount for copies; copies obtained through APHIS also cost a uniform amount. For these reasons we disagree with the commenter that we have violated the provisions of Article 10.4 of the GATT.

Another commenter stated that the interim rule "may * * * subject the [United States] to claims that we violate GATT obligations to substantiate and justify any trade restrictions imposed * * *." According to the commenter, this could open the United States to trade retaliation by other countries.

We are not making any changes based on this comment. We believe our regulations were substantiated and justified. As explained elsewhere in this document, we are making two changes to the interim rule in response to comments. We will continue to monitor the risk presented by importing casings from countries where BSE exists, and will review our regulations accordingly.

International Office of Epizootics

Several comments stated that the interim regulations, as they pertain to casings from countries where BSE exists and casings processed in countries where BSE exists, are contrary to, or ignore, the provisions of International Office of Epizootics (OIE), Animal Code.

We disagree. The United States is a member of the OIE. Chapter 3.2.13. of the International Animal Health Code, OIE 1992, concerns BSE. Article 3.2.13.1. of the chapter reads, in part, as follows:

> The following articles *recommend* [emphasis added] conditions under which cattle and bovine products can with safety be traded for human and animal consumption, and other uses.[4]

It is clear from this quotation that the OIE document recommends, rather than requires, certain actions on the part of member countries. In adopting our interim rule we carefully considered OIE recommendations. We consider them an excellent starting point for structuring a regulatory scheme to prevent the introduction of BSE. However, we believe, for reasons explained elsewhere in this document, that strictly following the OIE recommendations would not, under current circumstances, prevent the introduction of BSE into the United States.

Should Rule Have Been an Interim Rule?

Several commenters objected to our publishing the regulation as an interim rule, effective immediately. One commenter complained that no time was given to accommodate products enroute to the United States. This commenter also stated that we did not elaborate on the good cause for immediate action, and did not cite any new scientific finding which could justify an emergency action. The commenter suggested that, as BSE was first described in the United Kingdom in 1986, no emergency could exist at this time. Another commenter stated that immediate implementation of a regulation was justified only for a new disease situation where a serious threat exists, not stable situations such as that involving BSE.

We did not base our interim rule on new scientific evidence, but instead on the threat BSE poses to the health of livestock and possibly of people in the United States. We stated in our document of September 7, 1993, that "immediate action is necessary to prevent imported casings from introducing * * * BSE into the United States." We stand by this statement. Though BSE may be "stable" in the United Kingdom, as the commenter says, it nonetheless poses a serious threat. The disease has a very long incubation period; very little is known of how it spreads; it is untreatable and incurable; it has a devastating effect on livestock and livestock industries; and there are unanswered questions concerning cross-species transmission (there are several unexplained cases in the United Kingdom of house cats and humans with BSE-like diseases). Consequently, we believe that immediate action was necessary to prevent the introduction of BSE into the United States by imported casings.

We regret the effect our action has had on casings already enroute to the United States. However, allowing such casings to enter the United States would defeat the intended effect of the interim rule.

Regulatory Flexibility Act Analysis

One commenter questioned the accuracy of our Regulatory Flexibility Act Analysis (see 58 FR 47030) and suggested the rule should have been a "major rule." The commenter explained that effects on secondary markets and businesses, such as domestic sausage producers, should have been included in our analysis. According to the commenter, if we had included these impacts, our total economic impact would have exceeded $100 million.

The commenter is correct that we did not include figures concerning secondary economic effects created by the rule. The reason is that it is impossible to determine secondary economic effects with any accuracy. Our decision not to include figures for secondary economic effects is consistent with our standard methodology for economic analyses.

The commenter also stated that Canadian and United States natural sausage casings companies together do import ruminant casings, in the form of ovine casings, from the United Kingdom and Portugal. (BSE exists in the United Kingdom and, at the time the interim rule was published, was considered to exist in Portugal.) The commenter stated that this information appears to contradict the statement in our September 7, 1993, rule that "[no importers], in recent years, ha[ve] imported * * * ruminant casings from a country where BSE exists."

The commenter did not distinguish between casings imported into Canada and those imported into the United States. However, the commenter did state that the casings imported from countries where BSE exists were ovine casings. As explained elsewhere in this document, we are amending the interim rule to remove the restrictions on ovine casings and bovine casings made of stomachs. This should lessen the impact on domestic importers and users of natural casings.

The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

[4] The recommended conditions are listed in Articles 3.2.13.2 through 3.2.13.12 of the chapter.

List of Subjects in 9 CFR Part 96

Imports, Livestock, Reporting and threshold requirements.

Accordingly, 9 CFR part 96 is amended to read as follows:

PART 96—RESTRICTION OF IMPORTATIONS OF FOREIGN ANIMAL CASINGS OFFERED FOR ENTRY INTO THE UNITED STATES

1. The authority citation for part 96 continues to read as follows:

Authority: 21 U.S.C. 111, 136, 136a; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 96.2, paragraph (b) is revised to read as follows:

§ 96.2 Casings from countries where African swine fever or bovine spongiform encephalopathy exists.

* * * * *

(b) The importation of bovine casings, except stomachs, that originated in or were processed in any country where bovine spongiform encephalopathy exists, as listed in § 94.18(a) of this subchapter, is prohibited.

Done in Washington, DC, this 23rd day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–13056 Filed 5–27–94; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 600, 604, 605, 611, and 615

RIN 3052–AB41

Miscellaneous Technical Changes; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under parts 600, 604, 605, 611, and 615 on April 26, 1994 (59 FR 21640). The final regulation amends 12 CFR parts 600, 604, 605, 611, and 615 to reflect changes in the FCA organization and to update a statutory citation and a mailing address. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 26, 1994.

EFFECTIVE DATE: The regulation amending 12 CFR parts 600, 604, 605, 611, and 615, published on April 26, 1994 (59 FR 21640) is effective May 26, 1994.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,
or
Frances A. Pederson, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: May 24, 1994.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 94–13109 Filed 5–27–94; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–58–AD; Amendment 39–8921; AD 94–11–05]

Airworthiness Directives; Boeing Model 767–200 and 767–300 Series 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 certain Boeing Model 767–200 and 767–300 series airplanes. This action requires repetitive inspections of the pumping unit assembly on the override and jettison fuel boost pump assemblies to detect looseness of the screws that attach the inlet diffuser assembly to the pumping unit housing, and repair or replacement of the pumping unit assembly with a serviceable assembly, if necessary. For certain airplanes, this AD also provides for deactivation of the center wing fuel tank as an alternative to the repetitive inspections. This amendment is prompted by reports of failures of the override and jettison fuel pumps due to damage to impeller units and pumping unit housings caused by loose diffuser rings in the fuel pump assemblies of these airplanes. During dry fuel operation, a loose diffuser ring may cause metal-to-metal contact. The actions specified in this AD are intended to prevent the generation of sparks and a potential ignition source inside the fuel tank caused by metal-to-metal contact during dry fuel pump operation.

DATES: Effective June 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

Comments for inclusion in the Rules Docket must be received on or before August 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Lanny Pinkstaff, Aerospace Engineer, Propulsion Branch, ANM–140S; FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2684; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of failures of the override and jettison fuel pumps on certain Boeing Model 767–200 and –300 series airplanes. Investigation revealed that the screws that attach the inlet diffuser assembly to the pumping unit housing became loose and were ingested into the fuel pump assembly. Loose screws caused the diffuser ring to become loose and contact the impeller, which damaged the impeller and pumping unit housing and caused the fuel pump to seize. During dry fuel pump operation, a loose diffuser ring also could cause metal-to-metal contact. This condition, if not corrected, could result in the generation of sparks and a potential ignition source inside the fuel tank.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–28A0045, Revision 1, dated April 28, 1994, that describes procedures for repetitive inspections of the pumping unit assembly on the override and jettison fuel boost pump assemblies to detect looseness of the screws that attach the inlet diffuser assembly to the pumping unit housing, and replacement of the pumping unit assembly with a

serviceable assembly, if necessary. As an alternative to the inspections, the alert service bulletin also describes procedures for deactivating the center wing fuel tank. Accomplishment of either of these actions will prevent the inlet diffuser assembly and various parts in the pump assembly from creating an ignition source during dry fuel pump operation.

In addition, the FAA has reviewed and approved Sundstrand Alert Service Bulletin 5006286–28–A5, Revision 2, dated May 3, 1994, which describes procedures for repair of the pumping unit assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other Model 767–200 and –300 series airplanes of the same type design, this AD is being issued to prevent the generation of sparks and a potential ignition source inside the fuel tank. This AD requires repetitive inspections of the pumping unit assembly on the override and jettison fuel boost pump assemblies to detect looseness of the screws that attach the inlet diffuser assembly to the pumping unit housing, and repair or replacement of the pumping unit assembly with a serviceable assembly, if necessary. For certain airplanes, this AD also provides for deactivation of the center wing fuel tank as an alternative for the repetitive inspections. The inspections, replacement, and deactivation are required to be accomplished in accordance with the Boeing alert service bulletin described previously. The repair is required to be accomplished in accordance with the Sundstrand alert service bulletin described previously.

This AD also requires that operators submit a report of inspection findings to the FAA.

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 94–NM–58–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:

94–11–05 Boeing: Amendment 39–8921. Docket 94–NM–58–AD.

Applicability: Model 767–200 and –300 series airplanes; line positions 001 through 473 inclusive, 475 through 504 inclusive, 506 through 532 inclusive, and 534; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the generation of sparks and a potential ignition source inside the fuel tank, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish either paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) Perform an inspection of the pumping unit assembly, part number 5006286 series, on the override and jettison fuel boost pump assemblies to detect looseness of the screws that attach the inlet diffuser assembly to the pumping unit housing, in accordance with Boeing Alert Service Bulletin 767–28A0045, Revision 1, dated April 28, 1994.

(i) If no looseness is found, prior to further flight, identify the pumping unit assembly with "28–A5" next to the part number in the part number block or other blank space of the identification plate. Repeat the inspection thereafter at intervals not to exceed 1,000 hours time-in-service.

(ii) If any looseness if found, prior to further flight, accomplish either paragraph (a)(1)(ii)(A) or (a)(1)(ii)(B) of this AD; and repeat the inspection thereafter at intervals not to exceed 1,000 hours time-in-service.

(A) Replace the pumping unit assembly with a serviceable assembly, in accordance with Boeing Alert Service Bulletin 767–28A0045, Revision 1, dated April 28, 1994. Or

(B) Repair the pumping unit assembly in accordance with Sundstrand Alert Service Bulletin 5006286–28–A5, Revision 2, dated May 3, 1994.

(2) For airplanes having a center tank scavenge system: In lieu of accomplishing the inspection required by paragraph (a)(1) of this AD, the center wing fuel tank may be deactivated in accordance with Boeing Alert Service Bulletin 767–28A0045, Revision 1, dated April 28, 1994. The tank may be reactivated only after accomplishment of the inspection required by paragraph (a)(1) of

this AD, and the repair or replacement, as necessary, required by paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this AD.

(b) Within 10 days after accomplishing the initial inspection required by paragraph (a) of this AD, submit a report of inspection findings to the Manager, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (206) 227–1181. The report must include the inspection results, the airplane line position, the location of the pump on the airplane, and the number of hours time-in-service on the pumping unit assembly since new or since its last removal. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) As of 30 days after the effective date of this AD, no person shall install an override fuel boost pump assembly, part number 5006283 series, or an override/jettison fuel boost pump assembly, part number 5009656 series, on any airplane unless that assembly has been inspected and identified previously in accordance with Boeing Alert Service Bulletin 767–28A0045, Revision 1, dated April 28, 1994.

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

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

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

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–28A0045, Revision 1, dated April 28, 1994; and Sundstrand Alert Service Bulletin 5006286–28–A5, Revision 2, dated May 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on June 15, 1994.

Issued in Renton, Washington, on May 23, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13010 Filed 5–27–94; 8:45 am]

BILLING CODE 4910–13–U–M

14 CFR Part 39

[Docket No. 94–NM–64–AD; Amendment 39–8922; AD 94–11–06]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series 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 certain McDonnell Douglas Model MD–11 and MD–11F series airplanes. This action requires modification of the external power feeder cable clamping installation. This amendment is prompted by reports of damage to the external power feeder cables located under the forward cargo compartment floor, which was caused by excessive cable length and/or maintenance personnel stepping on the cables. The actions specified in this AD are intended to prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location.

DATES: Effective June 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1994.

Comments for inclusion in the Rules Docket must be received on or before August 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: business Unit Manager, Technical Administrative support, Dept. L51, M.C. 2–98. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5347; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: One operator of McDonnell Douglas Model MD–11 series airplanes recently reported that, during fueling and loading of cargo, smoke was observed in the forward lower cargo compartment of one airplane. The forward cargo door was open and no cargo compartment smoke warning was noted in the cockpit. Maintenance personnel directed a fire extinguisher into the cargo compartment air outlet at approximately station Y=635. The airport fire department was notified and assisted in extinguishing all smoke. No injuries were reported. Investigation of this incident revealed heat damage under the cargo floor from station Y=602 to station Y=695, between longerons 48 left-hand side to 43 right-hand side. Insulation blankets at these locations were replaced. Vertical supports, part numbers (P/N) ADA0033–2, suffered possible heat damage and were replaced. Certain wiring located near the aircraft centerline, station Y=602 to Y=615, was discolored and replaced. Paint on the lower fuselage in three locations was slightly darkened. The airplane was repaired prior to return to service.

Approximately one month later, a second incident occurred on this same airplane in which, prior to flight, a burning smell was noticed in the First Class passenger seating area at about the same time that electrical power was being applied to the airplane. Subsequently, the airplane would not accept external power. Investigation revealed that the external power cables had chafed and arced to the fuselage frame at station Y=655. The metalized covering of one blanket at this location from the airplane centerline to one yard left of centerline was missing, and the blanket insulation had burn spots. The cables and blankets were replaced on this airplane.

Investigation of these incidents by McDonnell Douglas revealed that the damage to the external power feeder cables located under the forward cargo

compartment floor could have been caused by excessive cable length and/or maintenance personnel stepping on the cable. Damage to the cables, such as chafing, can lead to arcing at the subject location. This condition, if not corrected, could result in a fire under the forward cargo compartment floor.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994, that describes procedures for replacing one cable clamp support (standoff) with a new bracket at station Y=655, and replacing six nylon cable clamps with new metal clamps having rubber cushions at station Y=635. Modifying the external power feeder cable clamping installation will minimize the possibility of damage and chafing of the cables, and thereby minimize the possibility of arcing and potential resultant fire. The manufacturer has advised that this installation will be incorporated prior to delivery on airplanes having manufacturer's serial numbers 559, 560, 562, and subsequent.

Since an unsafe condition has been identified that is likely to exist or develop on other Model MD–11 and MD–11F series airplanes of the same type design, this AD is being issued to prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location. This AD requires modification of the external power feeder cable clamping installation. The actions are required to be accomplished in accordance with the service bulletin described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications 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 94–NM–64–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:

94–11–06 McDonnell Douglas: Amendment 39–8922. Docket 94–NM–64–AD.

Applicability: Model MD–11 and MD–11F series airplanes, as listed in McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify the external power feeder cable clamping installation in accordance with McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994.

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

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

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

(d) The modification shall be done in accordance with McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: business Unit Manager, Technical Administrative support, Dept. L51, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 15, 1994.

Issued in Renton, Washington, on May 23, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13011 Filed 5–27–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

15 CFR Parts 923, 926, 927

[Docket No. 940109–4009]

RIN 0648–AE11

Coastal Zone Management Program Regulations

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

ACTION: Final rule.

SUMMARY: The Coastal Zone Act Reauthorization Amendments of 1990, enacted November 5, 1990, amended the Coastal Zone Management Act (CZMA) and reauthorized NOAA's Coastal Zone Management (CZM) Program under that Act. Among the amendments were revisions to findings, policies and definitions in the CZMA; repeal of provisions on preliminary program approval grants, program segmentation, and significant improvements; and reorganization and consolidation of approval requirements for state programs. The purpose of this final rule is to conform NOAA's regulations implementing the CZM program to the statutory changes.

EFFECTIVE DATE: This rule is effective on June 30, 1994.

ADDRESSES: Additional information may be obtained from the National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management at 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT:

Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, 1305 East-West Highway, 11th Floor, Silver Spring, Maryland 20910. Telephone: 301–713–3086.

SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued under the authority of the CZMA, as amended, 16 U.S.C. 1451 *et seq.*

II. Background

The CZMA was enacted to encourage and assist coastal states and territories to develop and implement management programs to preserve, protect, develop and, where possible, restore or enhance the resources of the Nation's coasts.

Prior to the 1990 Amendments, the CZMA included statements of Congressional findings and policies for the CZM Program, identified nine national coastal management objectives and specified that all state CZM Programs were to make "significant improvements" in achieving these objectives, defined key terms, authorized grants for program development and implementation and specified allocation and match requirements, and specified program approval requirements. The program approval requirements were set forth in Section 305, Management Program Development Grants (at Section 305(b) (1)–(9)) and Section 306, Administrative Grants (at Section 306 (c)–(h)). NOAA's regulations at 15 CFR parts 923, 926 and 927 implemented these provisions.

III. Coastal Zone Act Reauthorization Amendments of 1990

The Coastal Zone Act Reauthorization Amendments of 1990 (Amendments) (Pub. L. No. 101–508, 104 Stat. 1388 (1990)) were enacted on November 5, 1990. The Amendments made a number of changes to the CZMA.

- New and revised Congressional findings. Section 6202 of the Amendments set forth nine new Congressional findings. In addition, the Amendments revise the existing findings at Section 302 (d) and (f) and add three new findings at Section 302 (k), (l) and (m).
- New and revised Congressional declarations of policy. The Amendments revise the statements of policy at Sections 303(2), 303(2)(B) and 303(3), and add new statements of policy at Section 303(2) (C) and (K) and Section 303 (5) and (6).
- New and revised definitions. The Amendments revise the definitions of "coastal zone" at Section 304(1) and "water use" at Section 304(18), and add a definition of "enforceable policy" at Section 304(6a).
- Revisions to Management Program Development Grants. Section 305 on Management Program Development Grants was completely revised. Old Section 305(b) (1)–(9), which contains requirements for management program approval, was moved to new Section 306(d)(2). The remaining provisions of old Section 305, including the authorization for preliminary approval grants, were deleted and replaced with an authorization for annual program developments grants for Fiscal Years 1991, 1992 and 1993 not to exceed $200,000 per year per state at a ratio of 4-to-1 Federal-to-state match. Program development grants are also an authorized use of the new Section 308 Coastal Zone Management Fund.
- Revisions to Administrative Grants. Section 306 on Administrative Grants also was completely revised. Section 306(a) was amended to change the match provisions for administrative grants to implement approved state CZM Programs. The "significant improvement" provisions of old Section 306(a)(3) were deleted. The minimum grants provisions of old Section 306(b) were deleted and a new provision was added which allows the Secretary, after consultation with the coastal states, to establish maximum and minimum grants for any fiscal year to promote equity and efficient coastal management. The program approval requirements of old Section 305(b) (1)–(9) and Section 306 (c)–(h) were revised and consolidated in new Section 306(d). New program approval requirements were added at Section 306(d) (14), (15) and (16). Section 306(d) (14) and (15) must be met within three years of enactment (or by November 1993) and Section 306(d)(16) must be met within 30 months of EPA's issuance of final guidance on management measures for controlling coastal nonpoint pollution (or at the same time the Coastal Nonpoint Pollution Control Programs under Section 6217 of the Amendments are due). Old Section 306(g) on program changes was revised and renumbered as Section 306(e). Old Section 306(h) authorizing program segmentation was deleted.
- Revisions to Resource Management Improvement Grants. Section 306A(b)(1) was revised to authorize use of Section 306A funds for restoring and enhancing shellfish production.

IV. Purpose of Today's Rule

Some of NOAA's current CZM Program regulations need to be revised to conform to the changes to the CZMA made by the Amendments. The purpose of this rule is to amend these regulations to make them consistent with the CZMA as amended. By modifying the current NOAA regulations to reflect the new statutory requirements, this notice serves to clarify the effect of the

Amendments on coastal states, Federal agencies and other affected groups.

V. Codification of the Regulations

The following is a brief description of changes made to the regulations.

A. National Coastal Zone Management Program

Part 923—Coastal Zone Management Program Development and Approval Provisions.

By reorganizing and consolidating CZM Program approval requirements previously found throughout Sections 305 and 306 of the CZMA into one section—Section 306(d)—the Amendments have changed almost all of the statutory references found throughout 15 CFR part 923. This rule replaces the old statutory references with the new references throughout 15 CFR part 923 and revises the referenced statutory citations wherever required.

The Amendments deleted several previously authorized program development and approval provisions, including authority for preliminary approval grants, authority for program segmentation, and the requirement that states devote an increasing proportion of Federal financial assistance for program implementation, up to 30%, toward making "significant improvement" in achieving nine national coastal management objectives. This rule removes the portions of NOAA's regulations implementing these provisions and renumbers the regulations as necessary.

This rule revises the references to Congressional findings and declarations of policy to reflect the Amendments. This includes revising the phrase "as well as the needs for economic development" to "as well as the needs for compatible economic development" and adding the new Congressional findings on water quality, sea level rise, and ocean resources planning.

A definition of "enforceable policy" is added and the definitions of the terms "coastal zone" and "water use" are revised to reflect the Amendments. this includes revising all references to "the outer limit of the territorial sea" to read "the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 *et seq.*), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 20, 1962 (48 U.S.C. 1705), as applicable." It also includes revising all references to "direct and significant impacts on coastal waters" to read "direct and significant impacts on coastal waters or areas which are likely to be affected by or vulnerable to sea level rise."

Other changes include adding the word "historical" at §§ 923.22 (a) and (b) to read "preserving or restoring areas for their conservation, recreational, ecological, historical or esthetic values," revising the chart at § 923.71 which summarizes the findings necessary for CZM Program approval, revising the statutory reference to and citation of Section 312 at § 923.80, and changing the costs of equipment purchases requiring prior NOAA approval from $1,000 to $5,000 at § 923.93(f) pursuant to OMB Circular A–102.

Part 926—Coastal Zone Management Program Development Grants, Allocation of Funds to States.

This part is removed. The Amendments revised old Section 305 to authorize annual program development grants to states for Fiscal Years 1991, 1992, and 1993, not to exceed $200,000 per year per state at a 4-to-1 Federal-to-state match. In addition, program development grants are made an allowable use of the new CZM Fund (new Section 308).

Part 927—Allocation of Section 306 Program Administration Grants.

This part is revised to incorporate new statutory references and citations and new provisions for establishing annually the maximum and minimum share. The regulation on calculation of financial assistance award levels is revised to reflect the amendments to Section 312.

VI. Classification

A. Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

B. Administrative Procedure Act

The changes to the regulations made by this rule are required by the 1990 statute and, thus, are non-discretionary. Except for some minor editorial changes, the only revisions to the regulations are the incorporation of the new statutory language into them. Since no useful purpose would be served by giving notice and opportunity for comment, the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, for good cause, found under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) that notice and opportunity for public comment procedure thereon is unnecessary.

List of Subjects

15 CFR Part 923

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

15 CFR Part 927

Allocation formula.

Dated: May 10, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons set out the Preamble, 15 CFR chapter IX is amended as follows:

PART 923—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT AND APPROVAL REGULATIONS

1. The authority citation for Part 923 is revised to read as follows:

Authority: 16 U.S.C. 1451 *et seq.*

Subpart A—General

2. Section 923.1 is amended by revising the first sentence of paragraph (b), and by adding paragraphs (c)(7), (8) and (9) to read as follows;

§ 923.1 Purpose.

* * * * *

(b) Sections 306 and 307 of the Act set forth requirements which must be fulfilled as a condition of program approval. * * *

(c) * * *

(7) Provides for public participation in permitting processes, consistency determinations, and other similar decisions.

(8) Provides a mechanism to ensure that all state agencies will adhere to the program.

(9) Not later than 30 months after the date of publication of final guidance under section 6217(g) of the Act, contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the state required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990.

* * * * *

3. Section 923.2 is amended by revising paragraphs (d)(2) and (h) to read as follows:

§ 923.2 Definitions.

* * * * *

(d) * * *

(2) The following are defined as relevant Federal agencies:

Department of Agriculture;
Department of Commerce;

Department of Defense;
Department of Education;
Department of Energy;
Department of Health and Human Services;
Department of Housing and Urban Development;
Department of the Interior;
Department of Transportation;
Environmental Protection Agency;
Federal Energy Regulatory Commission;
General Services Administration;
Nuclear Regulatory Commission.

* * * * *

(h) The following terms, as used in these regulations, have the same definition as provided in section 304 of the Act:

(1) coastal zone
(2) coastal waters
(3) enforceable policy
(4) estuary
(5) land use
(6) water use

* * * * *

4. Section 923.3 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 923.3 General requirements.

(a)(1) As required by subsection 306(d)(1) of the Act, before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone which is adequate to carry out the purposes of the Act and is consistent with the policy declared in section 303 of the Act.

(2) As stated in section 302 of the Act, the Congress finds that—

(i) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone.

(ii) The coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation.

(iii) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.

(iv) The habitat areas of the coastal zone, and the fish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

(v) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost.

(vi) New and expanding demands for food, energy, minerals, defense needs, recreation, waste disposal, transportation, and industrial activities in the Great Lakes, territorial sea, exclusive economic zone and Outer Continental Shelf are placing stress on these areas and are creating the need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters.

(vii) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values.

(viii) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(ix) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage these states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

(x) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone.

(xi) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitants, and efforts to control coastal water pollution from land use activities must be improved.

(xii) Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.

(xiii) Because of their proximity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in the protection, management, and development of the resources of the exclusive economic zone that can only be served by the active participation of coastal states in all Federal programs affecting such resources and, wherever appropriate, by the development of state ocean resource plans as part of their federally approved coastal zone management programs.

(3) As stated in section 303 of the Act, the Congress finds and declares that it is the national policy—

(i) to preserve, protect, develop, and where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations;

(ii) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development;

(iii) to encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decisionmaking;

(iv) to encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this title;

(v) to encourage coordination and cooperation with and among the appropriate Federal, state, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results and technical assistance, to support state and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

(vi) to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging states to consider such issues as ocean uses potentially affecting the coastal zone.

(b) * * *

(1) The management program must provide for the management of those

land and water uses having a direct and significant impact on coastal waters and those geographic areas which are likely to be affected by or vulnerable to sea level rise. The program must take steps to assure the appropriate protection of those significant resources and areas, such as wetlands, beaches and dunes, and barrier islands, that make the state's coastal zone a unique, vulnerable, or valuable area.

* * * * *

Subpart B—Uses Subject to the Management Program

5. Section 923.10 is revised to read as follows:

§ 923.10 General.

This subpart deals with land and water uses which, because of their direct and significant impacts on coastal waters or those geographic areas likely to be affected by or vulnerable to sea level rise, are subject to the terms of the management program. Determination of these uses will assist in determining the appropriate coastal management boundary (see Subpart D). This subpart deals in full with the requirements of subsection 306(d)(1)(B), Uses subject to the management program, 306(d)(2)(H), Energy Facility Planning, and 306(d)(12)(B), Uses of Regional Benefit.

6. Section 923.11 is amended by revising paragraphs (a), the second sentence of paragraph (b)(1) and (c)(4)(ii), and by adding paragraph (c)(4)(v) to read as follows:

§ 923.11 Uses subject to management.

(a) As required by subsection 306(d)(2)(B), the management program for each coastal state must include a definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(b) *Requirements.* (1) * * * These uses shall be those with direct and significant impacts on coastal waters or on geographic areas likely to be affected by or vulnerable to sea level rise.

* * * * *

(c) * * *

(4) * * *

(ii) Historic, cultural and esthetic resources where coastal development is likely to affect these resources;

* * * * *

(v) Information on the impacts of global warming and resultant sea level rise on natural resources such as beaches, dunes, estuaries, and wetlands, on salinization of drinking water supplies, and on properties, infrastructure and public works.

7. Section 923.12 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 923.12 Uses of regional benefit.

(a) As required by subsection 306(d)(12), before approving a management program submitted by a coastal state, the Secretary shall find that the management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.

(b) In order to meet the requirements of subsection 306(d)(12) of the Act, states must:

* * * * *

8. Section 923.13 is amended by revising paragraph (a), the first sentence of paragraph (b) introductory text and (b)(3)(ii) to read as follows:

§ 923.13 Energy facility planning process.

(a) As required by subsection 306(d)(2)(H), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a planning process for energy facilities likely to be located in or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.

(b) *Requirements.* States must develop a planning process which is capable, at a minimum, of anticipating the management of the impacts from energy facilities in or affecting the state's coastal zone. * * *

* * * * *

(3) * * *

(ii) States must list relevant constitutional provisions, laws, regulations, judicial decisions and other appropriate official documents or actions that are specifically related to planning for, and anticipating the management of energy facilities or impacts, including licensing or permitting procedures.

* * * * *

Subpart C—Special Management Areas

9. Section 923.20 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 923.20 General.

(a) * * * This subpart deals with the following subsections of the Act: 306(d)(2)(C)—Geographic areas of Particular Concern; 306(d)(2)(E)—Guidelines on Priorities of Uses; 306(d)(2)(G)—Shorefront Access and Protection Planning; 306(d)(2)(I)—Shoreline Erosion/Mitigation Planning; and 306(d)(9)—Areas for Preservation and Restoration.

* * * * *

10. Section 923.21 is amended by revising paragraphs (a) and (b)(1)(i)(G) to read as follows:

§ 923.21 Areas of particular concern.

(a)(1) As required by subsection 306(d)(2)(C), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes an inventory and designation of areas of particular concern within the coastal zone.

(2) As required by subsection 306(d)(2)(E), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(b) * * *

(1) * * *

(i) * * *

(G) Areas where, if development were permitted, it might be subject to significant hazard due to storms, slides, floods, erosion, settlement, salt water intrusion, and sea level rise;

* * * * *

11. Section 923.22 is amended by revising paragraph (a) and the second sentence of paragraph (b)(1) to read as follows:

§ 923.22 Areas for preservation or restoration.

(a) As required by subsection 306(d)(9), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical or esthetic values.

(b) *Requirements.* (1) * * * Designations may be made for the purposes of preserving or restoring areas for their conservation, recreational ecological, historical or esthetic values.

* * * * *

12. Section 923.24(a) is revised to read as follows:

§ 923.24 Shorefront access and protection planning.

(a) As required by Subsection 306(d)(2)(G), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a definition of the term "beach" and a

planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological or cultural value.

* * * * *

13. Section 923.25 is amended by revising paragraphs (a) and (c)(1) and (2) to read as follows:

§ 923.25 Shoreline erosion/mitigation planning.

(a) As required by Subsection 306(d)(2)(I), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

* * * * *

(c) *Requirements.* (1) The management program must include a method for assessing the effects of shoreline erosion, including potential impacts of sea level rise, and evaluating techniques for mitigating, controlling or restoring areas adversely affected by erosion.

(2) There must be an identification and description of enforceable policies, legal authorities, funding techniques and other techniques that will be used to manage the effects of erosion, including potential impacts of sea level rise, as the state's planning process indicates is necessary.

Subpart D—Boundaries

14. Section 923.30 is amended by revising paragraphs (a) and (c) to read as follows:

§ 923.30 General.

(a) This subpart deals in full with subsection 306(d)(2)(A) of the Act—Boundaries of the Coastal Zone.

* * * * *

(c) As required by subsection 306(d)(2)(A), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes an identification of the boundaries of the coastal zone subject to the management program.

(1) As required by subsection 304(1), the term "coastal zone" means the coastal waters (including the lands therein and thereunder), and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas seaward to the outer limit of state title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705, as applicable). The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(2) As required by subsection 304(2), the term "coastal waters" means (i) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows and marshes, and

(ii) in other areas, those waters, adjacent to shorelines, which contain a measurable quantity or percentage of sea water, including but not limited to, sounds, bays, lagoons, bayous, ponds and estuaries.

15. Section 923.31 is amended by revising paragraphs (a)(1) and (b)(1) and (2) to read as follows:

§ 923.31 Inland boundaries.

(a) * * *

(1) Those areas the management of which is necessary to control uses which have direct and significant impacts on coastal waters, or are likely to be affected by or vulnerable to sea level rise, pursuant to section 923.11 of these regulations.

* * * * *

(b) * * *

(1) Watersheds—A state may determine some uses within entire watersheds which have direct and significant impact on coastal waters or are likely to be affected by or vulnerable to sea level rise. In such cases it may be appropriate to define the coastal zone as including these watersheds.

(2) Areas of tidal influence that extend further inland than waters under saline influence; particularly in estuaries, deltas and rivers where uses inland could have direct and significant impacts on coastal waters or areas that are likely to be affected by or vulnerable to sea level rise.

* * * * *

16. Section 923.32 is amended by revising paragraph (a)(1) to read as follows:

§ 923.32 Seaward boundaries.

(a) *Requirements.* (1) For states adjoining the Great Lakes, the seaward boundary is the international boundary with Canada or the boundaries with adjacent states. For all other states participating in the program, the seaward boundary is the outer limit of state title and ownership under the Submerged Lands Act (48 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note) or section 1 of the Act of November 10, 1963, (48 U.S.C. 1705, as applicable).

* * * * *

17. Section 923.33 is amended by revising paragraph (c)(1) introductory text to read as follows:

§ 923.33 Excluded lands.

* * * * *

(c) *General comments.* (1) The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that affect any land or water use or natural resource of the coastal zone within the purview of a state's management program. Therefore, states should consider mapping the following types of excluded Federal lands:

* * * * *

Subpart E—Authorities and Organizations

18. Section 923.40 is amended by revising the second, fifth and sixth sentences of paragraph (b), and paragraphs (c) and (d) to read as follows:

§ 923.40 General.

* * * * *

(b) * * * They may be the state agency designated pursuant to section 306(d)(6) of the Act, other state agencies, regional or interstate bodies, and local governments. * * * This demonstration will be in the context of one or a combination of the three control techniques specified in section 306(d)(11) of the Act. The requirements related to section 306(d)(12) are

described in §§ 923.42 through 923.44 of this subchapter.

(c) In determining the adequacy of the authorities and organization of a state's programs, the Assistant Administrator will review and evaluate authorities and organizational arrangements in light of the requirements of this subpart and the finding of section 302(h) of the Act, which provides:

> In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(d) The authorities requirements of the Act dealt with in this subpart are those contained in subsections 306(d)(2)(D)—Means of Control; 306(d)(10)—Authorities; 306(d)(10)(A)—Control Development and Resolve Conflicts; 306(d)(10)(B)—Powers of Acquisition; 306(d)(11)—Techniques of Control; and 307(f)—Air and Water Quality Control Requirements. The organization requirements of the Act dealt with in this subpart are those contained in sections 306(d)(2)(F)—Organizational Structure; 306(d)(6)—Designated State Agency; and 306(d)(7)—Organization.

19. Section 923.41 is amended by revising paragraphs (a), (b)(1) and (b)(2) introductory text to read as follows:

§ 923.41 Identification of authorities.

(a)(1) As required by subsection 306(d)(2)(D), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes an identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (B), including a listing of relevant state constitutional provisions, laws, regulations, and judicial decisions.

(2) As required by subsection 306(d)(10), before approving a management program submitted by a coastal state, the Secretary shall find that the state, acting through its chosen agency or agencies (including local governments, area-wide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone. Such authority shall include power:

(i) To administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(ii) To acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(b) * * *

(1) Identify relevant state constitutional provisions, statutes, regulations, case law and such other legal instruments (including executive orders and interagency agreements) that will be used to carry out the state's management program.

(2) This identification will include the authorities pursuant to sections 306(d)(10) and 306(d)(11) of the Act which require a state to have the ability to:

* * * * *

20. Section 923.42 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 923.42 State establishment of criteria and standards for local implemenation—Technique A.

(a) As required by subsection 306(d)(11), before approving a management program submitted by a coastal state, the Secretary shall find that the management program provides for any one or a combination of general techniques for control of land uses and water uses within the coastal zone. The first such control technique, at subsection 306(d)(11)(A), is state establishment of criteria and standards for local implementation, subject to administrative review and enforcement.

(b) There are 5 principal requirements associated with use of the control technique at subsection 306(d)(11)(A). They are that:

* * * * *

21. Section 923.43 is amended by revising paragraph (a), the first sentence of paragraph (b) introductory text and the second sentence of paragraph (c)(2)(i) to read as follows:

§ 923.43 Direct state land and water use planning and regulation—Technique B.

(a) As required by subsection 306(d)(11), before approving a management program submitted by a coastal state, the Secretary shall find that the management program provides for any one or a combination of general techniques for control of land and water uses within the coastal zone. The second such control technique, at subsection 306(d)(11)(B), is direct state land and water use planning and regulation.

(b) Control technique subsection 306(d)(11)(B) of the Act allows for direct state control of land and water uses subject to the management program on the basis of direct state authority. * * *

* * * * *

(c) * * *

(2) * * *

(i) * * * It will be sufficient if any of the following can act to ensure compliance: The state agency designated pursuant to subsection 306(d)(6) of the Act, the state's Attorney General, another state agency, a local government, or a citizen.

* * * * *

22. Section 923.44 is amended by revising paragraph (a) to read as follows:

§ 923.44 State review on a case-by-case basis of actions affecting land and water uses subject to the management program—Technique C.

(a) As required by subsection 306(d)(11), before approving a management program submitted by a coastal state, the Secretary shall find that the management program provides for any one or a combination of general techniques for control of land and water uses within the coastal zone. The third such control technique, at subsection 306(d)(11)(C), is state administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

* * * * *

23. Section 923.45 is amended by revising paragraph (a), by removing paragraph (b)(2), by redesignating paragraph (b)(3) as paragraph (b)(2) and revising it to read as follows:

§ 923.45 Air and water pollution control requirements.

(a) As required by subsection 307(f), notwithstanding any other provision of the title, nothing in the title shall in any way affect any requirement:

(1) Established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or

(2) Established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(b) *General comments.* * * *

(2) Water quality standards are established by EPA promulgation or approval of state standards, taking into consideration public water supplies, protection and propagation of fish, shellfish and wildlife, recreation, agriculture, industry and navigation. EPA itself develops standards on

effluent limitations, new source performance standards, pre-treatment standards and toxic pollutant discharge standards.

* * * * *

24. Section 923.46 is amended by revising paragraphs (a), (c)(1) and (c)(2) to read as follows:

§ 923.46 Organizational structure.

(a)(1) As required by subsection 306(d)(2)(F), before approving a management program submitted by a coastal state, the Secretary shall find that the management program includes a description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, state, regional and interstate agencies in the management process.

(2) As required by subsection 306(d)(7), before approving a management program submitted by a coastal state, the Secretary shall find that the state is organized to implement the management program.

* * * * *

(c) *Requirements.* (1) States must describe the organizational structure that will be used to implement and administer the management program including a discussion of those state and other agencies, including local governments, that will have responsibility for administering, enforcing and/or monitoring those authorities or techniques required pursuant to the following subsections of the Act: 306(d)(3)(B); 306(d)(10); 306(d)(10) (A) and (B); 306(d) (11) and (12); and 307(f).

(2) States must describe the relationship of these administering agencies to the state agency designated pursuant to subsection 306(d)(6) of the Act.

25. Section 923.47(a) is amended by revising paragraph (a) to read as follows:

§ 923.47 Designated state agency.

(a) As required by subsection 306(d)(6), before approving a management program submitted by a coastal state, the Secretary shall find that the Governor of the state has designated a single state agency to receive and administer the grants for implementing the management program.

* * * * *

SUBPART F—COORDINATION, PUBLIC INVOLVEMENT AND NATIONAL INTEREST

26. Section 923.50 is amended by revising paragraphs (a), (b)(2), (b)(3) and the third sentence of paragraph (d) and by adding paragraphs (b)(4) and (b)(5) to read as follows:

§ 923.50 General.

(a) As required by Section 303, the Congress finds and declares that it is the national policy:

(1) To preserve, protect, develop, and, where possible, to restore or enhance the resources of the Nation's coastal zone for this and succeeding generations;

(2) To encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for compatible economic development;

(3) To encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decisionmaking;

(4) To encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this Act;

(5) To encourage coordination and cooperation with and among the appropriate Federal, state, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support state and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

(6) To respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging states to consider such issues as ocean uses potentially affecting the coastal zone.

(b)* * *

(2) The achievement of wise use of coastal land and water resources with full consideration for ecological, cultural, historic, and aesthetic values and needs for compatible economic development;

(3) The involvement of the public, of Federal, state and local governments and of regional agencies in the development and implementation of coastal management programs;

(4) The management of coastal development to improve, safeguard, and restore coastal water quality; and

(5) The study and development of plans for addressing the adverse effects of land subsidence and sea level rise.

* * * * *

(d) * * * This subpart addresses the requirements of the following subsections of the Act: 306(d)(1)—Opportunity for Full Participation; 306(d)(3)(A)—Plan Coordination; 306(d)(3)(B)—Continued State-Local Consultation; 306(d)(4)—Public Hearings; 306(d)(8)—Consideration of the National Interest in Facilities; 307(b)—Federal Consultation; and 307(h)—Mediation.

27. Section 923.51 is amended by revising paragraph (a), the first sentence of paragraph (b), paragraph (d) introductory text and (d)(5)(vii) to read as follows:

§ 923.51 Federal-state consultation.

(a)(1) As required by subsection 306(d)(1), before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone with the opportunity of full participation by relevant Federal agencies.

(2) As required by section 307(b), the Secretary shall not approve the management program submitted by a state pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(b) The requirements of subsections 306(d)(1) and 307(b) of the Act and those of subsections 307 (c) and (d) establish reciprocal State-Federal relationships.* * *

* * * * *

(d) *Requirements.* In order to address that portion of subsection 306(d)(1) of the Act that deals with Federal agency participation, each state must:

* * * * *

(5) * * *

(vii) Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(d)(3) of the Act.

* * * * *

28. Section 923.52 is amended by revising paragraphs (a) and (b)(3) to read as follows:

§ 923.52 Consideration of the national interest in facilities.

(a) As required by subsection 306(d)(8), the management program

provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the Secretary shall find that the state has given consideration to any applicable national or interstate energy plan or program.

(b) * * *

(3) Indicate how and where the consideration of the national interest is reflected in the substance of the management program. In the case of energy facilities in which there is a national interest, the program must indicate the consideration given any national or interstate energy plans or programs which are applicable to or affect a state's coastal zone.

* * * * *

29. Section 923.53 is amended by revising paragraph (a)(1) to read as follows:

§ 923.53 Federal consistency procedures.

(a) * * *

(1) An indication of whether the state agency designated pursuant to subsection 306(d)(6) of the Act or a single other agency will handle consistency review (see 15 CFR 930.18);

* * * * *

30. Section 923.54 is amended by revising paragraph (d) to read as follows:

§ 923.54 Mediation.

* * * * *

(d) If a serious disagreement persists, the Secretary or other head of a relevant Federal agency, or the Governor or the head of the state agency designated by the Governor as administratively responsible for program development (if a state still is receiving section 305 program development grants) or for program implementation (if a state is receiving section 306 program implementation grants) may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the serious disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees and to the Assistant Administrator.

* * * * *

31. Section 923.55 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 923.55 Full participation by state and local governments, interested parties and the general public.

(a) As required by subsection 306(d)(1), before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone with the opportunity of full participation by state agencies, local governments, regional organizations, port authorities, and other interested public and private parties.

(b) *Requirements.* In addition to consultation with Federal agencies, subsection 306(d)(1) of the Act requires that the opportunity for full participation in program development be provided state agencies, local governments, regional commissions and organizations, and other interested public and private parties. * * *

* * * * *

32. Section 923.56 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 923.56 Plan coordination.

(a) As required by subsection 306(d)(3)(A), before approving a management program submitted by a coastal state, the Secretary shall find that the state has coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone—

(1) existing on January 1 of the year in which the state's management program is submitted to the Secretary; and

(2) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency.

(b) * * *

(1) Identify local governments, areawide agencies and regional or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which the management program is submitted;

* * * * *

33. Section 923.57 is amended by revising paragraphs (a), (b)(1), (b)(2)(i) and (b)(2)(iv) to read as follows:

§ 923.57 Continuing consultation.

(a) As required by subsection 306(d)(3)(B), before approving a management program submitted by a coastal state, the Secretary shall find that the state has established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) of section 306(d) and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be effective for purposes of this paragraph unless it requires that:

(1) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;

(2) within the 30-day period commencing on the date of receipt of that notice, the local government may submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and

(3) such management agency, if any comments are submitted to it, within the 30-day period, by any local government:

(i) shall consider the comments;

(ii) may, in its discretion, hold a public hearing on the comments; and

(iii) may not take any action within the 30-day period to implement the management program decision.

(b) *Requirements.* (1) Establish a mechanism or mechanisms which will provide for continuing consultation and coordination after program approval between local governments, regional, areawide, multi-state and other state agencies with activities in the coastal zone and the state agency designated pursuant to subsection 306(d)(6) of the Act;

(2) * * *

(i) "Management agency" refers to the state agency designated to the Governor pursuant to subsection 306(d)(6) of the Act and to any other state agency responsible for implementing a management program decision;

* * * * *

(iv) "Local government" refers to these defined in section 304(11) of the Act which have some form of zoning authority.

* * * * *

34. Section 923.58 is amended by revising paragraph (a) to read as follows:

§ 923.58 Public hearings.

(a) As required by subsections 306(d)(1) and 306(d)(4), before approving a management program submitted by a coastal state, the Secretary shall find that the state has developed and adopted a management program for its coastal zone after notice, and with the opportunity of full participation by relevant Federal

agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of the Act and is consistent with the policy declared in section 303; and shall find that the state has held public hearings in the development of the management program.

* * * * *

35. Subpart G is revised to read as follows:

Subpart G—Environmental Review

§ 923.60 Environmental assessment.

(a) Requirements. All state management program submissions must contain an environmental assessment at the time of submission of the management program to OCRM for threshold review. In accordance with the Council on Environmental Quality regulations, 40 CFR 1506.5 (a) and (b), state environmental assessments shall contain the following information:

(1) A summary of the state's management program;

(2) A brief discussion of the need for the state's participation in the Federal program;

(3) A succinct description of the environment to be affected by program implementation;

(4) A description and discussion of the major alternatives which were considered by the state in developing the coastal management program;

(5) A discussion of the environmental impacts of implementing the program;

(6) A listing of agencies or persons consulted in determining the impacts of the management program.

(b) General comments. OCRM will independently evaluate the state's environmental assessment and use as much as possible in developing an EIS on the management program. An EIS will be produced for all state programs submitted for 306 approval. The timing and review procedure for the EIS are discussed in § 923.72.

36. Section 923.70 is revised to read as follows:

Subpart H—Review/Approval Procedures

§ 923.70 General.

The purpose of this subpart is to describe the process of state program review and approval following submission of a state's management program to the Assistant Administrator. Because the review process involves preparation and dissemination of draft and final environmental impact statements and lengthy Federal agency review; states should at least anticipate that it normally will take 7 months between the time a state first submits a draft management program to OCRM for threshold review and the point at which the Assistant Administrator makes a final decision on whether to approve the management program. Certain factors will contribute to lengthening or shortening this time table; these factors are discussed in the sections that follow. This subpart also provides guidance on a recommended format for the program document submitted to the Assistant Administrator for review and approval.

37. Section 923.71 is amended by revising Table 2 in paragraph (b) and paragraph (c)(4) (i) through (vi), and removing paragraph (d) to read as follows:

§ 923.71 Recommended format for program submission.

* * * * *

(b) * * *

TABLE 2. CHART—FINDINGS NECESSARY FOR SECTION 306 APPROVAL

Section of the act	Associated section(s) of these regulations
Section 306(d) which includes:	
306(d)(2)(A): Boundaries	923.31–923.34
306(d)(2)(B): Uses subject to management	923.11
306(d)(2)(C): Areas of particular concern	923.21–923.23
306(d)(2)(D): Means of control	923.41
306(d)(2)(E): Guidelines on priorities of uses	923.21
306(d)(2)(F): Organizational structure	923.46
306(d)(2)(G): Shorefront planning process	923.24
306(d)(2)(H): Energy facility planning process	923.13
306(d)(2)(I): Erosion planning process	923.25
306(d)(1): Notice: full participation; consistent with sec. 303	923.3, 923.51, 923.55, & 923.58
306(d)(3)(A): Plan coordination	923.56
306(d)(3)(B): Continuing consultation mechanisms	923.57
306(d)(4): Public hearings	923.58
306(d)(5): Gubernatorial review and approval	923.48
306(d)(6): Designation of recipient agency	923.47
306(d)(7): Organization	923.46
306(d)(10): Authorities	923.41
306(d)(8): Adequate consideration of national interest	923.52
306(d)(9): Areas for preservation/restoration	923.22
306(d)(10)(A): Administer regulations, control development; resolve conflicts	923.41
306(d)(10)(B): Powers of acquisition, if necessary	923.41
306(d)(11): Technique of control	923.42–923.44
306(d)(12); Uses of regional benefit	923.12
Section 307 which includes:	
307(b): Adequate consideration of Federal agency views	923.51
307(f): Incorporation of air and water quality requirements	923.45

* * * * *

(c) * * *

(4) * * *

(i) *Boundaries.* The requirements of subsection 306(d)(2)(A) of the Act and Subpart D of these regulations should be addressed. States may want to indicate here, or as part of the EIA, major boundary alternatives considered.

General maps of the management boundaries and of excluded Federal lands, if provided, are recommended for inclusion in this section (or if more easily handled as a separate appendix, their location in the appendix should be indicated in this section).

(ii) *Uses subject to management.* The requirements of subsections 306(d)(2)(B), 306(d)(2)(H), and 306(d)(12) of the Act and related sections 923.11 through 923.13 of these regulations should be addressed.

(iii) *Special management areas.* The requirements of subsections 306(d)(2)(C), 306(d)(2)(E), 306(d)(2(G), 306(d)(2)(I), and 306(d)(9) and the associated requirements of Subpart C of these regulations should be addressed. States are encouraged to include generalized maps located designated Areas of Particular Concern.

(iv) *Authorities and organization.* The requirements of subsections 306(d)(2)(D), 306(d)(2)(F), 306(d)(6), 306(d)(10), 306(d)(11), and 307(f) of the Act and the associated requirements of Subpart E of these regulations should be addressed. This should include a discussion of the administrative and legal bases that will be used to implement and insure enforcement of and compliance with the policies of the management program. This section should include, as applicable, discussion of six types of legal authorities: state legislation, state agency regulations, gubernatorial executive orders, interagency agreements, significant judicial decisions and significant constitutional provisions. With respect to the organization structure that will be used to implement the management program, this section should include a discussion of the roles and responsibilities during the program implementation of the state agency designated pursuant to subsection 306(d)(6) of the Act and of other state, local or regional agencies that will be involved in carrying out the management program. The relationship of the designated state agency to these other agencies also should be described.

(v) *Consultation, participation and national interests.* The requirements of subsections 306 (d)(1) through (d)(4), 306(d)(8) and 307(b) of the Act and the related requirements of Subpart F of these regulations should be addressed. Included herein should be a summary of consultation efforts with relevant Federal and state agencies, local governments, regional, areawide and/or interstate entities. A summary of public information and participation during program development should be included. Also included herein should be discussions of national interest considerations; what procedures the state will use to implement the Federal consistency provisions of the Act; and what mechanisms will be used to insure continued governmental consultation and public participation after program approval. Detailed documentation regarding a number of the requirements addressed in this section can be reserved for appendices.

(vi) *Miscellaneous.* Normally, states will address the requirements of subsection 306(d)(5) and related section 923.48 in the gubernatorial transmittal that will accompany the program submission.

38. Section 923.73 is revised to read as follows:

§ 923.73 Miscellaneous.

The timelines laid out in § 923.72 may be shortened if reduction of the time allotted to review environmental impact statements is proposed consistent with applicable procedures and guidelines of CEQ and their concurrence is requested. Reductions in review time normally are limited to emergency circumstances or conditions which would result in impaired program effectiveness.

§§ 923.74, 923.75, 923.76 [Removed]

39. Sections 923.74, 923.75 and 923.76 are removed.

40. Section 923.80 is amended by redesignating paragraph (c) as paragraph (d), revising paragraph (b), and adding a new paragraph (c) to read as follows:

Subpart I—Amendments to and Termination of Approved Management Programs

§ 923.80 General.

* * * * *

(b) As required by subsection 306(e), any coastal state may amend or modify a management program which it has submitted and which has been approved by the Secretary under this subsection, subject to the following conditions:

(1) The state shall promptly notify the Secretary of any proposed amendment, modification, or other program change and submit it for the Secretary's approval. The Secretary may suspend all or part of any grant made under this subsection pending state submission of the proposed amendment, modification or other program change.

(2) Within 30 days after the date the Secretary receives any proposed amendment, the Secretary shall notify the state whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period not to exceed 120 days after the date the Secretary received the proposed amendment. The Secretary may extend this period only as necessary to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If the Secretary does not notify the coastal state that the Secretary approves or disapproves the amendment within that period, then the amendment shall be conclusively presumed as approved.

(3)(i) Except as provided in paragraph (3)(ii), a coastal state may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Secretary under this paragraph.

(ii) The Secretary, after determining on a preliminary basis, that an amendment, modification or other change which has been submitted for approval under subsection 306(e) is likely to meet the program approval standards, may permit the state to expend funds awarded under subsection 306(e) to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which has been given preliminary approval and is not finally approved under this paragraph shall not be considered an enforceable policy for purposes of subsection 307 of the Act.

(c) As required by subsection 312(d), the Secretary shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that state under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal state has failed to take the actions referred to in subsection 312(c)(2)(A).

* * * * *

41. Section 923.81 is amended by revising paragraphs (a) and (b)(3)(i) to read as follows:

§ 923.81 Requests for amendments.

(a) *Requirement.* Requests for amendments shall be submitted to the Assistant Administrator by the Governor of a coastal state with an approved management program or by the head of the state agency (designated pursuant to subsection 306(d)(6)) if the Governor had delegated this responsibility and such delegation is part of the approved management program.

(b) * * *

(3) * * *

(i) At least one public hearing must be held on the proposed amendment,

pursuant to subsection 306(d)(4) of the Act.

* * * * *

42. Section 923.82 is amended by revising paragraphs (a)(1)(i)(A), (a)(1)(v)(D), (a)(2), (b) and (c) to read as follows:

§ 923.82 Amendment review/approval procedures.

(a) * * *

(1) * * *

(i) * * *

(A) Areas the management of which is necessary to control uses with direct and significant impacts on coastal waters or areas likely to be affected by or vulnerable to sea level rise;

* * * * *

(v) * * *

(D) In the case of energy facilities, consideration of any applicable interstate energy plan or program (see § 923.52(c)(3)).

(2) The procedural requirements of section 306(d) of the Act have been met. These procedural requirements are that:

(i) The state has developed the amendment with the opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested public and private parties (subsection 306(d)(1));

(ii) The state has coordinated the amendment with local, area-wide and interstate plans applicable to areas within the coastal zone affected by the amendment and existing on January 1 of the year in which the amendment request is submitted (subsection 306(d)(3)(A));

(iii) Notice has been provided and a public hearing held on the proposed amendment (subsections 306(d)(1), 306(d)(3) and 306(d)(4)); and

(iv) The Governor or the head of the state agency, designated pursuant to subsection 306(d)(6), has reviewed and approved the proposed amendment (subsection 306(d)(5)).

(b) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would no longer constitute an approvable program, or if any of the procedural requirements of section 306(d) of the Act have not been met, the Assistant Administrator shall advise the state in writing of the reasons why the amendment request cannot be considered. * * *

(c) If the Assistant Administrator, as a preliminary matter, determines that the management program, if changed, would still constitute an approvable program and that the procedural requirements of section 306(d) of the Act have been met, the Assistant Administrator will then determine, pursuant to the National Environmental Policy Act of 1969, as amended, whether an environmental impact statement (EIS) is required. * * *

43. Section 923.83 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 923.83 Mediation of amendments.

* * * * *

(b) Mediation may be requested by a Governor or head of a state agency designated pursuant to subsection 306(d)(6) or by the head of a relevant Federal agency. * * *

* * * * *

44. Section 923.90 is amended by revising paragraphs (e) and (f) to read as follows:

Subpart J—Applications for Program Development or Implementation Grants

§ 923.90 General.

* * * * *

(e) For purposes of this subpart, the term "development grant" means a grant awarded pursuant to subsection 305(a) of the Act. "Administrative grant" and "implementation grant" are used interchangeably and mean grants awarded pursuant to subsection 306(a) of the Act.

(f) All application and preapplication forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910.

45. Section 923.91 is amended by revising paragraphs (a) and (b) to read as follows:

§ 923.91 State responsibility.

(a) Applications for program grants shall be submitted by the Governor of a participating state or by the head of the state entity designated by the Governor pursuant to subsection 306(d)(6) of the Act.

(b) In the case of a section 305 grant, the application shall designate a single state agency or entity to receive development grants and to be responsible for development of the state's coastal management program. The designee need not be that entity designated by the Governor pursuant to subsection 306(d)(6) of the Act as a single agency to receive and administer implementation grants.

* * * * *

46. Section 923.92 is amended by revising paragraph (a) to read as follows:

§ 923.92 Allocation.

(a) Subsections 303(4), 306(d)(3)(B) and 306(d)(10) foster intergovernmental cooperation in that a state, in accordance with its coastal zone management program, may allocate its coastal zone management responsibilities to several agencies, including local governments, areawide agencies, regional agencies and interstate agencies. Such allocations provide for continuing consultation and more effective participation and cooperation among state and local governments, interstate, regional and areawide agencies.

* * * * *

§§ 923.93, 923.98 [Removed]

47. In Subpart J, sections 923.93 and 923.98 are removed and sections 923.94, 923.95, 923.96, 923.97 923.99 and 923.100 are redesignated as sections 923.93, 923.94, 923.95, 923.96, 923.97 and 923.98, respectively.

48. Section 923.93 is amended by revising paragraph (c)(2)(i) and the first sentence of paragraphs (d) and (f) to read as follows:

§ 923.93 Eligible implementation costs.

* * * * *

(c) * * *

(2) * * *

(i) Prevent or mitigate loss of life and property in such coastal hazard areas as floodplains, erosion-prone areas, areas subject to subsidence, saltwater intrusion, or sea level rise;

* * * * *

(d) Implementation funding may be applied to the management of designated areas of particular concern, especially areas designated for preservation or restoration purposes pursuant to section 306(d)(9) of the Act. * * *

(e) * * *

(f) Equipment purchases by the grantee of more than five thousand (5,000) dollars per item require NOAA approval prior to purchase. * * *

* * * * *

49. Section 923.95 is amended by revising paragraph (a)(4) to read as follows:

§ 923.95 Applications for subsequent program development grants.

(a) * * *

(4) Indicate when the state will submit a management program to the Assistant Administrator for review and final approval pursuant to section 306 of the Act.

* * * * *

50. Section 923.98 is amended by revising paragraph (a) to read as follows:

§ 923.98 Grant amendments.

(a) Actions which require an amendment to a grant award such as a request for additional Federal funds, changes in the amount of the non-Federal share, changes in the approved project budget as specified in OMB Circular A–102, or extension of the grant period must be submitted to the Assistant Administrator and approved in writing by him/her and the NOAA Grants Officer prior to initiation of the contemplated change. Such requests should be submitted at least 30 days prior to the proposed effective date of the change and, if appropriate, accompanied by evidence of compliance with E.O. 12372 requirements.

* * * * *

51. In 15 CFR part 923, subpart K is removed.

§§ 923.1, 923.47, 923.62, 923.70, 923.71, 923.72, 923.81, 923.82, 923.84, 923.93 [Amended]

52. In addition to the amendments set forth above, in 15 CFR part 923, remove the word "OCZM" and add, in its place, the word "OCRM" in the following places:

a. Section 923.1(d)(5);
b. Section 923.47(b)(3) and (c)(1);
c. Section 923.70;
d. Section 923.71 (a) and (c);
e. Section 923.72(a);
f. Section 923.81(b)(4)(i);
g. Section 923.82(a) introductory text and (c)(1) introductory text;
h. Section 923.84(b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(2) introductory text, (b)(2)(i)(B), (b)(2)(i)(C), (b)(3), (b)(4) introductory text, (b)(4)(i)(A), and (b)(5);
i. Section 923.90(a); and
j. Section 923.93(e)(4)(ii) and (g).

53. Section 923.1(d)(5) is amended by removing the words "Office of Coastal Zone Management" and adding, in their place, the words "Office of Ocean and Coastal Resource Management".

54. Section 923.90(f) is revised to read as follows:

§ 923.90 General.

* * * * *

(f) All application and preapplication forms are to be requested from and submitted to: National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, Coastal Program Division, 1305 East-West Highway (N/ORM3), Silver Spring, MD 20910.

PART 926—COASTAL ZONE MANAGEMENT PROGRAM DEVELOPMENT GRANTS, ALLOCATION OF FUNDS TO STATES

55. Part 926 is removed and reserved.

PART 927—ALLOCATION OF SECTION 306 PROGRAM ADMINISTRATION GRANTS

56. Section 927.1 is amended by revising paragraphs (a), (b) and (f) to read as follows:

§ 927.1 Allocation formula.

(a) As required by subsection 306(a), the Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-state contributions for the applicable fiscal year:

(1) For those states for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 1 to 1 for any fiscal year.

(2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

(3) As required by subsection 306(b), the Secretary may make a grant to a coastal state under subsection 306(a) only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this title and has been approved in accordance with subsection 306(d).

(4) As required by subsection 306(c), grants under this section shall be allocated to coastal states under approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

(b) Minimum/maximum allocations. The Assistant Administrator shall establish minimum and maximum state allocations annually, after consultation with the coastal states.

(c) * * *

(d) * * *

(e) * * *

(f) Calculation of financial assistance award levels. Actual financial assistance award levels will be set from base level allocations, any adjustments under paragraph (e) above, and in accordance with the provisions of Section 312(c) and (d).

* * * * *

[FR Doc. 94–11715 Filed 5–27–94; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AD10

Supplemental Security Income for the Aged, Blind, and Disabled; Financial Institution Account Policy in the Supplemental Security Income Program

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are codifying in regulations, certain procedures which currently appear in our internal operating instructions regarding how we attribute ownership of financial institution accounts for purposes of determining eligibility for supplemental security income (SSI). Existing regulations do not contain the rules we use to determine ownership of financial institution account funds.

EFFECTIVE DATES: These final regulations are effective May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235 (410) 965–1762.

SUPPLEMENTARY INFORMATION: These regulations codify present SSI procedures with respect to attributing ownership of financial institution account funds for SSI eligibility purposes. These procedures appear in our operating instructions. Title XVI of the Social Security Act and existing regulations are silent on the issue of how funds in financial institution accounts are attributed for SSI resource eligibility purposes. Regulations at § 416.1201 define resources as "cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance." The term "bank account" as used in § 416.1201(b) has been replaced by the term "financial institution account" because, in the past, the use of the term "bank" has

been criticized as too restrictive. For example, credit unions and savings and loan institutions are not technically "banks," but our savings, checking, and time deposit account procedures apply to investments held in those institutions as well. So that our rules for determining ownership of financial institution account funds may be consistently used and relied upon as authority by our adjudicators at all administrative levels, and by the courts, and may be better understand by SSI claimants, recipients, representatives, and others, we are codifying those rules in the regulations.

Financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit) may either be individually-held or jointly-held. Funds held in a financial institution account are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can access the funds by looking at how the individual holds the account. This is reflected in the way the account is titled.

Individually Held Accounts

If an individual is designated as sole owner by the account title and can withdraw funds and use them for his or her support and maintenance, all of the funds, regardless of their sources, are that individual's resource for SSI purposes. This applies even if the individual does not consider the funds as belonging to him or her, has never made deposits to or withdrawals from the account, and has never used any of the funds for personal needs or benefit. Unless legal restrictions preclude the owner from using the funds for support and maintenance (e.g., under the terms of a divorce decree, the recipient must use all funds in the account to maintain a home for the former spouse), all of the funds are attributed to the owner as indicated on the account title.

We do not provide an opportunity for the owner of an individually-held account to rebut the presumption of 100 percent ownership. For example, as a result of an interface with the records of the Internal Revenue Service (IRS), we could learn that an SSI recipient owns a previously undisclosed solely-titled financial institution account. The recipient might allege that none of the funds in the account actually belong to him or her. However, for as long as the recipient is shown as sole owner and the account is not legally restricted, we determine that the funds are available for his or her support and maintenance and that the funds are a resource for SSI purposes.

Jointly Held Accounts

1. Account Holders Include One or More SSI Claimants or Recipients

If there is only one SSI claimant or recipient account holder on a jointly-held account, we presume that all of the funds in the account belong to that individual.

If there is more than one claimant or recipient account holder, we presume that all of the funds in the account belong to those individuals in equal shares. By allocating funds equally among claimant/recipient co-owners, we avoid double counting.

2. Account Holders Include One or More Deemors

If none of the account holders is a claimant or recipient, we presume that all of the funds in a jointly-held account belong to the deemor(s), in equal shares if there is more than one deemor. A deemor is a person whose income and resources are required to be considered when determining eligibility and computing the SSI benefit amount for an eligible individual (see §§ 416.1160 and 416.1202).

3. Right to Rebut Presumption of Ownership

If the claimant, recipient, or deemor objects or disagrees with an ownership presumption described in 1 or 2 above, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her. Successful rebuttal establishes that the individual does not own some or all of the funds.

The effect of successful rebuttal may be retroactive as well as prospective. To successfully rebut the ownership presumption on a retroactive and/or prospective basis, the individual must submit evidence showing:

- Who owns the funds in the joint account, why there is a joint account, who made deposits to or withdrawals from the account, and how the withdrawals have been spent;
- Any records of deposits, withdrawals, and interest in the months for which ownership is at issue; and
- The individual can no longer withdraw funds from the account (if he or she owns none of the funds); or
- The individual's funds have been removed from the account, or the other person's funds have been removed, and the account title has been redesignated.

Example: The recipient's first month of eligibility is January 1993. In May 1993, the recipient successfully establishes that none of the funds in a 5-year old jointly-held account belong to her. We do not count any of the funds as resources for the month of January 1993 and continuing.

The application of a presumptive finding that some or all of the funds in a jointly-held account belong to the SSI claimant or recipient could inconvenience that individual. However, we believe the current requirements are reasonable and any burdens on SSI claimants or recipients are minimal.

Our procedures with respect to jointly-held accounts reflect the legal reality that funds in a jointly-held account are available to meet a co-owner's day-to-day needs. However, the rebuttal process allows us to evaluate individual circumstances and not create administrative barriers to eligibility.

We believe the joint account rebuttal process minimizes the burden on individuals with respect to establishing SSI resource eligibility.

When an individual presents a jointly-held account, or when we become aware of such an account through interface with the nonwage records of the IRS, we inform the individual of the applicable ownership presumptions (described above) and of his or her right to provide evidence rebutting those presumptions. We assist the individual, where necessary, in establishing that some or all of the funds do not belong to him or her.

The administrative requirements with respect to rebuttal are not complicated or unreasonable. We obtain the individual's statement and corroborating statements from other account holders. We document account deposits and withdrawals. If the individual alleges owning none of the funds in the account, we ask that the title of the account be corrected so that the individual is no longer shown as a co-owner. If the individual owns only a portion of the funds, we ask that any solely owned funds be maintained separately from funds that do not belong to him or her.

We considered a change in our procedures whereby we would apply State laws in determining how much of the funds in a jointly-owned financial institution account an individual owns for SSI purposes. However, applying State laws to the ownership determination would not benefit all SSI claimants and recipients, since the current SSI joint ownership presumptions are rebuttable, whereas some State laws on ownership contain

nonrebuttable presumptions. A practice of applying State laws would result in dozens of disparate rules on the SSI treatment of funds in joint accounts, and could serve as a barrier to the public's understanding of, and participation in, the SSI program.

These regulations were published in the **Federal Register** (57 FR 22187) on May 27, 1992, as a Notice of Proposed Rulemaking (NPRM). Interested parties were given 60 days to submit comments. Comments were received from four organizations in response to the NPRM.

Discussion of Comments

A summary of the comments and our responses follow. For ease of reference, we have grouped the comments according to the issues raised.

Comment: Four commenters believed that the proposed rules concerning solely-titled accounts were inequitable and did not take into consideration arrangements whereby funds may not actually belong to, or be accessed by, the titled individual. One of the commenters indicated that the preamble and the proposed rule at § 416.1208(b) conflict in that the preamble would allow rebuttal of the ownership presumption for individually-held accounts in cases where a legal restriction precludes the owner from using the funds for support and maintenance, but the proposed rule indicates that the ownership presumption is non-rebuttable. Several commenters stated that these rules could discourage family members or other concerned individuals from attending to the needs of SSI claimants and recipients.

Response: Unlike situations involving jointly-titled accounts—where a titled owner can submit evidence supporting an ownership allegation (for example, evidence of who has made account deposits and withdrawals in the past)—there would be no objective way for SSA to establish that funds in a solely-titled account did not belong to the titled owner. To permit rebuttal of the ownership presumption with respect to a solely-titled account, SSA would have to rely on potentially self-serving allegations regarding ownership. The possibility of program abuse under such a procedure would be unacceptably high.

With respect to the comment regarding a purported conflict between the preamble and the proposed rule at § 416.1208(b), that rule does not allow rebuttal of the ownership presumption in instances in which the individual is designated as sole owner of the account and can withdraw funds and use them for his or her support and maintenance. If the individual is so designated by the account title but cannot use the funds for his or her support and maintenance due to a legal restriction, the funds are not considered to be the individual's resource and the nonrebuttable presumption is inapplicable.

Current SSI financial institution account policy does not discourage family members or other concerned individuals from attending to the needs of SSI claimants and recipients. An individual who acts only in a fiduciary capacity on behalf of the owner of a financial institution account, and who is so designated by the account title, is not presumed to own any of the funds in the account. For example, if an account is titled "In Trust for John Jones, Subject to Sole Order of Mary Smith," SSA does not consider Mary Smith to own any of the account funds. We believe that current procedures in this area represent a balanced approach to administering the SSI program in a fair, yet responsible, manner.

Comment: Two commenters stated that the proposed rules should be amended to reflect legal realities regarding the ability to use funds for support and maintenance. They noted that under State law, funds may be legally unavailable for a titled owner's support and maintenance. One of these commenters believes that the proposed rules are inconsistent with the definition of resources at § 416.1201.

Response: As discussed in the proposed rules, we considered a change in our procedures whereby State law would be applied in determining ownership of funds in financial institution accounts. However, we rejected that approach because, due to the variance in State laws on property ownership, such a change would not benefit all individuals and would introduce unacceptable complexity into the SSI program.

In establishing the SSI program, Congress intended to improve the effectiveness of adult assistance programs by replacing then existing State-administered programs of assistance with one combined program with nationally uniform eligibility requirements, including the level and types of resources allowed (H.R. Rep. No. 231, 92d Cong., 1st Sess. 383(1971)). We believe that the proposed rules are consistent with Congress' mandate for nationally uniform eligibility requirements, since the rules clearly delineate controlling Federal standards and thereby, obviate the need to refer to a myriad of varying State laws in order to determine ownership rights in financial institution account funds. This is consistent with the need to administer a national program in a consistent manner.

These rules do not supersede or conflict with the definition of a "resource" in the SSI program (§ 416.1201). In order for a property right to be considered an individual's resource for SSI purposes, the individual must be able to liquidate the right and use the cash for support and maintenance. However, if an individual establishes that a property right cannot be liquidated, or that funds cannot be used for support and maintenance, the property right is not considered a resource for SSI purposes.

Comment: Two commenters stated that implementation of the rules will harm individuals whose cases come before administrative law judges (ALJ's). Absent the proposed rules, ALJ's can give claimants an opportunity to rebut financial institution account ownership by conducting "de novo" hearings and assessing the evidence in light of applicable law.

Response: Procedures with respect to financial institution accounts are currently contained only in SSA's operating instructions. The final rules will codify those procedures in the SSI regulations, not change the procedures.

The operating instructions do not have the same force and effect as the SSI statute or regulations; therefore, they are frequently not relied upon as authority by ALJ's Appeals Council members or the courts. In the past, this has resulted in inconsistent decisions involving similarly-situated individuals. One reason for promulgating these rules is to ensure those procedures are consistently applied at all administrative levels.

Comment: Two commenters questioned the differential treatment accorded an individual who holds an account jointly with persons who are neither applying for, nor recipients of, SSI. Such an individuals is considered to own 100 percent of the funds in the account, whereas funds held jointly with other SSI claimants or recipients are considered to be owned by those persons in equal shares.

Response: We attribute equal shares when there is more than one claimant or recipient account holder in order not to count the same funds twice for SSI program purposes. When only one SSI claimant/recipient is a titled owner, the issue of double counting does not exist.

As described in the proposed rules, the SSI ownership presumption with respect to jointly-held accounts is rebuttable. The effect of successful rebuttal may be retroactive as well as prospective.

Comment: One commenter stated that SSA's presumptions regarding

ownership of jointly-held funds is contrary to Third Circuit law (*Cannuni* v. *Schweiker*, 740 F.2d 260 (3rd Cir. 1984)). With *Cannuni*, the Court of Appeals recognized the importance of the intent of the parties with respect to jointly-held accounts.

Response: In *Cannuni*, the court ruled that it was appropriate to apply Pennsylvania property law to determine the extent of an individual's ownership interest in a jointly-held bank account. That decision conflicted with longstanding SSI procedures as set forth in operating instructions. However, as discussed above, SSA is not bound by State law when it determines ownership of financial institution account funds. These final rules will ensure that our procedures for determining ownership of financial institution accounts can be consistently used and relied upon as authority by the courts.

Comment: Three commenters stated that the rules should not require the retitling of, or the removal of funds from, jointly-titled accounts when a titled individual does not have actual ownership or use of funds in the account. For example, the rules should permit an individual to rebut the ownership presumption by submitting a signed statement from the other owner(s) or a power-of-attorney document indicating that the individual acts in a fiduciary capacity only.

Response: We recognize that the rebuttal procedures may inconvenience some individuals. However, we believe that generally the current procedures minimize the burden on individuals with respect to establishing SSI resource eligibility. Moreover, we believe that the alternate rebuttal procedures suggested by the commenters—procedures which, for the most part, would require SSA to rely on potentially self-serving allegations concerning ownership of funds—could significantly increase the incidence of SSI program abuse.

The retitling requirement for jointly-held accounts is based on the same principle used in determining ownership of solely-held accounts—namely, the principle that we determine whether an individual owns an account by looking at how he or she holds the account. Accordingly, if some of the funds in a jointly-titled account do not, in fact, belong to the SSI claimant or recipient, SSI procedures require that the account be redesignated to reflect that fact.

Comment: One commenter believed that the proposed rules unconstitutionally deny equal protection of the laws to similarly situated SSI claimants. In contrast to the rebuttal procedure for jointly-held accounts, the commenter pointed out that the holder of a solely-titled account is not permitted to rebut the 100 percent ownership presumption.

Response: SSA'ss practice of determining ownership based on how an account is titled applies equally in all cases. To determine ownership of a solely or jointly-titled account, we look at how the account is titled. SSI procedures do not prevent an individual who acts only in a fiduciary role from being so designated by the account title. Provided the account title reflects the fiduciary role, such an individual is not presumed to own any of the funds in the account.

As discussed above, in order to permit rebuttal of the ownership presumption for solely-titled accounts, SSA would have to rely on potentially self-serving ownership allegations. Such a change in procedures would introduce an unacceptably high possibility of program abuse and would not reflect our obligation to administer the SSI program in a responsible manner.

Comment: Two commenters suggested that the rules include the procedures for rebutting the joint account ownership presumption.

Response: We have revised the rules to include rebuttal procedures, which were briefly described in the proposed rules under "Supplementary Information." A complete description of the procedure for rebuttal is now included at § 416.1208(c)(4).

The proposed rules with the above noted changes are adopted as final regulations.

Regulatory Procedures

Paperwork Reduction Act of 1980

These regulations contain an information collection requirement in § 416.1208(c)(4). We would normally request clearance of this requirement (under the Paperwork Reduction Act) by the Office of Management and Budget (OMB). However, we are not doing so in this situation because we have already obtained OMB clearance to collect this information using Form SSA–2574, Joint Checking/Savings Account Rebuttal Statement, under OMB control number 0960–0461.

Public reporting burden for this collection of information is estimated to average 7 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and fill out the form. We estimate that there will be 200,000 responses yearly, making the annual burden approximately 23,333 hours. If you have any comments or suggestions on this estimate, or on any other aspect of this collection of information, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–0461), Washington, DC 20503.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect eligibility for or the amount of SSI payments of individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplementary Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplementary Security Income.

Dated: November 3, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: February 22, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended to read as follows:

PART 416—[AMENDED]

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Public Law 93–66, 87 Stat. 154.

2. Section 416.1201 is amended by revising paragraph (b) to read as follows:

§ 416.1201 Resources; general.

* * * * *

(b) *Liquid resources.* Liquid resources are cash or other property which can be converted to cash within 20 days, excluding certain nonwork days as explained in § 416.120(d). Examples of resources that are ordinarily liquid are stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies, financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit) and similar items. Liquid resources, other than cash, are evaluated according to the

individual's equity in the resources. (See § 416.1208 for the treatment of funds held in individual and joint financial institution accounts.)

* * * * *

3. Section 416.1208 is added to read as follows:

§ 416.1208 How funds held in financial institution accounts are counted.

(a) *General.* Funds held in a financial institution account (including savings, checking, and time deposits, also known as certificates of deposit) are an individual's resource if the individual owns the account and can use the funds for his or her support and maintenance. We determine whether an individual owns the account and can use the funds for his or her support and maintenance by looking at how the individuals holds the account. This is reflected in the way the account is titled.

(b) *Individually-held account.* If an individual is designated as sole owner by the account title and can withdraw funds and use them for his or her support and maintenance, all of the funds, regardless of their source, are that individual's resource. For as long as these conditions are met, we presume that the individual owns 100 percent of the funds in the account. This presumption is non-rebuttable.

(c) *Jointly-held account—(1) Account holders include one or more SSI claimants or recipients.* If there is only one SSI claimant or recipient account holder on a jointly held account, we presume that all of the funds in the account belong to that individual. If there is more than one claimant or recipient account holder, we presume that all the funds in the account belong to those individuals in equal shares.

(2) *Account holders include one or more deemors.* If none of the account holders is a claimant or recipient, we presume that all of the funds in a jointly-held account belong to the deemor(s), in equal shares if there is more than one deemor. A deemor is a person whose income and resources are required to be considered when determining eligibility and computing the SSI benefit for an eligible individual (see §§ 416.1160 and 416.1202).

(3) *Right to rebut presumption of ownership.* If the claimant, recipient, or deemor objects or disagrees with an ownership presumption as described in paragraph (c)(1) or (c)(2) of this section, we give the individual the opportunity to rebut the presumption. Rebuttal is a procedure as described in paragraph (c)(4) of this section, which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her. Successful rebuttal establishes that the individual does not own some or all of the funds. The effect of successful rebuttal may be retroactive as well as prospective.

Example: The recipient's first month of eligibility is January 1993. In May 1993 the recipient successfully establishes that none of the funds in a 5-year-old jointly-held account belong to her. We do not count any of the funds as resources for the months of January 1993 and continuing.

(4) *Procedure for rebuttal.* To rebut an ownership presumption as described in paragraph (c)(1) or (c)(2) of this section, the individual must:

(i) Submit his/her statement, along with corroborating statements from other account holders, regarding who owns the funds in the joint account, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent;

(ii) Submit account records showing deposits, withdrawals, and interest (if any) in the months for which ownership of funds is at issue; and

(iii) Correct the account title to show that the individual is no longer a co-owner if the individual owns none of the funds; or, if the individual owns only a portion of the funds, separate the funds owned by the other account holder(s) from his/her own funds and correct the account title on the individual's own funds to show they are solely-owned by the individual.

[FR Doc. 94–13166 Filed 5–27–94; 8:45 am]
BILLING CODE 4190–29–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4890–1]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

This rule adds 42 new sites to the NPL, 18 to the General Superfund Section and 24 to the Federal Facilities Section. The identification of a site for the NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This action results in an NPL of 1,232 sites, 1,082 of them in the General Superfund Section and 150 of them in the Federal Facilities Section. An additional 54 sites are proposed, 48 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,286.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be June 30, 1994. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register.**

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see "Information Available to the Public" in Section I of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Keidan, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Purpose and Implementation of the NPL
III. Contents of This Final Rule
IV. Executive Order 12866
V. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of

uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99–499, stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action * * * and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)).

Pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is appendix B of 40 CFR part 300, is the National Priorities List ("NPL").

CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities," or "sites."

CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

Three mechanisms for placing sites on the NPL for possible remedial action are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of 40 CFR part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on February 23, 1994 (59 FR 8724).

The NPL includes two sections, one of sites that are evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

Deletions/Cleanups

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 59 sites from the General Superfund Section of the NPL, most recently Monroe Township Landfill, Monroe Township, New Jersey (59 FR 5109, February 3, 1994).

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Sites qualify for the CCL when:

(1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved;

(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or

(3) The site qualifies for deletion from the NPL. Inclusion of a site on the CCL has no legal significance.

In addition to the 58 sites that have been deleted from the NPL because they have been cleaned up (the Waste Research and Reclamation site was deleted based on deferral to another program and is not considered cleaned up), an additional 177 sites are also in the NPL CCL, all but one from the General Superfund Section. Thus, as of April 1994, the CCL consists of 235 sites.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of April 1994, EPA had conducted 614 removal actions at NPL sites, and 1,783 removal actions at non-NPL sites. Information on removals is available from the Superfund hotline.

Action in This Rule

This final rule adds 42 sites to the NPL, 18 to the General Superfund Section and 24 to the Federal Facilities

Section. This rule also expands the Austin Avenue Radiation Site (Delaware County, PA) and reclassifies three General Superfund sites as Federal Facilities. This action results in an NPL of 1,232 sites, 1,082 of them in the General Superfund Section and 150 of them in the Federal Facilities Section. An additional 54 sites have been proposed, 48 in the General Superfund Section and 6 in the Federal Facilities Section, and are awaiting final Agency action. Final and proposed sites now total 1,286.

Information Available to the Public

The Headquarters and Regional public dockets for the NPL contain documents relating to the evaluation and scoring of sites in this final rule. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Addresses and phone numbers for the Headquarters and Regional dockets follow.

Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, 5201, Waterside Mall, 401 M Street, SW., Washington, DC 20460, 202/260–3046.

Ellen Culhane, Region 1, U.S. EPA Waste Management Records Center, HES–CAN 6, J.F. Kennedy Federal Building, Boston, MA 02203–2211, 617/573–5729.

Walter Schoepf, Region 2, 26 Federal Plaza, 7th Floor, Room 740, New York, NY 10278, 212/264–6696.

Diane McCreary, Region 3, U.S. EPA Library, 3rd Floor, 841 Chestnut Building, 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597–7904.

Kathy Piselli, Region 4, U.S. EPA, 345 Courtland Street, NE, Atlanta, GA 30365, 404/347–4216.

Cathy Freeman, Region 5, U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604, 312/886–6214.

Bart Canellas, Region 6, U.S. EPA, 1445 Ross Avenue, Mail Code 6H–MA, Dallas, TX 75202–2733, 214/655–6740.

Steven Wyman, Region 7, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/551–7241.

Greg Oberley, Region 8, U.S. EPA, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303/294–7598.

Rachel Loftin, Region 9, U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2347.

David Bennett, Region 10, U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop HW–114, Seattle, WA 98101, 206/553–2103.

With the exception of Lower Ecorse Creek Dump (Wyandotte, Michigan) which is being listed based on ATSDR health advisory criteria, the Headquarters docket for this rule contains HRS score sheets for the final sites; Documentation Records for the sites describing the information used to compute the scores; pertinent information regarding statutory requirements or EPA listing policies that affect the sites; a list of documents referenced in each of the Documentation Records; comments received; and the Agency's responses to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—May 1994."

Except for the ATSDR health advisory criteria site mentioned above, each Regional docket contains all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Regional dockets. For the Lower Ecorse Creek Dump site which is being listed on the basis of health advisory criteria, both the Headquarters and Regional dockets contain the public health advisory issued by ATSDR, and EPA memoranda supporting the findings that the release poses a significant threat to public health and that it would be more cost-effective to use remedial rather than removal authorities at the site.

Interested parties may view documents, by appointment only, in the Headquarters or Regional Dockets, or copies may be requested from the Headquarters or Regional Dockets. An informal written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

II. Purpose and Implementation of the NPL

Purpose

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96–848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational and management tool. The identification of a site for the NPL is intended to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are identifiable at the time of listing, serve as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

Implementation

After initial discovery of a site at which a release or threatened release may exist, EPA begins a series of increasingly complex evaluations. The first step, the Preliminary Assessment (PA), is a low-cost review of existing information to determine if the site poses a threat to the public health or the environment. If the site presents a serious imminent threat, EPA may take immediate removal action. If the PA shows that the site presents a threat but not an imminent threat, EPA generally will perform a more extensive study called the Site Inspection (SI). The SI involves collecting additional information to better understand the extent of the problem at the site, screen out sites that will not qualify for the NPL, and obtain data necessary to calculate an HRS score for sites that warrant placement on the NPL and further study. To date EPA has completed approximately 35,000 PAs and approximately 17,000 SIs.

The NCP at 40 CFR 300.425(b)(1) limits expenditure of the Trust Fund for remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL; although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly,

in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.415(b)(2) (55 FR 8842, March 8, 1990).

EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities prior to undertaking response action, to proceed directly with Trust Fund-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

Although it is a factor that is considered, the ranking of sites by HRS scores does not by itself determine the sequence in which EPA funds remedial response actions, since the information collected to develop HRS scores is not sufficient to determine either the extent of contamination or the appropriate response for a particular site (40 CFR 300.425(a)(2), 55 FR 8845). Additionally, resource constraints may preclude EPA from evaluating all HRS pathways; only those presenting significant environmental risk and sufficient to make a site eligible for the NPL may be evaluated. Moreover, the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it already was underway. In addition, certain sites are based on other criteria.

More detailed studies of a site are undertaken in the Remedial Investigation/Feasibility Study ("RI/FS") that typically follows listing. The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy (40 CFR 300.430(a)(2)). The RI/FS takes into account the amount of contaminants released into the environment, the risk to affected populations and environment, the cost to remediate contamination at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of response action to be taken at these sites are made in accordance with 40 CFR 300.415 and 40 CFR 300.430.

After conducting these additional studies, EPA may conclude that initiating a CERCLA remedial action using the Trust Fund at some sites on the NPL is not appropriate because of more pressing needs at other sites, or because a private party cleanup already is underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

RI/FS at Proposed Sites

An RI/FS may be performed at sites proposed in the **Federal Register** for placement on the NPL (or even sites that have not been proposed for placement on the NPL) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.415. Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a site proposed for placement on the NPL in preparation for a possible Superfund-financed response action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

Facility (Site) Boundaries

The Agency's position is that the NPL does not describe releases in precise geographical terms, and that it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so.

CERCLA section 105(a)(8)(B) directs EPA to list national priorities among the known "releases or threatened releases" of hazardous substances. Thus, the purpose of the NPL is merely to identify releases of hazardous substances that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, described at 48 FR 40663 (September 8, 1983)).

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally known, as more is learned about the source and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be defined, and in any event are independent of the NPL listing. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

For these reasons, the NPL need not be amended if further research into the extent of the contamination expands the apparent boundaries of the release. Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), quoted at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

At the same time, however, the RI/FS or the Record of Decision (which defines the remedy selected, 40 CFR 300.430(f)) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, based on information known at that time. For example, EPA may evaluate (and list) a release over a 400-acre area, but the Record of Decision may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) also should note in such a case that if further study (or the remedial construction itself) reveals that

the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescoring NPL sites:

> EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process. . . . [T]he NPL serves as a guide to EPA and does not determine liability or the need for response. (49 FR 37081 (September 21, 1984)).

See also *City of Stoughton, Wisc.* v *U.S. EPA*, 858 F. 2d 747, 751 (DC Cir. 1988):

> Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet * * * "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." Eagle-Picher [*Industries* v. *EPA*] II, 759 F. 2d [921,] at 932 [(DC Cir. 1985)].

III. Contents of This Final Rule

This final rule adds 42 sites to the NPL, 18 to the General Superfund Section (Table 1) and 24 to the Federal Facilities Section (Table 2). Proposal #11 (56 FR 35840, July 29, 1991) provided 2 sites, Proposal #12 (57 FR 4824, February 7, 1992) provided 2 sites, Proposal #13 (57 FR 47204, October 14, 1992) provided 3 sites, Proposal #14 (58 FR 27507, May 10, 1993) provided 9 sites, and Proposal #15 (58 FR 34018, June 23, 1993) provided 14 sites; all are being added to the NPL based on HRS scores of 28.50 or greater. Proposal #16 (59 FR 2568, January 18, 1994) provided 12 sites; all but one are being added based on HRS scores of 28.50 or greater. The Lower Ecorse Creek Dump is being added to the NPL based on ATSDR health advisory criteria.

As discussed more fully below, the following tables present the sites in this rule arranged alphabetically by State and identifies their rank by group number. Group numbers are determined by arranging the NPL by rank and dividing it into groups of 50 sites. For example, a site in Group 4 has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.

NATIONAL PRIORITIES LIST FINAL RULE—GENERAL SUPERFUND SECTION

State	Site name	City/county	Group
CA	Frontier Fertilizer	Davis	14
CO	Summitville Mine	Rio Grande County	4/5
FL	Chevron Chemical Co. (Ortho Division)	Orlando	4/5
FL	Stauffer Chemical Co. (Tarpon Springs)	Tarpon Springs	1
KS	Chemical Commodities Inc	Olathe	4/5
KY	National Southwire Aluminum Co	Hawesville	5
MD	Spectron, Inc	Elkton	4
MA	Blackburn and Union Priveleges	Walpole	5
MI	Lower Ecorse Creek Dump	Wyandotte	*
NY	GCL Tie and Treating Inc	Village of Sidney	5
OH	North Sanitary Landfill	Dayton	4/5
OR	McCormick & Baxter Creosoting Co. (Portland)	Portland	1
PA	UGI Columbia Gas Plant	Columbia	4
TN	Chemet Co	Moscow	4/5
WA	Pacific Sound Resources	Seattle	1
WA	Spokane Junkyard/Associated Properties	Spokane	5
WA	Vancouver Water Station #1 Contamination	Vancouver	4/5
WI	Ripon City Landfill	Fond du Lac County	11

Number of Sites Listed: 18.
*Based on issuance of ATSDR health advisory (not scored)

NATIONAL PRIORITIES LIST FINAL RULE—FEDERAL FACILITIES SECTION

State	Site name	City/county	Group
AK	Adak Naval Air Station	Adak	4
AK	Fort Richardson (USARMY)	Anchorage	4/5
AL	Redstone Arsenal (USARMY/NASA)	Huntsville	4/5
CA	Laboratory for Energy-Related Health Research/Old Campus Landfill (USDOE)	Davis	4/5
FL	Whiting Field Naval Air Station	Milton	4/5
HI	Naval Computer and Telecommunications Area Master Station Eastern Pacific	Oahu	4/5
KY	Paducah Gaseous Diffusion Plant (USDOE)	Paducah	2
MA	Hanscom Field/Hanscom Air Force Base	Bedford	4/5
MA	Materials Technology Laboratory (USARMY)	Watertown	5
MA	Natick Laboratory Army Research, Development, and Engineering Center	Natick	4/5
MA	Naval Weapons Industrial Reserve Plant	Bedford	4/5
MA	South Weymouth Naval Air Station	Weymouth	4/5
MD	Beltsville Agricultural Research Center (USDA)	Beltsville	4/5
MD	Patuxent River Naval Air Station	St. Mary's County	4/5
ME	Portsmouth Naval Shipyard	Kittery	1
PA	Navy Ships Parts Control Center	Mechanicsburg	4/5
TX	Pantex Plant (USDOE)	Pantex Village	4
VA	Langley Air Force Base/NASA Langley Research Center	Hampton	4/5
VA	Marine Corps Combat Development Command	Quantico	4/5
WA	Jackson Park Housing Complex (USNAVY)	Kitsap County	4/5

NATIONAL PRIORITIES LIST FINAL RULE—FEDERAL FACILITIES SECTION—Continued

State	Site name	City/county	Group
WA	Old Navy Dump/Manchester Laboratory (USEPA/NOAA)	Manchester	4/5
WA	Port Hadlock Detachment (USNAVY)	Indian Island	4/5
WA	Puget Sound Naval Shipyard Complex	Bremerton	4/5
WV	Allegany Ballistics Laboratory (USNAVY)	Mineral County	4/5

Number of Sites Listed: 24.

Expansion of the Austin Avenue Radiation Site

The Austin Avenue Radiation Site (Delaware County, PA), was proposed to the NPL on February 7, 1992 (57 FR 4824). At that time, specific areas were identified and enumerated as part of the site. EPA has identified additional contaminated areas not included in the original proposal. EPA proposed to expand the site in Proposal #13 (57 FR 47204, October 14, 1992). The comment period for the proposed expansion ended on November 13, 1992. EPA received no comments and, at this time, is finalizing the expansion of the Austin Avenue Radiation Site to include those additional areas identified in Proposal #13.

Reclassification of General Superfund Sites as Federal Facilities

EPA has reclassified three General Superfund Sites as Federal Facilities in response to information demonstrating Federal affiliation and/or ownership of these sites. These changes are intended to reflect more accurately the ownership, location, nature, or potential sources of contamination at the sites. The names have also been slightly modified to reflect the Federal status of the sites. The three sites are:

West Virginia Ordnance (USARMY) in Point Pleasant, WV (previously West Virginia Ordnance)

American Lake Gardens/McChord AFB in Tacoma, WA (previously American Lake Gardens)

New Brighton/Arden Hills/TCAAP (USARMY) in Ramsey County, MN (previously New Brighton/Arden Hills)

The number of sites in the General Superfund Section and the Federal Facilities Section have been adjusted to reflect these reclassifications.

While EPA has redesignated these sites as Federal Facilities, the Agency emphasizes that designation of a site as Federal or non-Federal for listing is for informational purposes only. NPL listing, and the underlying information, may be used as evidence that a Federal agency may own or operate all or part of a facility for purposes of determining its obligations under Section 120(e) of CERCLA. However, the designation of a site as Federal or non-Federal for placement on the NPL does not determine, or limit, the extent of any Federal agency's obligations under section 120. For example, any Federal agencies that own or operate these sites were obligated under CERCLA Section 120(e) to commence the RI/FS within six months of listing, even though the sites were not listed in the Federal Facilities section of the NPL.

Name Change

EPA is changing the name of the Hanscom Air Force Base site in Bedford, Massachusetts, to Hanscom Field/ Hanscom Air Force Base. EPA believes the name change more accurately reflects the site.

Public Comments

EPA reviewed all comments received on sites included in this rule. The formal comment period ended on September 27, 1991 for sites included from Proposal #11; April 7, 1992 for sites included from Proposal #12; November 13, 1992 for the expansion of the Austin Avenue Radiation Site (Delaware County, PA); December 14, 1992 for sites included in Proposal #13; June 9, 1993 for Hanscom Field/ Hanscom Air Force Base (Bedford, MA) and Natick Laboratory Army Research, Development, and Engineering Center (Natick, MA); July 9, 1993 for all other sites included in Proposal #14; July 23, 1993 for South Weymouth Naval Air Station (Weymouth, MA), Materials Technology Laboratory (USARMY, Watertown, MA) and Portsmouth Naval Shipyard (Kittery, ME); August 23, 1993 for all other sites in Proposal #15; and March 21, 1994 for sites in Proposal #16.

Based on comments received on the proposed sites, as well as investigation by EPA and the States (generally in response to comment), EPA recalculated the HRS scores for individual sites where appropriate. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—May 1994". For a number of the sites included in this rule and for the expansion of the Austin Avenue Radiation Site (Delaware County, PA), EPA received no comments.

Statutory Requirements

CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

Releases from Federal Facility Sites

On March 13, 1989 (54 FR 10520), the Agency announced a policy for placing Federal Facility sites on the NPL if they meet the eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal Facility also is subject to the corrective action authorities of RCRA Subtitle C. In that way, those sites could be cleaned up under CERCLA, if appropriate.

Economic Impacts

The costs of cleanup actions that may be taken at any site are not directly attributable to placement on the NPL. EPA has conducted a preliminary analysis of economic implications of today's amendment to the NPL. EPA believes that the kinds of economic effects associated with this revision generally are similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to adding sites to the NPL can be

characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis.

Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to the sites included in this rulemaking.

The major events that follow the proposed listing of a site on the NPL are a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by Section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

—For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.

—For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1993) cost estimates available; the estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

Cost category	Average total cost per site [1]
RI/FS	1,350,000
Remedial Design	1,260,000
Remedial Action	[3] 21,960,000
Net present value of O&M [2]	3,770,000

[1] 1993 U.S. Dollars.
[2] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate.
[3] Includes State cost-share.

Source: Office of Program Management, Office of Emergency and Remedial Response, U.S. EPA, Washington, DC.

Costs to the States associated with today's final rule arise from the required State cost-share of: (1) 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites that are publicly-owned but not publicly-operated; and (2) at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites. States will assume the cost for O&M after EPA's period of participation. Using the budget projections presented above, the cost to the States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately $60 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known if the site will require this treatment and for how long. Assuming EPA involvement for 10 years is needed, State O&M costs would be approximately $58 million.

Placing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment to the NPL are aggregations of efforts on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

IV. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule revises the NCP, it is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no

identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that the listing of the sites in this NPL rule could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only the firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule does not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: May 24, 1994

Timothy Fields,

Acting, Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Appendix B to Part 300 is revised to read as set forth below:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994

State	Site name	City/county	Notes (a)
AK	Alaska Battery Enterprises	Fairbanks N Star Borough	C
AK	Arctic Surplus	Fairbanks.	
AL	Ciba-Geigy Corp. (McIntosh Plant)	McIntosh.	
AL	Interstate Lead Co. (ILCO)	Leeds.	
AL	Olin Corp. (McIntosh Plant)	McIntosh.	
AL	Perdido Ground Water Contamination	Perdido	C
AL	Redwing Carriers, Inc. (Saraland)	Saraland.	
AL	Stauffer Chemical Co. (Cold Creek Plant)	Bucks.	
AL	Stauffer Chemical Co. (LeMoyne Plant)	Axis	
AL	T.H. Agriculture & Nutrition (Montgomery)	Montgomery.	
AL	Triana/Tennessee River	Limestone/Morgan	C
AR	Arkwood, Inc.	Omaha.	
AR	Frit Industries	Walnut Ridge.	
AR	Gurley Pit	Edmondson.	
AR	Industrial Waste Control	Fort Smith	C
AR	Jacksonville Municipal Landfill	Jacksonville	
AR	Mid-South Wood Products	Mena	C
AR	Midland Products	Ola/Birta	C
AR	Monroe Auto Equipment (Paragould Pit)	Paragould,	
AR	Popile, Inc.	El Dorado.	
AR	Rogers Road Municipal Landfill	Jacksonville.	
AR	South 8th Street Landfill	West Memphis.	
AR	Vertac, Inc.	Jacksonville.	
AZ	Apache Powder Co.	St. David.	
AZ	Hassayampa Landfill	Hassayampa.	
AZ	Indian Bend Wash Area	Scottsdale/Tempe/Phoenix.	
AZ	Litchfield Airport Area	Goodyear/Avondale.	
AZ	Motorola, Inc. (52nd Street Plant)	Phoenix.	
AZ	Nineteenth Avenue Landfill	Phoenix.	
AZ	Tucson International Airport Area	Tucson.	
CA	Advanced Micro Devices, Inc.	Sunnyvale	C
CA	Advanced Micro Devices, Inc. (Bldg. 915)	Sunnyvale	C
CA	Aerojet General Corp.	Rancho Cordova.	
CA	Applied Materials	Santa Clara	C
CA	Atlas Asbestos Mine	Fresno County.	
CA	Beckman Instruments (Porterville Plant)	Porterville	C
CA	Brown & Bryant, Inc.(Arvin Plant)	Arvin.	
CA	CTS Printex, Inc.	Mountain View	C
CA	Celtor Chemical Works	Hoopa	C
CA	Coalinga Asbestos Mine	Coalinga.	
CA	Coast Wood Preserving	Ukiah.	
CA	Crazy Horse Sanitary Landfill	Salinas.	
CA	Del Norte Pesticide Storage	Crescent City	C
CA	Fairchild Semiconductor Corp (Mt View)	Mountain View.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
CA	Fairchild Semiconductor Corp (S San Jose	South San Jose	C
CA	Firestone Tire & Rubber Co. (Salinas Plant)	Salinas	C
CA	Fresno Municipal Sanitary Landfill	Fresno.	
CA	Frontier Fertilizer	Davis.	
CA	Hewlett-Packard (620–640 Page Mill Road)	Palo Alto.	
CA	Industrial Waste Processing	Fresno.	
CA	Intel Corp. (Mountain View Plant)	Mountain View.	
CA	Intel Corp. (Santa Clara III)	Santa Clara	C
CA	Intel Magnetics	Santa Clara	C
CA	Intersil Inc./Siemens Components	Cupertino	C
CA	Iron Mountain Mine	Redding.	
CA	J.H. Baxter & Co.	Weed.	
CA	Jasco Chemical Corp.	Mountain View.	
CA	Koppers Co., Inc. (Oroville Plant)	Oroville.	
CA	Liquid Gold Oil Corp.	Richmond.	
CA	Lorentz Barrel & Drum Co.	San Jose.	
CA	Louisiana-Pacific Corp.	Oroville.	
CA	MGM Brakes	Cloverdale.	
CA	McColl	Fullerton.	
CA	McCormick & Baxter Creosoting Co.	Stockton.	
CA	Modesto Ground Water Contamination	Modesto.	
CA	Monolithic Memories	Sunnyvale.	
CA	Montrose Chemical Corp.	Torrance.	
CA	National Semiconductor Corp.	Santa Clara.	
CA	Newmark Ground Water Contamination	San Bernardino.	
CA	Operating Industries, Inc., Landfill	Monterey Park.	
CA	Pacific Coast Pipe Lines	Fillmore.	
CA	Purity Oil Sales, Inc.	Malaga.	
CA	Ralph Gray Trucking Co.	Westminster.	
CA	Raytheon Corp.	Mountain View.	
CA	San Fernando Valley (Area 1)	Los Angeles.	
CA	San Fernando Valley (Area 2)	Los Angeles/Glendale.	
CA	San Fernando Valley (Area 3)	Glendale.	
CA	San Fernando Valley (Area 4)	Los Angeles.	
CA	San Gabriel Valley (Area 1)	El Monte.	
CA	San Gabriel Valley (Area 2)	Baldwin Park Area.	
CA	San Gabriel Valley (Area 3)	Alhambra.	
CA	San Gabriel Valley (Area 4)	La Puente.	
CA	Selma Treating Co.	Selma.	
CA	Sola Optical USA, Inc.	Petaluma	C
CA	South Bay Asbestos Area	Alviso.	
CA	Southern California Edison Co. (Visalia)	Visalia.	
CA	Spectra-Physics, Inc.	Mountain View	C
CA	Stringfellow	Glen Avon Heights	S
CA	Sulphur Bank Mercury Mine	Clear Lake.	
CA	Synertek, Inc. (Building 1)	Santa Clara	C
CA	T.H. Agriculture & Nutrition Co.	Fresno.	
CA	TRW Microwave, Inc (Building 825)	Sunnyvale	C
CA	Teledyne Semiconductor	Mountain View	C
CA	United Heckathorn Co.	Richmond.	
CA	Valley Wood Preserving, Inc.	Turlock.	
CA	Waste Disposal, Inc.	Santa Fe Springs.	
CA	Watkins-Johnson Co. (Stewart Division)	Scotts Valley.	
CA	Western Pacific Railroad Co.	Oroville.	
CA	Westinghouse Electric Corp. (Sunnyvale)	Sunnyvale.	
CO	Broderick Wood Products	Denver.	
CO	California Gulch	Leadville.	
CO	Central City-Clear Creek	Idaho Springs.	
CO	Chemical Sales Co.	Denver.	
CO	Denver Radium Site	Denver.	
CO	Eagle Mine	Minturn/Redcliff.	
CO	Lincoln Park	Canon City.	
CO	Lowry Landfill	Arapahoe County.	
CO	Marshall Landfill	Boulder County	C,S
CO	Sand Creek Industrial	Commerce City.	
CO	Smuggler Mountain	Pitkin County.	
CO	Summitville Mine	Rio Grande County.	
CO	Uravan Uranium Project (Union Carbide)	Uravan.	
CT	Barkhamsted-New Hartford Landfill	Barkhamsted.	
CT	Beacon Heights Landfill	Beacon Falls.	
CT	Cheshire Ground Water Contamination	Cheshire.	
CT	Durham Meadows	Durham.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
CT	Gallup's Quarry	Plainfield.	
CT	Kellogg-Deering Well Field	Norwalk.	
CT	Laurel Park, Inc.	Naugatuck Borough	S
CT	Linemaster Switch Corp.	Woodstock.	
CT	Nutmeg Valley Road	Wolcott.	
CT	Old Southington Landfill	Southington.	
CT	Precision Plating Corp.	Vernon.	
CT	Revere Textile Prints Corp.	Sterling	C
CT	Solvents Recovery Service New England	Southington.	
CT	Yaworski Waste Lagoon	Canterbury.	
DE	Army Creek Landfill	New Castle County.	
DE	Chem-Solv, Inc.	Cheswold.	
DE	Coker's Sanitation Service Landfills	Kent County	C
DE	Delaware City PVC Plant	Delaware City.	
DE	Delaware Sand & Gravel Landfill	New Castle County.	
DE	Dover Gas Light Co.	Dover.	
DE	E.I. Du Pont DE Nemours (Newport Landfill)	Newport.	
DE	Halby Chemical Co.	New Castle.	
DE	Harvey & Knott Drum, Inc.	Kirkwood.	
DE	Koppers Co., Inc. (Newport Plant)	Newport.	
DE	NCR Corp. (Millsboro Plant)	Millsboro.	
DE	New Castle Spill	New Castle County	C
DE	Sealand Limited	Mount Pleasant	C
DE	Standard Chlorine of Delaware, Inc	Delaware City.	
DE	Sussex County Landfill No. 5	Laurel.	
DE	Tybouts Corner Landfill	New Castle County	S
DE	Tyler Refrigeration Pit	Smyrna.	
DE	Wildcat Landfill	Dover	C
FL	Agrico Chemical Co.	Pensacola.	
FL	Airco Plating Co.	Miami.	
FL	Alpha Chemical Corp.	Galloway	C
FL	American Creosote Works (Pensacola Plt)	Pensacola.	
FL	Anaconda Aluminum Co./Milgo Electronics	Miami.	
FL	Anodyne, Inc.	North Miami Beach.	
FL	B&B Chemical Co., Inc.	Hialeah.	
FL	BMI-Textron	Lake Park.	
FL	Beulah Landfill	Pensacola	C
FL	Brown Wood Preserving	Live Oak	C
FL	Cabot/Koppers	Gainesville.	
FL	Chemform, Inc.	Pompano Beach	C
FL	Chevron Chemical Co. (Ortho Division)	Orlando.	
FL	City Industries, Inc.	Orlando	C
FL	Coleman-Evans Wood Preserving Co.	Whitehouse.	
FL	Davie Landfill	Davie.	
FL	Dubose Oil Products Co.	Cantonment.	
FL	Florida Steel Corp.	Indiantown.	
FL	Gold Coast Oil Corp.	Miami	C
FL	Harris Corp. (Palm Bay Plant)	Palm Bay.	
FL	Helena Chemical Co. (Tampa Plant)	Tampa.	
FL	Hipps Road Landfill	Duval County.	
FL	Hollingsworth Solderless Terminal	Fort Lauderdale	C
FL	Kassauf-Kimerling Battery Disposal	Tampa.	
FL	Madison County Sanitary Landfill	Madison.	
FL	Miami Drum Services	Miami	C
FL	Munisport Landfill	North Miami.	
FL	Northwest 58th Street Landfill	Hialeah.	
FL	Peak Oil Co./Bay Drum Co.	Tampa.	
FL	Pepper Steel & Alloys, Inc.	Medley	C
FL	Petroleum Products Corp.	Pembroke Park.	
FL	Pickettville Road Landfill	Jacksonville.	
FL	Piper Aircraft/Vero Beach Water & Sewer	Vero Beach.	
FL	Reeves Southeast Galvanizing Corp	Tampa.	
FL	Sapp Battery Salvage	Cottondale.	
FL	Schuylkill Metals Corp.	Plant City.	
FL	Sherwood Medical Industries	De Land.	
FL	Sixty-Second Street Dump	Tampa.	
FL	Standard Auto Bumper Corp.	Hialeah.	
FL	Stauffer Chemical Co. (Tarpons Springs)	Tarpon Springs.	
FL	Sydney Mine Sludge Ponds	Brandon.	
FL	Taylor Road Landfill	Seffner.	
FL	Tower Chemical Co.	Clermont.	
FL	Whitehouse Oil Pits	Whitehouse.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
FL	Wilson Concepts of Florida, Inc.	Pompano Beach	C
FL	Wingate Road Municipal Incinerator Dump	Fort Lauderdale.	
FL	Woodbury Chemical Co. (Princeton Plant)	Princeton	C
FL	Yellow Water Road Dump	Baldwin.	
FL	Zellwood Ground Water Contamination	Zellwood.	
GA	Cedartown Industries, Inc.	Cedartown.	
GA	Cedartown Municipal Landfill	Cedartown.	
GA	Diamond Shamrock Corp. Landfill	Cedartown.	
GA	Firestone Tire & Rubber Co. (Albany Plant)	Albany.	
GA	Hercules 009 Landfill	Brunswick.	
GA	Marzone Inc./Chevron Chemical Co.	Tifton.	
GA	Mathis Brothers Landfill	Kensington.	
GA	Monsanto Corp. (Augusta Plant)	Augusta	C
GA	Powersville Site	Peach County	C
GA	T.H. Agriculture & Nutrition (Albany)	Albany.	
GA	Woolfolk Chemical Works, Inc.	Fort Valley.	
GU	Ordot Landfill	Guam	C,S
IA	Des Moines TCE	Des Moines.	
IA	E.I. Du Pont DE Nemours (County Rd X23)	West Point	C
IA	Electro-Coatings, Inc.	Cedar Rapids.	
IA	Fairfield Coal Gasification Plant	Fairfield.	
IA	Farmers' Mutual Cooperative	Hospers.	
IA	John Deere (Ottumwa Works Landfills)	Ottumwa	C
IA	Lawrence Todtz Farm	Camanche	C
IA	Mid-America Tanning Co.	Sergeant Bluff.	
IA	Midwest Manufacturing/North Farm	Kellogg.	
IA	Northwestern States Portland Cement Co.	Mason City	C
IA	Peoples Natural Gas Co.	Dubuque.	
IA	Red Oak City Landfill	Red Oak.	
IA	Shaw Avenue Dump	Charles City.	
IA	Sheller-Globe Corp. Disposal	Keokuk.	
IA	Vogel Paint & Wax Co.	Orange City.	
IA	White Farm Equipment Co. Dump	Charles City.	
ID	Bunker Hill Mining & Metallurgical	Smelterville.	
ID	Eastern Michaud Flats Contamination	Pocatello.	
ID	Kerr-McGee Chemical Corp. (Soda Springs)	Soda Springs.	
ID	Monsanto Chemical Co. (Soda Springs)	Soda Springs.	
ID	Pacific Hide & Fur Recycling Co.	Pocatello.	
ID	Union Pacific Railroad Co.	Pocatello.	
IL	A & F Material Reclaiming, Inc.	Greenup	C
IL	Acme Solvent Reclaiming (Morristown Plant)	Morristown.	
IL	Adams County Quincy Landfills 2&3	Quincy.	
IL	Amoco Chemicals (Joliet Landfill)	Joliet.	
IL	Beloit Corp	Rockton.	
IL	Belvidere Municipal Landfill	Belvidere	C
IL	Byron Salvage Yard	Byron.	
IL	Central Illinois Public Service Co	Taylorville.	
IL	Cross Brothers Pail Recycling (Pembroke)	Pembroke Township.	
IL	DuPage County Landfill/Blackwell Forest	Warrenville.	
IL	Galesburg/Koppers Co	Galesburg.	
IL	H.O.D. Landfill	Antioch.	
IL	Ilada Energy Co	East Cape Girardeau.	
IL	Interstate Pollution Control, Inc	Rockford.	
IL	Johns-Manville Corp	Waukegan	C
IL	Kerr-McGee (Kress Creek/W Branch DuPage)	DuPage County.	
IL	Kerr-McGee (Reed-Keppler Park)	West Chicago.	
IL	Kerr-McGee (Residential Areas)	West Chicago/DuPage County.	
IL	Kerr-McGee (Sewage Treatment Plant)	West Chicago.	
IL	LaSalle Electric Utilities	LaSalle	C
IL	Lenz Oil Service, Inc	Lemont.	
IL	MIG/Dewane Landfill	Belvidere.	
IL	NL Industries/Taracorp Lead Smelter	Granite City.	
IL	Ottawa Radiation Areas	Ottawa.	
IL	Outboard Marine Corp	Waukegan	S
IL	Pagel's Pit	Rockford.	
IL	Parsons Casket Hardware Co	Belvidere.	
IL	Southeast Rockford Gd Wtr Contamination	Rockford.	
IL	Tri-County Landfill/Waste Mgmt Illinois	South Elgin.	
IL	Velsicol Chemical Corp. (Illinois)	Marshall.	
IL	Wauconda Sand & Gravel	Wauconda.	
IL	Woodstock Municipal Landfill	Woodstock.	
IL	Yeoman Creek Landfill	Waukegan.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
IN	American Chemical Service, Inc	Griffith.	
IN	Bennett Stone Quarry	Bloomington.	
IN	Carter Lee Lumber Co	Indianapolis.	
IN	Columbus Old Municipal Landfill #1	Columbus.	
IN	Conrail Rail Yard (Elkhart)	Elkhart.	
IN	Continental Steel Corp	Kokomo	
IN	Douglass Road/Uniroyal, Inc., Landfill	Mishawaka	
IN	Envirochem Corp	Zionsville.	
IN	Fisher-Calo	LaPorte.	
IN	Fort Wayne Reduction Dump	Fort Wayne.	
IN	Galen Myers Dump/Drum Salvage	Osceola.	
IN	Himco Dump	Elkhart.	
IN	Lake Sandy Jo (M&M Landfill)	Gary.	
IN	Lakeland Disposal Service, Inc	Claypool.	
IN	Lemon Lane Landfill	Bloomington.	
IN	MIDCO I	Gary.	
IN	MIDCO II	Gary.	
IN	Main Street Well Field	Elkhart.	
IN	Marion (Bragg) Dump	Marion.	
IN	Neal's Dump (Spencer)	Spencer.	
IN	Neal's Landfill (Bloomington)	Bloomington.	
IN	Ninth Avenue Dump	Gary.	
IN	Northside Sanitary Landfill, Inc	Zionsville.	
IN	Prestolite Battery Division	Vincennes.	
IN	Reilly Tar & Chemical (Indianapolis Plant)	Indianapolis.	
IN	Seymour Recycling Corp	Seymour	C,S
IN	Southside Sanitary Landfill	Indianapolis.	
IN	Tippecanoe Sanitary Landfill, Inc	Lafayette.	
IN	Tri-State Plating	Columbus	C
IN	Waste, Inc., Landfill	Michigan City.	
IN	Wayne Waste Oil	Columbia City.	
IN	Whiteford Sales & Service/Nationalease	South Bend.	
KS	29th & Mead Ground Water Contamination	Wichita.	
KS	57th and North Broadway Streets Site	Wichita Heights.	
KS	Arkansas City Dump	Arkansas City	C,S
KS	Chemical Commodities, Inc	Olathe.	
KS	Cherokee County	Cherokee County.	
KS	Doepke Disposal (Holliday)	Johnson County.	
KS	Obee Road	Hutchinson.	
KS	Pester Refinery Co	El Dorado.	
KS	Strother Field Industrial Park	Cowley County.	
KY	A.L. Taylor (Valley of Drums)	Brooks	C
KY	Airco	Calvert City.	
KY	B.F. Goodrich	Calvert City.	
KY	Brantley Landfill	Island.	
KY	Caldwell Lace Leather Co., Inc	Auburn.	
KY	Distler Brickyard	West Point.	
KY	Distler Farm	Jefferson County	C
KY	Fort Hartford Coal Co. Stone Quarry	Olaton.	
KY	General Tire & Rubber (Mayfield Landfill)	Mayfield	C
KY	Green River Disposal, Inc	Maceo.	
KY	Howe Valley Landfill	Howe Valley.	
KY	Lee's Lane Landfill	Louisville	C
KY	Maxey Flats Nuclear Disposal	Hillsboro.	
KY	National Electric Coil/Cooper Industries	Dayhoit.	
KY	National Southwire Aluminum Co	Hawesville.	
KY	Newport Dump	Newport	C
KY	Red Penn Sanitation Co. Landfill	PeeWee Valley.	
KY	Smith's Farm	Brooks.	
KY	Tri-City Disposal Co	Shepherdsville.	
LA	American Creosote Works, Inc (Winnfield)	Winnfield.	
LA	Bayou Bonfouca	Slidell.	
LA	Bayou Sorrel Site	Bayou Sorrel	C
LA	Cleve Reber	Sorrento.	
LA	Combustion, Inc	Denham Springs.	
LA	D.L. Mud, Inc	Abbeville.	
LA	Dutchtown Treatment Plant	Ascension Parish.	
LA	Gulf Coast Vacuum Services	Abbeville.	
LA	Old Inger Oil Refinery	Darrow	S
LA	PAB Oil & Chemical Service, Inc	Abbeville.	
LA	Petro-Processors of Louisiana Inc	Scotlandville.	
MA	Atlas Tack Corp	Fairhaven.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
MA	Baird & McGuire	Holbrook.	
MA	Blackburn & Union Privileges	Walpole.	
MA	Cannon Engineering Corp. (CEC)	Bridgewater	C
MA	Charles-George Reclamation Landfill	Tyngsborough.	
MA	Groveland Wells	Groveland.	
MA	Haverhill Municipal Landfill	Haverhill.	
MA	Hocomonco Pond	Westborough.	
MA	Industri-Plex	Woburn.	
MA	Iron Horse Park	Billerica.	
MA	New Bedford Site	New Bedford	S
MA	Norwood PCBs	Norwood.	
MA	Nyanza Chemical Waste Dump	Ashland.	
MA	PSC Resources	Palmer.	
MA	Re-Solve, Inc	Dartmouth.	
MA	Rose Disposal Pit	Lanesboro.	
MA	Salem Acres	Salem.	
MA	Shpack Landfill	Norton/Attleboro.	
MA	Silresim Chemical Corp	Lowell.	
MA	Sullivan's Ledge	New Bedford.	
MA	W.R. Grace & Co Inc (Acton Plant)	Acton.	
MA	Wells G&H	Woburn.	
MD	Bush Valley Landfill	Abingdon.	
MD	Kane & Lombard Street Drums	Baltimore.	
MD	Limestone Road	Cumberland.	
MD	Mid-Atlantic Wood Preservers, Inc	Harmans	C
MD	Sand, Gravel & Stone	Elkton.	
MD	Southern Maryland Wood Treating	Hollywood.	
MD	Spectron, Inc	Elkton.	
MD	Woodlawn County Landfill	Woodlawn.	
ME	McKin Co	Gray	C
ME	O'Connor Co	Augusta.	
ME	Pinette's Salvage Yard	Washburn.	
ME	Saco Municipal Landfill	Saco.	
ME	Saco Tannery Waste Pits	Saco	C
ME	Union Chemical Co., Inc	South Hope.	
ME	Winthrop Landfill	Winthrop.	
MI	Adam's Plating	Lansing.	
MI	Albion-Sheridan Township Landfill	Albion.	
MI	Allied Paper/Portage Ck/Kalamazoo River	Kalamazoo.	
MI	American Anodco, Inc.	Ionia	C
MI	Anderson Development Co.	Adrian	C
MI	Auto Ion Chemicals, Inc.	Kalamazoo.	
MI	Avenue "E" Ground Water Contamination	Traverse City.	
MI	Barrels, Inc.	Lansing.	
MI	Bendix Corp./Allied Automotive	St. Joseph.	
MI	Berlin & Farro	Swartz Creek.	
MI	Bofors Nobel, Inc.	Muskegon.	
MI	Burrows Sanitation	Hartford	C
MI	Butterworth #2 Landfill	Grand Rapids.	
MI	Cannelton Industries, Inc.	Saulte Saint Marie.	
MI	Carter Industrials, Inc.	Detroit.	
MI	Cemetery Dump	Rose Center	C
MI	Chem Central	Wyoming Township.	
MI	Clare Water Supply	Clare.	
MI	Cliff/Dow Dump	Marquette.	
MI	Duell & Gardner Landfill	Dalton Township.	
MI	Electrovoice	Buchanan.	
MI	Folkertsma Refuse	Grand Rapids.	
MI	Forest Waste Products	Otisville.	
MI	G&H Landfill	Utica.	
MI	Grand Traverse Overall Supply Co.	Greilickville	C
MI	Gratiot County Landfill	St. Louis	S
MI	H. Brown Co., Inc.	Grand Rapids.	
MI	Hedblum Industries	Oscoda	C
MI	Hi-Mill Manufacturing Co.	Highland.	
MI	Ionia City Landfill	Ionia.	
MI	J&L Landfill	Rochester Hills.	
MI	K&L Avenue Landfill	Oshtemo Township.	
MI	Kaydon Corp.	Muskegon.	
MI	Kent City Mobile Home Park	Kent City.	
MI	Kentwood Landfill	Kentwood.	
MI	Kysor Industrial Corp.	Cadillac.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
MI	Liquid Disposal, Inc.	Utica.	
MI	Lower Ecorse Creek Dump	Wyandotte	A
MI	Mason County Landfill	Pere Marquette Twp	C
MI	McGraw Edison Corp.	Albion.	
MI	Metamora Landfill	Metamora.	
MI	Michigan Disposal (Cork Street Landfill)	Kalamazoo.	
MI	Motor Wheel, Inc.	Lansing.	
MI	Muskegon Chemical Co.	Whitehall.	
MI	North Bronson Industrial Area	Bronson.	
MI	Northernaire Plating	Cadillac.	
MI	Novaco Industries	Temperance	C
MI	Organic Chemicals, Inc.	Grandville.	
MI	Ossineke Ground Water Contamination	Ossineke.	
MI	Ott/Story/Cordova Chemical Co.	Dalton Township.	
MI	Packaging Corp. of America	Filer City.	
MI	Parsons Chemical Works, Inc.	Grand Ledge.	
MI	Peerless Plating Co.	Muskegon.	
MI	Petoskey Municipal Well Field	Petoskey.	
MI	Rasmussen's Dump	Green Oak Township.	
MI	Rockwell International Corp. (Allegan)	Allegan.	
MI	Rose Township Dump	Rose Township.	
MI	Roto-Finish Co., Inc.	Kalamazoo.	
MI	SCA Independent Landfill	Muskegon Heights.	
MI	Shiawassee River	Howell.	
MI	South Macomb Disposal (Landfills 9 & 9A)	Macomb Township.	
MI	Southwest Ottawa County Landfill	Park Township.	
MI	Sparta Landfill	Sparta Township.	
MI	Spartan Chemical Co.	Wyoming.	
MI	Spiegelberg Landfill	Green Oak Township.	
MI	Springfield Township Dump	Davisburg.	
MI	State Disposal Landfill, Inc.	Grand Rapids.	
MI	Sturgis Municipal Wells	Sturgis.	
MI	Tar Lake	Mancelona Township.	
MI	Thermo-Chem, Inc.	Muskegon.	
MI	Torch Lake	Houghton County.	
MI	U.S. Aviex	Howard Township	C
MI	Velsicol Chemical Corp.(Michigan)	St. Louis	C
MI	Verona Well Field	Battle Creek.	
MI	Wash King Laundry	Pleasant Plains Twp.	
MI	Waste Management of Michigan (Holland)	Holland.	
MN	Agate Lake Scrapyard	Fairview Township.	
MN	Arrowhead Refinery Co.	Hermantown.	
MN	Boise Cascade/Onan Corp./Medtronics,Inc.	Fridley	C
MN	Burlington Northern (Brainerd/Baxter)	Brainerd/Baxter.	
MN	Dakhue Sanitary Landfill	Cannon Falls.	
MN	East Bethel Demolition Landfill	East Bethel Township.	
MN	FMC Corp. (Fridley Plant)	Fridley	C
MN	Freeway Sanitary Landfill	Burnsville.	
MN	General Mills/Henkel Corp.	Minneapolis	C
MN	Joslyn Manufacturing & Supply Co.	Brooklyn Center.	
MN	Koch Refining Co./N-Ren Corp.	Pine Bend.	
MN	Koppers Coke	St. Paul.	
MN	Kummer Sanitary Landfill	Bemidji.	
MN	Kurt Manufacturing Co.	Fridley.	
MN	LaGrand Sanitary Landfill	LaGrand Township.	
MN	Lehillier/Mankato Site	Lehillier/Mankato	C
MN	Long Prairie Ground Water Contamination	Long Prairie.	
MN	MacGillis & Gibbs/Bell Lumber & Pole Co.	New Brighton.	
MN	NL Industries/Taracorp/Golden Auto	St. Louis Park.	
MN	Nutting Truck & Caster Co.	Faribault	C
MN	Oak Grove Sanitary Landfill	Oak Grove Township	C
MN	Oakdale Dump	Oakdale.	
MN	Olmsted County Sanitary Landfill	Oronoco.	
MN	Perham Arsenic Site	Perham.	
MN	Pine Bend Sanitary Landfill	Dakota County.	
MN	Reilly Tar&Chem (St. Louis Park Plant)	St. Louis Park	S
MN	Ritari Post & Pole	Sebeka.	
MN	South Andover Site	Andover.	
MN	St. Augusta Sanitary Landfill/Engen Dump	St. Augusta Township.	
MN	St. Louis River Site	St. Louis County.	
MN	St. Regis Paper Co.	Cass Lake.	
MN	University Minnesota (Rosemount Res Cen)	Rosemount.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
MN	Waite Park Wells	Waite Park.	
MN	Washington County Landfill	Lake Elmo	C
MN	Waste Disposal Engineering	Andover.	
MN	Whittaker Corp.	Minneapolis	C
MN	Windom Dump	Windom	C
MO	Bee Cee Manufacturing Co.	Malden.	
MO	Big River Mine Tailings/St. Joe Minerals	Desloge.	
MO	Conservation Chemical Co.	Kansas City	C
MO	Ellisville Site	Ellisville	S
MO	Fulbright Landfill	Springfield	C
MO	Kem-Pest Laboratories	Cape Girardeau.	
MO	Lee Chemical	Liberty	C
MO	Minker/Stout/Romaine Creek	Imperial.	
MO	Missouri Electric Works	Cape Girardeau.	
MO	North-U Drive Well Contamination	Springfield	C
MO	Oronogo-Duenweg Mining Belt	Jasper County.	
MO	Quality Plating	Sikeston.	
MO	Shenandoah Stables	Moscow Mills.	
MO	Solid State Circuits, Inc.	Republic	C
MO	St Louis Airport/HIS/Futura Coatings Co.	St. Louis County.	
MO	Syntex Facility	Verona.	
MO	Times Beach Site	Times Beach.	
MO	Valley Park TCE	Valley Park.	
MO	Westlake Landfill	Bridgeton.	
MO	Wheeling Disposal Service Co. Landfill	Amazonia.	
MS	Flowood Site	Flowood	C,S
MS	Newsom Brothers/Old Reichhold Chemicals	Columbia.	
MT	Anaconda Co. Smelter	Anaconda.	
MT	East Helena Site	East Helena.	
MT	Idaho Pole Co.	Bozeman.	
MT	Libby Ground Water Contamination	Libby	C
MT	Milltown Reservoir Sediments	Milltown.	
MT	Montana Pole and Treating	Butte.	
MT	Mouat Industries	Columbus.	
MT	Silver Bow Creek/Butte Area	Sil Bow/Deer Lodge.	
NC	ABC One Hour Cleaners	Jacksonville.	
NC	Aberdeen Pesticide Dumps	Aberdeen.	
NC	Benfield Industries, Inc	Hazelwood.	
NC	Bypass 601 Ground Water Contamination	Concord.	
NC	Cape Fear Wood Preserving	Fayetteville.	
NC	Carolina Transformer Co	Fayetteville.	
NC	Celanese Corp. (Shelby Fiber Operations)	Shelby	C
NC	Charles Macon Lagoon & Drum Storage	Cordova.	
NC	Chemtronics, Inc	Swannanoa	C
NC	FCX, Inc. (Statesville Plant)	Statesville.	
NC	FCX, Inc. (Washington Plant)	Washington.	
NC	Geigy Chemical Corp. (Aberdeen Plant)	Aberdeen.	
NC	JFD Electronics/Channel Master	Oxford.	
NC	Jadco-Hughes Facility	Belmont.	
NC	Koppers Co. Inc. (Morrisville Plant)	Morrisville.	
NC	Martin-Marietta, Sodyeco, Inc	Charlotte.	
NC	NC State University (Lot 86, Farm Unit #1)	Raleigh.	
NC	National Starch & Chemical Corp	Salisbury.	
NC	New Hanover Cnty Airport Burn Pit	Wilmington.	
NC	Potter's Septic Tank Service Pits	Maco.	
ND	Arsenic Trioxide Site	Southeastern ND	C,S
ND	Minot Landfill	Minot.	
NE	10th Street Site	Columbus.	
NE	Cleburn Street Well	Grand Island.	
NE	Hastings Ground Water Contamination	Hastings.	
NE	Lindsay Manufacturing Co	Lindsay.	
NE	Nebraska Ordnance Plant (Former)	Mead.	
NE	Sherwood Medical Co	Norfolk.	
NE	Waverly Ground Water Contamination	Waverly	C
NH	Auburn Road Landfill	Londonderry.	
NH	Coakley Landfill	North Hampton.	
NH	Dover Municipal Landfill	Dover.	
NH	Fletcher's Paint Works & Storage	Milford.	
NH	Kearsarge Metallurgical Corp	Conway	C
NH	Keefe Environmental Services	Epping	C
NH	Mottolo Pig Farm	Raymond	C
NH	New Hampshire Plating Co	Merrimack.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
NH	Ottati & Goss/Kingston Steel Drum	Kingston.	
NH	Savage Municipal Water Supply	Milford.	
NH	Somersworth Sanitary Landfill	Somersworth.	
NH	South Municipal Water Supply Well	Peterborough.	
NH	Sylvester	Nashua	C,S
NH	Tibbets Road	Barrington.	
NH	Tinkham Garage	Londonderry.	
NH	Town Garage/Radio Beacon	Londonderry	C
NJ	A.O. Polymer	Sparta Township.	
NJ	American Cyanamid Co	Bound Brook.	
NJ	Asbestos Dump	Millington.	
NJ	Bog Creek Farm	Howell Township.	
NJ	Brick Township Landfill	Brick Township.	
NJ	Bridgeport Rental & Oil Services	Bridgeport.	
NJ	Brook Industrial Park	Bound Brook.	
NJ	Burnt Fly Bog	Marlboro Township.	
NJ	CPS/Madison Industries	Old Bridge Township.	
NJ	Caldwell Trucking Co	Fairfield.	
NJ	Chemical Control	Elizabeth.	
NJ	Chemical Insecticide Corp	Edison Township.	
NJ	Chemical Leaman Tank Lines, Inc	Bridgeport.	
NJ	Chemsol, Inc	Piscataway.	
NJ	Ciba-Geigy Corp	Toms River.	
NJ	Cinnaminson Ground Water Contamination	Cinnaminson Township.	
NJ	Combe Fill North Landfill	Mount Olive Township	C
NJ	Combe Fill South Landfill	Chester Township.	
NJ	Cosden Chemical Coatings Corp	Beverly.	
NJ	Curcio Scrap Metal, Inc	Saddle Brook Township.	
NJ	D'Imperio Property	Hamilton Township.	
NJ	Dayco Corp./L.E Carpenter Co	Wharton Borough.	
NJ	De Rewal Chemical Co	Kingwood Township.	
NJ	Delilah Road	Egg Harbor Township.	
NJ	Denzer & Schafer X-Ray Co	Bayville.	
NJ	Diamond Alkali Co	Newark.	
NJ	Dover Municipal Well 4	Dover Township.	
NJ	Ellis Property	Evesham Township.	
NJ	Evor Phillips Leasing	Old Bridge Township.	
NJ	Ewan Property	Shamong Township.	
NJ	Fair Lawn Well Field	Fair Lawn.	
NJ	Florence Land Recontouring Landfill	Florence Township.	
NJ	Fried Industries	East Brunswick Township.	
NJ	GEMS Landfill	Gloucester Township.	
NJ	Garden State Cleaners Co	Minotola.	
NJ	Glen Ridge Radium Site	Glen Ridge.	
NJ	Global Sanitary Landfill	Old Bridge Township.	
NJ	Goose Farm	Plumstead Township	C
NJ	Helen Kramer Landfill	Mantua Township	C
NJ	Hercules, Inc. (Gibbstown Plant)	Gibbstown.	
NJ	Higgins Disposal	Kingston.	
NJ	Higgins Farm	Franklin Township.	
NJ	Hopkins Farm	Plumstead Township.	
NJ	Imperial Oil Co., Inc./Champion Chemicals	Morganville.	
NJ	Industrial Latex Corp	Wallington Borough.	
NJ	JIS Landfill	Jamesburg/S. Brnswck.	
NJ	Jackson Township Landfill	Jackson Township.	
NJ	Kauffman & Minteer, Inc	Jobstown.	
NJ	Kin-Buc Landfill	Edison Township.	
NJ	King of Prussia	Winslow Township.	
NJ	Landfill & Development Co	Mount Holly.	
NJ	Lang Property	Pemberton Township.	
NJ	Lipari Landfill	Pitman.	
NJ	Lodi Municipal Well	Lodi	C
NJ	Lone Pine Landfill	Freehold Township.	
NJ	Mannheim Avenue Dump	Galloway Township.	
NJ	Maywood Chemical Co	Maywood/Rochelle Park.	
NJ	Metaltec/Aerosystems	Franklin Borough.	
NJ	Monitor Devices/Intercircuits Inc	Wall Township.	
NJ	Montclair/West Orange Radium Site	Montclair/W Orange.	
NJ	Montgomery Township Housing Development	Montgomery Township.	
NJ	Myers Property	Franklin Township.	
NJ	NL Industries	Pedricktown.	
NJ	Nascolite Corp	Millville.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
NJ	PJP Landfill	Jersey City.	
NJ	Pepe Field	Boonton.	
NJ	Pijak Farm	Plumstead Township.	
NJ	Pohatcong Valley Ground Water Contaminat	Warren County.	
NJ	Pomona Oaks Residential Wells	Galloway Township	C
NJ	Price Landfill	Pleasantville	S
NJ	Radiation Technology, Inc	Rockaway Township.	
NJ	Reich Farms	Pleasant Plains.	
NJ	Renora, Inc	Edison Township.	
NJ	Ringwood Mines/Landfill	Ringwood Borough	C
NJ	Rockaway Borough Well Field	Rockaway Township.	
NJ	Rockaway Township Wells	Rockaway.	
NJ	Rocky Hill Municipal Well	Rocky Hill Borough.	
NJ	Roebling Steel Co	Florence.	
NJ	Sayreville Landfill	Sayreville.	
NJ	Scientific Chemical Processing	Carlstadt.	
NJ	Sharkey Landfill	Parsippany/Troy Hls.	
NJ	Shieldalloy Corp	Newfield Borough.	
NJ	South Brunswick Landfill	South Brunswick	C
NJ	South Jersey Clothing Co	Minotola.	
NJ	Spence Farm	Plumstead Township.	
NJ	Swope Oil & Chemical Co	Pennsauken.	
NJ	Syncon Resins	South Kearny.	
NJ	Tabernacle Drum Dump	Tabernacle Township	C
NJ	U.S. Radium Corp	Orange.	
NJ	Universal Oil Products (Chemical Division)	East Rutherford.	
NJ	Upper Deerfield Township Sanit. Landfill	Upper Deerfield Township	C
NJ	Ventron/Velsicol	Wood Ridge Borough.	
NJ	Vineland Chemical Co., Inc	Vineland.	
NJ	Vineland State School	Vineland	C
NJ	Waldick Aerospace Devices, Inc	Wall Township.	
NJ	White Chemical Corp.	Newark	A
NJ	Williams Property	Swainton.	
NJ	Wilson Farm	Plumstead Township	C
NJ	Witco Chemical Corp.(Oakland Plt)	Oakland	C
NJ	Woodland Route 532 Dump	Woodland Township.	
NJ	Woodland Route 72 Dump	Woodland Township.	
NM	AT & SF (Clovis)	Clovis.	
NM	Cimarron Mining Corp	Carrizozo	C
NM	Cleveland Mill	Silver City.	
NM	Homestake Mining Co	Milan.	
NM	Prewitt Abandoned Refinery	Prewitt.	
NM	South Valley	Albuquerque	S
NM	United Nuclear Corp	Church Rock.	
NV	Carson River Mercury Site	Lyon/Churchill Cnty.	
NY	Action Anodizing, Plating, & Polishing	Copiague	C
NY	American Thermostat Co	South Cairo.	
NY	Anchor Chemicals	Hicksville.	
NY	Applied Environmental Services	Glenwood Landing.	
NY	Batavia Landfill	Batavia.	
NY	BioClinical Laboratories, Inc	Bohemia	C
NY	Brewster Well Field	Putnam County.	
NY	Byron Barrel & Drum	Byron.	
NY	C & J Disposal Leasing Co. Dump	Hamilton	C
NY	Carroll & Dubies Sewage Disposal	Port Jervis.	
NY	Circuitron Corp	East Farmingdale.	
NY	Claremont Polychemical	Old Bethpage.	
NY	Clothier Disposal	Town of Granby	C
NY	Colesville Municipal Landfill	Town of Colesville.	
NY	Conklin Dumps	Conklin.	
NY	Cortese Landfill	Village of Narrowsburg.	
NY	Endicott Village Well Field	Village of Endicott.	
NY	FMC Corp. (Dublin Road Landfill)	Town of Shelby.	
NY	Facet Enterprises, Inc	Elmira.	
NY	Forest Glen Mobile Home Subdivision	Niagara Falls	A
NY	Fulton Terminals	Fulton.	
NY	GCL Tie & Treating Inc	Village of Sidney.	
NY	GE Moreau	South Glen Falls.	
NY	General Motors (Central Foundry Division)	Massena.	
NY	Genzale Plating Co	Franklin Square.	
NY	Goldisc Recordings, Inc	Holbrook.	
NY	Haviland Complex	Town of Hyde Park.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
NY	Hertel Landfill	Plattekill.	
NY	Hooker (102nd Street)	Niagara Falls.	
NY	Hooker (Hyde Park)	Niagara Falls.	
NY	Hooker (S Area)	Niagara Falls.	
NY	Hooker Chemical/Ruco Polymer Corp	Hicksville.	
NY	Hudson River PCBs	Hudson River.	
NY	Islip Municipal Sanitary Landfill	Islip.	
NY	Johnstown City Landfill	Town of Johnstown.	
NY	Jones Chemicals, Inc	Caledonia.	
NY	Jones Sanitation	Hyde Park.	
NY	Katonah Municipal Well	Town of Bedford	C
NY	Kenmark Textile Corp	Farmingdale	C
NY	Kentucky Avenue Well Field	Horseheads.	
NY	Li Tungsten Corp	Glen Cove.	
NY	Liberty Industrial Finishing	Farmingdale.	
NY	Love Canal	Niagara Falls.	
NY	Ludlow Sand & Gravel	Clayville.	
NY	Malta Rocket Fuel Area	Malta.	
NY	Marathon Battery Corp	Cold Springs.	
NY	Mattiace Petrochemical Co., Inc	Glen Cove.	
NY	Mercury Refining, Inc	Colonie.	
NY	Nepera Chemical Co., Inc	Maybrook.	
NY	Niagara County Refuse	Wheatfield.	
NY	Niagara Mohawk Power Co (Saratoga Springs)	Saratoga Springs.	
NY	North Sea Municipal Landfill	North Sea.	
NY	Old Bethpage Landfill	Oyster Bay	C
NY	Olean Well Field	Olean.	
NY	Pasley Solvents & Chemicals, Inc	Hempstead.	
NY	Pollution Abatement Services	Oswego	S
NY	Port Washington Landfill	Port Washington.	
NY	Preferred Plating Corp	Farmingdale.	
NY	Radium Chemical Co., Inc	New York City	A
NY	Ramapo Landfill	Ramapo.	
NY	Richardson Hill Road Landfill/Pond	Sidney Center.	
NY	Robintech, Inc./National Pipe Co	Town of Vestal.	
NY	Rosen Brothers Scrap Yard/Dump	Cortland.	
NY	Rowe Industries Gnd Water Contamination	Noyack/Sag Harbor.	
NY	SMS Instruments, Inc	Deer Park.	
NY	Sarney Farm	Amenia.	
NY	Sealand Restoration, Inc	Lisbon.	
NY	Sidney Landfill	Sidney.	
NY	Sinclair Refinery	Wellsville.	
NY	Solvent Savers	Lincklaen.	
NY	Syosset Landfill	Oyster Bay.	
NY	Tri-Cities Barrel Co., Inc	Port Crane.	
NY	Tronic Plating Co., Inc	Farmingdale	C
NY	Vestal Water Supply Well 1–1	Vestal.	
NY	Vestal Water Supply Well 4–2	Vestal.	
NY	Volney Municipal Landfill	Town of Volney.	
NY	Warwick Landfill	Warwick.	
NY	Wide Beach Development	Brant	C
NY	York Oil Co.	Moira.	
OH	Allied Chemical & Ironton Coke	Ironton.	
OH	Alsco Anaconda	Gnadenhutten.	
OH	Arcanum Iron & Metal	Darke County.	
OH	Big D Campground	Kingsville.	
OH	Bowers Landfill	Circleville	C
OH	Buckeye Reclamation	St. Clairsville.	
OH	Chem-Dyne	Hamilton	C,S
OH	Coshocton Landfill	Franklin Township.	
OH	E.H. Schilling Landfill	Hamilton Township	C
OH	Fields Brook	Ashtabula.	
OH	Fultz Landfill	Jackson Township.	
OH	Industrial Excess Landfill	Uniontown.	
OH	Laskin/Poplar Oil Co	Jefferson Township	C
OH	Miami County Incinerator	Troy.	
OH	Nease Chemical	Salem.	
OH	New Lyme Landfill	New Lyme	C
OH	North Sanitary Landfill	Dayton.	
OH	Old Mill	Rock Creek	C
OH	Ormet Corp	Hannibal.	
OH	Powell Road Landfill	Dayton.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
OH	Pristine, Inc	Reading.	
OH	Reilly Tar & Chemical (Dover Plant)	Dover.	
OH	Republic Steel Corp. Quarry	Elyria	C
OH	Sanitary Landfill Co. (Industrial Waste)	Dayton.	
OH	Skinner Landfill	West Chester.	
OH	South Point Plant	South Point.	
OH	Summit National	Deerfield Township.	
OH	TRW, Inc. (Minerva Plant)	Minerva.	
OH	United Scrap Lead Co., Inc	Troy.	
OH	Van Dale Junkyard	Marietta.	
OH	Zanesville Well Field	Zanesville.	
OK	Compass Industries (Avery Drive)	Tulsa	C
OK	Double Eagle Refinery Co	Oklahoma City.	
OK	Fourth Street Abandoned Refinery	Oklahoma City.	
OK	Hardage/Criner	Criner.	
OK	Mosley Road Sanitary Landfill	Oklahoma City.	
OK	Oklahoma Refining Co	Cyril.	
OK	Sand Springs Petrochemical Complex	Sand Springs.	
OK	Tar Creek (Ottawa County)	Ottawa County.	
OK	Tenth Street Dump/Junkyard	Oklahoma City.	
OR	Allied Plating, Inc	Portland	C
OR	Gould, Inc	Portland.	
OR	Joseph Forest Products	Joseph	C
OR	Martin-Marietta Aluminum Co	The Dalles.	
OR	McCormick & Baxter Creos. Co. (Portland)	Portland.	
OR	Northwest Pipe & Casing Co	Clackamas.	
OR	Teledyne Wah Chang	Albany.	
OR	Union Pacific Railroad Tie Treatment	The Dalles.	
OR	United Chrome Products, Inc	Corvallis	C
PA	A.I.W. Frank/Mid-County Mustang	Exton.	
PA	AMP, Inc. (Glen Rock Facility)	Glen Rock.	
PA	Aladdin Plating	Scott Township.	
PA	Ambler Asbestos Piles	Ambler	C
PA	Austin Avenue Radiation Site	Delaware County	A
PA	Avco Lycoming (Williamsport Division)	Williamsport.	
PA	Bally Ground Water Contamination	Bally Borough.	
PA	Bell Landfill	Terry Township.	
PA	Bendix Flight Systems Division	Bridgewater Township.	
PA	Berkley Products Co. Dump	Denver.	
PA	Berks Landfill	Spring Township.	
PA	Berks Sand Pit	Longswamp Township.	
PA	Blosenski Landfill	West Caln Township.	
PA	Boarhead Farms	Bridgeton Township.	
PA	Brodhead Creek	Stroudsburg.	
PA	Brown's Battery Breaking	Shoemakersville.	
PA	Bruin Lagoon	Bruin Borough	C
PA	Butler Mine Tunnel	Pittston.	
PA	Butz Landfill	Stroudsburg.	
PA	C & D Recycling	Foster Township.	
PA	Centre County Kepone	State College Borough.	
PA	Commodore Semiconductor Group	Lower Providence Township.	
PA	Craig Farm Drum	Parker.	
PA	Crater Resources/Keystone Coke/Alan Wood	Upper Merion Township.	
PA	Crossley Farm	Hereford Township.	
PA	Croydon TCE	Croydon.	
PA	CryoChem, Inc	Worman.	
PA	Delta Quarries & Disp./Stotler Landfill	Antis/Logan Twps.	
PA	Dorney Road Landfill	Upper Macungie Township.	
PA	Douglassville Disposal	Douglassville.	
PA	Drake Chemical	Lock Haven.	
PA	Dublin TCE Site	Dublin Borough.	
PA	East Mount Zion	Springettsbury Township.	
PA	Eastern Diversified Metals	Hometown.	
PA	Elizabethtown Landfill	Elizabethtown.	
PA	Fischer & Porter Co	Warminster.	
PA	Foote Mineral Co	East Whiteland Township.	
PA	Havertown PCP	Haverford.	
PA	Hebelka Auto Salvage Yard	Weisenberg Township	C
PA	Heleva Landfill	North Whitehall Township.	
PA	Hellertown Manufacturing Co	Hellertown.	
PA	Henderson Road	Upper Merion Township	C
PA	Hranica Landfill	Buffalo Township.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
PA	Hunterstown Road	Straban Township.	
PA	Industrial Lane	Williams Township.	
PA	Jacks Creek/Sitkin Smelting and Refinery	Maitland.	
PA	Keystone Sanitation Landfill	Union Township.	
PA	Kimberton Site	Kimberton Borough	C
PA	Lackawanna Refuse	Old Forge Borough	C
PA	Lindane Dump	Harrison Township.	
PA	Lord-Shope Landfill	Girard Township.	
PA	MW Manufacturing	Valley Township.	
PA	Malvern TCE	Malvern.	
PA	McAdoo Associates	McAdoo Borough	S
PA	Metal Banks	Philadelphia.	
PA	Metropolitan Mirror and Glass	Frackville.	
PA	Middletown Air Field	Middletown.	
PA	Mill Creek Dump	Erie.	
PA	Modern Sanitation Landfill	Lower Windsor Township.	
PA	Moyers Landfill	Eagleville.	
PA	North Penn—Area 1	Souderton.	
PA	North Penn—Area 12	Worcester.	
PA	North Penn—Area 2	Hatfield.	
PA	North Penn—Area 5	Montgomery Township.	
PA	North Penn—Area 6	Lansdale.	
PA	North Penn—Area 7	North Wales.	
PA	Novak Sanitary Landfill	South Whitehall Township.	
PA	Occidental Chemical Corp./Firestone Tire	Lower Pottsgrove Township.	
PA	Ohio River Park	Neville Island.	
PA	Old City of York Landfill	Seven Valleys.	
PA	Osborne Landfill	Grove City.	
PA	Palmerton Zinc Pile	Palmerton.	
PA	Paoli Rail Yard	Paoli.	
PA	Publicker Industries Inc	Philadephia.	
PA	Raymark	Hatboro.	
PA	Recticon/Allied Steel Corp	East Coventry Twp.	
PA	Resin Disposal	Jefferson Borough.	
PA	Revere Chemical Co	Nockamixon Township.	
PA	River Road Landfill/Waste Mngmnt, Inc	Hermitage.	
PA	Rodale Manufacturing Co., Inc	Emmaus Borough.	
PA	Route 940 Drum Dump	Pocono Summit	C
PA	Saegertown Industrial Area	Saegertown.	
PA	Shriver's Corner	Straban Township.	
PA	Stanley Kessler	King of Prussia.	
PA	Strasburg Landfill	Newlin Township.	
PA	Taylor Borough Dump	Taylor Borough	C
PA	Tonolli Corp	Nesquehoning.	
PA	Tysons Dump	Upper Merion Twp.	
PA	UGI Columbia Gas Plant	Columbia.	
PA	Walsh Landfill	Honeybrook Township.	
PA	Westinghouse Electronic (Sharon Plant)	Sharon.	
PA	Westinghouse Elevator Co. Plant	Gettysburg.	
PA	Whitmoyer Laboratories	Jackson Township.	
PA	William Dick Lagoons	West Caln Township.	
PA	York County Solid Waste/Refuse Landfill	Hopewell Township.	
PR	Barceloneta Landfill	Florida Afuera.	
PR	Fibers Public Supply Wells	Jobos.	
PR	Frontera Creek	Rio Abajo.	
PR	GE Wiring Devices	Juana Diaz.	
PR	Juncos Landfill	Juncos.	
PR	RCA Del Caribe	Barceloneta.	
PR	Upjohn Facility	Barceloneta.	
PR	Vega Alta Public Supply Wells	Vega Alta.	
RI	Central Landfill	Johnston.	
RI	Davis (GSR) Landfill	Glocester.	
RI	Davis Liquid Waste	Smithfield.	
RI	Landfill & Resource Recovery, Inc.(L&RR)	North Smithfield.	
RI	Peterson/Puritan, Inc	Lincoln/Cumberland.	
RI	Picillo Farm	Coventry	S
RI	Rose Hill Regional Landfill	South Kingston.	
RI	Stamina Mills, Inc	North Smithfield.	
RI	West Kingston Town Dump/URI Disposal	South Kingston.	
RI	Western Sand & Gravel	Burrillville	C
SC	Beaunit Corp. (Circular Knit & Dye)	Fountain Inn.	
SC	Carolawn, Inc	Fort Lawn.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
SC	Elmore Waste Disposal	Greer.	
SC	Geiger (C & M Oil)	Rantoules.	
SC	Golden Strip Septic Tank Service	Simpsonville.	
SC	Helena Chemical Co. Landfill	Fairfax.	
SC	Independent Nail Co	Beaufort	C
SC	Kalama Specialty Chemicals	Beaufort.	
SC	Koppers Co., Inc. (Florence Plant)	Florence.	
SC	Leonard Chemical Co., Inc	Rock Hill.	
SC	Lexington County Landfill Area	Cayce.	
SC	Medley Farm Drum Dump	Gaffney.	
SC	Palmetto Recycling, Inc	Columbia.	
SC	Palmetto Wood Preserving	Dixiana.	
SC	Para-Chem Southern, Inc	Simpsonville.	
SC	Rochester Property	Travelers Rest.	
SC	Rock Hill Chemical Co	Rock Hill.	
SC	SCRDI Bluff Road	Columbia	S
SC	SCRDI Dixiana	Cayce	C
SC	Sangamo Weston/Twelve-Mile/Hartwell PCB	Pickens.	
SC	Townsend Saw Chain Co	Pontiac.	
SC	Wamchem, Inc	Burton.	
SD	Whitewood Creek	Whitewood	C,S
SD	Williams Pipe Line Co. Disposal Pit	Sioux Falls.	
TN	American Creosote Works, (Jackson Plant)	Jackson.	
TN	Amnicola Dump	Chattanooga	C
TN	Arlington Blending & Packaging	Arlington.	
TN	Carrier Air Conditioning Co	Collierville.	
TN	Chemet Co	Moscow.	
TN	Gallaway Pits	Gallaway.	
TN	Lewisburg Dump	Lewisburg	C
TN	Mallory Capacitor Co	Waynesboro.	
TN	Murray-Ohio Dump	Lawrenceburg.	
TN	North Hollywood Dump	Memphis	S
TN	Velsicol Chemical Corp (Hardeman County)	Toone.	
TN	Wrigley Charcoal Plant	Wrigley.	
TX	ALCOA (Point Comfort)/Lavaca Bay	Point Comfort.	
TX	Bailey Waste Disposal	Bridge City.	
TX	Bio-Ecology Systems, Inc	Grand Prairie	C
TX	Brio Refining, Inc	Friendswood.	
TX	Crystal Chemical Co	Houston.	
TX	Crystal City Airport	Crystal City	C
TX	Dixie Oil Processors, Inc	Friendswood	C
TX	French, Ltd.	Crosby.	
TX	Geneva Industries/Fuhrmann Energy	Houston	C
TX	Highlands Acid Pit	Highlands	C
TX	Koppers Co Inc (Texarkana Plant)	Texarkana.	
TX	Motco, Inc	La Marque	S
TX	North Cavalcade Street	Houston.	
TX	Odessa Chromium #1	Odessa	C
TX	Odessa Chromium #2 (Andrews Highway)	Odessa.	
TX	Pesses Chemical Co	Fort Worth	C
TX	Petro-Chemical Systems, (Turtle Bayou)	Liberty County.	
TX	Sheridan Disposal Services	Hempstead.	
TX	Sikes Disposal Pits	Crosby.	
TX	Sol Lynn/Industrial Transformers	Houston	C
TX	South Cavalcade Street	Houston.	
TX	Stewco, Inc	Waskom	C
TX	Texarkana Wood Preserving Co	Texarkana.	
TX	Triangle Chemical Co	Bridge City	C
TX	United Creosoting Co	Conroe.	
UT	Midvale Slag	Midvale.	
UT	Monticello Radioactive Contaminated Prop	Monticello.	
UT	Petrochem Recycling Corp./Ekotek Plant	Salt Lake City.	
UT	Portland Cement (Kiln Dust 2 & 3)	Salt Lake City.	
UT	Rose Park Sludge Pit	Salt Lake City	C,S
UT	Sharon Steel Corp. (Midvale Tailings)	Midvale.	
UT	Utah Power & Light/American Barrel Co	Salt Lake City.	
UT	Wasatch Chemical Co (Lot 6)	Salt Lake City.	
VA	Abex Corp	Portsmouth.	
VA	Arrowhead Associates/Scovill Corp	Montross.	
VA	Atlantic Wood Industries, Inc	Portsmouth.	
VA	Avtex Fibers, Inc	Front Royal.	
VA	Buckingham County Landfill	Buckingham.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
VA	C & R Battery Co., Inc	Chesterfield County	C
VA	Chisman Creek	York County	C
VA	Culpeper Wood Preservers, Inc	Culpeper.	
VA	Dixie Caverns County Landfill	Salem.	
VA	First Piedmont Rock Quarry (Route 719)	Pittsylvania County.	
VA	Greenwood Chemical Co	Newtown.	
VA	H & H Inc., Burn Pit	Farrington.	
VA	L.A. Clarke & Son	Spotsylvania County.	
VA	Rentokil, Inc (VA Wood Preserving Div)	Richmond.	
VA	Rhinehart Tire Fire Dump	Frederick County.	
VA	Saltville Waste Disposal Ponds	Saltville.	
VA	Saunders Supply Co	Chuckatuck.	
VA	Suffolk City Landfill	Suffolk	C
VA	U.S. Titanium	Piney River.	
VT	BFI Sanitary Landfill(Rockingham)	Rockingham.	
VT	Bennington Municipal Sanitary Landfill	Bennington.	
VT	Burgess Brothers Landfill	Woodford.	
VT	Darling Hill Dump	Lyndon	C
VT	Old Springfield Landfill	Springfield.	
VT	Parker Sanitary Landfill	Lyndon.	
VT	Pine Street Canal	Burlington	S
VT	Tansitor Electronics, Inc	Bennington.	
WA	ALCOA (Vancouver Smelter)	Vancouver.	
WA	American Crossarm & Conduit Co	Chehalis.	
WA	Centralia Municipal Landfill	Centralia.	
WA	Colbert Landfill	Colbert.	
WA	Commencement Bay, Near Shore/Tide Flats	Pierce County.	
WA	Commencement Bay, South Tacoma Channel	Tacoma.	
WA	FMC Corp. (Yakima Pit)	Yakima	C
WA	Frontier Hard Chrome, Inc	Vancouver.	
WA	General Electric Co (Spokane Shop)	Spokane.	
WA	Greenacres Landfill	Spokane County.	
WA	Harbor Island (Lead)	Seattle.	
WA	Hidden Valley Landfill (Thun Field)	Pierce County.	
WA	Kaiser Aluminum Mead Works	Mead.	
WA	Lakewood Site	Lakewood	C
WA	Mica Landfill	Mica.	
WA	Midway Landfill	Kent.	
WA	Moses Lake Wellfield Contamination	Moses Lake.	
WA	North Market Street	Spokane.	
WA	Northside Landfill	Spokane	C
WA	Northwest Transformer	Everson	C
WA	Northwest Transformer(South Harkness St)	Everson.	
WA	Old Inland Pit	Spokane.	
WA	Pacific Car & Foundry Co	Renton.	
WA	Pacific Sound Resources	Seattle.	
WA	Pasco Sanitary Landfill	Pasco.	
WA	Queen City Farms	Maple Valley.	
WA	Seattle Municipal Landfill (Kent Hghlnds	Kent.	
WA	Silver Mountain Mine	Loomis	C
WA	Spokane Junkyard/Associated Properties	Spokane.	
WA	Vancouver Water Station #1 Contamination	Vancouver.	
WA	Vancouver Water Station #4 Contamination	Vancouver.	
WA	Western Processing Co., Inc	Kent	C
WA	Wyckoff Co./Eagle Harbor	Bainbridge Island.	
WA	Yakima Plating Co	Yakima	C
WI	Algoma Municipal Landfill	Algoma	C
WI	Better Brite Plating Chrome & Zinc Shops	DePere.	
WI	City Disposal Corp. Landfill	Dunn.	
WI	Delavan Municipal Well #4	Delavan.	
WI	Eau Claire Municipal Well Field	Eau Claire C.	
WI	Fadrowski Drum Disposal	Franklin.	
WI	Hagen Farm	Stoughton.	
WI	Hechimovich Sanitary Landfill	Williamstown.	
WI	Hunts Disposal Landfill	Caledonia.	
WI	Janesville Ash Beds	Janesville.	
WI	Janesville Old Landfill	Janesville.	
WI	Kohler Co Landfill	Kohler.	
WI	Lauer I Sanitary Landfill	Menomonee Falls.	
WI	Lemberger Landfill, Inc	Whitelaw.	
WI	Lemberger Transport & Recycling	Franklin Township.	
WI	Madison Metropolitan Sewerage District	Blooming Grove.	

TABLE 1.—GENERAL SUPERFUND SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
WI	Master Disposal Service Landfill	Brookfield.	
WI	Mid-State Disposal, Inc Landfill	Cleveland Township.	
WI	Moss-American (Kerr-McGee Oil Co.)	Milwaukee.	
WI	Muskego Sanitary Landfill	Muskego.	
WI	N.W. Mauthe Co., Inc	Appleton	S
WI	National Presto Industries, Inc	Eau Claire.	
WI	Northern Engraving Co	Sparta	C
WI	Oconomowoc Electroplating Co Inc	Ashippin.	
WI	Omega Hills North Landfill	Germantown.	
WI	Onalaska Municipal Landfill	Onalaska.	
WI	Refuse Hideaway Landfill	Middleton.	
WI	Ripon City Landfill	Ripon.	
WI	Sauk County Landfill	Excelsior.	
WI	Schmalz Dump	Harrison	C
WI	Scrap Processing Co., Inc	Medford.	
WI	Sheboygan Harbor & River	Sheboygan.	
WI	Spickler Landfill	Spencer.	
WI	Stoughton City Landfill	Stoughton.	
WI	Tomah Armory	Tomah.	
WI	Tomah Fairgrounds	Tomah.	
WI	Tomah Municipal Sanitary Landfill	Tomah.	
WI	Waste Mgmt of WI (Brookfield Sanit LF)	Brookfield.	
WI	Wausau Ground Water Contamination	Wausau	C
WI	Wheeler Pit	La Prairie Township	C
WV	Fike Chemical, Inc	Nitro.	
WV	Follansbee Site	Follansbee.	
WV	Leetown Pesticide	Leetown	C
WV	Ordnance Works Disposal Areas	Morgantown.	
WY	Baxter/Union Pacific Tie Treating	Laramie.	
WY	Mystery Bridge Rd/U.S. Highway 20	Evansville	C

(a) A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be > 28.50).
C=Sites on construction completion list.
S=State top priority (included among the 100 top priority sites regardless of score).

TABLE 2.—FEDERAL FACILITIES SECTION, MAY 1994

State	Site name	City/county	Notes (a)
AK	Adak Naval Air Station	Adak.	
AK	Eielson Air Force Base	Fairbanks N Star Borough.	
AK	Elmendorf Air Force Base	Greater Anchorage Borough.	
AK	Fort Richardson (USARMY)	Anchorage.	
AK	Fort Wainwright	Fairbanks N Star Borough.	
AK	Standard Steel & Metals Salvage Yard (USDOT)	Anchorage.	
AK	Alabama Army Ammunition Plant	Childersburg.	
AL	Anniston Army Depot (SE Industrial Area)	Anniston.	
AL	Redstone Arsenal (USARMY/NASA)	Huntsville.	
AZ	Luke Air Force Base	Glendale.	
AZ	Williams Air Force Base	Chandler.	
AZ	Yuma Marine Corps Air Station	Yuma.	
CA	Barstow Marine Corps Logistics Base	Barstow.	
CA	Camp Pendleton Marine Corps Base	San Diego County.	
CA	Castle Air Force Base	Merced.	
CA	Edwards Air Force Base	Kern County.	
CA	El Toro Marine Corps Air Station	El Toro.	
CA	Fort Ord	Marina.	
CA	George Air Force Base	Victorville.	
CA	Jet Propulsion Laboratory (NASA)	Pasadena.	
CA	LEHR/Old Campus Landfill (USDOE)	Davis.	
CA	Lawrence Livermore Laboratory (Site 300)	Livermore.	
CA	Lawrence Livermore Laboratory (USDOE)	Livermore.	
CA	March Air Force Base	Riverside.	
CA	Mather Air Force Base	Sacramento.	
CA	McClellan Air Force Base (GW Contam)	Sacramento.	
CA	Moffett Naval Air Station	Sunnyvale.	
CA	Norton Air Force Base	San Bernardino.	
CA	Riverbank Army Ammunition Plant	Riverbank.	
CA	Sacramento Army Depot	Sacramento.	
CA	Sharpe Army Depot	Lathrop.	
CA	Tracy Defense Depot	Tracy.	

TABLE 2.—FEDERAL FACILITIES SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
CA	Travis Air Force Base	Solano County.	
CA	Treasure Island Naval Station-Hun Pt An	San Francisco.	
CO	Air Force Plant PJKS	Waterton.	
CO	Rocky Flats Plant (USDOE)	Golden.	
CO	Rocky Mountain Arsenal	Adams County.	
CT	New London Submarine Base	New London.	
DE	Dover Air Force Base	Dover.	
FL	Cecil Field Naval Air Station	Jacksonville.	
FL	Homestead Air Force Base	Homestead.	
FL	Jacksonville Naval Air Station	Jacksonville.	
FL	Pensacola Naval Air Station	Pensacola.	
FL	Whiting Field Naval Air Station	Milton.	
GA	Marine Corps Logistics Base	Albany.	
GA	Robins Air Force Base (Lf#4/Sludge lagoon)	Houston County.	
GU	Andersen Air Force Base	Yigo.	
HI	Naval Computer & Telecommunications Area	Oahu.	
HI	Pearl Harbor Naval Complex	Pearl Harbor.	
HI	Schofield Barracks	Oahu.	
IA	Iowa Army Ammunition Plant	Middletown.	
ID	Idaho National Engineering Lab (USDOE)	Idaho Falls.	
ID	Mountain Home Air Force Base	Mountain Home.	
IL	Joliet Army Ammunition Plant (LAP Area)	Joliet.	
IL	Joliet Army Ammunition Plant (Mfg Area)	Joliet.	
IL	Sangamo Electric/Crab Orchard NWR (USDOI)	Carterville.	
IL	Savanna Army Depot Activity	Savanna.	
KS	Fort Riley	Junction City.	
KY	Paducah Gaseous Diffusion Plant (USDOE)	Paducah.	
LA	Louisiana Army Ammunition Plant	Doyline.	
MA	Fort Devens	Fort Devens.	
MA	Fort Devens-Sudbury Training Annex	Middlesex County.	
MA	Hanscom Field/Hanscom Air Force Base	Bedford.	
MA	Materials Technology Laboratory (USARMY)	Watertown.	
MA	Natick Laboratory Army Research, D&E Cntr	Natick.	
MA	Naval Weapons Industrial Reserve Plant	Bedford.	
MA	Otis Air National Guard /Camp Edwards	Falmouth.	
MA	South Weymouth Naval Air Station	Weymouth.	
MD	Aberdeen Proving Ground (Edgewood Area)	Edgewood.	
MD	Aberdeen Proving Ground (Michaelsville LF)	Aberdeen.	
MD	Beltsville Agricultural Research (USDA)	Beltsville.	
MD	Patuxent River Naval Air Station	St. Mary's County.	
ME	Brunswick Naval Air Station	Brunswick.	
ME	Loring Air Force Base	Limestone.	
ME	Portsmouth Naval Shipyard	Kittery.	
MN	Naval Industrial Reserve Ordnance Plant	Fridley.	
MN	New Brighton/Arden Hills/TCAAP (USARMY)	New Brighton.	
MN	Twin Cities Air Force Base (SAR Landfill)	Minneapolis.	C
MO	Lake City Army Ammu. Plant (NW Lagoon)	Independence.	
MO	Weldon Spring Former Army Ordnance Works	St. Charles County.	
MO	Weldon Spring Quarry/Plant/Pitts (USDOE)	St. Charles County.	
NC	Camp Lejeune Military Reservation	Onslow County.	
NE	Cornhusker Army Ammunition Plant	Hall County.	
NH	Pease Air Force Base	Portsmouth/Newington.	
NJ	Federal Aviation Admin. Tech. Center	Atlantic County.	
NJ	Fort Dix (Landfill Site)	Pemberton Township.	
NJ	Naval Air Engineering Center	Lakehurst.	
NJ	Naval Weapons Station Earle (Site A)	Colts Neck.	
NJ	Picatinny Arsenal	Rockaway Township.	
NJ	W.R. Grace/Wayne Interim Storage (USDOE)	Wayne Township.	
NM	Cal West Metals (USSBA)	Lemitar.	
NM	Lee Acres Landfill (USDOI)	Farmington.	
NY	Brookhaven National Laboratory (USDOE)	Upton.	
NY	Griffiss Air Force Base	Rome.	
NY	Plattsburgh Air Force Base	Plattsburgh.	
NY	Seneca Army Depot	Romulus.	
OH	Feed Materials Production Center (USDOE)	Fernald.	
OH	Mound Plant (USDOE)	Miamisburg.	
OH	Wright-Patterson Air Force Base	Dayton.	
OK	Tinker Air Force (Soldier Cr/Bldg 300)	Oklahoma City.	
OR	Umatilla Army Depot (Lagoons)	Hermiston.	
PA	Letterkenny Army Depot (PDO Area)	Franklin County.	
PA	Letterkenny Army Depot (SE Area)	Chambersburg.	

TABLE 2.—FEDERAL FACILITIES SECTION, MAY 1994—Continued

State	Site name	City/county	Notes (a)
PA	Naval Air Development Center (8 Areas)	Warminster Township.	
PA	Navy Ships Parts Control Center	Mechanicsburg.	
PA	Tobyhanna Army Depot	Tobyhanna.	
PR	Naval Security Group Activity	Sabana Seca.	
RI	Davisville Naval Construction Batt Cent	North Kingston.	
RI	Newport Naval Education/Training Center	Newport.	
SC	Savannah River Site (USDOE)	Aiken.	
SD	Ellsworth Air Force Base	Rapid City.	
TN	Memphis Defense Depot	Memphis.	
TN	Milan Army Ammunition Plant	Milan.	
TN	Oak Ridge Reservation (USDOE)	Oak Ridge.	
TX	Air Force Plant #4 (General Dynamics)	Fort Worth.	
TX	Lone Star Army Ammunition Plant	Texarkana.	
TX	Longhorn Army Ammunition Plant	Karnack.	
TX	Pantex Plant (USDOE)	Pantex Village.	
UT	Hill Air Force Base	Ogden.	
UT	Monticello Mill Tailings (USDOE)	Monticello.	
UT	Ogden Defense Depot	Ogden.	
UT	Tooele Army Depot (North Area)	Tooele.	
VA	Defense General Supply Center	Chesterfield County.	
VA	Langley Air Force Base/NASA Langley Cntr	Hampton.	
VA	Marine Corps Combat Development Command	Quantico.	
VA	Naval Surface Warfare—Dahlgren	Dahlgren.	
VA	Naval Weapons Station—Yorktown	Yorktown.	
WA	American Lake Gardens/McChord AFB	Tacoma.	
WA	Bangor Naval Submarine Base	Silverdale.	
WA	Bangor Ordnance Disposal	Bremerton.	
WA	Bonneville Power Admin Ross (USDOE)	Vancouver.	
WA	Fairchild Air Force Base (4 Waste Areas)	Spokane County.	
WA	Fort Lewis (Landfill No. 5)	Tacoma.	
WA	Fort Lewis Logistics Center	Tillicum.	
WA	Hamilton Island Landfill (USA/COE)	North Bonneville.	
WA	Hanford 100–Area (USDOE)	Benton County.	
WA	Hanford 1100–Area (USDOE)	Benton County.	
WA	Hanford 200–Area (USDOE)	Benton County.	
WA	Hanford 300–Area (USDOE)	Benton County.	
WA	Jackson Park Housing Complex (USNAVY)	Kitsap County.	
WA	McChord Air Force Base (Wash Rack/Treat)	Tacoma.	
WA	Naval Air Station, Whidbey Is (Seaplane)	Whidbey Island.	
WA	Naval Air Station, Whidbey Island (Ault)	Whidbey Island.	
WA	Naval Undersea Warfare Station (4 Areas)	Keyport.	
WA	Old Navy Dump/Manchester Lab (USEPA/NOAA)	Manchester.	
WA	Port Hadlock Detachment (USNAVY)	Indian Island.	
WA	Puget Sound Naval Shipyard Complex	Bremerton.	
WV	Allegany Ballistics Laboratory (USNAVY)	Mineral.	
WV	West Virginia Ordnance (USARMY)	Point Pleasant.	S
WY	F. E. Warren Air Force Base	Cheyenne.	

(a) A=Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be > 28.50).
C=Sites on construction completion list.
S=State top priority (included among the 100 top priority sites regardless of score).

[FR Doc. 94–13189 Filed 5–27–94; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7055

[NV–930–4210–06; N–52465]

Withdrawal of Public Land for High Rock Canyon Area of Critical Environmental Concern; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 23,812.85 acres of public land and 200.96 acres of private land, when acquired, from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the High Rock Canyon Area of Critical Environmental Concern.

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Judy Kramer, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6618.

SUPPLEMENTARY INFORMATION: 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 High Rock Canyon Area of Critical Environmental Concern.

Mount Diablo Meridian

T. 41 N., R. 22 E.,
Sec. 3, SW¼ and W½SE¼;
Sec. 4, lot 3, S½N½, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 10, N½ and E½SE¼;
Sec. 11, NW¼ and S½;
Sec. 12, S½SW¼;
Sec. 13, N½ and SE¼;
Sec. 14, lots 1 to 4, inclusive;
Sec. 24, lot 1;
Sec. 36, lots 3 and 4, and W½SE¼.
T. 40 N., R. 22½ E.,
Sec. 1, lots 1 to 12, inclusive, E½SW¼, SE¼, and tract 37;
Sec. 12, E½ and E½W½;
Sec. 13, NE¼ and N½SE¼;
Sec. 25, SE¼SE¼;
Sec. 36, E½.
T. 39 N., R. 23 E.,
Sec. 1, lot 4, S½N½, and S½;
Sec. 2, lots 1 to 14, inclusive, S½NE¼, and N½SE¼;
Sec. 3, lots 1 and 2, S½NE¼, and NE¼SE¼;
Sec. 12, NE¼;
Sec. 14, SE¼SW¼;
Sec. 20, SE¼SW¼ and SW¼SE¼;
Sec. 21, E½ and SW¼;
Sec. 22, S½ and SW¼NW¼;
Sec. 23, lots 3 to 5, inclusive, lots 7 to 12, inclusive, and W½;
Sec. 24, NW¼SW¼, SE¼SW¼, and S½SE¼;
Sec. 26, lots 1, 2, 3, and W½;
Sec. 27;
Sec. 28, N½ and SW¼;
Sec. 29, NW¼NE¼, S½NE¼, E½NW¼, and S½;
Sec. 30, lots 13 to 16, inclusive, and lots 27 and 28, S½NE¼, and SE¼;
Sec. 31, lots 1, 2, 13 to 16, inclusive, and NE¼;
Sec. 32, NW¼NW¼;
Sec. 34, NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 35, W½NW¼ and NW¼SW¼.
T. 40 N., R. 23 E.,
Sec. 4, lots 16 and 17, and W½SW¼;
Sec. 5, lots 5 to 20, inclusive, and S½;
Sec. 6, lots 3 to 16, inclusive, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½W½, and E½;
Sec. 8, lots 1 and 2, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 9, W½E½, NW¼, N½SW¼, SE¼SW¼, and tract 51A;
Sec. 16, lots 1, 2, 3, E½, SW¼, and tracts 51B, 51D, and 51E;
Sec. 17, lots 1 and 2, W½NE¼SE¼, NE¼, W½, and SE¼;
Sec. 18, lots 1 to 4, inclusive, E½W½, and E½;
Sec. 20, lots 1 to 4, inclusive, NW¼, SE¼, and tract 53C;
Sec. 21, lots 1, 2, 3, E½, SW¼, and tracts 53B, 53D, and 53E;
Sec. 22, W½ and SW¼SE¼;
Sec. 26, SW¼SW¼;
Sec. 27, W½, W½E½, and SE¼SE¼;
Sec. 28;
Sec. 29, N½NE¼, SE¼SW¼, and S½SE¼;
Sec. 30, lot 4 and S½SE¼;
Sec. 31, lots 1 to 4, inclusive, NE¼, and E½NW¼;
Sec. 32, N½N½ and SW¼NW¼;
Sec. 33, N½NE¼ and NW¼NW¼;
Sec. 34, N½, N½SE½, and SE¼SE¼;
Sec. 35, lots 1 to 4, inclusive, N½ and N½S½;
Sec. 36, lot 1, W½NW¼, and NW¼SW¼.
T. 41 N., R. 23 E.,
Sec. 18, lots 3 and 4, and SE¼SW¼;
Sec. 19, lot 1, E½W½, and W½E½;
Sec. 21, S½SW¼;
Sec. 28, W½;
Sec. 29, SE¼NE¼ and E½SE¼;
Sec. 30, E½W½ and W½E½;
Sec. 31, lots 3 and 4, E½, and E½W½;
Sec. 32, E½E½ and W½SW¼;
Sec. 33, W½, NW¼SE¼, and S½SE¼.

The area described contains 23,812.85 acres in Washoe County.

2. The following described private lands are within the exterior boundaries of the High Rock Canyon Area of Critical Environmental Concern. If the United States subsequently acquires the private lands, the lands will be subject to this withdrawal.

Mount Diablo Meridian

T. 41 N., R. 22 E.,
Sec. 4, lot 4.
T. 39 N., T. 23 E.,
Sec. 24, NE¼SW¼, SW¼SW¼, and N½SE¼.

The areas described aggregate 200.96 acres in Washoe County.

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

4. 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: May 17, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–13175 Filed 5–27–94; 8:45am]

BILLING CODE 4310–HC–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–320; RM–8407]

Radio Broadcasting Services; Ellison Bay, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses the petition filed by Eden Broadcast Group requesting the allotment of Channel 223A to Ellison Bay, Wisconsin, as that community's first local broadcast service. See 59 FR 2344, January 14, 1994. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–320, adopted April 21, 1994, and released May 24, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–13157 Filed 5–27–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 940422–4122; I.D. 051994C]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment.

SUMMARY: NMFS announces that the commercial salmon fishery in the area

from Sisters Rocks to House Rock, Oregon, is open 7 days per week beginning May 18, 1994. This adjustment is intended to provide additional fishing opportunity to commercial fishermen and maximize the harvest of chinook salmon without exceeding the ocean share allocated to the commercial fishery in this area.

DATES: Effective at 0001 hours local time, May 18, 1994. Comments will be accepted through June 15, 1994.

ADDRESSES: Comments may be mailed to J. Gary Smith, Acting Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: In the annual management measures for ocean salmon fisheries (59 FR 22999, May 4, 1994), NMFS announced that the 1994 commercial fishery in the area between Sisters Rocks and House Rock, Oregon, would open on May 1 and fishing would be allowed during designated 2-day periods (May 1–2, 5–6, 10–11, 14–15, 18–19, 22–23, 26–27, and 31). The preseason objective for implementing the open/closure cycle was to dampen catch rates and extend the fishing season for as long as possible.

The best available information on May 17 indicated that commercial catch and effort rates have been low, with catches totaling less than 100 chinook salmon. The fishery is scheduled to close the earlier of May 31 or attainment of the 1,500 chinook salmon quota. The preseason management measure that opened this fishery for 2-day periods is being rescinded because its use as a catch dampening measure is now considered to be too restrictive. Conversion to a 7-day fishing week would provide additional fishing opportunity to commercial fishermen to increase access to chinook salmon.

Modifications of fishing seasons are authorized by regulations at 50 CFR 661.21(b)(1)(i). All other restrictions that apply to this fishery remain in effect as announced in the annual management measures (59 FR 22999).

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding this adjustment affecting the commercial fishery between Sisters Rocks and House Rock. The State of Oregon will manage the commercial fishery in state waters adjacent to this area of the Exclusive Economic Zone in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, May 18, 1994, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 661.21 and 661.23.

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

Dated: May 24, 1994.

David S. Crestin,

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

[FR Doc. 94–13183 Filed 5–27–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 103
Tuesday, May 31, 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

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Coarse Grains Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to establish provisions to insure coarse grains (corn, grain sorghum, and soybeans). The provisions will supplement the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. This rule consolidates the provisions of insuring coarse grains into one policy and provides automatic coverage for late and prevented planting. The intended effect of this proposed rule is to move these individual crops to the Common Crop Insurance Policy for ease of use by the public and conformance among policy languages.

DATES: Written comments, data, and opinions on this proposed rule must be submitted no later than June 30, 1994, to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Hand or messenger delivery may be made to suite 500, 2101 L St. NW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1999.

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore, has not been reviewed by the Office of Management and Budget (OMB).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this proposed rule can be found in 7 CFR part 400 subpart H.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this proposal does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This action would not have a significant impact on a substantial number of small businesses. The insurance companies delivering these policies will not increase the amount of work required over the previous policy delivery. The combination of a number of previously independent policies into one policy should reduce confusion and increase efficiency. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program 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.

The Office of General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

By separate rule, FCIC will limit the effect of the present policies covered by current crop endorsements to a period before the crop year for which this rule will be effective.

The coarse grains crop provisions were developed to provide one policy form for insuring corn, grain sorghum, and soybeans. Using one policy for these three crops will:

(1) Substantially reduce paperwork by issuing one policy rather than the three separate policies presently used;

(2) Reduce the time required to amend or revise the provisions by eliminating the repetitious review process; and

(3) Continue to allow insureds the flexibility to elect any of the three coarse grain crops they wish to insure.

The principle proposed differences between the previous provisions for corn, grain sorghum, and soybeans and the new coarse grain provisions are as follows:

1. FCIC has received numerous requests to revise the corn crop insurance provisions to allow producers to insure corn acreage intended to be harvested as grain on a grain basis, and corn acreage intended to be harvested as silage on a silage basis. The present corn provisions require all insurable corn acreage in a county to be insured on either a grain basis under the corn endorsement or a silage basis if the corn silage option is elected by the insured. FCIC proposes a change to the corn provisions to eliminate the corn silage option and permit the insured to separately designate acreage intended for harvest as grain and as silage.

2. Subsection 1.(k) specifies that the local market price for corn will be the cash grain price per bushel for U.S. No. 2 yellow corn and is intended to clarify the quality adjustment standard. Current regulations state that this price will be for U.S. No. 2 corn.

3. Subsection 1.(l) requires that acreage be initially planted in rows far enough apart to permit mechanical

cultivation in order to be insurable under published rates and coverages unless otherwise allowed by the Special Provisions or by written agreement.

4. Subsection 3.(a) requires that an insured may select only one price election for all the grain sorghum insured under this policy, only one price election for all the soybeans insured under this policy, only one price election for all the corn insured as silage under this policy, and only one price election for all the corn insured as grain under this policy.

5. Subsection 3.(b) provides that when the insured harvests insured corn in a manner other than the manner initially reported (for example, reported grain but harvested as silage) and has not selected a price election for the type harvested, the insurer will assign a price election for the type harvested that bears the same percentage relationship to the maximum price election for the type harvested specified in the Special Provisions as does the price election selected by the insured for the reported type. This assigned price election will be used to determine the dollar value of production to count for indemnity purposes.

6. Section 4 provides that the contract change date is November 30 for all counties so as to maintain an adequate time period between this date and the revised cancellation dates (see item 7 below).

7. Section 5 provides that cancellation and termination dates for coarse grains be changed to February 15 for Texas counties that currently have March 31 dates, to February 28 for states that currently have March 31 dates, and to March 15 in states and counties that currently have April 15 dates. The cancellation and termination dates for corn and grain sorghum have been changed to January 15 for Texas counties that currently have February 15 dates. These changes are intended to reduce the probability that the insured may make a determination of whether to buy insurance on the probability that a loss may occur or has already occurred.

8. Paragraph 6.(a)(2) requires that the grain variety planted must be adapted to the area based on days to maturity and compatibility with agronomic and weather conditions.

9. Paragraph 6.(a)(3) permits requests to insure coarse grains planted into an established grass or legume or interplanted with another crop. This provision makes insurance available by written agreement for crops grown with a production practice that is not normally followed in an area. The guarantee and premium rate will be based on the specific production practice.

10. Paragraph 6.(b)(2) and subparagraph 6.(b)(2)(i) specify the types of field corn (e.g., yellow dent corn, white corn, mixed yellow and white corn, waxy corn, and high-lysine corn) that are insurable at standard premium rates. If a written agreement allows, the insured may insure special purpose corn, including high-amylose, high-oil, high-protein, flint, flour, Indian, and blue corn, a variety genetically adapted to provide forage for wildlife or any other open pollinated corn. The special purpose written agreement will contain a premium rate based on the specific type. This provision makes insurance available by written agreement for kinds of field corn that are less commonly produced.

11. Paragraph 6.(b)(2)(ii) provides that a variety of corn adapted for use as silage only is not insurable when the corn is reported as grain. This change prevents standard grain insurance guarantees from attaching to silage varieties which may not produce as high as grain varieties.

12. Subsection 6.(c) permits consideration for requests to insure corn on a silage basis when the actuarial table does not provide a premium rate for silage, and for requests to insure corn on a grain basis when the actuarial table does not provide a premium rate for grain. This provision makes insurance available by written agreement for a type which may not normally be grown in the area and which must have a guarantee and premium rate based on the specific grain type and production practice.

13. Paragraph 6.(d)(3) permits consideration for requests to insure a dual-purpose type of grain sorghum (a type used for both grain and forage). This provision makes insurance available by written agreement for a type of grain which may not normally be grown in the area and which must have a guarantee and premium rate based on the specific grain type and production practice.

14. Current provisions for corn and grain sorghum that state that any acreage destroyed to comply with United States Department of Agriculture programs will not be insured have been deleted from the proposed coarse grains crop provisions. Under those provisions insurance was provided on a crop until it was destroyed without any premium being paid.

15. Section 7 provides that any acreage damaged prior to the final planting date, to the extent that the remaining stand will not produce at least 90 percent of the production guarantee, must be replanted unless the insurer agrees that replanting is not practical. This requirement to replant is currently in effect, but fails to clearly indicate the percent of damage that requires replanting.

16. Subsections 8.(a) and (b) specify different end of insurance period dates for corn acreage insured as grain and for corn acreage insured as silage. These provisions allow the insurance period to be based on the type reported since this is the basis for the premium charged, not the type harvested, and the insurance risk changes by type after a specific period.

17. Subsection 10.(a) does not allow a replanting payment for any acreage replanted more than 25 days after the final planting date since it could be generally impractical to replant.

18. Subsection 10.(b) limits the replanting payment per acre to the lesser of 20 percent of the production guarantee or eight bushels for corn insured as grain, one tone for corn insured as silage, seven bushels for grain sorghum, and three bushels for soybeans, multiplied by the insured's price election multiplied by the insured's share. Current provisions do not contain the 20 percent limitation. It was added to prevent insureds, who elect a lower coverage level, from receiving a replanting payment that exceeds the original liability.

19. Subsection 10.(c) allows replanting payments in excess of the insured share to be made to insureds if there is an agreement between the shareholders that:

(1) Requires one person to incur the entire cost of replanting; or

(2) Gives the right to any replanting payment to a single insured person, who incurred the cost of replanting.

20. Subsection 10.(d) requires that the liability for the unit be reduced by the amount of the replanting payment attributable to the insured's share if the acreage is replanted with a method that is not insurable for an original planting.

21. Paragraphs 11.(b)(1) and 11.(b)(2) require that for any corn unit that has two different dates for the end of the insurance period (a separate end of insurance period date for grain and for silage), the insured is required to:

(1) Give notice of damage within 72 hours of initial discovery of damage (but not later than 15 days after the earliest end of the insurance period for the unit) if damage occurs before the earliest end of the insurance period for the unit; and

(2) Submit a claim for indemnity declaring the amount of loss not later than 60 days after the latest date for the end of insurance period for the unit.

22. Paragraph 12.(b)(2) modifies calculations of corn claims for indemnity. The production guarantee for each type reported will be multiplied by the insured acreage for that type and further multiplied by the appropriate price election. The guarantee for the unit will be the sum of these calculations for each type. Production to count of each type will be multiplied by the appropriate price election. The total value of production to count is the sum of these calculations for each type. An indemnity is payable if the guarantee exceeds the value of production to count. This modification is necessary to accommodate both grain and silage guarantees and grain and silage production to count within a unit.

23. Subsection 12.(d) provides that all production to count will be determined in bushels for grain and in tons for silage. Production to count for harvested acreage will be according to the method of harvest and for unharvested acreage according to the information contained on the acreage report, except as otherwise provided.

24. Subsection 12.(e) allows adjustments to production for excessive moisture to be made separately from any adjustments for quality defenciencies. This change is made because wide variations in charges associated with the drying and handling of high moisture production has caused production of equal quality and moisture content to be valued differently. These differences in value caused inequities in indemnity payments under the current policy.

25. Subparagraph 12.(e)(1)(i) allows adjustment of production to count when corn moisture exceeds 15.0 since this is the most commonly used percentage in corn markets. Current corn provisions allow production to be adjusted for moisture in excess of 15.5 percent but not exceeding 40 percent.

26. Paragraph 12.(e)(4) provides that coarse grain production that is eligible for quality adjustment will be reduced by the quality adjustment factor contained in the Special Provisions.

List of Subjects in 7 CFR Part 457

Crop insurance, corn, grain sorghum, soybean.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457) to read as follows:

PART 457—COMMON CROP INSURANCE; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 457 is amended by adding a new section, 457.113 Coarse Grains Crop Insurance Provisions, to read as follows:

§ 457.113 Coarse grains crop insurance provisions.

The Coarse Grains Crop Insurance Provisions for the 1995 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Coars Grains Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Coarse grains*—Corn, grain sorghum, and soybeans.

(b) *Days*—Calendar days.

(c) *Final planting date*—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

(d) *Good farming practices*—Good farming practices are the cultural practices generally in use in the county for the insured crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(e) *Grain sorghum*—The crop defined as sorghum under the United States Grain Standards Act.

(f) *Harvest*—Combining, threshing, or picking the insured crop for grain, or cutting for hay, silage, or fodder.

(g) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(i) *Late planted*—Acreage planted to the insured crop during the late planting period.

(j) *Late planting period*—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(k) *Local market price*—The cash grain price per bushel for the U.S. No. 2 yellow corn, U.S. No. 2 grain sorghum, or U.S. No. 1 soybeans, offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade for yellow corn and grain sorghum, or U.S. No. 1 grade soybeans. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein and oil will not be considered.

(l) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Coarse grains must initially be planted in rows far enough apart to permit mechanical cultivation to be considered planted. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the Special Provisions or by written agreement to insure such crop.

(m) *Practical to replant*—In lieu of subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8) practical to replant is defined as follows: Our determination, after loss or damage to the insured crop, based on factors including, but not limited to moisture availability, condition of the field, and time to crop maturity that replanting to the insured crop will allow the crop to attain maturity and to produce at least ninety percent (90%) of the production guarantee prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by:

(1) The final planting date designated in the Special Provisions for the insured crop in the country; or

(2) The end of the late planting period.

You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting due to similar insurable causes. The insured cause of prevented planting must occur between the sales closing date and the final planting date for the insured crop in the county or within the late planting period.

(o) *Production guarantee*—The number of bushels (tons for corn insured as silage) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(p) *Replanting*—Performing the cultural practices necessary to replace the seed of the same insured crop, and replacing the seed for the same crop in the insured acreage with the expectation of growing a successful crop.

(q) *Silage*—Severing the plant from the land and chopping it for the purpose of livestock feed.

(r) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

(s) *Ton*—Two thousand (2000) pounds avoirdupois.

(t) *Written agreement*—Designated terms of this policy may be altered by written agreement. Any request for such written agreement must be made at least fifteen (15) days prior to the sales closing date and the terms of such agreement must be offered and accepted in writing prior to the sales closing date. Each agreement is for one year only and if not specifically renewed the following year continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium and price election must be set out in the written agreement.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that we can verify the production from each optional unit or the production from each unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable:

(1) *Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands as the equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to or instead of establishing optional units by section, section equivalent, or ASCS Farm Serial Number, optional units may be established based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or ASCS Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage and the non-irrigated acreage in accordance with recognized good irrigated farming practices.

Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the basic unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, the premium paid for the purpose of electing optional units will be refunded to you.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements under section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8) you may select:

(1) For grain sorghum and soybeans, only one price election for each crop in the county insured under this policy; and

(2) For corn, only one price election for all the corn in the county insured as grain under this policy, and only one price election for all the corn in the county insured as silage under this policy.

(b) For corn only, to determine the dollar value of production to count for indemnity purposes, if you harvest the crop in a manner other than the manner you reported (for example, you reported grain but harvested as silage) and you did not select a price election for the type harvested, we will assign a price election for the type harvested that bears the same percentage relationship to the maximum price election you selected for the type reported (for example, if you selected a grain price election in the amount of 80% of the maximum price election for grain and you did not select a silage price election, we will assign a silage price election in the amount of 80% of the maximum price election for silage specified in the Special Provisions if you harvest for silage).

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions under section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Common Crop Insurance Policy (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination dates
(a) For corn and grain sorghum:	
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Golaid, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to an including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina .	February 28.
All other Texas counties and all other states	March 15.
(b) For soybeans:	
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, and Dimmit Couinties, Texas and all Texas counties lying south thereof.	February 15.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Marverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorad Counties, Texas.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina .	February 28.
All other Texas counties and all other states	March 15.

6. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Common Crop Insurance Policy (§ 457.8), the crop insured will be each coarse grain crop you elect to insure for which premium rates are provided by the actuarial table:

(1) In which you have a share;

(2) That is adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area; and

(3) That is not (unless a written agreement allows otherwise):

(i) Interplanted with another crop except as allowed in paragraph 6.(b)(1); or

(ii) Planted into an established grass or legume.

(b) For corn only, in addition to the provisions of subsection 6.(a), the corn crop insured will be all of the field corn that is:

(1) Planted for harvest either as grain or as silage (see subsection 6.(c)). A mixture of corn and sorghum (grain or forege-type) will be insured as corn silage if the sorghum does not constitute more than twenty percent (20%) of the plants;

(2) Yellow dent or white corn, including mixed yellow and white, waxy or high-lysine corn, and excluding:

(i) High-amylose, high-oil, high-protein, flint, flour, Indian, or blue corn, or a variety genetically adapted to provide forage for wildlife or any other open pollinated corn, unless a written agreement allows insurance of such excluded crops.

(ii) A "silage variety" of corn (a variety of corn adapted for silage use only) when the corn is reported for insurance as grain.

(c) For corn only, if the actuarial table for the county provides a premium rate for:

(1) *Both grain and silage,* all insurable acreage will be insured as the type or types reported by you on or before the acreage reporting date;

(2) *Grain but not silage,* all insurable acreage will be insured as grain unless a written agreement allows insurance on all or a portion of the insurable acreage as silage; or

(3) *Silage but not grain,* all insurable corn acreage will be insured as silage unless a written agreement allows insurance on all or a portion of the insurable acreage as grain.

(d) For grain sorghum only, in addition to the provisions of subsection 6.(a), the grain sorghum crop insured will be all of the grain sorghum in the county:

(1) That is planted for harvest as grain;

(2) That is combine-type hybrid grain sorghum (grown from hybrid seed); and

(3) That is not a dual-purpose type of grain sorghum (a type used for both grain and forage), unless a written agreement allows insurance of such grain sorghum.

(e) For soybeans only, in addition to the provisions of subsection 6.(a), the soybean crop insured will be all of the soybeans in the county that are planted for harvest as beans.

7. Insurable Acreage

In addition to the provisions under section 9 (Insurable Acreage) of the Common Crop Insurance Policy (§ 457.8), any acreage of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee, must be replanted unless we agree that replanting is not practical (see subsection 1.(m)).

8. Insurance Period

In accordance with the provisions under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) *For corn insured as grain:*	
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30;
(2) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington.	October 31;
and	
(3) All other counties and states.	December 10;
(b) For corn insured as silage:	
All states	September 30;
(c) For grain sorghum:	
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30; and
(2) All other Texas counties and all other states.	December 10;
and	
(d) *For soybeans:* all states.	December 10.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), insurance is provide only against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply.

10. Replanting Payments.

(a) In accordance with section 13 (Replanting Payment) of the Common Crop Insurance Policy (§ 457.8), replanting payments for coarse grains are allowed if the coarse grains are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee for the acreage and replanting takes place not later than 25 days after the final planting date.

(b) The maximum amount of the replanting payment per acre will be the lesser of twenty percent (20%) of the production guarantee or the number of bushels (tons for corn insured as silage) shown below, multiplied by your price election multiplied by your share:

(1) Corn:

(i) Grain—8 bushels;

(ii) Silage—1 ton;

(2) Grain sorghum—7 bushels; and

(3) Soybeans—3 bushels.

(c) When more than one person insures the same crop on a share basis, a replanting payment based on the total shares insured may be made to the insured person who incurs the total cost of replanting. Payment will be made in this manner only if an agreement exists between the insured persons which:

(1) Requires one person to incur the entire cost of replanting; or

(2) Gives the right to all replanting payments to one person.

(d) When the insured crop is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Common Crop Insurance Policy (§ 457.8), if you initially discover damage to any insured crop within 15 days of or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

(b) For any corn unit that has separate dates for the end of the insurance period (grain and silage):

(1) In lieu of paragraph 14.(a)(2) of the Common Crop Insurance Policy (§ 457.8), if damage occurs before the earliest date (grain or silage) for the end of the insurance period, you must give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after that earliest date); and

(2) In lieu of subsection 14.(c) of the Common Crop Insurance Policy (§ 457.8), in addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the latest date for the end of insurance period for the unit. This claim must include all the information we require to settle the claim.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production.

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim:

(1) For grain sorghum and soybeans by:

(i) Multiplying the lesser of the reported or determined acreage by the production guarantee;

(ii) Subtracting from this the total production to count;

(iii) Multiplying the remainder by your price election; and

(iv) Multiplying this result by your share.

(2) For corn by:

(i) Multiplying the lesser of the reported or determined acres of each type grain/silage) by the production guarantee for that type;

(ii) Multiplying each result by the price election for each type;

(iii) Adding these values;

(iv) Multiplying the production to count of each type (see subsection 12.(d)) by the price election for that type (see the provisions under section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities));

(v) adding these dollar values;

(vi) subtracting the results of step (v) from the results of step (iii); and

(vii) multiplying the result by your share.

(c) The total production in bushels (tons for corn silage) (see subsection 12.(d)) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with subsection 12.(e));

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop we will give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) The production to count for corn will be in bushels for grain and in tons for silage as follows:

(1) For harvested acreage, according to the method of harvest; and

(2) For unharvested acreage, according to the information contained on your acreage report; except as otherwise provided in paragraph 12.(c)(1).

(e) Mature coarse grain production (excluding corn insured or harvested as silage) may be adjusted for excess moisture and quality deficiencies. Corn insured or harvested as silage will be adjusted for excess moisture and quality only as specified in subsection 12.(f).

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of:

(i) Fifteen percent (15%) for corn (If moisture exceeds 30 percent (30%), production will be reduced 0.2 percent for each 0.1 percentage point above 30 percent (30%));

(ii) Fourteen percent (14%) for grain sorghum; and

(iii) Thirteen percent (13%) for soybeans.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in:

(A) Corn not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight or kernel damage (excluding heat damage), or having a musty, sour, or commercially objectionable foreign odor;

(B) Grain sorghum not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage), or having a musty, sour, or commercially objectionable foreign odor (except smut odor), or meets the special grade requirements for smutty grain sorghum; or

(C) Soybeans not meeting the grade requirements for U.S. No. 4 (grade U.S. Sample grade) because of test weight, kernel damage (excluding heat damage), or having a musty, sour, or commercially objectionable foreign odor (except garlic odor), or which meet the special grade requirements for garlicky soybeans; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. (Test weight for quality adjustment purposes may be determined by our loss adjuster.)

(4) Coarse grain production that is eligible for quality adjustment, as specified in paragraphs 12.(e)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(f) For corn insured or harvested as silage:

(1) Whenever our appraisal of grain content is less than 4.5 bushels of grain per ton of silage, the silage production will be reduced by 1 percentage point for each 0.1(1/10) of a bushel less than 4.5 bushels per ton, (If we cannot make a grain appraisal before harvest and you do not leave a representative unharvested sample, no reduction for grain-deficient silage will be made.); and

(2) If the normal silage harvesting period has ended, or for any acreage harvested as silage or appraised as silage prior to October 1, we may increase the silage production to count to 65 percent (65%) moisture equivalent to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(g) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

13. Late Planting and Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§ 457.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subsection 13.(c)), and acreage you were prevented from planting (see subsection 13.(d)). These coverages provide reduced production guarantees. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage). (For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely

planted acreage by 93 percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by 50 percent (0.5) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.)

(b) You must provide written notice to us if you were prevented from planting (see subsection 1.(n)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For acreage planted to the insured crop after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the insured crop continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting the insured crop (see subsection 1.(n)), you may elect:

(i) To plant the insured crop during the late planting period (the production guarantee for such acreage will be determined in accordance with paragraph 13.(c)(1));

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year, (the production guarantee for such acreage will be fifty percent (0.5) of the production guarantee for timely planted acres, (For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.5). This paragraph does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest.); or

(iii) To plant the insured crop after the late planting period, (the production guarantee for such acreage will be fifty percent (0.5) of the production guarantee for timely planted acres, (For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.5). Production to count for such acreage will be determined in accordance with subsections 12.(c) through (g)).

(2) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Special Provisions for the insured crop in the county.

(3) Unless a written agreement is in place to the contrary, the acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to the insured crop on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for the insured crop, if applicable, reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that were used to determine your yield.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(B) Land for which the actuarial table does not designate a premium rate unless a written agreement is in place designating such premium rate;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than the insured crop, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and planted after the final planting date. (For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero. (100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more insured crop acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.)

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to the insured crop in the crop year.

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which is not eligible will be deleted from prevented planting coverage.

Done in Washington, DC, on May 24, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–13128 Filed 5–27–94; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 457

Common Crop Insurance Regulations; Cotton Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes provisions for cotton crop insurance. These proposed provisions are contained in an endorsement to the Common Crop Insurance Policy (§ 457.8) which contains standard terms and conditions common to most crops. The intended effect of this proposed rule is to provide insureds with the terms of their insurance in one comprehensive policy with terms identical throughout the policies reinsured by the FCIC.

DATES: Written comments, data, and opinions on this proposed rule must be submitted no later than June 30, 1994 to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Hand or messenger delivery may be made to 2101 L Street NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1999.

This rule has been determined "not-significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this proposed rule are found in 7 CFR part 400, subpart H.

It has been determined under section 6(a) of Executive Order 12612, Federalism that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This action will not have a significant impact on a substantial number of small businesses. This action reduces the paperwork burden on the insured farmer, the reinsured company, and sales and service contractor. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

Ths program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program 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.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Upon publication of 7 CFR 457.104 as a final rule, the provisions for insuring cotton contained herein will replace the current cotton endorsement contained in 7 CFR 401.119. That regulation will be amended to restrict the crop years of application to those prior to the crop years herein.

This rule makes minor editorial and format changes to improve its compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing other changes in the provisions for insuring cotton as follows:

1. Section 4—The contract change date has been changed to November 30 for all counties to maintain an adequate time period between this date and the revised cancellation dates (see item 2 below).

2. Section 5—The cancellation and termination dates have been changed to February 28 in states and counties that currently have March 31 dates, and to March 15 in states and counties that currently have April 15 dates. The changes are intended to reduce the probability that the insured may make a determination as to the purchase of insurance on the probability that a loss may occur or has already occurred.

3. Section 6—A specific reference to colored cottons is added to provide that such cottons are insurable under the policy. Production guarantees for these cottons will be established by FCIC's Regional Service Offices via written agreements until adequate actual production history is available for individual policyholders.

4. The current provisions for cotton indicating that any acreage destroyed to comply with United States Department of Agriculture programs will not be insured, are not included in the proposed Cotton Provisions. Under those provisions, insurance was provided on a crop until it was destroyed without any premium being paid.

5. The current provisions that indicate that insurance will end upon removal of the cotton from the field are not included in the proposed cotton provisions. The insurance period will end upon harvest of the unit as provided under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8).

6. Section 7—Paragraph 7.(b) provides that any acreage damaged prior to the final planting date, to the extent that the remaining stand will not produce at least 90% of the production guarantee, must be replanted unless the insurer agrees that replanting is not practical.

7. Section 10—The current provisions for cotton state that in the event of damage or loss, any required unharvested samples of the crop must remain intact until 15 days after notice of damage was given but do not require the cotton stalks remain intact. These proposed provisions require that cotton stalks and any required unharvested samples of the crop not be destroyed or harvested until the earlier of our inspection or 15 days after harvest is completed on the unit. This change clarifies requirements regarding cotton stalks.

8. Section 11—Paragraph 11.(c)(2) provides that cotton retrieved from the ground will be considered production to count.

9. Subsection 11.(d)—The date on which prices for quality adjustment purposes are determined is changed from the date of final notice of loss to the date the last bale from the insured unit is classed.

10. Subsection 11.(e) provides that colored lint cotton is not eligible for quality adjustment because grade standards for colored cotton are not available.

List of Subjects in 7 CFR Part 457

Crop insurance, Cotton.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457) to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 457 is amended by adding a new section, § 457.104 Cotton Crop Insurance Provisions, to read as follows:

§ 457.104 Cotton Crop Insurance.

The Cotton Crop Insurance Provisions for the 1995 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Cotton Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Cotton*—Varieties identified as American Upland Cotton.

(b) *Days*—Calendar days.

(c) *Final planting date*—The date contained in the Special Provisions by which the insured crop must initially be planted in order to be insured for the full production guarantee.

(d) *Good farming practices*—The cultural practices generally in use in the county for the insured crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(e) *Growth area*—A geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

(f) *Harvest*—The removal of the seed cotton from the open cotton boll, or the severance of the open cotton boll from the stalk by either manual or mechanical means.

(g) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(i) *Late planted*—Acreage planted to cotton during the late planting period.

(j) *Late planting period*—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(k) *Mature cotton*—Cotton that can be harvested either manually or mechanically.

(l) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Cotton must be planted in rows to be considered planted. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the special provisions or by written agreement to insure such crop. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any crop.

(m) *Practical to replant*—In lieu of subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8) practical to replant is defined as follows: our determination, after loss or damage to the insured crop, based on factors including, but not limited to moisture availability, condition of the field, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity and to produce at least ninety percent (90%) of the production guarantee prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by:

(1) the final planting date designated in the Special Provisions for the insured crop in the county; or

(2) the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting due to similar insurable causes. The insured cause of prevented planting must occur between the sales closing date and the final planting date for the insured crop in the county or within the late planting period.

(o) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by any applicable yield conversion factor for non-irrigated skip-row planting patterns, and multiplying the result by the coverage level percentage you elect.

(p) *Replanting*—Performing the cultural practices necessary to replace the cotton seed, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(q) *Skip-row*—A planting pattern that consist of alternating rows of cotton and fallow land or land planted to another crop the previous fall.

(r) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions.

(s) *Written agreement*—Designated terms of this policy may be altered by written agreement. Any request for such written agreement must be made at least fifteen (15) days prior to the sales closing date and the terms of such agreement must be offered and accepted in writing prior to the sales closing date. Each agreement is for one year only and if not specifically renewed the following year continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium and price election must be set out in the written agreement.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), may be divided into optional units if, for each optional unit you meet, all the conditions of this section or if a written agreement to such division exists. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that we can verify the production from each optional unit or the production from each optional unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable:

(1) *Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands as equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to or instead of establishing optional units by section, section equivalent, or ASCS Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or ASCS Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

Basic units may not be divided into optional units on any basis including, but not limited to: production practice, type, variety, or planting period, other than as described in this section. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions on all optional units is determined to be inadvertent, and the optional units are combined, premium paid for the purpose of electing optional units will be refunded to you.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements under section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8), you may select only one

price election for all cotton in the county insured under this policy.

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions under section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Common Crop Insurance Policy (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagon, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crocket, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.
All other Texas counties and all other states	March 15.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Common Crop Insurance Policy (457.8), the crop insured will be all the cotton (including colored cotton) for which premium rates are provided by the actuarial table:

(a) in which you have a share; and

(b) that is not (unless a written agreement allows otherwise):

(1) planted into an established grass or legume;

(2) interplanted with another spring planted crop;

(3) grown on acreage from which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(4) grown acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than fifty percent (50%) of the small grain plants reach the heading stage.

7. Insurable Acreage

In addition to the provisions under section 9 (Insurable Acreage) of the Common Crop Insurance Policy (§ 457.8):

(a) The acreage insured will be only the land occupied by the rows of cotton when a skip row planting pattern is utilized; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee, must be replanted unless we agree that replanting is not practical (see subsection 1.(m)).

8. Insurance Period

In accordance with the provisions under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) September 30 in Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof;

(b) January 31 in Arizona, California, New Mexico, Oklahoma, and all other Texas counties; and

(c) December 31 in all other states.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) adverse weather conditions;

(b) fire;

(c) insects, but not damage due to insufficient or improper application of pest control measures;

(d) plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) wildlife;

(f) earthquake;

(g) volcanic eruption; or

(h) failure of the irrigation water supply.

10. Duties in the Event of Damage or Loss

(a) In addition to your duties under section 14 (Duties in the Event of Damage or Loss) of the Common Crop Insurance Policy (§ 457.8), in the event of damage or loss:

(1) the cotton stalks must remain intact for out inspection; and

(2) if you initially discover damage to the insured crop within 15 days of harvest, or during harvest, you must leave representative samples of the unharvested crop must remain in the field for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit.

(b) The stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) for any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) for any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) multiplying the insured acreage by the production guarantee;

(2) subtracting from this the total production to count;

(3) multiplying the remainder by your price election; and

(4) multiplying this result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include:

(1) all appraised production follows:

(i) Not less than the production guarantee for acreage:

(A) that is abandoned;

(B) put to another use without our consent;

(C) damaged solely by uninsured causes;

(D) for which you fail to provide records of production that are acceptable to us; or

(E) on which the cotton stalks are destroyed within 15 days after harvest without our consent;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature harvested production of white cotton may be adjusted for quality deficiencies in accordance with subsection 11.(d));

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we will give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (the amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(v) Not less than twenty-five percent (25%) of the production guarantee per acre for any

acreage of cotton which was replanted more than 25 days after the final planting date and is immature when we determine that harvest of cotton becomes general in the county; and

(2) all harvested production from the insurable acreage, including any mature cotton retrieved from the ground.

(d) Mature white cotton may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for cotton of like quality (price quotation "A") for the applicable growth area is less than seventy-five percent (75%) of price quotation "B." Price quotation "B" is defined as the price quotation for the applicable growth area for cotton of the color and leaf grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. Price quotations "A" and "B" will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If the date the last bale classed is not available, the price quotations will be determined on the date the last bale from the unit is delivered to the warehouse, as shown on the producer's account summary obtained from the gin. If eligible for adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation "A" by seventy-five percent (75%) of price quotation "B."

(e) Colored lint cotton will not be eligible for quality adjustment.

12. Late Planting and Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§ 457.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subsection (c)), and acreage you were prevented from planting (see subsection (d)). These coverages provide reduced production guarantees. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage). (For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by thirty-five percent (0.35) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee per acre for timely planted acreage by the 150 acres in the unit.)

(b) You must provide written notice to us if you were prevented from planting (see subsection 1.(n)). This notice must be given not later than three days after:

(1) the final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) the date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting

(1) For cotton acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) one percent (.01) for the first through tenth day; and

(ii) two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of cotton continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) the acreage reporting date contained in the Special Provisions; or

(ii) five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting cotton (see subsection 1.(n)), you may elect:

(i) to plant cotton during the late planting period (The production guarantee for such acreage will be determined in accordance with paragraph 12.(c)(1));

(ii) not to plant this acreage to any crop that is intended for harvest in the same crop year, (the production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be equivalent to 245 pounds per acre (700 pounds multiplied by 0.35). This subparagraph does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest.); or

(iii) to plant cotton after the late planting period, (the production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be equivalent to 245 pounds per acre (700 pounds multiplied by 0.35). Production to count for such acreage will be determined in accordance with subsections 11.(c) and (d)).

(2) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Special Provisions for the insured crop in the county.

(3) Unless a written agreement is in place to the contrary, the acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) the number of acres planted to cotton on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) the ASCS base acreage for cotton, if applicable, reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) one hundred percent (100%) of the simple average of the number of acres planted to cotton during the crop years that were used to determine your yield;

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(B) land for which the actuarial table does not designate a premium rate unless a written agreement is in place designating such premium rate;

(C) land used for conservation purpose or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) land on which any crop, other than cotton, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and reduced by the number of cotton acres timely planted and planted after the final planting date. (For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be

reduced to zero. (100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more cotton acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you report for each unit.)

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to cotton in the crop year.

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which is not eligible will be deleted from prevented planting coverage.

Done in Washington, DC on May 24, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–13130 Filed 5–27–94; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 457

Common Crop Insurance Regulations; Extra Long Staple Cotton Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes provisions for extra long staple (ELS) cotton insurance. These proposed provisions are contained in an endorsement to the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. The intended effect of this proposed rule is to provide insureds with the terms of their insurance in one comprehensive policy with terms identical throughout the policies reinsured by the FCIC.

DATES: Written comments, data, and opinions on this proposed rule must be submitted no later than June 30, 1994 to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Hand or messenger deliver may be made to 2101 L Street NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, USDA, Washington, DC 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1999.

This rule has been determined "not significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or record-keeping requirements included in this proposed rule can be found in 7 CFR 400 subpart H.

It has been determined under section 6(a) of Executive Order 12612, that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures contained in this rule will not have substantial direct effects on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This action will not have a significant impact on a substantial number of small businesses. This action reduces the paperwork burden on the insured farmer, the reinsured company, and sales and service contractor. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program 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.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Upon publication of 7 CFR 457.105 as a final rule, the provisions for insuring ELS cotton contained herein will replace the current ELS cotton endorsement contained in 7 CFR 401.121. That regulation will be amended to restrict the crop years of application to those prior to the crop years herein.

This rule makes minor editorial and format changes to improve its compatibility with the Common Crop Insurance Policy. In addition, FCIC is proposing other changes in the provisions for insuring ELS cotton as follows:

1. Subsection 1.(n)—The definition of "replanting" is redefined to include acreage replanted to ELS cotton. The current definition includes only acreage that is replanted to American Upland Cotton after initially being planted to ELS cotton. This change is made because in some situations (especially before the ELS cotton final planting date) it may be more beneficial for both the insurer and the insured to replant to ELS cotton.

2. Section 5—The cancellation and termination dates are changed to March 15 in all states. These changes are intended to reduce the probability that the insured may make a determination as to the purchase of insurance on the probability that a loss may occur or has already occurred.

3. The current provisions for ELS cotton indicating that any acreage destroyed to comply with United States Department of Agriculture programs will not be insured, are not included in the proposed ELS Cotton Provisions. Under those provisions, insurance was provided on a crop until it was destroyed without any premium being paid.

4. The current provisions for ELS cotton indicating that insurance will end upon removal of the cotton from the field are not included in the proposed ELS Cotton Provisions. The insurance period will end upon harvest of the unit as provided under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8).

5. Paragraph 7.(b)—Provides that any acreage damaged prior to the final planting date, to the extent that the remaining stand will not produce at

least 90% of the production guarantee, must be replanted unless the insurer agrees that replanting is not practical.

6. Section 10—The current provisions state that in the event of damage or loss, any required unharvested samples of cotton must remain intact for 15 days after notice of damage, but the provisions do not indicate that this requirement includes the cotton stalks. Proposed provisions state that cotton stalks and any required unharvested samples of the crop must not be destroyed or harvested until the earlier of our inspection or 15 days after harvest is completed on the unit.

7. Paragraph 11.(c)(2)—Clarifies that cotton retrieved from the ground will be considered production to count.

8. Subsection 11.(d)—The date on which prices for quality adjustment purposes are determined is changed from the time of final notice of loss to the date the last bale from the insured unit is classed.

9. Subsection 11—(e)—Indicates ELS cotton must be ginned at a facility using roller equipment in order to be eligible for quality adjustment. This clarification will eliminate indemnities for poor quality caused by inappropriate ginning equipment and not by an insured cause of loss.

List of Subjects in 7 CFR Part 457

Crop insurance, ELS cotton.

Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457) to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 457 is amended by adding a new section, 457.105 ELS Cotton Crop Insurance Provisions, to read as follows:

§ 457.105 Extra Long Staple Cotton Crop Insurance Provisions.

The Extra Long Staple Cotton Crop Insurance Provisions for the 1995 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

ELS Cotton Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Cotton*—Varieties identified as Extra Long Staple (ELS) cotton and American Upland (AUP) cotton if ELS cotton is destroyed by an insured cause and acreage is replanted to AUP cotton.

(b) *Days*—Calendar Days.

(c) *ELS cotton*—Extra Long Staple cotton (also called Pima cotton, American-Egyptian cotton, and American Pima cotton).

(d) *Final planting date*—The date contained in the Special Provisions by which the insured crop must initially be planted in order to be insured for the full production guarantee.

(e) *Good farming practices*—The cultural practices in use in the country for the insured crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(f) *Harvest*—The removal of the seed cotton from the open cotton boll, or the severance of the open cotton boll from the stalk by either manual or mechanical means.

(g) *Interplanted*—Acreage on which two or more crops are planted in manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(i) *Mature ELS cotton*—ELS cotton that can be harvested either manually or mechanically.

(j) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Cotton must be planted in rows to be considered planted. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the Special Provisions or by written agreement to insure such crop. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any crop.

(k) *Practical to replant*—(In lieu of subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8) practical to replant is defined as follows: Our determination, after loss or damage to the insured crop, based on factors including, but not limited to moisture availability, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity and to produce at least ninety percent (90%) of the production guarantee prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the final planting date unless replanting is generally occurring in the area.

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the country. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented most producers in the surrounding area from planting due to similar insurable causes. The insured cause of prevented planting must occur between the sales closing date and the final planting date for the insured crop in the country.

(m) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by an applicable yield conversion factor for non-irrigated skip-row planting patterns, and multiplying the result by the coverage level percentage you elect.

(n) *Replanting*—Performing the cultural practices necessary to replace the ELS cotton seed, and replacing the seed with either ELS or AUP cotton seed in the insured acreage with the expectation of growing a successful crop.

(o) *Skip-row*—A planting pattern that consists of alternating rows of cotton and fallow land or land planted to another crop the previous fall.

(p) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions.

(q) *Written agreement*—Designated terms of this policy may be altered by written agreement. Any request for such written agreement must be made at least fifteen (15) days prior to the sales closing date and the terms of such agreement must be offered and accepted in writing prior to the sales closing date. Each agreement is for one year only and if not specifically renewed the following year continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium and price election must be set out in the written agreement.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance (§ 457.8), may be divided into optional if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. All optional units must be reflected on the acreage report for each crop year.

(a) You must have verifiable records, which can be independently verified, of planted acreage and production for each optional unit for a least the last crop year used to determine your production guarantee.

(b) You must plant the crop in manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that we can verify the production from each optional unit or the production from each optional unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable:

(1) *Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad survey, leagues, labors, or Virginia Military Lands as equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to or instead of establishing optional units by section, section equivalent, or ASCS Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or ASCS Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and you many not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the basic unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and if the optional units are combined, the premium paid for the purpose of electing optional units will be refunded to you.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements under section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy you may select only one price election of all the cotton in the county insured under this policy.

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions under section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Common Crop Insurance Policy the cancellation and termination dates are March 15.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Common Crop Insurance Policy (§ 457.8), the crop insured will be the cotton for which premium rates are provided by the actuarial table:

(a) in which you have a share; and

(b) that is not (unless a written agreement allows otherwise):

(1) planted into an established grass or legume;

(2) interplanted with another spring planted crop;

(3) grown on acreage from which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(4) grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than fifty percent (50%) of the small grain plants reach the heading stage;

7. Insurable Acreage

In addition to the provisions under section 9 (Insurable Acreage) of the Common Crop Insurance Policy (§ 457.8):

(a) The acreage insured will be only the land occupied by the rows of cotton when a skip row planting pattern is utilized; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee, must be replanted unless we agree that replanting is not practical (see subsection 1.(k)).

8. Insurance Period

In accordance with the provisions under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the calendar date for the end of the insurance period is January 31 immediately following planting.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) adverse weather conditions;

(b) fire;

(c) insects, but not damage due to insufficient or improper application of pest control measures;

(d) plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) wildlife;

(f) earthquake;

(g) volcanic eruption; or

(h) failure of irrigation water supply.

10. Duties in the Event of Damage or Loss

(a) In addition to your duties under section 14 (Duties in the Event of Damage or Loss) of the Common Crop Insurance Policy (§ 457.8), in the event of damage or loss:

(1) you must give us notice if you intend to replant any acreage originally planted to ELS cotton to AUP cotton;

(2) the cotton stalks must remain intact for our inspection; and

(3) if you initially discover damage to any insured crop within 15 days of harvest, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of the field in the unit.

(b) The stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production.

(1) for any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) for any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) multiplying the insured acreage by the production guarantee;

(2) subtracting from this the total production to count;

(3) multiplying the remainder by your price election; and

(4) multiplying this result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include:

(1) all appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) that is abandoned;

(B) put to another use without our consent;

(C) damaged solely by uninsured causes;

(D) for which you fail to provide records of production that are acceptable to us; or

(E) on which the cotton stalks are destroyed within 15 days after harvest without our consent;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies in accordance with subsection:

(A) 11.(d) and (e) if it is mature ELS cotton; or

(B) 11.(f) it if is AUP cotton insured under these crop provisions);

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we will give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(v) Not less than twenty-five percent (25%) of the production guarantee per acre for any acreage of cotton which was replanted and is immature when we determine that harvest of cotton becomes general in the county; and

(2) all harvested production, including any mature cotton retrieved from the ground.

(d) Mature ELS cotton production may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for ELS cotton of like quality (price quotation "A") is less than seventy-five percent (75%) of price quotation "B." Price quotation "B" will be the price quotation for ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. The price quotations for prices "A" and "B" will be the price quotations contained in the Weekly Cotton Market Review published by the USDA Agricultural Marketing Service the week the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined the week the last bale from the unit is delivered to the warehouse as shown on the producer's account summary obtained from the gin. In the absence of either price quotation for the applicable week, the price quotations for the nearest prior week for which an ELS cotton price quotation was listed for both prices will be used. If eligible for adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation "A" by seventy-five percent (75%) of price quotation "B."

(e) For ELS cotton to be eligible for quality adjustment as shown in subsection 11.(d), ginning must have been completed at a gin using roller equipment.

(f) Any AUP cotton harvested or appraised from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price per pound of the AUP cotton by the price quotation for ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. The price used for the ELS cotton will be the price contained in the Weekly Cotton Market Review published by the USDA Agricultural Marketing Service the week the last bale from the unit is classed. The price used for the AUP cotton will be the price contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service the day the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined when the last bale from the unit is delivered to the warehouse, as shown on the producer's account summary obtained from the gin. If either price quotation is unavailable for the dates stated above, the price quotations for the nearest prior date for which price quotations for both the AUP and ELS cotton are available will be used. If prices are not yet available for the insured crop year, the previous season's average prices will be used.

12. Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§ 457.8), insurance will be provided for acreage you were prevented from planting (see subsections 12.(b) through (g)). This coverage provides a reduced production guarantee. The reduced guarantee will be combined with the production guarantee for planted acreage for each unit. The premium amount for eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage). (For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 100 acres, of which 50 acres were planted by the final planting date and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For planted acreage, multiply the per acre production guarantee for planted acreage by the 50 acres planted; and

(2) For prevented planting acreage, multiply the per acre production guarantee for planted acreage by thirty-five percent (0.35) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the two calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 100 acres in the unit).

(b) If you were from planting ELS cotton (see subsection 1.(l)), you may elect:

(1) not to plant this acreage to any crop that is intended for harvest in the same crop year, (The production guarantee for such acreage which is eligible for prevented planting coverage will be thirty-five percent (0.35) of the production guarantee for planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be equivalent to 210 pounds per acre (600 pounds multiplied by 0.35). This paragraph does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest.); or

(2) to plant ELS cotton after the final planting date (The production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be equivalent to 210 pounds per acre (600 pounds multiplied by 0.35). Production to count for such acreage will be determined in accordance with subsections 11.(c) through (e)).

(c) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8, the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Special Provisions for the insured crop in the county.

(d) You must provide written notice to us if you were prevented from planting (see subsection 2.(l)). This notice must be given not later than three (3) days after the final planting date if you have unplanted acreage that may be eligible for prevented planting coverage.

(e) Unless a written agreement is in place to the contrary, the acreage to which prevented planting coverage applies will be limited as follows:

(1) Eligible acreage will not exceed the greater of:

(i) the number of acres planted to ELS cotton on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(ii) the ASCS base acreage for ELS cotton, if applicable, reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(iii) one hundred percent (100%) of the simple average of the number of acres planted to ELS cotton during the crop years that were used to determine your yield;

(2) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(3) A prevented planting production guarantee will not be provided for:

(i) any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(ii) land for which the actuarial table does not designate a premium rate unless a written agreement is in place designating such premium rate;

(iii) land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(iv) land on which any crop, other than ELS cotton, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(v) land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(4) For the purpose of determining eligible acreage for prevented planting coverage,

acreage for all units will be combined and reduced by the number of ELS cotton acres timely planted. (For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of ELS cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero. (100 ares eligible for prevented planting coverage minus 100 acres planted equals zeros.) If you report more ELS cotton acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.)

(f) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to ELS cotton in the current crop year.

(g) In accordance with the provisions of section 6(Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the final planting date. Any acreage you repot as eligible for prevented planting coverage which is not eligible will be deleted from prevented planting coverage.

Done in Washington, DC, on May 24, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–13129 Filed 5–27–94; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–73–AD]

Airworthiness Directives; Pacific Scientific Company, HTL/KIN–TECH Division, Lap Belt Assemblies and Restraint Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pacific Scientific lap belt assemblies and restraint systems. This proposal would require removal of certain lap belt assemblies and restraint systems, and replacement with another design assembly. This proposal is prompted by a report indicating that, subsequent to an accident involving a transport category airplane, some passengers experienced difficulty in attempting to release the buckle on their lap belts. The actions specified by the proposed AD are intended to prevent the inability of passengers or crew to egress from their seats during an emergency situation, due to problems associated with the lap belt assembly.

DATES: Comments must be received by July 25, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pacific Scientific, HTL/KIN–TECH Division, 22715 Savi Ranch Parkway, Yorba Linda, California 92687. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Layton Walker, Aerospace Engineer, Systems & Equipment Branch, ANM–130L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5339; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–73–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–73–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In January 1994, an accident involving a Jetstream Model J4101 airplane occurred in which several surviving passengers experienced difficulty in removing their lap belts. One passenger indicated that the plastic release lever on the buckle was difficult to operate and had to be moved greater than 90 degrees before it would release. The airplane was destroyed in the post-crash fire, so no evaluation could be made of the specific lap belts in question. However, the manufacturer of the lap belt assembly was able to duplicate this problem at its facility, using a lap belt tester with foam padding added to simulate soft abdominal flesh. This examination revealed that the existing buckle design is such that the connector half, when inserted into the buckle portion, is retained by a raised portion of the buckle frame. This raised portion is angled 90 degrees to the floor of the buckle frame. Activation of the buckle lever does not unlatch the belt, as is common in other designs; rather, activation of the buckle lever allows the connector to be manually moved up off the raised portion of the buckle frame and, thus, disconnected. This disconnecting movement is easily accomplished when done under normal operating conditions; however, when attempted under certain load conditions and without prior knowledge of this unique design feature, the buckle will not release and no amount of lever movement will cause it to release. This condition, if not corrected, could result in difficulty for passengers or crew to egress from their seats in an emergency situation.

The subject seat buckles have part numbers 1108435 and 1108460; both are approved under Technical Standard Order (TSO)-C22f. The lap belt assemblies and restraint systems in which they are used can be installed on any type of aircraft or rotorcraft.

The FAA has reviewed and approved Pacific Scientific Service Bulletin 1108435–25–01, dated April 28, 1994, which describes procedures for replacing passenger and crew lap belts and restraint systems that incorporate the P/N 1108435 "45 degrees" release lift lever buckle assembly. The replacement assembly has a modified design that will improve the lap belt buckle release feature.

Additionally, the FAA also has reviewed and approved Pacific Scientific Service Bulletin 1108460–25–01, dated April 28, 1994, which describes procedures for replacing passenger and crew lap belts and restraint systems that incorporate the P/N 1108460 "90 degrees" release lift lever buckle assembly. This replacement assembly likewise has a modified design that will improve the lap belt buckle release feature.

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 replacement of the subject lap belt assemblies and restraint systems with new design assemblies. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 27,002 lap belts of the affected design installed in aircraft and rotorcraft worldwide. The FAA estimates that, of this number, approximately 10,000 could be installed on U.S. registered aircraft and rotorcraft. It would take approximately .5 work hour per lap belt to accomplish the proposed actions, at an average labor rate of $55 per work hour. Required parts would be supplied by Pacific Scientific Company at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $275,000, or $27.50 per lap belt.

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

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§39.13 [Amended]

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

Pacific Scientific Company, HTL/Kin-tech Division: Docket 94–NM–73–AD.

Applicability: Lap belt assemblies and restraint systems, as listed in Pacific Scientific Service Bulletin 1108435–25–01, dated April 28, 1994, and Pacific Scientific Service Bulletin 1108460–25–01, dated April 28, 1994; as installed on aircraft and rotorcraft, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of passengers or crew to egress from their seats during an emergency situation, due to problems associated with the lap belt assembly, accomplish the following:

(a) Within 90 days after the effective date of this AD, remove the applicable lap belt assemblies and restraint systems, and replace them with new design assemblies in accordance with Pacific Scientific Service Bulletin 1108435–25–01, dated April 28, 1994, or Pacific Scientific Service Bulletin 1108460–25–01, dated April 28, 1994, as applicable.

(b) As of a date 90 days after the effective date of this AD, no person shall install on any aircraft or rotorcraft a passenger or crew lap belt or restraint system (as listed in Pacific Scientific Service Bulletin 1108435–25–01, dated April 28, 1994, and Pacific Scientific Service Bulletin 1108460–25–01, dated April 28, 1994) that incorporates the part number 1108435 "45 degrees" release lift lever buckle assembly, or the part number 1108460 "90 degrees" release lift lever buckle assembly.

(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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

Issued in Renton, Washington, on May 24, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13137 Filed 5–27–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Withdrawal of proposed amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment submitted on September 24, 1993, pertains to provisions of Missouri's alternative bonding system statute. Missouri is withdrawing this

amendment because it intends to resubmit a complete package to resolve all remaining concerns identified by OSM.

EFFECTIVE DATE: This withdrawal is effective May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom; Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION: By letter dated September 24, 1993 (Administrative Record No. MO–575), Missouri submitted a proposed amendment to its program pursuant to SMCRA. The proposed amendment revised Missouri statutes concerning its bonding requirements. Missouri submitted the proposed amendment with the intent of satisfying the required program amendments at 30 CFR 925.16(g).

On October 18, 1993 (Administrative Record No. MO–580), OSM announced receipt of and solicited public comment on the proposed program amendment (58 FR 53683). On March 9, 1994 (Administrative Record No. MO–592), OSM notified Missouri of concerns it had with the proposed program amendment. On April 4, 1994 (Administrative Record No. MO–594), Missouri responded to some of OSM's concerns and requested a meeting with OSM to discuss others. On May 5, 1994, a public meeting was held between OSM and the State of Missouri at the OSM Field Office in Kansas City, Missouri (Administrative Record No. MO–597). In follow up to discussions at that meeting, Missouri formally requested that the proposed amendment be withdrawn in a letter dated May 10, 1994 (Administrative Record No. MO–598). Missouri proposes to submit a complete package of revised statutes, regulations, and other information to address all outstanding OSM concerns with the Missouri alternative bonding system.

Therefore, the proposed amendment announced in the October 18, 1993, **Federal Register** is withdrawn.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 24, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–13139 Filed 5–27–94; 8:45 am]

BILLING CODE 4310–05–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1236

RIN 3095–AA51

Vital Records; Records Disaster Mitigation and Recovery

AGENCY: National Archives and Records Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This regulation proposes to revise completely NARA regulations on Federal agencies' management of vital records and to require agencies to establish a program for protecting records from possible loss due to a disaster or an emergency. Recent natural disasters, including earthquakes, hurricanes, and floods, indicate a need for Federal agencies to implement vital records and records disaster mitigation and recovery programs. Such programs ensure continuity of agency operations and protect rights and interests of citizens and the Government documented in the records. The regulation affects all Federal agencies.

DATES: Comments must be received by August 1, 1994.

ADDRESSES: Comments should be sent to Director, Policy and Program Analysis Division (NAA), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at 301–713–6730 (FTS 301–713–6730) or TDD 301–713–6760.

SUPPLEMENTARY INFORMATION: The proposed rule incorporates three significant policy changes in the vital records program contained in the current regulation, 36 CFR part 1236. First, the emphasis of the vital records program has been changed to provide for protection against natural disasters as well as civil defense emergencies. Second, agencies will be required to duplicate vital records to ensure that such records can be given the special protection needed to prevent unauthorized loss or removal. Third, the regulation is broadened to require agencies to plan for the protection and recovery of all records affected by a disaster or an emergency. This rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993, and has not been reviewed by OMB. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1236

Archives and records.

For the reasons set forth in the preamble, NARA proposes to revise part 1236 of chapter XII of the Code of Federal Regulations to read as follows:

PART 1236—VITAL RECORDS; RECORDS DISASTER MITIGATION AND RECOVERY

Subpart A—General

Sec.

1236.10 Purpose.
1236.12 Authority.
1236.14 Definitions.
1236.16 Obtaining program assistance.

Subpart B—Contingency Planning

1236.20 Description.
1236.22 Planning requirements.
1236.24 Personnel requirements.

Subpart C—Vital Records

1236.30 Vital records program.
1236.32 Identifying, using and protecting vital records.

Subpart D—Records Disaster Mitigation and Recovery Program

1236.40 Records protection.
1236.42 Elements of a records disaster mitigation and recovery program.

Authority: 44 U.S.C. 2104(a), 2904(a), 3101, 3102, 3105; and E. O. 12656, 53 FR 47491, 3 CFR, 1988 Comp., p. 585.

Subpart A—General

§ 1236.10 Purpose.

This part prescribes policies and procedures for establishing and implementing an agency program for the identification, protection, use, and recovery of agency records, particularly vital records, before, during, and after emergencies. The records may be maintained on a variety of media including paper, electronic, audiovisual and microform.

§ 1236.12 Authority.

The authority for vital records and records disaster mitigation and recovery programs is found in the following responsibilities of the head of each agency:

(a) To make and preserve records containing adequate and proper documentation of the agency's organization, functions, policies, procedures, decisions, and essential transactions, and to furnish information to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities (44 U.S.C. 3101).

(b) To establish and maintain an active, continuing program for the efficient and economical management of the agency's records (44 U.S.C. 3102).

(c) To establish safeguards against the removal or loss of records determined to be necessary and required by the regulations of the Archivist of the United States (44 U.S.C. 3105).

(d) To perform national security emergency preparedness functions and activities (Executive Order 12656, 3 CFR, 1988 Comp., p. 585).

§ 1236.14 Definitions.

Basic records management terms are defined in 36 CFR 1220.14. As used in Part 1236:

Contingency planning means an assessment by each Federal department and agency of the actual and potential hazards, emergencies or disasters to its operations and records in order to develop and implement policies and procedures, including assigning resources, to mitigate the effects of such events on its operations and records. Contingency planning is part of the continuity of operations planning required for an agency's emergency preparedness plan. Federal Preparedness Circulars and other guidance issued by the Federal Emergency Management Agency (FEMA) provide further information on emergency preparedness planning. Executive Order 12656 specifies the responsibilities of Federal departments and agencies during national security emergencies.

Cycle means the periodic removal of obsolete vital records and their replacement with current vital records needed by a Federal department or agency. This may occur daily, weekly, quarterly, annually or less frequently, depending upon the need for the information contained in the records.

Disaster means an unexpected occurrence inflicting widespread destruction and distress.

Emergency means a situation or an occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action.

Emergency coordinator means a senior policy official in each Federal department and agency appointed by the head of the agency to be responsible for developing and maintaining a multi-year, national security emergency preparedness plan for the department or agency to include objectives, programs, and budgetary requirements. Executive Order 12656 defines this position and its responsibilities.

Emergency operating records are vital records, regardless of media, essential to the continued functioning or reconstitution of an organization during and after an emergency. Included are emergency plans and directive(s), orders of succession, delegations of authority, staffing assignments, and related records of a policy or procedural nature that provide agency staff with guidance for conducting operations under emergency conditions and for resuming normal operations after an emergency.

Hazard means a danger, a peril, or a risk.

National security emergency means any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States. This term is defined in Executive Order 12656.

Records disaster mitigation and recovery program means the policies, plans and procedures developed and implemented and the resources assigned by each Federal department and agency to protect its records from unauthorized disclosure, loss, or removal or to mitigate any such actual disclosures, losses, or removals that may occur.

Rights-and-interests records are vital records, regardless of media, essential to protect the legal and financial rights and interests of an organization and of the individuals directly affected by its activities. Included are records having such important value that their loss would significantly impair the completion of essential agency activities to the detriment of the legal or financial rights of the organization or individuals directly affected by its activities. Examples of this category of vital records are accounts receivable records, social security records, payroll records, retirement records, and insurance records.

Vital records mean essential agency records that are needed to meet the agency's operational responsibilities under national security emergencies or other emergency conditions (emergency operating records) or needed to preserve the Government's rights and interests or those of its citizens (rights-and-interests records).

Vital records manager means an official in each Federal department and agency designated to coordinate, with other appropriate agency officials, the identification, use, protection, and cycling of the agency's vital records.

Vital records program means the policies, plans, and procedures developed and implemented and the resources assigned by each Federal department and agency to identify, use, and protect the essential records needed to meet its operational responsibilities under national security emergencies or other emergency conditions or needed to preserve the Government's rights and interests or those of its citizens.

§ 1236.16 Obtaining program assistance.

(a) Except for inquiries concerning vital records storage in Federal records centers, agencies should direct questions about vital records and records disaster mitigation and recovery to the Agency Services Division, Office of Records Administration, National Archives at College Park (NIA), 8601 Adelphi Road, College Park, MD 20740–6001.

(b) Agencies should direct questions about vital records storage at Federal records centers, including transfer procedures, to the appropriate center director (see § 1228.150 of this chapter for addresses) or to the Office of Federal Records Centers, National Archives at College Park (NC), 8601 Adelphi Road, College Park, MD 20740–6001.

(c) Agencies should consult with appropriate units of the General Services Administration (GSA) and the Federal Emergency Management Agency (FEMA) about the disaster recovery and emergency coordination programs which they administer.

Subpart B—Contingency Planning

§ 1236.20 Description.

Contingency planning prepares an agency to meet its responsibilities under other than normal operating conditions. Such planning is critical to assessing an agency's vital records needs and program requirements and to determining the means required to protect and recover records that may be damaged or destroyed. The planning process should be flexible and lead to the development of procedures addressing various actual or potential hazards ranging from limited or minor emergencies to major disasters. For example, a limited emergency may arise when a waterpipe bursts in a building and water damages records at that specific site. On the other hand, the 1993 flooding in the Midwest is an example of a major disaster, affecting a number of Federal agencies and requiring the movement of records to safe areas to prevent their possible damage or loss. Contingency planning includes an analysis of actual or potential hazards to agency operations and records and the probability of occurrence. Hazards may include fire, flood, theft, explosion, sabotage, war or sudden attack, structural building failures, and environmental emergencies, particularly exposure of individuals to hazardous substances.

§ 1236.22 Planning requirements.

The planning must address: (a) What basic agency operations must continue during an emergency;

(b) The responsibilities of agency staff under such conditions;

(c) What records are required to support those responsibilities, to resume basic functions following the emergency or disaster, and to protect the rights and interests of the Government and its citizens; and

(d) What procedures and resources must be available to protect records from unauthorized loss or removal and recover or replace those damaged or destroyed in an emergency or disaster.

§ 1236.24 Personnel requirements.

Senior agency officials concerned with such functions as information resources management, records management, emergency coordination, facilities management, public affairs, security, and safety should participate in the planning.

Subpart C—Vital Records

§ 1236.30 Vital records program.

There are several elements required to establish and implement a vital records program.

(a) *Directive.* Each Federal agency must issue a directive(s) or other published authorization establishing program objectives, responsibilities, and authorities for the agency's vital records program, including the formal designation of a vital records manager. The directive should deal in some detail with the process of identifying, protecting, using, and keeping vital records current and with the responsibilities of appropriate agency officials in implementing the program. Copies of the directive(s) or other authorization, including subsequent amendments or supplements, must be disseminated throughout the agency as appropriate.

(b) *Training.* Adequate training must be provided to appropriate agency personnel at all levels on policies, responsibilities, and techniques for the implementation of the vital records program.

(c) *Annual review.* An agency's vital records program must be reviewed annually and modified, as necessary, to reflect changes in the agency's mission, programs, or operations. Ideally, such a review will include testing of the program by appropriate agency staff in mock disaster situations. The review must also determine whether the vital records selected for duplication (see § 1236.32) are current, complete, adequately protected, accessible, and usable when needed.

§ 1236.32 Identifying, using and protecting vital records.

(a) *Vital records plan.* Each Federal agency must develop and implement a plan for identifying and protecting its vital records in accordance with Subpart B and § 1236.40 of this part. Critical to this effort is the development and maintenance of a current inventory of the agency's record series and information systems deemed to be vital. The vital records plan is a crucial element of an agency's emergency preparedness continuity of operations plan.

(b) *Volume and use.* In identifying vital records, an agency must keep the volume of records at a manageable level. Also, retrieval procedures should require only routine effort to locate needed information, keeping in mind that during an emergency those who will use the records may not be the same individuals as those who use them under normal conditions.

(c) *Vital records copies.* The copy of the vital record stored off-site is normally a duplicate of the original record. Generally, designating and using duplicate copies of original records as vital records is preferable to using the original records themselves because the duplicates are easier to manage and to keep current. Obsolete duplicates may be disposed of upon their replacement by duplicates containing updated information, whereas original records used as vital records must be retained for the period specified in the agency records schedule. In rare cases, the agency may designate the original as the emergency off-site copy and retain the duplicate in current files. The agency may decide to store the original record off-site if original signatures are necessary, or if it does not need to keep the original record at its normal place of business. The agency should ensure that proper storage conditions exist for originals stored off-site and that their disposition is authorized and carried out under the terms of an approved agency records schedule.

(d) *Storage considerations.* The storage site for off-site copies depends on the category of vital record. Records that fall into both categories are handled as emergency operating records.

(1) The off-site copies of emergency operating vital records should be stored reasonably near the agency for immediate use in the event of disaster, generally in a designated off-site emergency operations center. They may not be located at a Federal records center.

(2) The off-site copy of rights-and-interests vital records may be stored at an off-site agency location or, in accordance with § 1228.156 of this chapter, at any Federal records center. When duplicate copies of these records maintained to protect legal and financial rights are transferred to a Federal records center, the agency must identify them as vital records, specify that they are duplicates and the medium on which they are maintained, and periodically cycle (update) them by removing obsolete items and replacing them with the most recent version.

(e) *Management controls.* An agency must apply management controls to off-site copies to ensure that they are accurate, current, and complete. The disposition controls that apply to the vital record must also be applied to the off-site copy. Periodic cycling should occur.

(f) *Disposition of permanent vital records.* The original copies of vital records that have been appraised and scheduled as permanent must be transferred to the National Archives as provided in the agency records schedule. After transfer, the agency may dispose of any duplicate copy in its custody when it is no longer needed for current business.

Subpart D—Records Disaster Mitigation and Recovery Program

§ 1236.40 Records protection.

Federal records have value. Their value determines the level of protection that they require. Appropriate agency officials must identify and implement suitable protective measures for agency records, including vital records, to address actual or potential hazards, emergencies or disasters identified in contingency planning and to which the agency may be subject. Protective measures include, but are not limited to, using fire-rated filing equipment; providing an on-site vault to store records required for continuing agency operations, for protecting legal or financial rights and interests, or for those deserving more than routine protection; transferring records to off-site storage not subject to the same hazard, emergency or disaster; conducting regular facility and security inspections of records storage areas, such as off-site inactive storage and vital records holding areas, to identify potential hazards; duplicating records at the time of creation, such as computer "backup tapes;" using existing duplicates routinely created in the normal course of business; or microfilming required records. Standards for the creation, preservation and use of microforms are found in 36 CFR part 1230—Micrographic Records Management, and for audiovisual

records in 36 CFR part 1232—Audiovisual Records Management. For electronic information systems, agencies should be aware of the protective measures and standards prescribed by the Computer Security Act of 1987 (40 U.S.C. 759, Pub. L. 100–235), OMB Circular A–130, and 36 CFR Part 1234—Electronic Records Management and 41 CFR part 201, Subchapter B-Management and Use of Information and Records.

§ 1236.42 Elements of a records disaster mitigation and recovery program.

There are several elements required to establish and implement a records disaster mitigation and recovery program.

(a) *Directive.* Each Federal agency must issue a directive(s) or other published authorization establishing program objectives, responsibilities, and authorities for the agency's records disaster mitigation and recovery program, including the formal designation of an official assigned program responsibility. This directive need not necessarily be a separate directive devoted exclusively to records disaster recovery, but may be issued as part of the agency's vital records or other emergency planning directive(s). Copies of the directive(s) or other authorization, including subsequent amendments or supplements, must be disseminated throughout the agency as appropriate.

(b) *Records recovery plan.* Each Federal agency must develop and implement a records recovery plan. Such a plan outlines how records, regardless of media, damaged by fire, water, or other agents may be preserved and/or recovered and the information in them made available for continued use. The plan must assign specific tasks to a designated agency recovery team, including damage assessment; define the priority in which specific records or record media receive attention when damaged and the time frame in which required recovery actions should occur; and contain other recovery information, such as lists of records recovery consultants and lists of supplies and equipment to be maintained on-site in the event of an emergency.

(c) *Training.* Adequate training must be provided to appropriate agency personnel at all levels on policies, responsibilities, and techniques for the implementation of the records disaster mitigation and recovery program.

(d) *Annual review.* An agency's records disaster mitigation and recovery program must be reviewed annually and modified, as necessary, to reflect changes in the agency's mission, programs, or operations. Ideally, such a review will include testing of the recovery plan by members of a designated recovery team in mock disaster or emergency situations. The review must also determine whether the resources and information needed to implement a records recovery plan are adequate, complete and current.

Dated: May 23, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–13180 Filed 5–27–94; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS # CA–65–1–6176; FRL–4889–6]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA today proposes to approve the State Implementation Plan (SIP) revision submitted by the State of California for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the Federal mandate 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 is set forth in this notice; additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by June 30, 1994. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments can be mailed to the U.S. Environmental Protection Agency, Division Director, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105, Attention: R. Michael Stenburg.

Copies of the State's submittal and EPA's technical support document are available for inspection during normal business hours at the following locations: (1) U. S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105; (2) State of California, Air Resources Board, 2020 L Street, Sacramento, CA 95814.

For further information contact: R. Michael Stenburg, A–1, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1102.

SUPPLEMENTARY INFORMATION:

I. Background

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 State of California has submitted a SIP revision to EPA in order to satisfy the requirements of Section 507. In order to gain full approval, the State submittal 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; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement by providing training courses and compliance assistance manuals and by working with the California Trade and Commerce Agency to disseminate technical information.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by providing training on pollution prevention and environmental hazard management. The Air Resources Board (ARB) training programs and the state university and community college systems provide training on pollution prevention. In addition the California Trade and Commerce Agency's Business Environmental Assistance Center's database provides technical information on pollution prevention. The University of California Extension Centers offer an environmental hazard management program. The Office of Emergency Services has an accidental release detection and prevention program that receives technical support from the ARB.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement through its compliance assistance and training programs which provide appropriate training courses and compliance assistance manuals. The California Trade and Commerce Agency's Business Environmental Assistance Center provides information on regulatory requirements. The ARB's technical staff and local air permitting agencies also provide assistance in determining permitting requirements.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by proposing a pamphlet explaining the rights of small businesses affected by the Act and by having the ARB legal office respond to specific questions.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement by operating a Registered Environmental Assessors Program and by proposing a pamphlet explaining the obligations of small businesses affected by the Act.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of (A) any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by virtue of the fact that local air permitting agencies have a variance procedure for considering alternative compliance methods and schedules. The hearing notices of the ARB and local air permitting agencies are required by law to solicit information on alternative compliance methods for small businesses facing severe economic impacts from regulation.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by proposing to create a high level position in the California Air Resources Board to serve as the Ombudsman. Although the Ombudsman's office will be located within the Air Resources Board (ARB), the position will not be responsible for nor accountable to the ARB staff that are implementing the program. The Ombudsman's office will disseminate information, make referrals, respond to complaints, and have a toll-free hotline. In February 1994, the state advised us that candidates for the position of Ombudsman were being reviewed.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by specifing that they will establish a Compliance Advisory Panel.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act; [2] (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by proposing that the purpose of the panel is to assist program development and monitor and render advisory opinions on the overall effectiveness of the program. The state has clarified in writing to utilizing the Small Business Stationary Source Technical and Compliance Program to serve as the secretariat for the CAP on the development and dissemination of its reports and advisory opinions. Additional authorities will be to issue reports to EPA on the program's compliance with federal requirements and to review publications to ensure that they are understandable to small business operators.

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;
(B) Is a small business concern as defined in the Small Business Act;
(C) Is not a major stationary source;
(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and
(E) Emits less than 75 tpy of all regulated pollutants.

The State has not established a definition of a small business and therefore has not established procedures for including or excluding sources from that definition. As a general rule, in mailing pamphlets and in providing information on hotlines, the State does not plan to screen businesses seeking information. The goal of the State is to develop and implement a program that will assist all businesses needing environmental assistance to operate in compliance in California. In addition to fulfilling the requirements of the Federal program, the State is committed to going beyond the federal program definition in offering assistance to any small business.

III. Today's Action

In today's action, EPA is proposing to approve the SIP revision submitted by the State of California.

The State of California has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA by November 15, 1994. The State SIP revision commits to: (1) Create a high level position in the Air Resources Board to serve as State Small Business Ombudsman, (2) notify the appointing authorities of the need to appoint members to the Compliance Advisory Panel, (3) initiate the Small Business Assistance Program through expansion of existing programs as well as the creation of new programs. EPA is therefore proposing to approve this submittal.

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). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future notice will inform the general public of these tables. Under the revised tables this action remains classified as a Table 2. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. The US EPA 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 EPA's request. This request continued 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 today's action, EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. 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, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 13, 1994.

John Wise,

Acting Regional Administrator.

[FR Doc. 94–13188 Filed 5–27–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[IL12–34–6434; FRL–4887–8]

Approval and Promulgation of Implementation Plans; Illinois; Extension of the Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: The Environmental Protection Agency (EPA) extended the comment period for a proposed rule published December 16, 1993 (58 FR 65688). On December 16, 1993, EPA proposed rulemaking in response to a Petition for Reconsideration filed with the Administrator on behalf of Riverside Laboratories' (Riverside) Kane County, Illinois facility. On February 25, 1994 (59 FR 9154), EPA announced a public hearing scheduled on this proposed rule on April 6, 1994, and that the public comment period was reopened from February 25, 1994 until May 6, 1994. At the request of Riverside the public comment period was extended 10 days to May 16, 1994, to allow Riverside to examine the transcript of the public hearing.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano at (312) 886–6036.

Dated: May 11, 1994.

Michelle D. Jordan,

Acting Regional Administrator.

[FR Doc. 94–12903 Filed 5–27–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 402

RIN 0970–AB28

State Legalization Impact Assistance Grants (SLIAG)

AGENCY: Administration for Children and Families, HHS, Office of Refugee Resettlement.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families proposes to amend the final rule implementing the State Legalization Impact Assistance Grant (SLIAG) program. This proposed rule provides that grant funds not expended by participating States by December 30, 1994, be reallotted to States with unreimbursed SLIAG-related costs. The intent of this proposal is to ensure that States with unreimbursed SLIAG-related costs are reimbursed for those costs to the extent to which funds are available at the end of the SLIAG program.

DATES: Comments must be received on or before August 1, 1994.

ADDRESSES: Comments may be mailed to Henley Portner, Division of State Legalization and Repatriation, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant

Promenade, SW., 6th floor, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: David B. Smith (Director, Division of State Legalization and Repatriation), 202–401–9255.

SUPPLEMENTARY INFORMATION:

Background

State Legalization Impact Assistance Grants (SLIAG) are mandated by the Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99–603), as amended. The purpose of SLIAG is to lessen the financial impact on State and local governments that may result from the legalization of aliens under IRCA. The Department published a final rule, 45 CFR part 402, implementing section 204 of IRCA, on March 10, 1988, and has subsequently amended that rule in response to programmatic and administrative requirements.

The Labor/Health and Human Services FY 1993 Appropriations Act, Public Law 102–394, dated October 6, 1992, amended Section 204(b)(4) of IRCA. Section 204(b)(4) previously provided that funds under SLIAG would remain available to States for obligation through September 30, 1994. The FY 1993 HHS Appropriations Act amendment to IRCA provides that any funds not expended as of December 30, 1994, be reallocated to participating States which have expended their entire allotments and which have incurred unreimbursed SLIAG-related costs in excess of their allotments. The basis for the reallocation is each State's percentage share of total unreimbursed SLIAG-related costs in all States. The amendment provides that reallocated SLIAG funds will be available to States until June 30, 1995.

Previous Formula Allocations of SLIAG Funds

Section 204(b)(1) of IRCA mandated that, between FY 1988 and FY 1994, SLIAG funds be allocated to States by a formula which took into account the population of eligible legalized aliens (ELAs) in each State; the ratio of ELAs in each State to the population of the State and to the number of ELAs in all States; the costs incurred by each State in providing services to ELAs; and the ratio of costs incurred by each State to the total of all such costs in all States. States' costs were to be reimbursed from their grants to the extent that these costs have been documented and determined to be allowable SLIAG-related costs as defined in the SLIAG regulations.

At the beginning of the SLIAG program, very little information existed about the types of programs which the legalized alien population would access or about the participation rates of the legalized alien population in these programs. The costs submitted by States and used in the allocation formula in FY 1988 and FY 1989 were therefore estimates. (Since FY 1990, when States began to be able to document and submit the actual SLIAG-related costs they had incurred, the costs incorporated in the formula have also included States' actual SLIAG-related costs.) Current data indicate that the estimated costs used in the FY 1988 and FY 1989 allocations were imperfect predictors of what States' actual SLIAG-related costs would be in providing services to the ELA population. Furthermore, as mandated by the legislation, more than $1.8 billion in grant funds were allocated in FY 1988 and FY 1989. Thus, over one-half of the funds appropriated under IRCA were allocated when States were only able to provide estimated costs for use in the allocation formula. For these reasons, some States have received grants that are projected to be in excess of the SLIAG-related costs they will have incurred by the end of the program. Other States have received grants that are less than their total SLIAG-related costs. The amendment to IRCA on reallocating unexpended funds will provide reimbursement for their costs to States whose grants are less than their allowable documented costs.

Reallocation of Unexpended Funds

To implement the amendment, we are proposing to add section 402.34, concerning allocation of unexpended funds, to the SLIAG regulations. This section would provide that any SLIAG funds unexpended as of December 30, 1994, would be reallocated to States with unreimbursed SLIAG-related costs to the extent to which such funds are available. Section 402.2, Definitions, would be amended to define "unreimbursed SLIAG-related costs" as those costs the Department has accepted as of March 15, 1995, which exceed the amount of the allotments the State had received through September 30, 1994. "Unexpended funds" would be defined as the amount by which the allotments received by a State through September 30, 1994, exceed the amount of the State's SLIAG-related costs accepted by the Department as of March 15, 1995.

Since the funds made available to States pursuant to Public Law 102–394 would be reallotments of previously allotted funds, no application for reallocated funds would be required. The Department's acceptance of documented SLIAG-related costs which establish that the State has SLIAG-related costs in excess of the total amount of its allotments through FY 1994 would constitute the State's request for reallocated funds. Sections 402.30 and 402.40 would be amended to explain that no application is required to receive reallocated funds.

Source of Data for Reallocation

States must document the actual SLIAG-related costs they have incurred in the annual reports which they submit to the Department for each year during which a State receives or during which a State obligates or expends SLIAG funds. The annual reports therefore provide the data necessary to determine the total SLIAG-related costs incurred by a State in providing allowable services.

The annual reports required by § 402.51 are due 90 days after the end of the fiscal year. Annual reports for FY 1994 are due December 29, 1994. Since the determination of unreimbursed SLIAG-related costs would be based on the SLIAG-related costs reported in the annual reports and accepted by the Department as of March 15, 1995, § 402.11 would be amended to clarify that reimbursement for SLIAG-related costs is available only for costs which have been accepted by the Department by that date. No reimbursement under SLIAG for any grant year would be available for costs not submitted by December 29, 1994, or not found acceptable by the Department as of March 15, 1995. The latter date would allow sufficient time for States to submit any necessary revisions to their FY 1994 and earlier years' annual reports resulting from Department review before the determination of total unexpended funds and unreimbursed SLIAG-related costs is made.

Section 402.26 currently states that obligations of grant funds must be expended within 90 days of the end of the funding period. Since the funding period for all SLIAG grants ends on September 30, 1994, no obligations of funds for SLIAG-related activities may be made after that date. All obligations must be expended by December 29, 1994, for States to receive reimbursement.

The current regulations also state that the deadline for expending obligations may be extended if extenuating circumstances prevent a State from meeting it. The amendment to IRCA, however, requires that funds unexpended as of December 30, 1994, be reallocated to States with unreimbursed SLIAG-related costs. For this reason, the proposed rule would revise § 402.26 to state that all obligations must be expended by

December 29, 1994, without the possibility of extension. This change will allow the Department to determine the amount of unexpended funds as of December 30, 1994, as mandated by IRCA.

Calculation of Unexpended Funds and Unreimbursed Costs

A new § 402.34 would be added to the SLIAG regulations to establish the procedure for allocating unexpended funds to States with unreimbursed SLIAG-related costs. To determine unexpended funds and unreimbursed SLIAG-related costs, (1) the cumulative amount of allotments received by each State through September 30, 1994, would be calculated; (2) the total costs accepted by the Department as of March 15, 1995, based on the annual cost reports submitted by the State, would be calculated; and (3) total costs for each State would be subtracted from each State's cumulative allotments.

The positive results of this subtraction would constitute each State'e unexpended funds. The unexpended funds for each State would be added together to determine the total amount of unexpended funds in all States.

Any negative results of this subtraction would constitute a State's unreimbursed SLIAG-related costs. Total unreimbursed SLIAG-related costs for participating States would be the sum of the negative results of this calculation.

Allocation of Unexpended Funds

To allocate the unexpected funds, each State's percentage share of total unreimbursed SLIAG-related costs would be calculated. The percentage for each State would be found by dividing each State's unreimbursed SLIAG-related costs by the total amount or unreimbursed SLIAG-related costs for all States with such costs. The percentages thus obtained would be multiplied by the total amount of unexpended funds to determine the allocation for each State with unreimbursed SLIAG-related costs.

Allotment of Unexpended Funds

The amount determined by the above calculation would constitute each State's allocation. The amount of the allotment awarded to each State would depend on whether the total amount of unexpended funds is greater or less than the total amount of unreimbursed costs. To determine the amount of each State's allotment, the total amount of unexpended funds would be compared to the total amount of unreimbursed SLIAG-related costs. If unexpended funds are less than total reimbursed costs, each State would receive an allotment equal to the amount of its allocation (i.e., its percentage share of total unexpended funds). If unexpended funds are greater than unreimbursed costs, each State's allotment would equal the amount of its accepted unreimbursed SLIAG-related costs.

Use of Reallotted Funds

Currently, funds provided under SLIAG may be used by States for reimbursement of SLIAG-related costs incurred in the fiscal year in which the funds are awarded and during the following fiscal years of the program. Section 402.10 would be amended to allow funds reallotted after December 30, 1994, to be used by States for reimbursement of approved SLIAG-related costs incurred in any fiscal year of the program. The section would also be amended to state that funds provided in FY 1993 and FY 1994 may be used for costs incurred in FY 1990 and in succeeding years, as prescribed by Public Law 102–394.

In accordance with the amendment to IRCA, the reallotted funds would remain available to States through June 30, 1995, for reimbursement of their SLIAG-related costs. We anticipate that States will have drawn down the amount of their approved SLIAG-related costs (or, for States with costs in excess of their grants, the amount of their allotments) before December 30, 1994. If, however, a State has not drawn down the full allowable amount, the funds allotted before September 30, 1994, would also continue to be available for drawdown through June 30, 1995. After June 30, 1995, no funds—either previously allotted or reallotted funds—would remain available. Section 402.11, Limitations on use of SLIAG funds, would be amended to state that funds awarded under SLIAG are available for drawdown through June 30, 1995.

Reporting

To implement this amendment, § 402.51 would be revised to clarify the reporting requirements for FY 1994 and FY 1995. The annual reports due 90 days after the end of FY 1994 would, as currently required, include costs incurred during FY 1994. States have until December 29, 1994, to expend obligations incurred through September 30, 1994. since all SLIAG-related costs must be documented and reported to the Department before States may be reimbursed for them, this proposed rule would require that SLIAG-related costs incurred as a result of expending obligations between September 30, 1994, and December 29, 1994, be submitted to the Department in the FY 1994 annual report.

Since all SLIAG-related costs for which the reallotments will be provided would have been submitted in previous annual reports and accepted by the Department, no annual report would be required for FY 1995. Section 402.51 would be amended to indicate that Financial Status Reports (SF 269) are required 90 days after the last day (June 30, 1995) on which States could draw down funds from their allotments (i.e., by September 28, 1995).

Regulatory Procedures

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective an least burdensome while still achieving the regulatory objectives.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements, and therefore, no approvals are necessary under section 3504 of the Paperwork Reduction Act of 1980 (Public Law 96–511).

Regulatory Flexibility Act

The Regulatory Flexibility Act (Public Law 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small entities.

The primary impact of this rule is on State governments. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities because it affects the reallocation and reallotment of SLIAG funds to State governments. Thus, a regulatory flexibility analysis is not required.

[Catalogue of Federal Domestic Assistance Program No. 93.565, State Legalization Impact Assistance Grants]

List of Subjects in 45 CFR Part 402

Administrative cost, Aliens, Allocation formula, Allotment, Education, Grant programs, Immigration, Immigration Reform and Control Act, Public assistance, Public health assistance, Reporting and recordkeeping requirements, State Legalization Impact Assistance Grants.

Dated: March 22, 1994

Mary Jo Bane,

Assistant Secretary for Children and Families.

Dated: May 14, 1994.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set out in the preamble, the Administration for Children and Families proposes to amend 45 CFR part 402 as follows:

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

1. The authority citation for part 402 continues to read as follows:

Authority: 8 U.S.C. 1255a note, as amended.

2. Section 402.2 is amended by revising the definitions of "allocation" and "allotment" and by adding definitions for "unexpended funds" and "unreimbursed SLIAG-related costs" to read as follows:

§ 402.2 Definitions.

* * * * *

Allocation means an amount designated for a State, as determined under § 402.31, § 402.33, or § 402.34.

Allotment means the total amount awarded to a State, as determined under § 402.31, § 402.33, or § 402.34.

* * * * *

Unexpended funds means the amount by which allotments awarded to a State, as determined under § 402.31 and § 402.33 of this part, exceed the State's SLIAG-related costs, as defined in this part, reported in annual reports pursuant to § 402.51 and accepted by the Department as of March 15, 1995.

Unreimbursed SLIAG-related costs means the amount by which a State's total SLIAG-related costs, as defined in this part, reported in annual reports pursuant to § 402.51 and accepted by the Department as of March 15, 1995, exceed the allotments awarded to a State, as determined under § 402.31 and § 402.33 of this part.

3. Section 402.10(a) if revised to read as follows:

§ 402.10 Allowable use of funds.

(a) Funds provided under § 402.31 and § 402.33 of this part for a fiscal year may be used only with respect to SLIAG-related costs incurred in that fiscal year or succeeding fiscal years, except that funds provided for FY 1993 and FY 1994 may be used for SLIAG-related costs incurred in FY 1990 or succeeding years. Funds provided under § 402.34 of this part may be used with respect to SLIAG-related costs incurred in any fiscal year of the program. Funds may be used, subject to §§ 402.11 and 402.26, for the following activities, as defined in this part:

(1) Public assistance;

(2) Public health assistance;

(3) Educational services;

(4) Employment discrimination education and outreach;

(5) Phase II outreach;

(6) SLIAG administrative costs; and

(7) Program administrative costs.

* * * * *

4. In § 402.11, paragraphs (p) and (q) are added to read as follows:

§ 402.11 Limitations on use of SLIAG funds.

* * * * *

(p) Funds provided under this part may be used only for SLIAG-related costs submitted to the Department pursuant to § 402.51 and accepted as allowable costs by March 15, 1995.

(q) Funds awarded under this part will remain available to States for reimbursement of SLIAG-related costs until June 30, 1995.

5. In § 402.26, paragraph (b) is revised to read as follows:

§ 402.26 [Amended]

* * * * *

(b) Obligations of funds by States must be expended by December 29, 1994.

6. Section 402.30 is amended by revising the first sentence and adding a second sentence to read as follows:

§ 402.30 Basis of awards.

The Secretary will award funds in a fiscal year under § 402.31 or § 402.33 to States with approved applications for that fiscal year in accordance with the apportionment of funds from the Office of Management and Budget. The Secretary will award funds under § 402.34 to States whose annual reports submitted pursuant to § 402.51 establish that their allowable SLIAG-related costs exceed the total of their allotments, as determined under § 402.31 and § 402.33.

* * *

7. Section 402.34 is added to read as follows:

§ 402.34 Allocation of unexpended funds.

(a) Any unexpended funds, as defined in this part, from allotments awarded to States under § 402.31 and § 402.33 of this part, will be allocated to States with unreimbursed SLIAG-related costs, as defined in this part.

(b) To determine the allocations, the ratio of each State's unreimbursed SLIAG-related costs to the total of all such costs in all States will be calculated. The ratio for each State with unreimbursed SLIAG-related costs will be multiplied by total unexpended funds to determine the allocation for each State. The amount allotted to a State will be the amount of the State's allocation under this section or the amount of the State's unreimbursed SLIAG-related costs, whichever is less.

8. Section 402.40 is amended by revising the first sentence and adding a third sentence to read as follows:

§ 402.40 General.

In order to be eligible for funds available under § 402.31 or § 402.33 of this part in a fiscal year, a State must submit an annual application. * * * In order to be eligible for funds under § 402.34 of this part, a State must submit annual reports pursuant to § 402.51 which establish that the State has incurred SLIAG-related costs in excess of the amount of the allotments it received under § 402.31 and § 402.33 of this part.

9. Section 402.51 is amended by redesignating paragraph (a) as paragraph (a)(1) and revising the first sentence of that paragraph, by adding paragraph (a)(2), and by revising the introductory text of paragraph (c) to read as follows:

§ 402.51 Reporting.

(a)(1) After the end of each Federal fiscal year through FY 1994 for which it received or during which it obligated or expended SLIAG funds and by the due date indicated below, a State must submit annual reports containing the information identified in (c) and (e) of this section. * * *

(2) A State which expends funds pursuant to § 402.26(b) must submit a report containing the information identified in (e) of this section. The report is due no later than December 29, 1994. A State which receives funds pursuant to § 402.34 must submit a report containing the information identified in (c) of this section. The report is due no later than September 28, 1995.

* * * * *

(c) A State's annual report must provide information on the status of each fiscal year's funds, as of September 30, for the fiscal year for funds received under § 402.31 and § 402.33, and as of June 30, 1995, for funds received under § 402.34, including:

* * * * *

(Approved by the Office of Management and Budget under control number 0970–0079)

[FR Doc. 94–13165 Filed 5–27–94; 8:45 am]

BILLING CODE 4184–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20, 22, and 90

[GN Docket No. 93-252; FCC 94-100]

Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Further Notice of Proposed Rule Making (Further Notice) in response to Congress mandate directing the agency to implement sections 3(n) and 332 of the Communications Act of 1934 as amended by title VI, section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, 107 Stat. 312, 392 (Budget Act). The intended effect of this Further Notice is to implement this legislation by soliciting comment on conforming the Commission's technical, operational, and licensing rules for commercial mobile radio service providers, including rules for commercial mobile radio service providers, including licensees in services formerly classified as private.

DATES: Comments must be filed on or before June 20, 1994, and reply comments must be filed on or before July 11, 1994.

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

FOR FURTHER INFORMATION CONTACT: Private Radio Bureau Contacts: David Furth or Kathleen O'Brien Ham, (202) 634-2443. Common Carrier Bureau Contacts: Nancy Boocker (202) 632-6450, or Jay Jackson (202) 653-5560.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making, GN Docket No. 93-252, FCC 94-100, adopted April 20, 1994, and released the May 20, 1994 (Further Notice). The full text of the Notice is available for inspection and copying during normal business hours in the FCC Public Reference Center, Room 239 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M St., NW., suite 140, Washington DC 20037, (202) 857-3800.

Summary of Notice of Proposed Rule Making

A. Introduction and Overview

1. On February 3, 1994, the Commission adopted a Second Report and Order in this proceeding that implemented the basic provisions of sections 3(n) and 332 of the Communications Act (the Act), as amended by section 6002(b) of the Omnibus Budget Reconciliation Act of 1993. Second Report and Order, Implementation of sections 3(n) and 332 of the Communications Act. Regulatory Treatment of Mobile Services, GN Docket No. 93-252, 9 FCC Red 1411, 59 FR 18493 (April 19, 1994) (Second Report and Order). This Further Notice proposes further modifications to the Commission's existing mobile services rules that are necessary to complete the transition to the new regulatory regime envisioned by Congress and establish regulatory symmetry in the regulation of mobile services.

2. Specifically, the Further Notice addresses the impact of the amended statute on technical, operational, and licensing rules for the mobile services, and particularly on the rules affecting those former private land mobile services that have been reclassified as "commercial mobile" radio services (CMRS) by the Second Report and Order. As required by the Budget Act, the Commission proposes to amend these rules to ensure that competitors in the mobile services marketplace are subject to comparable regulatory requirements and that inconsistencies in our regulation of substantially similar services are eliminated. The Commission will act on these proposals by the August 10, 1994 deadline established by Congress for adoption of rules implementing the statute.

B. Comparison of Reclassified Part 90 Services and "Substantially Similar" Common Carrier Services

3. The statute directs the Commission to ensure that private land mobile licensees who are reclassified as CMRs providers are subject to technical requirements comparable to those that apply to providers of "substantially similar" common carrier services. Therefore, the Further Notice first addresses to the issue of what is meant by "substantially similar" services for this purpose. Because one of the principal goals of the Budget Act is regulatory parity within product markets and geographic markets for services that compete with each other, the Commission proposes to base the determination of substantial similarity primarily on whether the CMRS providers in question compete to meet similar customer demands for services.

4. The Commission seeks specific comment on the degree to which Specialized Mobile Radio (SMR), 220-222 MHz service, Business Radio, and private paging—the four categories of private land mobile service potentially subject to reclassification as CMRS—are "substantially similar" to any part 22 mobile service.

5. *SMR:* The Further Notice states that "enhanced" wide-area SMR service and cellular service could be viewed as substantially similar, but that traditional SMR service may be more analogous to traditional common carrier radiotelephone service.

6. *220-222 MHz Service:* The Commission states that it appears unlikely that 220 MHz licensees would offer services similar to cellular or broadband PCS, but seeks comment on whether 220 MHz service could be competitive alternative to other existing common carrier services or narrowband PCS.

7. *Business Radio:* The Commission seeks comment on whether CMRS licensees on Business Radio channels should be considered to provide service that is substantially similar to services provided by part 22 licensees, particularly in light of the fact that Business Radio frequencies are licensed on a non-exclusive basis and therefore must be shared by multiple licensees.

8. *Paging:* The Commission tentatively concludes that private and common carrier paging should be deemed substantially similar for statutory purposes. The Further Notice requests comment, however, on whether private paging licensees using shared frequencies below 900 MHz are in providing service competitive with common carrier paging service.

C. Technical and Operational Rules

9. Next, the Further Notice seeks comment on how to ensure that technical and operational rules for reclassified part 90 licensees and carriers and other service providers offering substantially similar common carrier services are "comparable." The Commission proposes to identify and eliminate those differences in existing technical and operational rules that would otherwise result in inconsistent regulation of substantially similar CMRS services. In those instances where modification of existing technical and operational rules is required, the Further Notice seeks comment on which of the following alternatives would best promote competition and ensure regulatory symmetry: (1) Extension of the part 22 rule to part 90 CMRS

services; (2) extension of the part 90 rule to part 22 services; or (3) modification of both part 22 and part 90. The Future Notice also seeks comment on the degree to which technical and operational rules for existing mobile services should be conformed to technical and operational rules for Personal Communications Service (PCS).

10. *Channel Assignment and Service Area.* The Commission seeks comment on whether the channel assignment rules for 800 and 900 MHz SMR should be revised to facilitate licensing on a wide-area, multi-channel basis comparable to licensing of cellular and broadband PCS spectrum. The Commission also seeks comment on how to ensure that rule revisions intended to make wide-area SMR service more comparable to other wide-area CMRS offerings do not adversely affect traditional SMR systems designed primarily to provide dispatch service to small groups of customers. The Further Notice states that a possible alternative in the 800 MHz band would be to implement optional wide-area licensing procedures similar to the "Expanded Mobile Service Provider" (EMSP) proposal set forth in the Commission's Notice of Proposed Rule Making in PR Docket No. 93–144, 8 FCC Rcd 3950, 58 FR 33062 (June 15, 1993). Because of recent licensing activity in this band, however, the Further Notice seeks comment on whether sufficient spectrum is available to support multi-channel licensing on an MTA-wide basis, or whether the Commission's objectives could be more practically achieved by allowing 800 MHz licensees to establish and operate in self-defined service areas. In the 900 MHz band, which is not heavily licensed, the Commission seeks comment on whether to proceed with its "900 MHz Phase II" proposal in PR Docket No. 89–553. See First Report and Order and Further Notice of Proposed Rule Making, 8 FCC Rcd 1469, 58 FR 12176 (March 3, 1993).

11. The Commission also seeks comment on channel assignment and service area definitions applicable to non-SMR Part 90 services subject to reclassification as CMRS. The Commission notes that in Business Radio and paging services where channels are shared, it could be difficult to superimpose a system of exclusive channel assignments. Commenters are asked whether the shared use of channels in such services should be limited as a means of promoting competition. In the case of 900 MHz paging, the Commission observes that the rules for assigning common carrier and private paging frequencies are already very similar, but seeks comment on whether additional conforming of the rules is required. The Further Notice also asks commenters to address whether future licensing of paging could be based on Commission-defined service areas similar to those used in narrowband PCS. Finally, the Commission seeks comment on whether 220 MHz systems should be licensed on a regional as well as a local and nationwide basis.

12. *Co-Channel Interference Criteria.* The Commission seeks comment on whether the statutory goal of comparable technical regulation for substantially similar services requires revision of co-channel interference criteria for any mobile service. Commenters are specifically invited to provide information on the type and level of potential costs to licensees that would result from modifying these criteria. The Commission notes, however, that a cautious approach to rule revisions in this area does not imply that no changes to co-channel interference rules can be justified. For example, if the Commission proceeds with proposals to establish wide-area SMR service, the Further Notice seeks comment on whether wide-area licensees should be subject to restrictions on co-channel station separation or interference other than at the borders of their service areas.

13. *Adjacent Channel Interference Criteria.* To protect against adjacent channel interference, most mobile radio services operates under "emission mask" rules that restrict transmitter emissions on a range of frequencies removed from the licensee's assigned frequency. These rules typically vary depending upon the bandwidth and spacing of channels in each particular service. The Further Notice seeks comment on whether existing emission mask rules are consistent in their application to substantially similar services. Because specific emission limitations are dependent on such service-specific factors as bandwidth, channel spacing, and the likelihood that different licensees will operate on adjacent channels, the Commission notes that substantial changes to these rules may not be necessary or practical.

14. *Antenna Height and Transmitter Power Limits.* The Commission tentatively concludes that substantially similar mobile services should operate under complete restrictions on antenna height and transmitter power, but that height and power rules should also encourage technical flexibility and allow licensees to serve diverse customer needs wherever possible. For example, to the extent that wide-area SMR is considered substantially similar to cellular service, it could be argued that SMR licensees should be required to comply with power limits comparable to those prescribed for cellular licensees. In the case of traditional SMR service, which is not substantially similar to cellular service, existing height and power limits for each service should arguably be retained. A third alternative that could be applied to wide-area SMR systems and cellular systems would be to limit station power at the licensee's service area border, but give licensees greater flexibility over station power within the interior portions of their service areas. The Further Notice seeks comment on the feasibility and practical effect of these alternatives.

15. The Commission also seeks comment on whether height and power limits in other Part 90 services should be conformed to those of substantially similar Part 22 services. The Commission observes that on Part 90 lower band frequencies that are shared, it may not be practical to adopt the typically higher power limits that apply to Public Land Mobile Service licensees on exclusive channels. In the case of 220 MHz service, which is licensed on an exclusive basis, the Commission seeks comment on whether it is necessary to revise our 220 MHz height and power rules and what the practical consequences would be of doing so. The Commission observes that Part 90 and Part 22 power limits for 900 MHz paging systems are already highly similar, but seeks comment on whether non-nationwide licensees at 929–930 MHz should be allowed to operate at up to 3500 watts within their existing service areas, as non-nationwide paging systems under Part 22 are currently allowed to do.

16. The Further Notice also seeks comment on alternatives affecting power limitations on mobile units. While Part 90 systems seeking to compete with cellular are likely to use similar low-power technology to provide lightweight and easily portable mobiles to the end user, users of traditional Part 90 systems may continue to need higher-power mobiles in order to obtain effective service. Aside from any action to conform existing rules, however, the Further Notice states that all mobiles must comply with power limits dictated by applicable radio frequency radiation standards, regardless of the service in which they are used. The Commission therefore proposes to apply the 1992 IEEE/ANSI standard to all CMRS and PMRS mobiles, as proposed in the Notice of Proposed Rule Making on this

issue in ET Docket No. 93–62, 8 FCC Rcd 2849, 58 FR 19393 (April 8, 1993).

17. *Modulation and Emission Requirements.* The Further Notice seeks comment on whether there should be any restriction on modulation or emissions so long as licensees comply with other technical requirements designed to guard against co-channel interference, adjacent channel interference, and similar problems. While proposing to allow licensees greater flexibility in this area, however, the Commission does not propose to modify or eliminate the requirement that cellular licensees provide analog service to customers with analog equipment. In addition, the Further Notice tentatively concludes that where services operate on shared frequencies, existing emission restrictions should be retained in order to prevent incompatible uses.

18. *Interoperability.* The Commission seeks comment on whether Part 90 CMRS licensees should be subject to mandatory interoperability requirements similar to those applicable to cellular licensees. For example, if the Commission determines that wide-area SMR service is substantially similar to cellular service, the Commission must then decide whether to adopt rules ensuring that SMR customers have access to compatible equipment and the ability to use that equipment on any wide-area SMR system. The Further Notice asks commenters to address the costs and benefits of the following options: (1) Requiring interoperability among all classes of CMRS equipment; (2) requiring interoperability of equipment used to provide the same type or class of CMRS service; or (3) maintaining the *status quo.*

19. *Construction Period and Coverage Requirements.* The Further Notice proposes a uniform "baseline" construction period of 12 months for all CMRS licensees whose systems do not require an unusually long time to construct. This approach would apply, *inter alia,* to conventional and trunked SMR, paging, Business Radio, and local 220 MHz systems. In addition, although such a step is not required to achieve comparable regulation of CMRS, the Commission seeks comment on whether the 12-month construction period should also be extended to PMRS licensees under Part 90. The Commission further proposes to require that licensees not only complete construction but also commence service by the end of this period, which would be defined as providing service to at least two third parties unaffiliated with the licensee.

20. With respect to Part 90 CMRS systems that require more than 12 months to construct (*e.g.,* wide-area SMR), the Commission seeks comment on whether to require licensees to apply for extended implementation or adopt longer construction periods that apply automatically to such systems. The Commission tentatively concludes that the 10-year construction period (with interim benchmarks) is viable for licensing of future 900 MHz SMR systems, but that a five-year build out period may be more practical for 800 MHz licensing. The Commission also seeks comment on whether to extend the construction period applicable to wide-area paging systems.

21. *Loading Requirements.* The Further Notice seeks comment on the degree to which loading standards should be used as a means of ensuring efficient spectrum use by CMRS licensees. In general, Part 22 services area not subject to loading requirements, and the Commission has previously concluded in the case of PCS that coverage requirements and construction timetables are sufficient to ensure efficient use of spectrum. The Commission tentatively concludes that certain loading requirements should also be eliminated or modified in the case of SMR services. The Commission also seeks comment on whether alternatives to loading should be adopted to protect against spectrum warehousing, *e.g.,* requiring that licensees construct and provide service on existing channels before they can receive additional frequencies in the same area.

22. *User Eligibility.* Because section 332(c)(1)(A) of the Act subjects all CMRS providers to the requirements of sections 201 and 202, Part 90 licensees who are reclassified as CMRS must offer service to the public on a nondiscriminatory basis. In light of the statute, the Commission proposes to eliminate restrictions on user eligibility for CMRS providers in Part 90 services so that CMRS licensees in Part 90 services may serve the public without restriction.

23. *Permissible Uses.* Although the rules of permissible uses of Part 90 and Part 22 systems are similar in some respects (*e.g.,* restrictions on fixed base-to-base communciations), some of these rules appear to require modification to conform to the new regulatory structure and ensure comparable regulatory treatment of similar services. For example, the Commission tentatively proposes to eliminate the prohibition on provision of common carrier service by Part 90 licensees as it applies to SMR, 220 MHz, Business Radio, and Part 90 paging services. The Commission also proposes to eliminate restrictions on the purpose and duration of communications on Part 90 systems that are not imposed on Part 22 licensees, except that some restrictions would be retained in the case of systems on shared spectrum to assure that all cochannel licensees have the maximum possible access to air time.

24. *Station Identification.* Station identification rules are often necessary to ensure that both the Commission and other spectrum users can identify sources of interference. In some services, however, (*e.g.,* cellular, 220 MHz nationwide service) licensees operating on exclusion channel blocks are exempt from station identification requirements because they can be readily identified by other means. The Commission seeks comment on whether station identification requirements can be eliminated in other services on similar grounds. In addition, where the Commission determines that station identification continues to be necessary, the Further Notice proposes to adopt a general rule that CMRS licensees operating multiple station systems may use a single call sign on a system-wide basis.

25. *General Licensee Obligations.* Both Part 22 and Part 90 contain a variety of rules describing the general operational responsibilities of the licensee, including rules on licensee management and control of station facilities, posting of station licenses, station inspections, and responses to official communications. Because these rules generally appear similar, the Further Notice proposes to retain them with only minor modifications to eliminate inconsistency and redundancy.

26. *Equal Employment Opportunities.* Under Part 22, all common carrier licensees and permittees are subject to the Commission's equal employment opportunity (EEO) rules. The Commission proposes to apply these same EEO requirements to Part 90 CMRS licensees.

D. CMRS Spectrum Aggregation Limit

27. The Further Notice seeks comment on whether to adopt a cap on the amount of CMRS spectrum that licensees may aggregate in a given geographic area. Although restrictions have been adopted on aggregation of spectrum in specific services, such as PCS, there is no general cap on the amount of spectrum that an entity may use to provide CMRS. The Commission is concerned that licensees with the ability to acquire large amounts of CMRS spectrum in a given area could

acquire excessive market power by potentially reducing the numbers of competing providers.

28. The Further Notice seeks comment on whether all CMRS services should be treated as part of a single competitive product market or as consisting of several discrete markets. If all CMRS services are part of a single competitive product market, a spectrum cap applicable to all CMRS could arguably guard against the excercise of undue market power in this single market. Even if CMRS services do not constitute a single market, a spectrum cap may be justified if a licensee with sufficient spectrum in a sub-market could, as a result of its spectrum holdings, excercise market power against other CMRS providers.

29. Assuming the Commission concludes that some form of CMRS spectrum cap should be adopted, the Further Notice tentatively concludes that the 40 MHz limit on broadband PCS aggregation provides a reasonable basis for calculating a general CMRS cap, but that a CMRS cap should also be adjusted upward slightly to allow reasonable flexibility for PCS licensees and other existing mobile services providers to provide both broadband and narrowband services. The Further Notice also seeks comment on whether the cap should apply to: (1) Services that are not competitive with each other, (2) narrowband services, or (3) services licensed on a non-contiguous channel-by-channel basis or on shared spectrum. Commenters are also asked to address whether satellite licensees offering CMRS services should be included in a CMRS spectrum cap.

30. Assuming that the Commission adopts a CMRS spectrum cap, the Further Notice seeks comment on: (1) How to define the geographic service areas in which the cap would apply, and (2) the percentage ownership interest that an individual or entity should be allowed to hold in a CMRS offering before it is attributed to that entity for purposes of a spectrum cap. The Commission proposes to consider all CMRS ownership interests of five percent as subject to a spectrum cap, but seeks comment on the alternative of establishing different attribution levels for specific CMRS offerings. The Commission also proposes that a CMRS licensee serving 10 percent or more of the population in a designated area should be subject to the spectrum cap in that area for purposes of further licensing. Finally, the Commission seeks comment on whether to apply different attribution standards for designated entities, *i.e.*, minorities and women, rural telcos, and small businesses, to ensure their full participation in the developing CMRS market.

E. Licensing Rules

31. Finally, the Further Notice addresses the issue of licensing rules for CMRS applicants in those services that were formerly licensed solely on a private basis. Specifically, the Commission proposes to ensure that once reclassification becomes effective, all CMRS applications are subject to uniform licensing procedures that comply with the statutory requirements for licensing of common carriers under Title III of the Act, including public notice procedures and alien ownership restrictions. In addition, the Commission proposes a transition mechanism for carrying out the reclassification of existing private radio licensees that have been identified as CMRS providers by the Second Report and Order but that are not subject to CMRS regulation until the conclusion of the statutory transition period.

32. *Application Forms and Procedures.* The Commission proposes to adopt a single unified application form that can be used by all CMRS and PMRS applicants in all terrestrial mobile services. The proposed form (tentatively designated as Form 600) would supersede both Form 401 and Form 574 in those services that currently use them. The form consists of two-page main form and a series of supplemental schedules designed for particular mobile service categories. The main form is designed to provide the Commission with basic information regarding the identity and qualifications of the applicant and the general nature of the application. The proposed schedules seek additional administrative and technical information in specific service categories.

33. The Commission proposes to use Form 600 to determine the regulatory classification of all mobile services. The main form requires each applicant to indicate the service category in which the application is made and whether the proposed service meets the three "prongs" of the statutory definition of CMRS, i.e., whether the applicant's service will be: (1) Provided for profit, (2) interconnected to the public switched network, and (3) available to the public. Based on the information provided, the Commission proposes to classify each application as CMRS or PMRS for licensing purposes.

34. *Qualifying Information.* Under our proposed application procedures discussed above, all CMRS applicants, including Part 90 applicants who request CMRS station classification, will be required to disclose on Form 600 any ownership or control interest in the applicant held by an alien. This disclosure is identical to the disclosure currently required of Part 22 applicants. In addition, the proposed form will require Part 90 CMRS applicants to disclose the same information as Part 22 applicants relating to prior license denials or revocations, felony convictions, and monopolization of radio services.

35. *Fees.* The Further Notice proposes to establish filing fees for CMRS applicants in Part 90 services that are equivalent to the filing fees already paid by Part 22 common carrier applicants. In addition, the Budget Act has added a new section 9 to the Communications Act, which authorizes the Commission to collect annual regulatory fees from all Commission licensees to recover costs incurred in carrying out its regulatory activities. The Further Notice proposes to require Part 90 CMRS licensees to pay the per-subscriber fee established pursuant to the statute for common carriers instead of the per-license fee established for private radio services.

36. *Public Notice and Petition to Deny Procedures for CMRS Applications.* Section 309(b)(1) of the Act requires all applications for common carrier station authorizations (other than minor amendments excepted under section 309(c)) to be placed on public notice for 30 days prior to grant, and Section 309(d) allows petitions to deny to be filed against such applications during the public notice period. To implement these statutory requirements, the Commission proposes to apply the public notice and petition to deny procedures currently set forth in Part 22 to Part 90 applications for SMR, 220 MHz, Business Radio, and paging licenses that are designated as CMRS.

37. *Mutually Exclusive Applications/ Competitive Bidding.* Section 309(j) of the Communications Act authorizes the use of competitive bidding to select among mutually exclusive initial applications in most CMRS services. The Further Notice tentatively concludes that competitive bidding procedures should generally be used to resolve mutually exclusive CMRS applications where the Commission has the authority to do so. This is not intended to preclude the use of first-come, first-served procedures, short filing windows, and similar procedures for avoiding mutual exclusivity where appropriate to promote the public interest.

38. Based on this tentative conclusion, the Commission generally proposes to continue the use of current

filing window procedures in Part 22 services, with some modifications, and to use competitive bidding to select a tentative licensee where mutually exclusive initial applications are filed. The Commission seeks further comment on whether to adopt similar procedures for resolving mutually exclusive CMRS applications in Part 90 services subject to reclassification, or whether there are factors that may justify the use of different procedures for some Part 90 services, either the Commission lacks authority to use competitive bidding in the service or because amending our procedures would otherwise not be in the public interest.

39. The Further Notice seeks specific comment on how this analysis would apply to each Part 90 service that is subject to reclassification. The Commission tentatively concludes that filing windows and competitive bidding procedures should be used in future 900 MHz SMR licensing. In the 800 MHz band, the Commission seeks comment on whether wide-area applications should be treated as modifications of existing licenses that should not be subject to competitive bidding or as initial applications that justify the use of filing windows and competitive bidding procedures. With respect to 220 MHz service, the Further Notice does not propose any changes to existing first-come, first-served procedures, but seeks comment on whether alternative procedures would allow reasonable opportunities for CMRS applications to file competing applications without limiting the availability of frequencies to potential PMRS applicants. Finally, the Commission will defer the issue of mutually exclusive application procedures for 929–930 MHz paging frequencies until after it has completed the pending reconsideration of the Report and Order in PR Docket No. 93–35. See Report and Order, 8 FCC Rcd 8318, 58 FR 62289 (November 26, 1993).

40. *Amendment of Applications and License Modification.* Under Section 309 of the Communications Act, major amendments to CMRS applications in Part 90 services must be placed on public notice and are subject to petitions to deny in the same manner as initial applications. For this purpose, the Commission proposes to apply the same definitions of "major" and "minor" amendments to Part 90 CMRS applications that are applicable to Part 22 applications. The Commission also proposes to apply these same definitions to applications to modify existing CMRS licenses in Part 90 services.

41. The Further Notice also seeks comment on whether the foregoing definition of "major" filings should dictate whether auctions may be used when an application to modify an existing CMRS license is mutually exclusive with another application. Although the Commission has previously concluded that competitive bidding generally should not be used in the case of license modification applications (see Second Report and Order, PP Docket No. 93–253, 59 FR 22980 (May 4, 1994), it reserved the authority to treat a modification that would significantly alter a licensee's existing authorization as equivalent to an initial application for competitive bidding purposes. The Further Notice seeks comment on whether "major" CMRS modifications that are treated as initial applications for purposes of public notice and acceptance of competing applications should be treated as initial applications for competitive bidding purposes as well.

42. *Conditional and Special Temporary Authority.* Part 22 applicants are generally prohibited from commencing construction or operations prior to licensing, except that section 309(f) of the Communications Act allows the Commission to grant a special temporary authorization (STA) to a common carrier applicant under extraordinary circumstances., Part 90 applicants may commence construction at any time and are subject to more liberal procedures for temporary operation. The Further Notice proposes to apply the same rules for pre-grant construction and operation to CMRS applicants under both Part 22 and Part 90. Because Section 309(f) now applies to CMRS applications in Part 90 as well as applications under Part 22, the Commission proposes to adopt procedures in Part 90 that will subject STA requests by Part 90 CMRS applicants to the same requirements that are applied to similar requests by Part 22 applicants.

43. *License Term/Renewal Expectancy.* The Commission proposes to establish a uniform 10-year license term for all CMRS licensees, including those in Part 90 services. The Commission also proposes to extend its existing Part 22 rules and case law regarding renewal expectancy to all Part 90 CMRS licensees. The Further Notice seeks comment, however, on whether a single standard for granting a preference to renewal applicants should be applied uniformly to all CMRS services or whether alternative standards should be considered.

44. *Assignment of Licenses and Transfer of Control.* The Commission proposes to allow assignment or transfer of most CMRS licenses upon completion of construction and placing of the system in operation, provided that the applicant can demonstrate that the assignment or transfer will serve the public interest, convenience and necessity. The Commission also seeks comment on whether CMRS licensees should be allowed to assign or transfer unconstructed licenses under some circumstances, e.g., where the transferor can demonstrate that the transfer is not for purposes of speculation. The Commission also seeks comment on whether disclosure and anti-trafficking rules recently adopted for licenses awarded by competitive bidding and lottery justify modifying our existing transfer and assignment restrictions.

45. *Combined PMRS and CMRS Operation.* In the Second Report and Order, the Commission concluded that mobile service providers in Part 90 services where both CMRS and PMRS operation are allowed should have the flexibility to provide both CMRS and PMRS offerings under a single license. The Commission proposes that in such services, applicants would be allowed to seek authority to provide both CMRS and PMRS offerings under a single authorization. For licensing purposes, such applications would be treated as CMRS applications subject to public notice, petitions to deny, and the additional procedural requirements for CMRS discussed above. In addition, the applicant would be required to submit a showing with its application indicating what portion of the assigned spectrum would be dedicated to PMRS and describing the proposed PMRS offering in sufficient detail to demonstrate that it falls outside the CMRS definition.

46. *Conversion to CMRS Status by Existing Part 90 Licensees.* In addition to affecting licensing procedures for new applicants, the reclassification of certain Part 90 services as CMRS changes the regulatory status of a significant number of existing licensees. The Commission proposes to identify all existing licensees in the SMR, Business Radio, and 220 MHz services as CMRS or PMRS providers based on whether the licensee's station classification authorizes for-profit, interconnected service to be provided. Where the station classification indicates that for-profit, interconnected service is being provided, the Commission would modify the license to indicate CMRS status. Part 90 licensees bearing any other classification would continue to be treated as PMRS authorizations. The Commission further proposes that within 90 days after the date these proposed rules go into effect, Part 90 licensees may request changes to their

station class designations to reflect actual operations.

Initial Regulatory Flexibility Analysis

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA.

A. Reason for Action

This rule making proceeding was initiated to secure comment on various proposals for the implementation of sections 3(n) and 332 of the Communications Act, 47 U.S.C. 153(n), 332, as amended by Title VI of the Omnibus Budget Reconciliation Act (Budget Act). The proposals advanced herein are designed to carry out Congress' intent to establish regulatory symmetry in the regulation of mobile radio services.

B. Objectives

In the Budget Act, Congress directed the Commission to implement sections 3(n) and 332, as amended. In accordance with this directive, the Commission seeks to address the impact of the statute on technical, operational, and licensing rules for all Commercial Mobile Radio Services (CMRS) including those formerly private services that have been reclassified as CMRS under the terms of the new legislation. The revisions to the regulatory scheme proposed in this Further Notice are intended to ensure equitable treatment of comparable mobile services providers, which will in turn promote regulatory certainty and allow for the enhanced provision of service to the public.

C. Legal Basis

The proposed action is authorized under the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, Title VI, 6002(b), and sections 3(n), 4(i), 303(r), 332(c), and 332(d) of the Communications Act of 1934, 47 U.S.C. 153(n), 154(i) and 303(r), 332(c), and 332(d), as amended.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposals under consideration in this Further Notice may impose certain new reporting and recordkeeping requirements on mobile services licensees whose regulatory status has changed from private to commercial as a result of the new legislation.

E. Federal Rules Which Overlap, Duplicate, or Conflict With These Rules

None.

F. Description, Potential Impact, and Number of Small Entities Involved

Many small entities could be affected by the proposals contained in the Further Notice. Depending on the final resolution of the issues, regulations affecting the licensing, technical configuration, and operations of numerous mobile services providers may be changed. The full extent of these changes cannot be predicted until various other issues raised in the proceeding have been resolved. After evaluating the comments filed in response to the Further Notice, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

G. Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

The Further Notice solicits comment on a variety of alternatives. Any additional significant alternatives presented in the comments will also be considered.

H. IRFA Comments

The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines specified in the summary above.

List of Subjects in 47 CFR Parts 20, 22, and 90

Mobile radio services, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–13311 Filed 5–27–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–38, RM–8451]

TV Broadcasting Services; Sioux City, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Independent Communications, Inc., proposing the allotment of Channel 39 to Sioux City, Iowa. Channel 39 can be allotted to Sioux City consistent with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules without the imposition of a site restriction. The coordinates for UHF Channel 39 at Sioux City are 42–29–30 and 96–23–30. The proposed allotment at Sioux City is not affected by the temporary freeze on new television allotments in certain metropolitan areas.

DATES: Comments must be filed on or before July 8, 1994, and reply comments on or before July 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis R. Begley, Esq., Reddy Begley & Martin, suite 350, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–38, adopted April 21, 1994, and released May 24, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–13158 Filed 5–27–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 676

[Docket No. 940546-4146; I.D. 050494A]

RIN 0648-AD19

Limited Access Management of Federal Fisheries In and Off of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 30 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands area (BSAI) and Amendment 34 to the FMP for Groundfish of the Gulf of Alaska (GOA); and to make regulatory amendments affecting the Pacific halibut and sablefish fisheries in and off of the State of Alaska (Alaska or State). This action is necessary to raise the sablefish community development quota (CDQ) allocation limit for qualified applicants from 12 percent to 33 percent, and to clarify the evidence that may be used to verify vessel leases for the Pacific halibut and sablefish individual fishing quota (IFQ) program. It is intended to allow total allocation of the sablefish CDQ reserve and to provide IFQ program applicants with information about the evidence required for vessel lease verification.

DATES: Comments must be received by July 11, 1994.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th, Room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of Amendments 30 and 34 to the FMPs and the Regulatory Impact Review may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: John Lepore, Fisheries Regulations Specialist, Alaska Region, NMFS, at 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The Pacific halibut and sablefish CDQ program was designed to promote the revitalization of rural communities in Western Alaska by providing those communities access to nearby fishery resources. The program was developed under the authority, and is consistent with, the management objectives of the Magnuson Fishery Conservation and Management Act and the Northern Pacific Halibut Act (Halibut Act). The current regulations permit the NMFS to allocate up to 12 percent of the total sablefish CDQ reserve to any one applicant. This action would implement Amendment 30 to the Bering Sea FMP, raising the sablefish CDQ allocation limit for qualified applicants to 33 percent. Amendment 34 to the Gulf of Alaska FMP would correct the inadvertent inclusion of the CDQ program in that FMP by removing and reserving section 4.4.1.1.8.

The 12 percent limit was designed to prevent monopolization of the CDQ allocations and to ensure an adequate distribution of benefits from the CDQ program (57 FR 57130, December 3, 1992). The 12 percent limit for sablefish CDQ allocations was set by the North Pacific Fishery Management Council (Council) during the development phase of the Pacific halibut and sablefish IFQ program, when 55 communities were initially determined to be eligible to apply for sablefish CDQ allocations. The 12 percent limit was designed to ensure that sufficient amounts of the sablefish CDQ reserve would be available for all communities without excessive, and inefficient, competition.

No limit was set for Pacific halibut CDQ allocations because the Pacific halibut CDQ reserve will be allocated to eligible applicants according to their geographical proximity to an International Pacific Halibut Commission (IPHC) management area. This means that the Pacific halibut CDQ reserve from an IPHC management area will generally go to the community group or groups within that management area.

The pollock CDQ program was implemented while the Pacific halibut and sablefish CDQ program was awaiting Secretarial approval. In anticipation of participating in the pollock CDQ program, the 55 eligible communities decided to pool their efforts in producing Community Development Plans (CDP) and managing CDQ harvest; they joined together in six groups. The 12 percent limit on allocation in the Pacific halibut and sablefish CDQ program is no longer feasible, because allocations to the six groups would allocate only 72 percent of the CDQ reserve resources.

The Council thus recommended raising the limit on sablefish CDQ allocations in the Pacific halibut and sablefish CDQ program.

Proposed Action Raising the Sablefish CDQ Allocation Limit

The proposed action would also change the terms "community" and "communities" to "CDQ applicant" and "CDQ applicants," respectively. It would allow the Pacific halibut and sablefish CDQ program to operate under the same CDQ reserve allocation limits as the pollock CDQ program.

The proposed action would not change the amount of sablefish available for harvest by fishermen participating in the Pacific halibut and sablefish IFQ program. The sablefish CDQ reserve, 20 percent of the annual fixed-gear total allowable catch of sablefish for each management area in the BSAI, would be the same amount under the proposed action as it is under the current management program.

Inclusion of IPHC Area 4A as a Compensating Non-CDQ Area

Currently, 50 CFR 676.24(i)(1) provides that:

> The Regional Director will compensate persons that receive a reduced halibut QS in IPHC regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC regulatory areas 2C, 3A, and 3B. This compensation of halibut QS from areas 2C, 3A, and 3B will be allocated in proportion to the amount of halibut QS foregone due to the CDQ allocation authorized by this section.

No halibut quota from area 4A is being made available to the halibut CDQ program, so area 4A should have been included with areas (2C, 3A, and 3B) that compensate persons who receive reduced halibut QS because of CDQ allocations.

To correct this omission, area 4A is added in the regulatory text as an area that will provide halibut QS as compensation in proportion to the amount of halibut QS foregone due to CDQ allocations.

Vessel Lease Verification

The current regulatory language, found at 50 CFR 676.20(a)(1)(iii), provides that:

> Evidence of a vessel lease shall be limited to a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years.

The proposed change to 50 CFR 676.20(a)(1)(iii) would provide that:

> Conclusive evidence of a vessel lease will include a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Conclusive evidence of a vessel lease must identify the leased

vessel and indicate the name of the lease holder and the period of time during which the lease was in effect. Other evidence, which may not be conclusive, but may tend to support a vessel lease, may also be submitted.

The types of evidence that can be submitted to verify a vessel lease would be expanded. The Council intends to open the appeals process to persons who claim they had a lease but who are unable to produce the specific evidence required under the current regulatory language. Other types of evidence that could be submitted under the proposed rule include canceled checks or receipts for IPHC or Commercial Fisheries Entry Commission permits, Internal Revenue Service tax forms showing a business deduction for the lease, or 1099 tax forms demonstrating the payment of crew.

The proposed language, like the current language, would not assure that the evidence submitted would verify the vessel lease claimed. NMFS will carefully evaluate all evidence submitted to verify a vessel lease agreement.

Classification

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities. The 55 communities eligible to apply for sablefish CDQ allocations are expected to apply as six groups. This creates an inability to allocate all of the sablefish CDQ reserve, with the 12 percent limit, to achieve 100 percent allocation. Of the affected entities, only the estimated six CDQ applicants (made up of the 55 eligible communities) would be affected. While a substantial number of the CDQ groups would be affected by this action, there is no evidence that any of the criteria for significant economic impact on the CDQ groups would occur.

This proposed rule is exempt from prepublication review for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 676

Fisheries; Reporting and recordkeeping requirements.

Dated: May 24, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is proposed to be amended as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. Section 676.20(a)(1)(iii) is revised to read as follows:

§ 676.20 Individual allocations.

* * * * *

(a) * * *

(1) * * *

(iii) Conclusive evidence of a vessel lease will include a written vessel lease agreement or a notarized statement from the vessel owner and lease holder attesting to the existence of a vessel lease agreement at any time during the QS qualifying years. Conclusive evidence of a vessel lease must identify the leased vessel and indicate the name of the lease holder and the period of time during which the lease was in effect. Other evidence, which may not be conclusive, but may tend to support a vessel lease, may also be submitted.

* * * * *

3. Section 676.24 is amended by revising paragraphs (b), (e)(1) and (i)(1) to read as follows:

§ 676.24 Western Alaska Community Development Quota Program.

* * * * *

(b) *Sablefish CDQ Program.* In the proposed and final harvest limit specifications required under § 675.20(a) of this chapter, NMFS will specify 20 percent of the fixed gear allocations of sablefish in each Bering Sea and Aleutian Islands subarea, as provided under § 675.24(c) of this chapter, as a sablefish CDQ reserve, exclusive of issued QS. Portions of the CDQ reserve for each subarea may be allocated for the exclusive use of CDQ applicants in accordance with CDPs approved by the Governor in consultation with the Council and approved by the Secretary. NMFS will allocate no more than 33 percent of the total CDQ for all subareas combined to any one applicant with an approved CDQ application.

* * * * *

(e) *Secretarial review and approval of CDPs.* (1) Upon receipt by the Secretary of the Governor's recommendation for approval of proposed CDPs, the Secretary will review the record to determine whether the CDQ applicant eligibility criteria and the evaluation criteria set forth in paragraph (f) of this section have been met. The Secretary will then approve or disapprove the Governor's recommendation within 45 days of its receipt. In the event of approval, the Secretary will notify the Governor and the Council in writing, including the Secretary's reasons for approval. The decision, including the percentage of the sablefish and halibut CDQ reserves allocated to each CDP and the availability of the findings, will be published in the *Federal Register.* NMFS will allocate no more than 33 percent of the sablefish CDQ reserve to any one applicant with an approved CDP. A CDQ applicant may not concurrently receive more than one halibut CDQ or more than one sablefish CDQ, and only one application for each type of CDP per CDQ applicant will be accepted.

* * * * *

(i) *Compensation for CDQ allocations.* (1) The Regional Director will compensate persons who receive a reduced halibut QS in IPHC regulatory areas 4B, 4C, 4D, or 4E because of the halibut CDQ program by adding halibut QS from IPHC regulatory areas 2C, 3A, 3B, and 4A. This compensation of halibut QS from areas 2C, 3A, 3B, and 4A will be allocated in proportion to the amount of halibut QS forgone due to the CDQ allocation authorized by this section.

* * * * *

[FR Doc. 94–13132 Filed 5–25–94; 10:10 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 103
Tuesday, May 31, 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

Alternative Agricultural Research and Commercialization (AARC) Center

AARC Center Request for Proposals

AGENCY: Alternative Agricultural Research and Commercialization (AARC) Center.

ACTION: AARC Center request for proposals.

Program Description

Purpose

The Alternative Agricultural Research and Commercialization (AARC) Center is requesting proposals to use agricultural (traditional and new crops, animal by-products or forestry) materials in industrial products or processes. The authority for the Program is contained in sections 1660 and 1661 of the Food, Agricultural, Conservation, and Trade Act of 1990, Public Law No. 101–624, 7 U.S..C. 5904. Potential funding for proposals can be either under research and development assistance or the commercialization assistance provisions using the Cooperative Agreement Program (Program) to assist emerging industrial products/processes involving the use of agricultural materials in non-food, non-feed, non-traditional fiber products or processes. The Board of Directors reserves the right to use only certain types of authorized assistance. Successful projects are expected to repay the AARC Center Revolving Fund through negotiated arrangements. The Program is administered by the AARC Center, which is an independent entity within the U.S. Department of Agriculture.

The objectives of the AARC Center are:

- To search for new non-food, non-feed, non-traditional fiber products that may be produced from agricultural commodities and for processes to produce such products.
- To conduct product and co-product/process development and demonstration projects, as well as provide commercialization assistance for industrial products from agricultural and forestry materials.
- To encourage cooperation development and marketing efforts among manufacturers, private and government laboratories, universities, and financiers to assist in bridging the gap between research results and marketable, competitive products and processes.
- To collect and disseminate information about commercialization projects that use agricultural or forestry materials and industrial products derived therefrom.

Under the Program, the AARC Center will award competitive cooperative agreements to support primarily pre-commercial tasks but also targeted research and development of new industrial products or processes derived from agricultural or forestry materials. All other things equal, the nearer to commercialization a product or process is the higher the likelihood of funding by the AARC Center.

The AARC Center will accept either pre-proposals or full proposals. Pre-proposals will be evaluated to determine if an idea has sufficient merit to warrant a full proposal including if it meets the AARC Center's mission, and to provide suggestions for improvement. Full proposals will require more time to complete and will be evaluated to determine if they warrant funding. The AARC Center may ask applicants submitting either pre-proposals or full proposals to make an oral presentation. All proposals will be evaluated by external reviewers, as well as by the AARC Center staff, before the proposals along with review comments are provided to the Board of Directors. The Board makes final funding decisions.

Available Funding

This request for proposals is being announced subject to funding from Congress for Fiscal Year 1995. The Administration's budget request to Congress was $9 million for the AARC Center.

The AARC Center Board expects applicants to, at minimum, match the dollars requested from the AARC Center. A preference may be given to projects for which the ration of AARC Center funds to non-Center funds would be the lowest.

Eligibility

Proposals are invited from any private firm, individual, public or private educational or research institution or organization, Federal agency, cooperative, or non-profit organization. Cooperative projects involving combinations of the above organizations, especially with private sector leadership, are strongly encouraged. Since this is basically a program to commercialize new products, and since repayment is expected, it is much more likely that awards will be given to private firms. Small business entrepreneurs are preferred.

Program Emphasis

As determined by the AARC Center Board from a series of public hearings, Congressional Hearings, workshops, and experience from the initial two rounds of proposals, each proposal should focus on products/ processing using at least one of the following agricultural or forestry material categories:

Starch/Carbohydrates
Fats and Oils
Fibers
Forest Materials
Animal By-Products
Other Plant Materials used as pharmaceuticals, fine chemicals, encapsulation agents, etc.

The AARC Center Board is in the process of funding about 20 projects from the request for pre-proposals and full proposals that appeared in the **Federal Register** on June 8, 1993. Projects include use of a broad range of agricultural and forestry materials such as: Soybean oil, cotton lint, peanut hulls, corn husk, wheat straw, milkweed, kenaf, castor oil, rapeseed, cuphea, crambe, ethanol, compost, biomass, and plant proteins. Examples of products include: Biocontrol agents, medium-density fiberboard from straw, plypole, food packaging, bonded paper from kenaf, oil adsorbents, fillers and yarn, spinning fibers, highway signposts and railroad ties, building composites, heating and electricity, potting mixes, diesel fuel replacements, lubricants, coatings, cosmetics, detergents, personal care products, and cat litter.

Evaluation Criteria

The AARC Center's primary interest, in this request for prepoposals/ proposals, is in providing assistance in pre-commercial activities to move new industrial products from agricultural and forestry materials into the marketplace. The AARC Center Board seeks projects that will have market impact. This includes expanding use of agricultural or forestry materials in industrial products especially those that expand markets for farmers, create jobs, spur rural development, provide environmental and/or conservation benefits, and improve trade. Emphasis will be given to those proposals whose products are closest to commercialization and have positive impact on rural employment and economic activity.

Proposals and pre-proposals will be evaluated on four primary criteria: Management team capability, business and marketing soundness, technical factors, and expected time and magnitude of impacts if successful. Examples of types of information that will enter the decision process on each of the primary categories of criteria include:

Management: Capability of the management team.
Amount of matching funds (cash) committed.
Awareness of the financial resources needed to successfully market the product.
Clear identification of project milestones.
Private sector leadership to commercialize the product or process.
Business: Potential profitability.
Clear identification of customers.
Structure of the market in terms of size, number, leading competitors, and reaction of competitors to a new product.
Amount and nature of the value added to the agricultural or forestry material.
Ability to replicate in other parts of the country.
Key issues and government policies or regulations that might impact success.
Applicant's ability and willingness to repay the AARC Center for the risk investment made by the American taxpayers.
Technical: Relation to previous work.
Technical requirements of the product—industry standards or guidelines.
Technical and market testing needed.
Government approvals or permits required.
Major technical hindrances.
Innovative techniques and patents.
Ability to achieve technical claims.
Present stage of development.
Impacts: Volume of agricultural or forestry material used.
Number and quality of jobs (especially in distressed rural areas) expected to be created—type, rural/urban, timeframe.
Potential positive and negative environmental impacts from production to consumer disposal of product.
Proposed product's implications for helping improve farm income, especially the family farm.
Resource conservation effects such as replacement of stock resources, crop diversification, soil erosion, water use, etc.
Estimated impact on export/import trade balance, commodity support programs and rural economic activity.

Other Considerations

With respect to projects carried out with private researchers or commercial companies, the enabling legislation provides that information submitted by applicants incident thereto will be kept confidential. Project information including applications is specifically excluded from release under the Freedom of Information Act, except with the approval of the person providing the information or in a judicial or administrative proceeding in which such information is subject to protective order. However, the information is subject to protective order. However, the information will be reviewed by three reviewers who will be held to confidentiality. Board members are required to exclude themselves from consideration of a proposal where a conflict of interest exists.

Intellectual property rights, such as patents and licenses, shall remain with the owner unless other arrangements are negotiated as part of the agreement. Inventions made under an award under this Program shall be owned by the awardee in accordance with 35 U.S.C. 200–204 and 37 CFR part 401.

No agreement may be entered into under the program for the acquisition or construction of a building or facility.

All applicants must file a declaration of compliance with 31 U.S.C. 1352 regarding limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions either prior to or simultaneous with the submission.

Due to limited funds, the AARC Center may not be able to fund all projects meriting support, and awards will be based on merit using the review evaluations and the Board's judgement.

Applicants who submitted a proposal or pre-proposal previously must reapply to be considered for Fiscal Year 1995 funding.

Future Proposals

In the future and until further notice, the AARC Center Board will accept proposals or pre-proposals at any time on AARC Center forms. The Board will meet at least twice a year to select proposals for funding.

Submissions

To be eligible for this round of AARC Center Board decisions, both pre-proposals and full proposals must be received at the AARC Center office by August 31, 1994. One of the following addresses should be used, as applicable:

Regular U.S. mail	Overnight delivery
USDA AARC Center, Ag Box 0400, 14th & Independence Avenue SW., Cotton Annex, 2nd flr Mez, Washington, DC 20250–0400.	USDA AARC Center, 300 12th Street SW., Cotton Annex, 2nd flr Mez, Washington, DC 20250–0400.

For More Information

Proposals must be submitted on forms provided by the AARC Center—either pre-proposals or full proposals. Contact the AARC Center by letter using the addresses above or fax number 202–401–6068 to receive a packet containing the instructions and forms.

Specific questions should be directed to Patricia Dunn: Phone 202–401–4860.

Done at Washington, DC, on May 25, 1994.

Paul F. O'Connell,

Director, AARC Center.

[FR Doc. 94–13184 Filed 5–27–94; 8:45 am]

BILLING CODE 3410–2B–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census Test–Special Place Facility Questionnaire Operation.

Form Number(s): DG–351 (GQ), DG–351 (GQ)(R), DG–351A (R), DG–351A (GQ), DG–351A (HU), DG–351 (GQ)(T).

Agency Approval Number: None.

Type of Request: New Collection.

Burden: 215 hours.

Number of Respondents: 770.

Avg Hours Per Response: 15 minutes.

Needs and Uses: In preparation for the Year 2000 Decennial Census, the Census Bureau will conduct a test census in 1995 of five test sites around the United States. The Special Place Facility Questionnaire Operation will identify every group quarter and/or housing unit associated with special places at all five test sites. Information on location of special places will come from 1990 Decennial Census records updated with information gathered in

the precanvass, prelist, and local update operations.During this operation, interviewers will conduct telephone interviews with owners/operators of special places to collect administrative information, update existing data, identify group quarters and/or housing units, and assign a type code to each group quarter. Information for special places having more than 5 group quarters will be collected using a combination of telephone interview and a mail out/mail back form. This operation will test changes to forms, procedures, and coding schemes made over the Special Place Prelist operation conducted for the 1990 and earlier censuses in which enumerators conducted personal visits at special places. Improvements realized will be incorporated into the Year 2000 Decennial Census.

Affected Public: Individuals or households, Business or other for profit institutions, Non–profit institutions, Small businesses or organizations.

Frequency: One–Time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 24, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–13198 Filed 5–27–94; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Order No. 692]

Approval of Export Processing Activity Dane Company, Inc. (Dairy Product/ Sugar Blending) Within Foreign-Trade Zone 43, Battle Creek, MI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, § 400.28(a)(2) of the Board's regulations, requires approval of the Board prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the BC/CAL/KAL Inland Port Development Corporation, operator of FTZ 43, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of the Dane Company, Inc., to process under zone procedures foreign-origin sugar and foreign-origin dairy products for export (1,500 metric tons annually) within FTZ 43, Battle Creek, Michigan (filed 12–15–93, FTZ Docket A(32b1)-6–93; Doc. 15–94, assigned 4–8–94);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is for export only (§ 400.32(b)(1)(ii)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28, and subject to the further requirement that all foreign-origin sugar and foreign-origin dairy products admitted to the zone for the Dane Company operation shall be reexported.

Signed at Washington, DC, this 16th day of May 1994.

Susan G. Esserman,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 94–13201 Filed 5–27–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 21–94]

Foreign-Trade Zone 49—Newark and Elizabeth, NJ; Application for Subzone Merck & Co. Pharmaceutical Plant, Rahway, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Merck & Co., Inc., (Merck) in Rahway, New Jersey, adjacent to the Perth Amboy Customs port of entry area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 20, 1994.

Merck is one of the world's largest pharmaceutical manufacturers with nearly $9 billion in total sales in 1991. Its primary product lines include: Patented prescription and over-the-counter pharmaceutical products, veterinary pharmaceuticals and agricultural and specialty chemicals. This proposal is part of an overall company cost reduction effort. (Applications for subzone status have been submitted for seven other Merck facilities.)

Merck's Rahway plant (200 acres, 154 bldgs., 2,500,000 sq. ft.) is located at 126 Lincoln Avenue (Rahway), in the cities of Rahway and Linden (Union County), New Jersey, some 10 miles south of Newark. The facility (3,100 employees) is used primarily to produce bulk pharmaceutical chemicals and intermediates, but will also produce finished pharmaceutical products. Bulk pharmaceutical chemicals are shipped to other Merck pharmaceutical plants for further manufacturing, packaging and distribution.

The production of "Primaxin", a broad spectrum antibiotic; and the bulk pharmaceutical chemicals, amitriptyline and cyproheptadine, would account for a substantial portion of the savings from zone procedures. Currently, foreign-sourced materials account for, on average, 20 percent of its finished product value and include the following specific ingredients: acetoxy azetidinone, HP–20 resin dianon, SP–207 (brominated polystyrene resin), D-carboxamide, dienone, trienone, 1–Methyl-4 hydroxypiperdine. The company also may purchase from abroad active ingredients for other Merck products and items in the following general product categories: Gums, starches, waxes, vegetable extracts, mineral oils, phosphoric acid, hydroxides, hydrazine and hydroxylamine, chlorides, phosphates, carbonates, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, vitamins, hormones, sugars, antibiotics, gelatins, enzymes, color lakes, soaps and detergents, medicaments, and pharmaceutical products. The company may source from abroad insecticides, rodenticides, fungicides and herbicides for use in its AgVet production.

Zone procedures would exempt Merck from Customs duty payments on foreign materials used in production for

export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 23.5%, with most ranging from 3.7%–8.2%). The duty rates on foreign-sourced items range from duty-free to 23.5%, with most falling between 3.9% and 16.2% plus 3.7¢/kg. The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 1, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 15, 1994.)

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Room 3718, Federal Office Building, 26 Federal Plaza, New York, NY 10278.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 20, 1994.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 94–13200 Filed 5–27–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–570–825]

Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766.

FINAL DETERMINATION: We determine that sebacic acid from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the December 28, 1993, issuance of the preliminary determination (59 FR 565, January 5, 1994), the following events have occurred.

On January 3, 1994, Sinochem International Chemical Company (SICC), Tianjin Chemical Import & Export Corporation (Tianjin), Sinochem Jiangsu Import & Export Corporation (Jiangsu), and Guangdong Chemical Import & Export Corporation (Guangdong) (collectively referred to as respondents) withdrew their claim that the sebacic acid industry in the PRC is a market-oriented industry (MOI). On January 4, 1994, the Department issued to respondents a request for clarification of previously provided information, as well as for additional, published information. On January 5, 1994, respondents' counsel requested a hearing and asked for an extension to submit its clarification comments on previously provided published information and to submit additional published information. On January 7, 1994, the Department granted the extension. On January 11, 1994, petitioner, which is Union Camp Corporation, requested a hearing. On January 14, 1994, the Department sent to the respondents verification agendas. On January 25, 1994, the Department issued to petitioner and respondents a questionnaire asking for the material requirements for producing sebacic acid. On January 31, 1994, respondents indicated that they could not provide any additional published information for the period of investigation (POI). On February 2, 1994, petitioner alleged that India was not the proper surrogate country in this investigation. On February 3, 1994, respondents' counsel submitted financial statements for three of the four factories under investigation. On February 8, 1994, petitioner and respondents submitted their responses to the January 25, 1994, material requirements questionnaire. On February 14, 1994, petitioner submitted its verification comments. From February 21 to March 19, 1994, Department officials conducted verifications of four trading companies and four factories and met with officials from the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and other government agencies in the PRC. From March 24 to April 2, 1994, the Department issued the verification reports. On April 8, 1994, petitioner and respondents submitted hearing briefs. On April 13, 1994, the parties submitted rebuttal briefs. On April 15, 1994, a public hearing was held.

Scope of Investigation

The products covered by this investigation are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH_2)_8(COOH)_2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.00, of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation is January 1, 1993, through June 30, 1993.

Separate Rates

The respondents have each requested that they be assigned separate rates. Their business licenses indicate that they are "owned by all the people." As stated in the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China (PRC) (59 FR 22585, May 2, 1994) ("Silicon Carbide"), "ownership of a company by all the people does not require the application of a single rate." Accordingly, SICC, Tianjin, Jiangsu, and Guangdong are eligible for consideration for separate rates.

To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under a test established in the Final Determination of Sales at Less Than Fair

Value: Sparklers from the PRC (56 FR 20588, May 6, 1991) ("Sparklers"), as amplified in Silicon Carbide. Under the separate rates test, the Department assigns separate rates only where respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

1. Absence of De Jure Government Control

Three PRC laws that have been placed on the record in this case indicate that the responsibility for managing these enterprises "owned by all of the people" is with the enterprises themselves and not with the government. These are the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 (1988 Law); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 (1992 Regulations); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 (Export Provisions). The 1988 Law and 1992 Regulations shifted government control to the enterprises themselves. The 1988 Law provides that enterprises owned "by the whole people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers and purchase their own goods and materials. The 1988 Law also has other provisions which indicate that enterprises have management independence from the government. The 1992 Regulations provide that these same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire their employees without government approval (Article XVII).

The Export Provisions designate those export products specifically under government control. Sebacic acid does not appear on the lists in Export Provisions and, therefore, is not subject to export constraints.

The existence of these laws indicates the respondents are not *de jure* subject to control. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (see "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93–133 (July 14, 1993). Therefore, it is critical that we conduct a *de facto* analysis to determine whether these respondents were, in fact, subject to governmental control.

2. Absence of De Facto Government Control

The Department has considered four factors in evaluating whether each respondent is subject to *de facto* government control: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses (see Silicon Carbide).

During verification, we examined bank account records, sales contracts, fixed assets on the financial statements, management selection practices and tax records for each respondent. Based on our examination, we find that each respondent:

(1) Establishes its own export prices; (2) negotiates its own sales without guidance from any government entities; (3) selects its own management without interference from any government entities; and (4) retains its own proceeds from the sale of the subject merchandise. (See May 20, 1994, final concurrence memorandum, and individual verification reports for further discussion.)

3. Conclusion

Given that the record of this investigation demonstrates an absence of *de jure* or *de facto* governmental control over the export functions of SICC, Tianjin, Jiangsu, and Guangdong, we determine that these companies are eligible for separate rates. See comments 1 and 2 for further discussion.

Surrogate Country

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are comparable to the PRC in terms of overall economic development, per capita gross national product (GNP), the national distribution of labor and growth rate in per capita GNP. (See memorandum from David P. Mueller to David L. Binder, dated September 29, 1993.) Though it is possible that India may no longer be a producer of the subject merchandise, the Department has determined that India is a significant producer and exporter of comparable merchandise (see comment 5 for further discussion). Therefore, because India fulfills both requirements outlined in the statute, India is the preferred surrogate country for purposes of valuing the factors of production used in producing the subject merchandise. Except for one factor of production, we have used publicly available published values obtained in India. For that one factor, we used information from Pakistan. We have relied upon publicly available published information wherever possible.

Fair Value Comparisons

To determine whether sales of sebacic acid from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

For those exporters that responded to the Department's questionnaire, we calculated purchase price based on packed, CIF prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, marine insurance, and foreign brokerage and handling expenses.

For foreign inland freight, we based the deduction on freight rates in India and on the verified distance from the factory to the port of exportation (see comment 18 for further discussion). For ocean freight, the respondents all used PRC transportation services in incurring this charge during the POI. Therefore, we based the deduction for ocean freight on the current tariff rate in the Asia North America Eastbound Rate Agreement.

For foreign brokerage and handling expenses and marine insurance, we used publicly summarized versions of these two expenses reported in the

antidumping duty investigation of Sulfur Dyes, Including Sulfur Vat Dyes, from India (see memorandum to the file dated December 27, 1993).

Foreign Market Value

We calculated FMV based on the verified factors of production used by the factories which produced the subject merchandise for the four respondents (see comments 4 and 11 for further discussion). In accordance with section 773(c)(3) of the Act, the factors to value include materials, labor, energy and capital costs (*e.g.*, factory overhead), and we have valued these factors in this case. To calculate FMV, the verified factors of production were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of the surrogate values used and a detailed discussion of the source publications referred to in this notice, see the May 20, 1994, final concurrence memorandum.)

In determining which surrogate value to use for valuing each factor of production, we selected, where possible, the publicly available published value which was: (1) An average non-export value; (2) representative of a range of prices within the POI if submitted by an interested party, or most contemporaneous with the POI; (3) product-specific; and (4) tax-exclusive. We have expressed a preference for prices representative of the POI because these prices more closely reflect the prices paid for inputs in the surrogate during the POI. Where we could not obtain a POI-representative price for an input, we have selected a value in accordance with the remaining criteria mentioned above and which is closest in time to the POI.

In accordance with this selection methodology, we have obtained more current values for eight material inputs since the preliminary determination. In addition, for four of those eight materials, we reassigned values based on additional product-specific information. We also established a POI price range for the publicly available published values that we used and which were submitted by the respondents (see comment 6 for further discussion). As a result of applying the selection methodology noted above, we changed the values used in the preliminary determination for the following nine materials: Castor oil, cresol, activated carbon, a substitute for activated carbon, steam coal, electricity, one type of packing material, glycerine, and fatty acid. In addition, we valued a substitute for cresol as a result of our verification findings.

In the case of material inputs, we also used surrogate transportation rates to value the transportation of inputs to the factories. In those cases where a respondent provided incorrect transportation distances, we valued the verified distances (see comment 10 for further discussion).

To value castor oil, we used publicly available published information from The Times of India because this source provided a non-export price during the POI. We calculated an average price representative of the POI based on prices submitted by respondents and prices we obtained from the U.S. embassy in India. We did not have the necessary information to deduct taxes from these prices (see comment 6 for further discussion).

To value caustic soda, sodium chloride, zinc oxide, and phenol, we used publicly available published information from Chemical Business. This source provided a representative range of non-export prices during the POI which did not include Indian excise or provincial sales taxes. For caustic soda, we used a price for liquid caustic soda for all four factories. We did not adjust the selected value to account for different percentage strengths of the solution used by the factories because the selected value did not indicate a percentage strength for the solution (see comment 12 for further discussion).

To value sulfuric acid, cresol, and caproyl alcohol, we used publicly available published information from Chemical Weekly. This source provided a representative range of non-export prices during the POI which was inclusive of taxes. We did not have the necessary information to deduct taxes from these prices. In the case of cresol, we calculated an average price of the three types of cresol used by the factories (see comment 14 for further discussion). In addition, we used the factories' verified cresol amounts (see comments 13 and 15 for further discussion). In the case of caproyl alcohol (which is also called octanol-2), we used a price for octanol (see comment 8 for further discussion).

To value activated carbon, fatty acid, substitutes for cresol and activated carbon, and steam coal, we used more recent publicly available published information from the Monthly Statistics of the Foreign Trade of India (Monthly Statistics). With the exception of steam coal, this source was the only one we found which provided publicly available published price information for these material inputs. For steam coal, we used an import value from Monthly Statistics rather than the domestic value from the publication OECD IEA Statistics, because the import value was more contemporaneous with the POI (see comment 19 for further discussion). For fatty acid, we used the price for a general type of fatty acid (see comment 8 for further discussion).

To value glycerine, we used a value for crude glycerine in the publication Monthly Statistics of the Foreign Trade of India and not the value for industrial water grade glycerine in the Indian publication Chemical Business, because the value in Monthly Statistics was more product-specific (see comment 7 for further discussion).

To value electricity, we used publicly available published information from the Asian Development Bank (ADB). We used a 1990 value from the ADB publication instead of a published POI Pakistani industrial usage value because the ADB value was specific to industrial usage in India and because India is the first-choice surrogate country. In the ADB publication, there are three types of electricity rates (e.g., low-tension, high-tension and power-intensive). In this case, we took an average of the low-tension and high-tension rates provided in the ADB publication because we could not ascertain whether the sebacic acid industry in the PRC incurs a low-tension or high-tension rate. We were able to ascertain that the PRC sebacic acid industry does not incur power-intensive rates because the electricity used by the sebacic acid factories in the PRC did not account for a major portion of the production cost.

To value water, we used a public cable from the U.S. consulate in Pakistan which was originally provided in the investigation of Sulfanilic Acid from the PRC. We used this cable because we could not locate a value for water in any Indian or Pakistani publication.

For all material and energy prices we used that were for a period prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using wholesale price indices (WPIs) published in International Financial Statistics (IFS) by the International Monetary Fund (IMF).

To value labor costs, we used the International Labor Office's 1992 Yearbook of Labor Statistics. To determine the number of hours in an Indian workday, we used the Country Reports: Human Rights Practices for 1990. Because the published labor rate was prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using the consumer price indices published in IFS by the IMF. In addition, for one factory in question, we

considered the additional labor amounts to be indirect labor and a part of factory overhead (see comment 16 for further discussion).

To value factory overhead, selling, general and administrative expenses, and profit, we calculated percentages based on elements of industry group income statements from The Reserve Bank of India Bulletin. We did not include an amount for energy in our factory overhead calculation or inflate the percentages to the POI.

To calculate the FMV for one metric ton of sebacic acid, we added each of the costs derived above. We also added to FMV, where appropriate, an amount for packing labor based on the appropriate Indian wage rate, and an amount for packing materials based on more current Indian prices than those values previously used from the Monthly Statistics of the Foreign Trade of India. Since the packing material prices were also prior to the POI, we used WPIs from IFS to inflate the values to the POI. We made no adjustments for selling expenses. Finally, we added surrogate freight costs for the delivery of inputs and packing materials to the factories producing sebacic acid.

In this investigation, we have verified that the factories produce three subsidiary products (glycerine, fatty acid, and capryl alcohol) in the course of producing sebacic acid.

We have used the same methodology established in the preliminary determination to determine whether each of the three products in question are by-products or co-products.

However, for the final determination, we have not considered the factories' costs and profits because we have not found an MOI, and we have obtained more current values than those used in the preliminary determination for sebacic acid, glycerine, and fatty acid. Consistent with the preliminary determination and after incorporating these values into the analysis, we still find that fatty acid is a by-product because the overall value of fatty acid is insignificant compared to the relative value of the "subsidiary" products and the subject merchandise. As a by-product, we subtracted the sales revenue of fatty acid from the production costs of sebacic acid. This treatment of by-products is consistent with generally accepted accounting principles. (See Cost Accounting: A Managerial Emphasis (1991) at pages 539–544).

We also find that glycerine and caproyl alcohol are co-products. The value of glycerine for two of the four factories and the value of caproyl alcohol for all four factories is significant compared to the relative value of all of the products manufactured as a result of, or during, the process of manufacturing sebacic acid. We also find that the quantity of glycerine production is subject to manipulation by management based on the variation in the quantity yield among the four factories, and because there is no information on the record which indicates other reasons for why the quantity would vary.

Therefore, we have allocated the factor inputs, (e.g., materials used to produce glycerine and caproyl alcohol), based on the relative quantity of output of these two products and sebacic acid. In addition, we have used the production times necessary to complete each production stage of sebacic acid as a basis for allocating the amount of labor, energy usage and factory overhead among the products (see May 20, 1994, concurrence memorandum, memorandum to the file dated May 9, 1994, and comment 9 for further discussion). This treatment of co-products is consistent with generally accepted accounting principles. (See Cost Accounting: A Managerial Emphasis (1991) at pages 528–533).

Best Information Available (BIA)

As stated in the preliminary determination, the Department must receive an adequate questionnaire response from an entity requesting a separate dumping margin rate before a separate rate can be applied to that entity. Non-respondent entities must receive a PRC country-wide rate. We have based the PRC country-wide rate on BIA.

Section 776(c) of the Act provides that whenever a party refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Department shall use BIA. We have done so in this investigation with regard to the non-responding entities.

In determining what to use as BIA, the Department follows a two-tiered methodology based on the degree of respondents' cooperation. According to the Department's two-tiered BIA methodology, when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. This methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See Allied-Signal Aerospace Co. v. United States, 996 F.2d 1185 (Fed. Cir. 1993); see also Krupp Stahl AG et al. United States, 822 F. Supp. 789 (CIT 1993).) We find those PRC exporters which refused to answer the Department's questionnaire to have been uncooperative in this investigation. As BIA for these exporters, we are assigning the highest margin alleged in the petition (243.40 percent) as the PRC country-wide rate, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. We made no adjustment to petitioner's amended calculations.

Consistent with our preliminary determination, no "All Others" rate will be established for the PRC. Instead, a country-wide rate is applied to all imports of sebacic acid from the PRC for those PRC exporters which were unable to demonstrate that they were entitled to a separate rate. Because we are assigning a country-wide rate in this situation, there is no need to assign an "All Others" cash deposit rate for PRC entities.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents by using standard verification procedures, including on-site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Analysis of Comments Received

Comment 1: Petitioner contends that the four respondents should not receive separate rates because each is a state-owned company subject to central control by the PRC government.

Respondents contend that the issue determining separate rates is not state-ownership but government control. Therefore, respondents request that the Department return to its policy set forth in the Sparklers to determine if the PRC trading companies are entitled to separate rates. Respondents maintain that if the Sparklers criteria is applied, there can be no question that the four trading companies should receive separate rates.

DOC Position: As described in the "Separate Rates" section above, we have found that the four responding exporters "owned by all the people" are not controlled by the central government. Further, the information on the record relating to provincial and local

governments shows that their activities with regard to the four respondents are limited to such functions as taxation, business licensing, and the collection of export statistics. There is no evidence that these governments (1) manipulate export prices or (2) interfere with other aspects of conducting business with the United States. Therefore, we have found that the four respondents are not subject to government control of their sebacic acid exports.

Comment 2: Petitioner maintains that the respondents in this case do not meet the Department's criteria for separate rates because they have not demonstrated that they are independent of government ownership or control, and therefore, the Department must presume central government control. Petitioner also maintains that evidence on the record demonstrates that the respondents are subject to certain types of control by the central and provincial governments (e.g., government approval is necessary for companies to receive bank loans and companies can only use their profits if they have increased the value of their assets). Further, petitioner states that various provisions of PRC law demonstrate that respondents, whose business licenses state that they are owned by "the whole people," are subject to state control. In addition, petitioner contends that there is evidence that shows that the provincial or municipal governments regulate prices between the domestic producers and the four respondents and the prices between domestic producers and their suppliers. In conclusion, petitioner states that, based on the record of this investigation, respondents are ineligible for separate rates.

Respondents state that the Department should apply the Sparklers criteria and find them eligible for separate dumping margins. Respondents state that they have cooperated completely in this investigation and have provided information indicating a lack of control by the PRC central government. Moreover, respondents assert that they are not owned by the central government because the appropriate test of ownership is control of property rather than simple legal title. Respondents state that the record also provides evidence of a *de facto* absence of central control with respect to exporters.

DOC Position: During verification, we found no evidence that respondents are controlled by the central government. On the contrary, we found evidence that the respondents are not controlled by the PRC government. Such evidence included the laws on the record of this proceeding, an examination of the respondents' bank accounts, and documentation showing the financial independence of each of the respondents. In addition, we did not find that respondents had to seek approval from the central government to receive loans or had to report their profits to the central government before using them. As discussed at length in the "Separate Rates" section above, respondents are eligible for separate rates.

Finally, petitioner's concerns regarding the ability of provincial or municipal governments to regulate prices between domestic producers and exporters are not relevant to these respondents' eligibility for separate rates. The Department's separate rates analysis focuses on governmental control over the respondents' export activities. The Department's separate rates analysis does not focus on the prices between domestic producers and exporters or on the prices between the domestic producers and their suppliers.

Comment 3: Respondents contend that the Department's PRC policy is not based on the antidumping statute or regulations. Therefore, the Department has no basis for disallowing separate rates to PRC trading companies.

Petitioner contends that since Congress never provided for a separate rates provision in the 1988 amended statute, Congress in effect approved the Department's policy of issuing country-wide rates in NME antidumping investigations. Therefore, the lack of legislative and regulatory provisions indicates that the Department does not have the authority to issue separate rates in NME antidumping investigations.

DOC Position: The statute does not contain specific guidelines for issuing separate rates. The NME provision of the statute only contains guidelines for calculating a foreign market value. It does not address how U.S. price should be established in NME cases. Therefore, it has been left to the Department to determine the circumstances in which separate rates should be calculated. In an NME, the government exercises a significant degree of control over economic activity. Given the nature of NMEs, we have determined that a respondent "owned by all the people" should receive a country-wide rate unless it can demonstrate that it is not subject to *de facto* or *de jure* government control. As discussed in the "Separate Rates" section and in comments 1 and 2 above, four companies in this proceeding have demonstrated their independence from *de jure* and *de facto* government control and, as such, are entitled to separate rates. PRC exporters that did not respond and, therefore, did not demonstrate eligibility for separate rates, are presumed to be part of state-controlled operations and will receive the PRC country-wide rate.

Comment 4: Petitioner contends that Tong Liao has been repeatedly late and unresponsive to the Department's requests for information throughout the course of this investigation. In addition, Tong Liao has exhibited an extreme lack of cooperation by not bringing to the verification site requested documentation which would have enabled the Department to tie Tong Liao's response to its financial statements. Finally, the errors found in Tong Liao's response at verification were numerous. Therefore, the Department should use BIA for Tong Liao.

Respondents contend that the raw material inputs reported by Tong Liao factory were in fact verified by the Department. Therefore, Tong Liao's factor information should be used in the final determination.

DOC Position: We find that Tong Liao has not been unresponsive in the course of this proceeding. With the exception of its financial statements, Tong Liao provided information requested by the Department in a timely manner.

Regarding whether Tong Liao has been cooperative during this investigation, the verification team was able to tie 11 out of 13 factor amounts reported in Tong Liao's response to actual consumption and production reports which Tong Liao brought to verification. Even though the verification team was not provided the financial statements so that it could tie the amounts to those statements, the verification team was able to establish that the reports recorded actual consumption amounts of materials and actual production of the subject merchandise and its subsidiary products because the reports were authentic and kept by the factory in the ordinary course of business. Therefore, we have used Tong Liao's verified factors for the final determination.

For the two factors which were unverified (e.g., labor and coal), we have used as BIA the higher of (1) the highest amount verified for any of the other three factories, or (2) the amount reported by Tong Liao.

Comment 5: Petitioner contends that the Department should not use India as the surrogate country for valuing the factors of production of sebacic acid because India may not be a producer of sebacic acid.

Respondents contend that the Department should continue to use India as the surrogate country because

there is no evidence on the record that India did not produce sebacic acid during the POI.

DOC Position: We agree with respondents. The statute directs us to select a country that is comparable economically to the PRC. Based on the list of possible surrogate countries, we find that India is a comparable economy to the PRC. The countries that we were able to confirm still produce sebacic acid, such as Japan and the United States, do not have economies comparable to the PRC. Even though we are not certain whether sebacic acid was produced in India during the POI, we still find that India was a significant producer of comparable merchandise (*e.g.*, oxalic acid) during the POI. Though sebacic acid and oxalic acid have different end uses, both are dicarboxylic acids. In addition, many of the inputs used to produce sebacic acid are also used to produce oxalic acid. Therefore, we find that India fulfills both requirements of the statute.

Comment 6: Respondents contend that the published information from India submitted by respondents was what was reasonably available to them. Since the published data contains Indian chemical prices for various inputs and subsidiary products during the POI, the Department should use them. The Department should not use Indian import values when it has actual POI domestic input prices.

Petitioner contends that since respondents were unable to provide the Department with Indian published information which was more representative of the POI, the Department should resort to BIA and rely on the published information provided in the petition.

DOC Position: For the three chemicals (sulfuric acid, capryl alcohol, glycerine), we obtained late December 1992 prices from the same periodical submitted by respondents (see "FMV section" for further discussion). Therefore, we were able to establish a price range during the POI for the three chemicals listed above and we have used them in the final determination in accordance with the selection methodology outlined in the FMV section of this notice.

For castor oil, we obtained additional POI prices from the U.S. embassy in India, and these prices were from the same periodical from which respondents obtained their prices. Therefore, we were also able to establish a price range during the POI for castor oil. To calculate an average POI price for castor oil, we have used the January 1993 prices from respondents and the April and June 1993 prices obtained from the U.S. embassy in India.

Comment 7: Petitioner contends that the Department should not value the glycerine produced at the factories using the Indian published value for industry water grade glycerine. Instead, the Department should use the value for crude grade glycerine.

DOC Position: We agree with petitioner. Based on verification, we have determined that the factories produce crude glycerine and not industry water grade glycerine during the sebacic acid production process. Therefore, we have selected a more product-specific Indian published value for crude glycerine.

After reassigning a value to glycerine, we still find that glycerine is not a by-product, but a co-product, of the sebacic acid production process (see May 20, 1994, concurrence memorandum for further discussion).

Comment 8: Petitioner contends that the Department should not value the amount of fatty acid or capryl alcohol produced by the factories because respondent did not provide product-specific values for the two products. Therefore, if values must be assigned to these subsidiary products, then the Department should assign the correct values and not use values which do not reflect the actual products.

Respondents contend that values should be assigned to fatty acid and capryl alcohol. Therefore, the Department should continue to value fatty acid and capryl alcohol using the Indian published values from the preliminary determination.

DOC Position: We agree with respondents. We find that octanol-1 and capryl alcohol (*i.e.*, octanol-2) share very similar molecular formulae though they are not identical products. We were able to obtain an Indian price for octanol-1. We were unsuccessful in locating a price for octanol-2 either in Indian publications or in publications from our other recommended surrogate countries.

Therefore, because we cannot find an exact Indian price for capryl alcohol, we have relied on the price of octanol-1, in valuing this factor. To properly value this capryl alcohol, we must assign a value to this subsidiary product. Since product-specific price information is not available from our recommended surrogate countries, we must rely on the price of the closest product we could obtain to value capryl alcohol.

As for fatty acid, the factories do not produce a fatty acid which is classifiable. The only thing we could establish through verification is that this fatty acid results from producing a carboxylic acid and is used to make soap. Throughout the course of this investigation, neither we nor respondents could establish the specific type of fatty acid produced by the factories. The problem is that the factories' fatty acid is comprised of many different acids (e.g., oleic, palmitic, etc.) and the percentage concentrations can vary.

As in the case of capryl alcohol, we have relied on the price of the closest Indian product we could obtain to value fatty acid.

Comment 9: Petitioner contends that it is unclear based on the description of the sebacic acid production process how much energy, labor, and overhead should be allocated to the production of glycerine and capryl alcohol. Therefore, the Department should not allocate any non-material amounts to the subsidiary products.

Respondents contend that the Department should also allocate amounts for energy, labor, and overhead to glycerine and capryl alcohol since the production process is continuous and it is possible to identify an amount for factors associated specifically with sebacic acid and each of the subsidiary products.

DOC Position: We agree with respondents. For two of the four factories, we established at verification the amount of time required to perform each stage of the sebacic acid production process. This information now provides us with the means for devising a method which reasonably allocates amounts for labor, coal, electricity and factory overhead to glycerine and capryl alcohol production at each factory.

For the two factories where we did not examine production times, we used the information from the factories (where we did establish production times) to calculate an average time for each production stage. We applied the average times to the two factories where we did not examine production times to determine the amount of labor, coal, electricity, and factory overhead associated with glycerine and capryl alcohol production at those two factories. We did not allocate materials, energy, labor, or factory overhead amounts to fatty acid because it is a by-product, and as such, we simply subtracted its assigned value from the cost of manufacture of sebacic acid.

Comment 10: Petitioner contends that in instances where the respondents have misreported distances or not reported certain factors of production or sales expenses, the Department should use BIA. The Department should use as BIA the longest freight distance reported by a given factory for determining the

freight expense associated with each input reported by that same factory.

Respondents contend that the Department should use the verified amounts for factors and distances in the final determination.

DOC Position: We agree with respondents. We obtained the correct distances at verification. Respondents satisfactorily explained that the mistakes in their data were the result of providing estimated distances to the Department. In addition, we find that the correction of the mistakes has had a negligible impact on the amount calculated for delivery charges for each factory. Therefore, we have used the correct distances in the final determination.

As for the unreported factor of production (e.g., packing material amounts), we obtained at verification the factor amounts which we could not previously value. At verification, we found that respondents' failure to include these amounts in their responses was simply an oversight. Therefore, we have valued the additional packing materials in accordance with the publicly available published information selection methodology noted above.

Finally, the Department has used surrogate values for all of the respondents' sales expenses. Therefore, we have not used the sales expense amounts reported by the respondents.

Comment 11: Respondents contend that material inventory write-offs recorded in the factory's inventory ledgers should be treated as losses in inventory and not included in the amount of materials necessary to produce sebacic acid. Instead, the Department should consider the write-offs as a general and administrative expense.

Petitioner contends that the material losses should be considered as additional factors of production.

DOC Position: We agree with respondents. Two factories in this investigation recorded in their inventory ledgers material losses either before or after the material was transferred to the workshop producing sebacic acid. In both cases, we find that the workshop at each factory did not actually incur material losses in producing the subject merchandise. Specifically, we find that the losses did not result from the production process, nor did they represent a production yield loss. Rather, the losses resulted from factors such as leakage which are unrelated to the production process. Therefore, we have considered the material losses as a part of factory overhead rather than part of the general and administrative expense and have not assigned values to the material losses.

Comment 12: Petitioner contends that the different strengths of caustic soda used by respondents should be valued differently. In addition, for those factories that purchase solid caustic soda and then dilute it, the Department should consider the costs of converting the solid to a liquid form. In addition, the Department should use the value of solid caustic soda for those factories.

Respondents contend that the Department should continue to use the values for liquid caustic soda because the factories reported factors for liquid caustic soda and this is the input actually used in the production process.

DOC Position: We agree with respondents. First, the published values we examined do not indicate a percentage of purity. Therefore, we would have to make an assumption concerning the purity percentage of the published value we select. Based on the information on the record, we have no basis for determining the percentage of purity of a published value for which no percentage is indicated.

Second, even if we assigned an arbitrary purity percentage figure to the published value we select, we would have to make an additional assumption regarding which multipliers we should use to adjust the value to account for different purity percentages. Based on testimony at our April 15, 1994, hearing, even petitioner was unsure as to the correct multipliers we should use.

Finally, we consider the usage amounts reported by the factories to be for liquid caustic soda, and as such, we have valued them accordingly. Since the factories used liquid caustic soda, we do not find it appropriate to use a value for solid caustic soda.

Comment 13: Petitioner contends that because there was a discrepancy between the amounts of cresol recorded in Nangong factory's detailed subledger for chemical materials and Nangong's sebacic acid workshop ledger, the Department should use the cresol amount from the workshop ledger.

Respondents request that the Department accept the reported and verified amount in the final determination.

DOC Position: We have used the verified amounts. As we stated in the verification report, the purity of the cresol stored in the warehouse was different from the purity of the cresol used by the workshop. Since we do not have a published price for cresol which indicates the purity percentage, we have no means of determining whether the cresol price we are using corresponds more closely to the type of cresol transferred from the warehouse or more closely to the type of cresol used by the workshop. Therefore, we have accepted Nangong factory's reported cresol factor.

Comment 14: Respondents contend that an Indian published value for mixed cresol should be used rather than a value for a specific type of cresol because officials from all four factories stated at verification that they use a mixture of cresol to produce sebacic acid.

DOC Position: We agree with respondents. First, we established that the prices for cresol in the publication Chemical Weekly, which were submitted by respondents, were representative of a price range throughout the POI. Second, we calculated an average Indian POI value based on the values of three types of cresol (e.g., ortho, para, and meta) listed in Chemical Weekly. Finally, we used this average price to value the cresol used by the factories.

Comment 15: Petitioner contends that because the factories recover cresol used in the production process, the Department should consider the cresol recovery costs when determining the cost of manufacture.

Respondents contend that the Department captured the costs of recovering the cresol after establishing the factor for cresol at verification.

DOC Position: We agree with respondents. We have valued the amounts of cresol the factories actually used in producing sebacic acid based on the factories' production records. We find that these amounts used in production included amounts for recycled cresol. As in the case of caustic soda, we also have considered any costs associated with recovering cresol to be included in factory overhead since we did not discover at verification any unreported and quantifiable factors associated with the cresol recovery process.

Comment 16: Respondents contend that the additional labor amounts unreported by Handan factory should be considered as indirect labor, that is, part of factory overhead, and not production-related.

Petitioner contends that since Handan factory considers such labor to be part of its cost of manufacture, the Department should value the additional labor as direct labor in the production process. Petitioner also cites to a decision made in the Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC, 58 FR 48833 (September 20, 1993) (HSLW) in support of its argument.

DOC Position: We agree with respondents. The antidumping questionnaire instructs responding factories to include in their labor factors the direct hours associated with producing the subject merchandise. Handan reported only the direct skilled and unskilled labor hours associated with producing and packing the subject merchandise during the POI. As a result of verification, we do not consider the unreported labor such as work performed by the plant managers to be direct labor. Rather, we consider the unreported labor to be indirect labor because such labor is not directly associated with producing or packing sebacic acid.

In the HSLW decision, the Department did not differentiate between direct and indirect labor when analyzing this issue. Instead, we based our decision on the fact that the additional laborers were considered by the factory to be part of the workshop producing the subject merchandise. In this case, we have distinguished between direct and indirect labor. We have found that Handan's additional labor is indirect labor and have considered the additional labor a part of factory overhead.

Comment 17: Petitioner contends that the material yield amounts reported by the factories in their submissions are not chemically possible. Therefore, the Department should resort to the amounts stated in the petition for BIA.

Respondents contend that the data of the Chinese producers have all been verified. Therefore, the Department should use the producers' data in the final determination.

DOC Position: We agree with respondents. Based on our verification findings, each factory on the whole correctly reported all of the materials it used to produce the subject merchandise during the POI. We checked each factory's reported material amounts at verification using standard verification procedures such as: (1) Examining the factories' production cost and consumption usage reports; (2) examining entries in each factory's material inventory ledger to determine whether the factory underreported its material usage; (3) examining material draw tickets from the workshop producing the subject merchandise to determine actual usage; (4) tying the material inventory ledger to the factory's financial statements; and (5) examining sales invoices to determine whether the factories should have included additional material amounts in their reported material amounts.

In addition to employing standard verification procedures, we examined two of the four factories' Chinese sebacic acid production manuals (one was published; the other was not). These manuals illustrated the general prescribed method for producing sebacic acid in the PRC. After careful analysis of our verification findings and of information provided by all the parties to this proceeding, we found no evidence to support petitioner's contention that the material yield amounts reported by the factories are inaccurate.

Comment 18: Petitioner contends that since Guangdong underreported the distance used to determine the foreign inland freight expense, the Department should use as BIA, in calculating the U.S. price, the longest distance reported by any of the other three trading companies to determine the deduction to U.S. price for Guangdong's foreign inland freight expense.

Respondents contend that the Department should use the verified amounts for factors and distances in the final determination.

DOC Position: We agree with respondents. We obtained the correct distance at verification. Therefore, we have used the correct distance to calculate Guangdong's foreign inland freight in the final determination.

Comment 19: Respondents contend that the Department should not use Indian import values to value the factors of production because neither the Chinese nor the Indian producers use imported inputs to produce the subject merchandise. Instead, the Department should use Indian domestic prices to value the factors of production.

DOC Position: We disagree in part with respondents. We have selected both published import and domestic prices (e.g., non-export values) to value the factors of production in accordance with the publicly available published information selection methodology noted in the "Foreign Market Value" section of this notice. If the published value was representative of a price range within the POI or more contemporaneous with the POI, product-specific, and tax-exclusive, we selected that value over all other values regardless of whether the value was an import or domestic value. In only one case (*e.g.*, steam coal) has this resulted in the selection of an import value over a domestic value. We selected the import value because it was one month outside the POI whereas the domestic value was about three years prior to the POI and the import value was, therefore, more contemporaneous with the POI.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of sebacic acid from the PRC, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after January 5, 1994, which is the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount, with respect to the subject merchandise, by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. The weighted-average dumping margins are as follows. The PRC country-wide rate applies to all PRC companies not specifically listed below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/ Exporter	Weighted-average margin percentage
Sinochem Jiangsu Import & Export Corporation	85.45
Tianjin Chemicals Import & Export Corporation	59.67
Guangdong Chemicals Import & Export Corporation	57.00
Sinochem International Chemicals Company	43.72
PRC country-wide rate	243.40

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on sebacic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to

administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20(a)(4).

Dated: May 20, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–13126 Filed 5–27–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Virginia Electric and Power Company From an Objection by the North Carolina Department of Environment, Health and Natural Resources

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision.

On May 19, 1994, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Virginia Electric and Power Company (VEPCO) (now known as Virginia Power). The decision was reached on a project proposed by the City of Virginia Beach (City) to withdraw water from Lake Gaston for the City's water supply needs. The Secretary has overridden North Carolina's objection, thereby allowing the City to obtain federal permits to build a pipeline for the withdrawal of up to 60 million gallons of water a day from Lake Gaston.

Lake Gaston, which lies approximately 100 miles west-southwest of the City, is a man-made lake formed by damming a portion of the Roanoke River. Lake Gaston is part of a hydroelectric project operated by VEPCO under a license granted by the Federal Energy Regulatory Commission (FERC). Lake Gaston lies partly in Virginia and partly in North Carolina.

To gain access to Lake Gaston, the City proposes to construct a pipeline. The proposed pipeline would originate in a branch of Lake Gaston in Brunswick County, Virginia, at a location approximately 400 yards north of the Virginia-North Carolina border, run 76 miles across southeastern Virginia and end at Lake Prince in Isle of Wight County, Virginia. The proposed pipeline and point of water withdrawal would be located entirely within Virginia.

To install and operate its water intake for Lake Gaston, the City must obtain permission from VEPCO, and VEPCO, in turn, must obtain approval from FERC. In February 1991, VEPCO applied to FERC to obtain the necessary permit approval for the pipeline project. The State of North Carolina requested that the City and VEPCO submit a certification that the proposed project is consistent with North Carolina's coastal management program (CMP), a program approved under the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et. seq.* The City and VEPCO jointly submitted such a consistency certification.

The North Carolina Department of Environment, Health and Natural Resources (State), the State of North Carolina's coastal management agency, reviewed the City's project pursuant to section 307(c)(3)(A) of the CZMA. On September 9, 1991, the State objected to the City's project on the ground that it is inconsistent with several enforceable policies contained in the State's CMP. Specifically, the State alleged that the project is not consistent with its guidelines for estuarine waters and public trust areas because the proposed withdrawal of water would significantly increase the number of low flow days experienced by the lower Roanoke River system in coastal North Carolina. This increase, the State asserted, would cause significant adverse effects on its coastal zone, including the Roanoke River striped bass fishery. The State recommended that the City obtain water from other sources.

Under section 307(c)(3)(A) of the CZMA and 15 CFR 930.131, the State's consistency objection precludes any federal agency from issuing any license or permit necessary for the City's proposed project, unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II).

On October 3, 1991, VEPCO, on behalf of the City, filed with the Secretary a notice of appeal from the State's objection to the City's proposed project. The City argued that the project satisfies both Ground I and Ground II.

Upon consideration of the entire administrative record, which included submissions by the City, VEPCO, and North Carolina, written information from federal agencies and the public, and views given during a public hearing, the Secretary made the following findings.

Under Ground I, the Secretary found that the project is consistent with the objectives or purposes of the CZMA, and accordingly may be federally permitted. Specifically, the Secretary found that the project satisfies all four elements required under Ground I of the CZMA: (1) It furthers one or more of the national objectives or purposes of the CZMA, (2) its individual and cumulative adverse effects on the coastal zone are outweighed by its contribution to the national interest; (3) it will not violate any of the requirements of the Clean Water Act or the Clean Air Act; and (4) there is no reasonable alternative available that would permit the proposed activity to be conducted in a manner consistent with North Carolina's CMP.

Under Ground II, the Secretary found that the project is not necessary in the interest of national security based upon an evaluation of comments by interested parties, including agencies of the Department of Defense.

In making these findings the Secretary decided that: (1) The City's argument, that North Carolina did not have authority to review the Lake Gaston project, lacked merit; (2) North Carolina had standing under the plain terms of the CZMA to review the project since the project affects North Carolina's coastal zone; and (3) the CZMA employs an effects test as the basis for a state's consistency review, regardless of a project's location.

Only one of the two Grounds for a Secretarial override need be satisfied in order for the project to be federally permitted. Accordingly, because the proposed project satisfies all of the requirements of Ground I, the Secretary did override the State's objection, and the project may be permitted by federal agencies. Copies of the decision may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT:

Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, room 6110, 1305 East-West Highway, Silver Spring, Maryland 20832, (301) 713–2967.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: May 20, 1994.

Meredith J. Jones,

General Counsel.

[FR Doc. 94–13123 Filed 5–27–94; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Information Architecture for the Battlefield

ACTION. Notice of Advisory Committee Meeting.

SUMMARY. The Defense Science Board Task Force on Information Architecture for the Battlefield will meet in closed session on June 13–14, 1994 at Strategic Analysis, Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will provide recommendations for implementing an information architecture for commanders and forces at all levels.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552B(c)(1)(1988), and that accordingly this meeting will be closed to the public.

Dated: May 25, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–13170 Filed 5–27–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Productivity Advancement Research (CPAR) Program

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: The purpose of this notice is to inform potential applicants of a program of cost-shared research, development, demonstration and commercialization and technology transfer (R&D) projects between the U.S. Army Corps of Engineers (Corps) and the U.S. construction industry. The purpose of the Construction Productivity Advancement Research (CPAR) Program is to assist the U.S. construction industry in enhancing its productivity and competitive position through the development and commercialization of advanced technologies, materials and constitution management systems.

DATES: Effective date is June 6, 1994. Proposals will be accepted until July 22, 1994.

ADDRESSES: Proposals for the Fiscal Year 1995 CPAR Program should be submitted to the Corps laboratories identified in the CAPR Guidelines for Participation, dated May 1994. The Guidelines provide information about the CPAR Program and how to participate, and should be read carefully by those wishing to propose a project before contact is made with a Corps laboratory. Copies of the Guidelines may be obtained by writing to: HQUSACE, ATTN: CERD–C; 20 Massachusetts Avenue NW., Washington, DC. 20314–1000 or by calling (202) 272–0257.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Mathis; HQUSACE, CERD–C; 20 Massachusetts Avenue NW. Washington, DC 20314–1000, or call (202) 272–1846 or 272–0267.

SUPPLEMENTARY INFORMATION: CPAR is a program consisting of cost-shared R&D projects executed by collaborative partnerships between the Corps, the U.S. construction industry (contractors, equipment and material manufacturers and supplies, architects, engineers, and financial organizations), public and private foundations, trade and professional organizations, state and local governments, academic institutions and other entities who are interested in enhancing construction productivity and competitiveness. The objective of CPAR is to facilitate research development and application of advanced technologies through collaborative R&D, field demonstration, licensing agreements, commercialization, technology transfer and other means of reducing technology to practice in the U.S. construction industry.

R&D efforts conducted under CPAR will be based on proposals received from U.S. construction industry entities and others, as noted above, which can be addressed effectively by a partnership between an industry partner and a Corps laboratory, with both performing a mutually defined portion of the required R&D, and which will benefit both the construction industry and the Corps.

Participation in CPAR is open to any U.S. private firm, including corporations, partnerships, limited partnerships and industrial development organizations; public and private foundations; non-profit organizations; units of state and local governments; academic institutions; and others who have an interest in and the resources and capability to address CPAR objectives. Consortia of industry firms and organizations are encouraged, with emphasis on inclusion of construction contractors and other practitioners to ensure the product of each CPAR project is useful and beneficial to the industry.

As provided by law, special consideration will be given to small business firms. Preference will be given to business units located in the United States that agree to substantially manufacture, market and apply the products in the United States. Consideration will be given to a potential partner that is subject to the control of a foreign company or government if that foreign government permits U.S. agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

The cost of each CPAR project will be shared by the Corps and the construction industry partner. Specific cost sharing terms will be defined for each proposed project prior to submission of the proposal to Corps Headquarters (HQUSACE) for approval. "In-Kind" services and/or use of facilities may be considered in arriving at a cost-sharing agreement. As required by law, not more than fifty (50) percent of the total cost of a CPAR project will be provided by the Corps and not less than five (5) percent of the construction industry partner's share of the cost must be contributed in cash. The Corps and the construction industry partner may each contribute personnel, services, facilities, property, patent licenses (or assignment or options to the patent license) and money. Funds for the Corps share of each project will be provided to the Corps laboratory for in-house performance of the laboratory's share of the collaborative R&D. The construction industry partner will provide all funds and other resources necessary to perform the partner's share of the collaborative R&D. No costs previously incurred by the Corps or the construction industry partner on the subject matter of the CPAR project may be recovered in the cost sharing agreement.

A CPAR Cooperative Research and Development Agreement (CPAR–CRDA) specific to each project will be negotiated between the Corps and the U.S. construction industry partner. The CPAR–CRDA is defined by law as neither a procurement contract nor an assistant agreement (grant or cooperative agreement). The CPAR–CRDA will contain, in addition to the cost-sharing terms, a work plan and all other conditions and responsibilities necessary to complete the project and

commercialize/transfer the technology, including rights to inventions. Those considering proposing a CPAR project should review CPAR–CRDA given in Appendix B of the CPAR Guidelines for Participation before proposing the project to ensure that the proposer can agree to the terms and conditions of the CPAR–CRDA.

It is recognized that the industry partner will do more to push the technology into use in the construction industry if the industry partner is provided a marketplace interest in the product of a CPAR project. Therefore, to the extent permitted by law, the Corps will generally grant to the industry partner an option to licenses or assignments for any intellectual property made in whole or in part by a Federal employee under the CPAR–CRDA, retaining a nonexclusive, non-transferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world on behalf of the Government. The Corps may, without further notice to others, agree to negotiate an exclusive license to intellectual property if such action would facilitate commercialization and use of the product. However, to the greatest extent possible and appropriate, licensing and assignments will be on a non-exclusive basis. In appropriate cases, royalties will be negotiated and collected by the Government in exchange for licenses or assignments. The industry partner will retain title to all inventions created by industry partner employees under the CPAR–CRDA and, generally, will grant a non-exclusive, non-transferrable, irrevocable, royalty-free license to the Government on such inventions.

CPAR is designed to promote and assist in the advancement of ideas and technology which will have a direct, positive impact on construction productivity and Corps mission accomplishment. The intent of each CPAR project is to produce a discrete, field-demonstrated product ready for use by the U.S. construction industry at the end of the project. CPAR is focused on three major technology areas: planning and design improvement, improved construction site productivity and advanced materials. However, any idea for improving construction productivity will be considered. Ideas that cannot define a direct and demonstrable link to the enhancement of construction productivity will not be accepted into the CPAR Program. Areas of interest include, but are not limited to:

Planning and Design Improvement

* Computer-Aided Planning and Engineering Tools.
* Advanced Site Investigation Technology.
* Knowledge-Based Cost Estimating Systems.
* Computer-Aided Design Systems.
* Total Integrated Design Systems.
* Expert Systems/Artificial Intelligence.
* Materials Selection Systems.
* Advanced Technology Selection Systems.

Improved Construction Site Productivity

* Construction Management Methods.
* Materials Handling.
* Automated Construction/Robotics.
* Expert Systems.
* Marine Construction.
* Advanced Excavating, Tunneling and Other Construction Technologies.
* Cold Weather Construction.
* Automated Inspection and Quality Control.
* Computer-Aided Construction Management Systems.
* Advanced Environmental Compliance Systems.
* Flood Fighting Expedient Construction.

Advanced Materials

* High-Performance Cementitious Materials.
* Structural Polymers.
* Advanced Ceramics.
* Metal Matrix Composites.
* Advanced Fabrication Systems.
* Coatings.
* Adhesives/Fasteners.
* Geomodifiers/Geotextiles.

Proposed Review Process

Proposals received by the Corps laboratories which meet CPAR criteria may be discussed and further developed, as necessary, by the laboratory and the prospective construction industry partner. The following criteria will be used to evaluate the proposals. The first two evaluation factors are of equal importance and are more significant than the remaining factors, which are listed in descending order of importance:

1. Potential Impact on U.S. Construction Industry Productivity

High—Technological advancement which would have major beneficial impact on current construction industry processes, materials and/or equipment and will have a demonstrable major beneficial impact on construction industry productivity and effectiveness.

Medium—Technological advancement which would improve on and/or demonstrate currently available processes, materials and/or equipment not in widespread construction industry use and which would have a demonstrable beneficial impact on construction industry productivity and effectiveness.

Low—Technological advancement which would upgrade construction industry processes, materials and/or equipment in current use and which would have a limited but beneficial and impact on construction industry productivity and effectiveness.

2. Potential Impact on the Corps of Engineers

High—Technological advancement which would be a major improvement in technology and procedures currently used by the Corps or Corps contractors and which would have a demonstrable major beneficial impact on the Corp's ability to carry out its missions.

Medium—Technological advancement which would significantly improve currently used Corps/contractor technology and procedures and which would result in demonstrable benefits for the Corps.

Low—technological innovation which would upgrade current Corps/contractor standard technology and procedures and which would have a limited but beneficial impact on the Corps.

3. Commercialization and Technology Transfer

High—Plan and concepts stated for broad-scale use and adoption of the product by non-Federal and Federal organizations and the production, marketing and dissemination of the product by the industry partner.

Medium—Plans and concepts stated for some beneficial use and adoption of the product by non-Federal and Federal organizations.

Low—Plans and concepts stated for limited but beneficial use and adoption of the product by non-Federal and Federal organizations.

4. Ease of Adoption

High—Technology provides construction industry productivity and effectiveness improvement with minimal equipment, training, materials and operating costs beyond the cost of current practice.

Medium—Technology provides construction industry productivity and effectiveness improvements, but requires moderate additional equipment, training, materials, and operating costs beyond the cost of current practice.

Low—Technology provides construction industry productivity and effectiveness improvement, but with substantially higher costs for additional equipment, training, materials and operating costs beyond the cost of current practice.

5. Probability of Achieving Projected Productivity and Effectiveness Enhancement

High—Some risk, requires innovative application of current knowledge, high probability of success.

Medium—Moderate risk, concepts exist but are unproven, good probability of success.

Low—High risk, basic concepts must be developed and proven, uncertain probability of success.

6. Project Duration

High—Project, including demonstration of benefits, can be completed in 3 years or less.

Medium—Project, including demonstration of benefits, can be completed in 4 years or less.

Low—Project, including demonstration of benefits, will require more than 4 years to complete.

7. R&D Investment

High—Project will obligate the Corps to invest less than $300,000 per year.

Medium—Project will obligate the Corps to invest between $300,000 and $500,000 per year.

Low—Project will obligate the Corps to invest more than $500,000 per year.

After discussions between the laboratory and the prospective construction industry partner, a CPAR Executive Summary of the proposal will be prepared by the laboratory. The Executive Summary will contain the project objective and approach to be followed in developing the specific end product, all expected costs and cost-sharing arrangements, time needed to complete, expected productivity benefits to the U.S. construction industry and the Corps, and a proposed commercialization and technology transfer plan.

Corps laboratories will submit their recommended Executive Summaries to HQUSACE for consideration under the CPAR Program. The CPAR Executive Summaries will be reviewed and recommendations made by the CPAR Executive Committee in HQUSACE. The CPAR Executive Committee is composed of senior-level HQUSACE managers. The Director of Civil Works, HQUSACE, will act on the recommendations of the CPAR Executive Committee in approving the Fiscal Year 1995 CPAR Program.

All information and data furnished by the prospective construction industry partner will be used for evaluation purposes only and will be safeguarded from unauthorized disclosure in accordance with applicable laws. Protection of information during and after completion of a CPAR project will be defined and agreed to in the CPAR–CRDA. Classified information and data will be handled in accordance with Army regulations.

Additional Requirements

Applicants are reminded that a false statement may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Except where declared by law or approved by the head of agency, no award or Federal funds shall be made to an applicant who is delinquent on a Federal debt until the delinquent account is made current or satisfactory arrangements are made between affected agencies and the debtor. No award will be made to a debarred or suspended firm or organization.

Classification

This document is not a major rule requiring a regulatory analysis under Executive Order 12291 because it will not have an annual impact on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect on competition, employment investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets. It is not a major Federal action requiring an environmental assessment under the National Environment Policy Act. The CPAR Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, the Corps determined that Executive Order 12372 is not applicable to CPAR. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. CPAR is being carried out under the authority of Section 7, Water Resources Development Act of 1988 (Pub. L. 100–676) (33 USC 2313).

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–13244 Filed 5–27–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing sponsored by the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Monday, June 6, 1994, beginning at 9 a.m. and ending at 3:30 p.m.

ADDRESSES: The University of Colorado at Boulder, the Dal Ward Athletic Center, Varsity Room, in Boulder, Colorado 80309–0106.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB–3, 7th & D Streets SW., Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, and conducting a study of institutional lending in the Stafford Student Loan Program and an in-depth study of student loan simplification. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, the Congress also directed the Advisory Committee to conduct an evaluation of the Federal Direct Student Loan Program (FDSLP) and the Federal Family Education Loan Program (FFELP) and submit a report to the Secretary and Congress on not less than an annual basis on the operation of both programs.

The Advisory Committee will meet in Boulder, Colorado on June 6, 1994, from 9 a.m. to 3:30 p.m.

The proposed agenda includes discussion sessions on the implications of planned delivery system changes on the FDSL and FFEL programs. Those who cannot attend the hearing are invited to submit written testimony which will be presented to the Advisory Committee members.

The intent of the Boulder, Colorado hearing is to involve as witnesses many of the financial aid administrators and members of the higher education community from that region. In addition, congressional staff are being invited to share their views on the delivery system and loan programs.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Street SW., Washington DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: May 24, 1994.

Dr. Brian K. Frizgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 94–13164 Filed 5–27–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

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

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SP(SW)–1, for the transfer from Sweden to Spain of 750 kilograms of uranium containing 24.622 Kilograms of the isotope uranium-235 (3.28 percent enrichment) for use as fuel in the Central Nucleare de Cofrentes power reactor.

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

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

Issued in Washington, DC, on May 25, 1994.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 94–13194 Filed 5–27–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG94–65–000, et al.; 1069284 Ontario Inc., et al.]

Electric Rate and Corporate Regulation Filings

May 20, 1994.

Take notice that the following filings have been made with the Commission:

1. 1069284 Ontario Inc.

[Docket No. EG94–65–000]

On May 17, 1994, 1069284 Ontario Inc. (the "Applicant") whose address is c/o Mark Bradley, Dow Chemical Canada Inc., 1086 Modeland Road, P.O. Box 1012, Sarnia, Ontario, Canada N7T7K7, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The Applicant states that it will be engaged directly and exclusively in the business of owning and operating a gas turbine and associated electric generator, together with a heat recovery steam generator, located at Sarnia, Province of Ontario, Canada, with an aggregate rated electric generating capacity of approximately 62 megawatts, and selling electric energy exclusively at wholesale. The Applicant requests a determination that the Applicant will be an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequancy or accuracy of the application. All such motions and comments must be served on the applicant.

2. Maine Public Service Co.

[Docket No. ER92–725–000]

Take notice that on May 6, 1994, Maine Public Service Company (Maine Public) tendered for filing a modification to its FERC Electric Tariff, Original Volume No. 1, Power Sales Tariff. Specifically, Maine Public proposes to modify its rate schedule to allow for market pricing of sales from the Maine Yankee and Wyman 4 generating units. Maine Public proposes an effective date of July 5, 1994.

Comment date: June 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Co.

[Docket No. ER94–1012–000]

Take notice that on May 16, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing an amended filing in FERC Docket No. ER94–1012–000. FERC Docket No. ER94–1012–000 initially submitted, to the Commission, an agreement entitled "Facilities Agreement For The Construction, Installation, Operation, And Maintenance Of The ARCO-Polonio Pass 70 KV Line And Tie Lines For The Coastal Branch Phase II Pumping Plants and PowerPlant" (Facilities Agreement) between the Department of Water Resources of the State of California (DWR) and PG&E.

Subsequent to the initial filing, FERC Staff requested that PG&E clarify the description of the new 70 kV electric transmission facilities to be built in accordance with the January 24, 1994 Facilities Agreement between PG&E and DWR. PG&E's amended filing includes a one-page Letter of Clarification signed by both Parties and a modified Exhibit II line diagram.

Copies of this filing have been served upon DWR and the California Public Utilities Commission.

Comment date: June 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corp.

[Docket No. ER94–1040–000]

Take notice that on May 9, 1994, Florida Power Corporation tendered for filing, at the request of Staff, (a) a cost of service supporting daily capacity charges and hourly adders for interchange services developed based on the fixed costs of the units most likely to provide service, and (b) a revised rate sheet containing revenue caps on both the daily capacity charges and the energy adders which will prevent overcollection of those costs. The cost of service support is submitted as independent justification for the capacity charges and adders and does not supersede any of the exhibits of the original filing, which follow the cost support method provided for in the Interchange Agreements.

Comment date: June 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Comp.

[Docket No. ER94–1043–000]

Take notice that on May 6, 1994, Virginia Electric and Power Company (the Company), tendered for filing supplemental cost support information in connection with its proposed Rate Schedule No. TFC–1, Clover Transmission Facilities Charges, which is a rate schedule applicable to Old Dominion Electric Cooperative.

Copies of the filing were served upon Old Dominion and its counsel, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER94–1171–000]

Take notice that on May 6, 1994, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Certificate of Concurrence in the Reciprocal Transmission Service Agreement as filed by Arizona Public Service Company (APS) in Docket No. ER94–1171–000.

PacifiCorp requests a waiver of prior notice requirements in accordance with 18 CFR § 35.11 of the Commission's Rules and Regulations be granted and that an effective date of March 2, 1994 be assigned. The waiver will have no effect on PacifiCorp's purchasers under other rate schedules.

Comment date: June 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Comp.

[Docket No. ER94–1231–000]

Take notice that on May 5, 1994, Idaho Power Company tendered for filing revised copies of the Power Sale Agreement between Idaho Power and the Cities of Azusa, Banning and Colton, California.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corp.

[Docket No. ER94–1249–000]

Take notice that on May 13, 1994, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 178, an agreement between Niagara Mohawk and Sithe/Independence Power Partners, L.P. (Sithe).

Rate Schedule No. 178 provides for the wheeling of certain loads by Niagara Mohawk to Consolidated Edison Company as New York, Inc. generated by Sithe. The proposed change revises the rates for the wheeling of power and energy by Niagara Mohawk. Niagara Mohawk proposes that the revisions be effective on July 12, 1994.

Copies of this filing were served upon the Public Service Commission of New York and Sithe/Independence Power Partners, L.P.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of Colorado

[Docket No. ER94–1250–000]

Take notice that on May 13, 1994, Public Service Company of Colorado (PSC) tendered for filing a notice of Cancellation of FERC Rate Schedule No. 36.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of Colorado

[Docket No. ER94–1251–000]

Take notice that on May 13, 1994, Public Service Company of Colorado (PSC) tendered for filing a notice of Cancellation of FERC Rate Schedule No. 35.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of Colorado)

[Docket No. ER94–1252–000]

Take notice that on May 13, 1994, Public Service Company of Colorado (PSC) tendered for filing a notice of Cancellation of FERC Rate Schedule No. 33.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Company of Colorado

[Docket No. ER94–1253–000]

Take notice that on May 13, 1994, Public Service Company of Colorado (PSC) tendered for filing a notice of Cancellation of FERC Rate Schedule No. 31.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of Colorado

[Docket No. ER94–1254–000]

Take notice that on May 13, 1994, Public Service Company of Colorado (PSC) tendered for filing a notice of Cancellation of FERC Rate Schedule No. 29. *Comment date:* June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of Colorado

[Docket No. ER94–1255–000]

Take notice that on May 13, 1994, Public Service Company of Colorado (PSC) tendered for filing a notice of Cancellation of FERC Rate Schedule No. 22.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. San Diego Gas & Electric Comp.

[Docket No. ER94–1259–000]

Take notice that on May 16, 1994, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR § 35.12, an Interchange Agreement (Agreement) between SDG&E and Citizens Power and Light Corporation (Citizens).

SDG&E requests that the Commission allow the Agreement to become effective on the 20th day of July, 1994 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Citizens.

Comment date: June 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. San Diego Gas & Electric Comp.

[Docket No. ER94–1260–000]

Take notice that on May 16, 1994, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and Howell Power Systems, Inc. (HPS).

SDG&E requests that the Commission allow the Agreement to become effective on the 20th day of July, 1994 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and HPS.

Comment date: June 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Orange and Rockland Utilities, Inc

[Docket No. ER94–1262–000]

Take notice that on May 16, 1994, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and C&D Power Systems.

Comment date: June 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Orange and Rockland Utilities, Inc.

[Docket No. ER94–1263–000]

Take notice that on May 16, 1994, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and Aluf Plastics Industries, Inc.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Orange and Rockland Utilities, Inc.

[Docket No. ER94–1264–000]

Take notice that on May 16, 1994, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88–112–000, an executed Service Agreement between Orange and Rockland and Innovative Plastics Corporation.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. Delmarva Power & Light Company

[Docket No. ER94–1265–000]

Take notice that on May 16, 1994, Delmarva Power & Light Company (Delmarva) tendered for filing a rate schedule providing for Transmission Service to Old Dominion Electric Cooperative, Inc. (ODEC). Delmarva states that the rate schedule is being filed to accommodate ODEC's purchase of a portion of its capacity and energy from Public Service Electric & Gas Company.

Delmarva requests that the transmission rates become effective on July 15, 1994 and be suspended until January 1995, when ODEC has requested to have the Transmission service available.

Delmarva states that a copy of the filing has been posed as required by the Commission's regulations, and copies have been mailed to ODEC and to the Public Service Commissions of the State of Delaware, Maryland and Virginia.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

21. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–1267–000]

Take notice that on May 17, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with Central Hudson Gas and Electric Corporation (CH) to provide for the sale of excess energy and capacity. The agreement provides for sales of excess energy and capacity to be made subject to cost based ceiling rates. The ceiling rate for energy that Con Edison sells is 110 percent of the highest incremental energy cost on Con Edison's system and the ceiling rate for capacity that Con Edison sells is $26.00 per megawatt hour.

Con Edison states that a copy of this filing has been served by mail upon CH.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Electric Power Company

[Docket No. ER94–1268–000]

Take notice that on May 17, 1994, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a transmission service agreement between itself and Upper Peninsula Power Company (UPPCO).

Wisconsin Electric respectfully requests an effective date of May 15, 1994. Wisconsin Electric is authorized to state that UPPCO joins in the requested effective date.

Copies of the filing have been served on UPPCO, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: June 6, 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. 94–13148 Filed 5–27–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER90–283–007, et al.]

Cambridge Electric Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 23, 1994.

Take notice that the following filings have been made with the Commission:

1. Cambridge Electric Light Company

[Docket No. ER90–283–007]

Take notice that on April 14, 1994, Cambridge Electric Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: June 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. B+G Vermögensverwaltungs GmbH & Co. KG

[Docket No. EG94–63–000]

On May 13, 1994, B+G Vermögensverwaltungs GmbH & Co. KG ("B+G"), with its principal office at Wiesenstrasse 20, 06727 Theissen, Federal Republic of Germany, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

B+G states that it is a limited partnership organized under the laws of the Federal Republic of Germany. B+G will be engaged directly and exclusively in owning three coal-fired electric generating facilities that are located in the Federal Republic of Germany. The total generating capacity of the three facilities is approximately 197 MW. Electric energy produced by the facilities will be sold at wholesale to the regional utility in Western Saxony, Germany, and at retail to nearby coal mines and other third parties. In no event will any electric energy be sold to consumers in the United States.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequancy or accuracy of the application. All such motions and comments must be served on the applicant.

3. B+I Vermögensverwaltungs GmbH

[Docket No. EG94–64–000]

On May 13, 1994, B+I Vermögensverwaltungs GmbH ("B+I"), with its principal office at Wiesenstrasse 20, 06727 Theissen, Federal Republic of Germany, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

B+I states that it is a limited liability company organized under the laws of the Federal Republic of Germany. B+I will be engaged directly and exclusively in operating, maintaining and selling energy from three coal-fired electric generating facilities that are located in the Federal Republic of Germany. The total generating capacity of the three facilities is approximately 197 MW. B+I will lease the Facilities from B+G Vermögensverwaltungs GmbH & Co. KG, a limited partnership organized under the laws of the Federal Republic of Germany. Electric energy produced by the facilities will be sold at wholesale to the regional utility in Western Saxony, Germany, and at retail to nearby coal mines and other third parties. In no event will any electric energy be sold to consumers in the United States.

Comment date: June 10, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments must be served on the applicant.

4. Appalachian Power Company

[Docket No. ER94–920–000]

Take notice that Appalachian Power Company (APCo), on May 6, 1994, tendered for filing with the Commission an amendment to its January 21, 1994, filing of an Addendum to the existing Electric Service Agreement between APCo and Central Virginia Electric Cooperative, Inc. (CVEC). The amendment provides additional information about the Addendum, which adds a new delivery point for CVEC.

APCo proposes an effective date of November 1, 1994, and states that a copy of its filing was served on CVEC, Virginia Electric and Power Company and the Virginia State Corporation Commission.

Comment date: June 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Eclipse Energy, Inc.

[Docket No. ER94–1099–000]

Take notice that on April 28, 1994, Eclipse Energy, Inc. tendered for filing an amendment to its March 30, 1994, filing in the above-referenced docket.

Comment date: June 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Oklahoma Gas and Electric Co.

[Docket No. ER94–1266–000]

Take notice that on May 17, 1994, Oklahoma Gas and Electric Company (OG&E) tendered for filing an Interchange Agreement (Agreement) between OG&E and the Grand River Dam Authority (GRDA) which will provide for the exchange of power and energy between the two companies. OG&E requests an effective date of July 16, 1994 for the Agreement.

Copies of this filing have been served on GRDA, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: June 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Boston Edison Co.

[Docket No. ES94–27–000]

Take notice that on May 17, 1994, Boston Edison Company filed an application under Section 204 of the Federal Power Act seeking authorization to issue not more than $350 million of short-term debt securities during the period January 1, 1995 through December 31, 1996, with a final maturity date no later than December 31, 1997.

Comment date: June 16, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Michigan Cogeneration Partners Limited Partnership

[Docket No. QF94–104–000]

On May 17, 1994, Michigan Cogeneration Partners Limited Partnership of 1221 Nicolett Mall, suite 700, Minneapolis, Minnesota 55403, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to section 292.207(b) of the commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility, which will be located in Parchment, Michigan, will consist of two circulating fluidized bed boilers with associated equipment, and one extraction condensing steam turbine generator. Steam extracted from the facility will be used by the thermal host to produce electric power, to drive a paper machine, to thermally dry paper products in a paper production process, and to provide heating in the host facilities. The maximum net electric output of 65.36 MW will be purchased by Consumers Power Company. The primary energy sources will be low sulfur subbituminous coal and paper mill waste. Installation of the facility is expected to commence on April 1, 1995.

Comment date: June 30, 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. 94–13149 Filed 5–27–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–894–000, et al.]

Northern States Power Company, et al.; Electric Rate and Corporate Regulation Filings

May 18, 1994.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Co.

[Docket No. ER94–894–000]

Take notice that on April 20, 1994, Northern States Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: June 1, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Power & Light Co.

[Docket No. ER94–1050–000]

Take notice that on May 2, 1994, Wisconsin Power & Light Company tendered for filing additional materials

relating to its March 9, 1994, filing in this docket.

Comment date: June 1, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Nantahala Power & Light Co.

[Docket No. ER94–1139–000]

Take notice that the Notice of Filing issued in the above-referenced docket on May 4, 1994 is rescinded because filing is an informational filing and should not have been noticed. (59 FR 24415, May 11, 1994).

4. Central Maine Power Co.

[Docket No. ER94–1153–000]

Take notice that on May 13, 1994, Central Maine Power Company (CMP) tendered for filing a Amended Transmission Agreement between CMP and Maine Public Service Company, Inc., dated as of April 18, 1994 (Amended Agreement). CMP will provide MPS with non-firm transmission service over the CMP transmission system for the purpose of transmitting Maine Yankee non-firm energy in accordance with the terms of the Amended Agreement.

Comment date: June 1, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER94–1233–000]

Take notice that on May 9, 1994, PacifiCorp, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Exhibit 2, dated April 20, 1994, (Revised Exhibit 2) of Amendment of Agreements (Amendment) between PacifiCorp and Moon Lake Electric Association (Moon Lake). The Revised Exhibit 2 reflects a change in Moon Lake's utilization of PacifiCorp's 69 kV transmission line between Moon Lake's UPALCO and Pleasant Valley substation.

PacifiCorp requests, pursuant to 18 CFR § 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that an effective date of April 20, 1994, be assigned to Revised Exhibit 2.

Copies of this filing were supplied to Moon Lake Electric Association, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Co.

[Docket No. ER94–1234–000]

Take notice that on May 9, 1994, Southern California Edison Company (Edison) tendered for filing the following amendments to a supplemental agreement, Rate Schedule FERC No. 246.22, to the 1990 Integrated Operations Agreement with the City of Anaheim, Commission Rate Schedule No. 246, and associated firm transmission service agreement, Commission Rate Schedule No. 246.23:

Amendment No. 1
To The Supplemental Agreement (Supplemental Agreement) Between Southern California Edison Company and City of Anaheim
For The Integration of a Portion of Anaheim's Entitlement in San Juan Unit 4
Amendment No. 1
To The Edison-Anaheim, San Juan Unit 4
Firm Transmission Service Agreement (FTS Agreement) Between Southern California Edison Company and City of Anaheim

The Amendments modify Section 5.2.1 of the Supplemental Agreement and associated FTS Agreement to extend the termination dates from May 31, 1994, to December 31, 1994. Additionally, the Amendment to the Supplemental Agreement modifies Section 6.3 of the Supplemental Agreement to reflect a minimum take obligation associated with San Juan Unit 4 to become effective June 1, 1994.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Co.

[Docket No. ER94–1235–000]

Take notice that on May 9, 1994, Commonwealth Edison Company (Edison) submitted a Service Agreement, dated April 18, 1994, establishing Wisconsin Public Power Inc. SYSTEM (WPPI) as a customer under the terms of Edison's Transmission Service Tariff TS–1 (TS–1 Tariff).

Edison requests an effective date of April 18, 1994, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon WPPI, the Public Service Commission of Wisconsin, and the Illinois Commerce Commission.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Co.

[Docket No. ER94–1236–000]

Take notice that on May 9, 1994, New England Power Company (NEP) tendered for filing the following Supplement (the Supplement) to its rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission):

Supplement No. 1 to NEP's FERC Rate Schedule No. 324.

By this filing, NEP requests approval of the assignment by Newport Electric Corporation (Newport) of all of its rights and obligations under NEP's Rate Schedule No. 324 (Rate Schedule) to Montaup Electric Company (Montaup). On March 27, 1990, Newport became a wholly-owned subsidiary of Eastern Utilities Associates (EUA), a registered public utility holding company. Newport intends to become an all-requirements customer of Montaup, the bulk-power supply entry of the EUA system, and has, therefore, assigned all of its rights and obligations under the Rate Schedule to Montaup, such assignment to become effective on the FERC-allowed effective date for Montaup's modified all-requirements wholesale tariff (the M–14 Rate), filed on March 21, 1994. To the extent FERC approves Montaup's M–14 Rate within 60 days of this filing, NEP seeks waiver of the Commission's notice requirements.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Co.

[Docket No. ER94–1237–000]

Take notice that on May 9, 1994, New England Power Company (NEP) tendered for filing a Consent, Assignment and Assumption Agreement which supplements Transmission Service Agreement No. 30 under its FERC Electric Tariff, Original Volume No. 3, with the Federal Energy Regulatory Commission (FERC or the Commission):

By this filing, NEP requests approval of the assignment by Newport Electric Corporation (Newport) of all of its rights and obligations under NEP's Transmission Service Agreement No. 30 to Montaup Electric Company (Montaup). On March 27, 1990, Newport became a wholly-owned subsidiary of Eastern Utilities Associates (EUA), a registered public utility holding company. Newport intends to become an all-requirements customer of Montaup, the bulk power supply entity of the EUA system, and has, therefore, assigned all of its rights and obligations under the Agreement to Montaup, such assignment to become effective on the FERC-allowed effective date for Montaup's modified all-requirements wholesale tariff (the M–14 Rate), filed on March 21, 1994. To the extent FERC approves Montaup's Rate M–14 within 60 days of this filing, NEP

seeks waiver of the Commission's notice requirements.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Public Service Co.

[Docket No. ER94–1238–000]

Take notice that on May 9, 1994, Maine Public Service Company (Maine Public) filed an executed Service Agreement with Vermont Marble Power Division of OMYA, Inc. Maine Public states that the service agreement is being submitted pursuant to its tariff provision pertaining to the short-term non-firm sale of capacity and energy which establishes a ceiling rate at Maine Public's cost of service for the units available for sale.

Maine Public has requested that the service agreement become effective on May 1, 1994 and requests waiver of the Commission's regulations regarding filing.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Gulf Power Co.

[Docket No. ER94–1239–000]

Take notice that on May 9, 1994, Gulf Power Company filed a letter agreement dated April 6, 1994, revising the contract executed by the United States of America, Department of Energy, acting by and through the Southeastern Power Administration and Gulf Power Company. The letter agreement extends the term of the existing Contract for six months to allow the parties to continue negotiations of a new arrangement.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corp.

[Docket No. ER94–1241–000]

Take notice that on May 10, 1994, New York State Electric & Gas Corporation (NYSEG), tendered for filing Supplement No. 9 to its Agreement with Consolidated Edison Company of New York, Inc. (Con Edison), designated Rate Schedule FERC No. 87. The proposed changes would increase revenues by $23,685 based on the twelve month period ending March 31, 1995.

This rate filing, Supplement No. 9, is made pursuant to Section 1 (e) and (f) and 2 (e), (f) and (g) of Article III of the August 23, 1983 Facilities Agreement—rate Schedule FERC No. 87. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes, are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1993. In addition, Con Edison's pro rata share of the total annual carrying charges associated with the firm supply system is calculated based on the rate of Con Edison's one hour demand at Mohansic plus estimated NYSEG and Con Edison one hour peak input at Wood Street. The levelized annual carrying charges included in the calculation of revised facilities charges reflect: (1) The 11.2 percent allowed return on equity which was approved by the New York State Public Service Commission's Opinion 92–21 in Cases 91–E–0863, 91–E–0864, and 91–G–0865, effective August 1, 1992, and (2) the 10.8 percent allowed return on equity which was approved by the new York State Public Service Commission's Opinion 93–22 in Case 92–E–1084 *et al.*, effective August 1, 1993.

NYSEG requests an effective date of April 1, 1994, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Co.

[Docket No. ER94–1242–000]

Take notice that on May 11, 1994, PECO Energy Company (PECO) tendered for filing an Agreement between PECO and Pennsylvania Power & Light Company (PL) dated May 3, 1994.

PECO states that the Agreement sets forth the terms and conditions for the sale of system energy which it expects to have available for sale from time to time and the purchase of which will be economically advantageous to PL. In order to optimize the economic advantage to both PECO and PL, PECO requests that the Commission waive its customary notice period and permit the agreement to become effective on May 16, 1994.

PECO states that a copy of this filing has been sent to PL and will be furnished to the Pennsylvania Public Utility Commission.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corp.

[Docket No. ER94–1243–000]

Take notice that on May 11, 1994, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing, an amendment to its filing dated May 9, 1994 regarding the Marcy South Facilities Agreement with the Power Authority of the State of New York (NYPA).

Copies of the filing were served upon NYPA and the Public Service Commission of New York.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Southwestern Public Service Co.

[Docket No. ER94–1244–000]

Take notice that Southwestern Public Service Company (Southwestern) on May 11, 1994, tendered for filing a proposed amendment to the Agreement for Primary Electric Service and Golden Spread Electric Cooperative, Inc., for service to Deaf Smith Electric Cooperative, Inc. (Deaf Smith).

The amendment reflects an additional delivery point and two one time Contribution in Aid of Construction payments for additional facilities requested by Deaf Smith. The first CIAC agreement calls for the payment to Southwestern of $60,000 for installation of transmission switches on Southwestern's lines that are for the sole benefit of Deaf Smith. The second CIAC is to cover Southwestern's expense for the installation of Electric Demand Signal Equipment by Southwestern at Deaf Smith's request. Deaf Smith has also agreed to reimburse Southwestern for any additional costs above %1000 related to Southwestern's seeking regulatory approval for the CIACs.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power Corp.

[Docket No. ER94–1245–000]

Take notice that Florida Power Corporation (Florida Power) on May 11, 1994, tendered for filing a Third Amendment between Florida Power Corporation and Seminole Electric Cooperative, Inc. for Supplemental Retail Service, Transmission and Distribution Service and Load Following Service. The Third Amendment provides for Florida Power to sell and Seminole Electric Cooperative, Inc. (Seminole) to buy all interruptible resale service required by a member system of Seminole for new interruptible loads locating within the member system service territory within Hardee County, Florida.

Florida Power requests that the rate change be permitted to become effective sixty days after its submission for filing.

Comment date: June 2, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. West Texas Utilities Co.

[Docket No. ER94–1258–000]

Take notice that on May 13, 1994, as supplement on May 16, 1994, West Texas Utilities Company (WTU) tendered for filing a Service Agreement between WTU and Tex-La Electric Cooperative of Texas, Inc. (Tex-La). Under the terms of the Agreement, Tex-La will become a full-requirements customer under WTU's FERC Electric Tariff TR–1, WTU's tariff of general availability for full-requirements service.

WTU requests waiver of the notice requirements in order that the agreement may become effective as of June 29, 1994.

Copies of the filing have been served on Tex-La and the Public Utility Commission Texas.

Comment date: June 6, 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. 94–13150 Filed 5–27–94; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 11080–003, et al.]

Hydroelectric Applications [Eagle Mountain Energy Company, et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Major License (Tendering Notice).

b. *Project No.:* 11080–003.

c. *Date filed:* April 29, 1994.

d. *Applicant:* Eagle Mountain Energy Company.

e. *Name of Project:* Eagle Mountain.

f. *Location:* On lands administered by the Bureau of Land Management in Riverside County, California. Township 4 S Range 14 E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C 791(a)–825(r).

h. *Applicant Contact:* Mr. Art Lowe, Eagle Mountain Energy Company, 19800 Macarthur Blvd., Irvine, CA 92715, (714) 222–2820.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Description of Project:* The proposed pump storage project would consist of: (1) An upper storage reservoir formed behind two embankments, one a 77-foot-high dam and the other a 27-foot-high dam, with a maximum surface area of 157 acres, a total reservoir capacity of 14,200 acre-feet, and a maximum surface elevation of 2,446 feet msl; (2) a 29-foot-diameter, 5,700-foot-long tunnel, joining a 33-foot-diameter, 1,500-foot-long tunnel; (3) a powerhouse/pump station containing 3 motor/generator and pump/turbine units with a total installed capacity of 1,000 MW and producing an estimated average annual generation of 1,752 Gwh; (4) a 29-foot-diameter, 7,200-foot-long tailrace tunnel; (5) a lower storage reservoir formed within the east pit of the Eagle Mountain Mine, with a maximum surface area of 107 acres, a total reservoir capacity of 15,700 acre-feet, and a maximum surface elevation of 1,044 feet msl; (6) an 83-mile-long, 500–Kv transmission line interconnecting with the existing area transmission system; and (7) appurtenant facilities. Water for the project would be supplied by three wells using a 6,200-foot-long, 28-foot-diameter tunnel to the powerhouse. The cost of the project is estimated at $691,000,000.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

1. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

2a. *Type of Application:* New Major License.

b. *Project No.:* 2579–010.

c. *Date Filed:* December 9, 1991.

d. *Applicant:* Indiana Michigan Power Company.

e. *Name of Project:* Twin Branch Hydro Project.

f. *Location:* On the St. Joseph River in St. Joseph County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)- 825(r).

h. *Applicant Contact:* Mr. B. H. Bennett, Assistant Vice President, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2930.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Deadline Date:* See paragraph D9.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) A spillway composed of (a) a broad crested weir, the "north rollway section", 102.7 feet long, 10 feet wide and 23.2 feet high, located at the right end of the dam when facing downstream, topped with 5.1 feet high timber flash boards along the crest and constructed of timber cribbing capped with concrete, (b) a broad crested weir, the "south rollway section", 100.6 feet long , 10 feet wide and 23.2 feet high, located on the right side of the powerhouse when facing downstream, topped with 5.1 feet high timber flash boards along the crest and constructed of timber cribbing capped with concrete, (c) a triangular broad crested weir, the "center Tainter gate section", 198.3 feet long, 5 feet wide and 16.3 feet high, located between the "rollway sections", constructed of timber cribbing capped with concrete, divided into seven segments each with pivoting steel arched Tainter gates approximately 25 feet wide by 11 feet high along the crest; (2) a reservoir with a surface area of 1,065 acres and a total volume of 9,700 acre-feet at the normal maximum surface elevation of 717.37 NGVD; (3) a powerhouse composed of, (a) an "L" shaped main section approximately 152 feet long, 36 feet wide and 35 feet high with an auxiliary section approximately 73 feet long, 31 feet wide and 59 feet high constructed of concrete with a flat membrane roof supported on steel trusses, (b) six turbine bays each approximately 61 feet long, 23 feet wide and 22 feet high constructed of

reinforced concrete with steel 3-inch clear space bar racks (c) a twenty ton traveling hoist, (d) eight Kaplan vertical shaft, single runner, turbines, manufactured by Flygt Corp., rated at 860 hp with 20.8 feet of head, (e) eight Siemans Corp., 4,160 V, 60 hz, generators rated at 600 kW each; (4) a transmission system containing, (a) generator leads, (b) a 4-kV generator bus., (c) four 350 MCM, 3/c, 5-kV cables, (d) a 4/34.5 kV transformer and, (e) appurtenant facilities to connect to the 34.5-kV bus. There are approximately 4.5 acres of U.S. lands located within the project boundary. No changes are being proposed for this new license. The applicant estimates the average annual generation for this project would be 33,000 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Indiana Michigan Power Company, One Summit Square, Fort Wayne, IN, (219) 425–2930.

p. *Scoping Process:* In gathering background information for preparation of the Environmental Assessment for the issuance of a Federal hydropower license, staff of the Federal Energy Regulatory Commission, is using a scoping process to identify significant environmental issues related to the construction and operation or the continued operation of hydropower projects. The staff will review all issues raised during the scoping process and identify issues deserving of study and also deemphasize insignificant issues, narrowing the scope of the environmental assessment as well. If preliminary analysis indicates that any issues presented in the scoping process would have little potential for causing significant impacts, the issue or issues will be identified and the reasons for not providing a more detailed analysis will be given.

q. *Request for Scoping Comments:* Federal, state, and local resource agencies; licensees, applicants and developers; Indian tribes; other interested groups and individuals, are requested to forward to the Commission, any information that they believe will assist the Commission staff in conducting an accurate and thorough analysis of the site-specific and cumulative environmental effects of the proposed licensing activities of the project(s). Therefore you are requested to provide information related to the following items:

- Information, data, maps or professional opinion that may contribute to defining the geographical and temporal scope of the analysis and identifying significant environmental issues.
- Identification of and information from any other EIS or similar study (previous, on-going, or planned) relevant to the proposed licensing activities in the subject river basin.
- Existing information and any data that would aid in describing the past and present effects of the project(s) and other developmental activities on the physical/chemical, biological, and socioeconomic environments. For example, fish stocking/management histories in the subject river, historic water quality data and the reasons for improvement or degradation of the quality, any wetland habitat loss or proposals to develop land and water resources within the basin.
- Identification of any federal, state or local resource plans and future project proposals that encompass the subject river or basin. For example, proposals to construct or operate water treatment facilities, recreation areas, or implement fishery management programs.
- Documentation that would support a conclusion that the project(s) does not contribute, or does contribute to adverse and beneficial cumulative effects on resources and therefore should be excluded for further study or excluded from further consideration of cumulative impacts within the river basin. Documentation should include, but not limited to: How the project(s) interact with other projects within the river basin or other developmental activities; results from studies; resource management policies; and, reports from federal, state, and local agencies.

Comments concerning the scope of the environmental assessment should be filed by the deadline established in paragraph D9.

3a. *Type of Application:* Transfer of License.

b. *Project No.:* 7041–033.

c. *Date filed:* April 4, 1994.

d. *Applicant:* Potter Township, Pennsylvania.

e. *Name of Project:* Emsworth Hydro Project.

f. *Location:* On the Ohio River in Allegheny County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Dennis M. DiMartini, 396 Adams Street, P.O. Box 150, Rochester, PA 15074–0150, (412) 728–5710.

Joseph J. Liberati, President, Econeco, Inc., Law Center, Walmart Plaza, Monaca, PA 15061, (412) 775–0314.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* June 24, 1994.

k. *Description of Project Action:* Potter Township proposes to transfer the license for the Emsworth Project No. 7041 to the Potter Township Hydroelectric Authority. The licensee proposed to utilize the existing U.S. Army Corps of Engineers' Emsworth Locks and Dam. No Construction has taken place, and the site remains unaltered. The purpose is for the authority to assume operation to better facilitate the development of the project.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

4a. *Type of Application:* Major License.

b. *Project No.:* 11475–000.

c. *Date Filed:* April 25, 1994.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Carver Falls.

f. *Location:* On the Poultney River in Washington County, New York and Rutland County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert de R. Stein, Senior Vice President, Engineering and Energy Resources, Central Vermont Public Service Corp., 77 Grove Street, Rutland, VT 05701, (802) 747–5552.

i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.

j. *Comment Date:* June 24, 1994.

k. *Description of Project:* The existing operating project impoundment with a surface area of 10 acres extending ⅜ mile upstream; (2) a 34-foot-high, 455-foot-long concrete gravity dam, with flashboards 1.5 and 5.5 foot high; (3) a 300-foot-long, 7-foot-diameter steel penstock that bifurcates to two 150-foot-long steel penstocks, 3-foot and 4-foot in diameter with surge tanks; (4) a powerhouse containing two s. Morgan Smoth horizontal turbines with generating capacities of 600 kilowatts (kW) and 1,200 kW, respectively; and (5) appurtenant facilities.

l. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHOP), as required

by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4

m. Pursuant to Section 432(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, SHPO, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

5a. *Type of Application:* Major Relicense (Tendered Notice).

b. *Project No.:* 1930–014.

c. *Date filed:* May 2, 1994.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Kern River No. 1.

f. *Location:* On the Kern River in Kern County, California, within Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. C. Edward Miller, Manager of Hydro Generation, Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (818) 302–1564.

i. *FERC Contact:* James Hunter at (202) 219–2839.

j. *Description of Project:* The existing run-of-the-river project consists of a diversion dam and intake structure, water conveyances, a powerhouse containing a 26.3–MW generating unit, a transmission line, and other appurtenant facilities. The project produces an average annual output of 178.6 GWh.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at 800.4.

l. Under § 4.32 (b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application was filed, and must serve a copy of the request on the applicant.

m. The Commission's deadline for the applicant's filing of a final amendment to the application is July 1, 1994.

6a. *Type of Application:* Subsequent License (Notice of Tendering & Final Amendment).

b. *Project No.:* 1932–004.

c. *Date filed:* April 29, 1994.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Lytle Creek Hydroelectric Project.

f. *Location:* On Lytle Creek in San Bernardino County, California near the town of Devore. The project is located within the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* C. Edward Miller, Manager, Hydro Generation, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (818) 302–1564.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Brief Description of Project:* The existing project consists of: (1) A 3-foot-high, 200-foot-long rubble masonry gravity dam; (2) a concrete intake structure consisting of trashracks and a fishscreen; (3) a 4.3-mile long flowline system comprised of 13 tunnels, a flume, a concrete pipeline, siphons and surge tanks; (4) a concrete forebay; (5) a 1,546- foot-long steel penstock; (5) a powerhouse containing two generating units with a combined installed capacity of 500 kilowatts; (6) a 904-foot-long tailrace channel; (7) a 12–Kv distribution tap; and (8) related facilities. The are no proposed modifications to project facilities or operation at this time.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, of the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. In accordance with 4.32 (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

m. The Commission's deadline for the applicant's filing of a final amendment to this application is July 11, 1994.

7a. *Type of Application:* Major License (Notice of Tendering & Final Amendment).

b. *Project No.:* 1933–010.

c. *Date filed:* April 29, 1994.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Santa Ana River 1 and 2 Hydroelectric Project.

f. *Location:* On Santa Ana River in San Bernardino County, California near the town of Mentone. The project is located within the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* C. Edward Miller, Manager, Hydro Generation, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (818) 302–1564.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Brief Description of Project:* The existing project consists of two developments.

Santa Ana Development No. 1 consists of: (1) A 6-foot-high, 40-foot-long, diversion dam on the Santa Ana River; (2) a 5-foot-high, 29-foot-long rubble concrete diversion dam on Bear Creek; (3) an intake/diversion structure on Breakneck Creek; (4) 48-inch-diameter, 125-foot-long steel pipe carrying combined flows of the Santa Ana and Bear Creek diversions; to (5) a concrete-lined sand box; (6) a flowline comprised of tunnels, pipeline and a flume; (7) a concrete forebay with a spillway; (8) two 3,111-foot-long penstocks; (9) a powerhouse containing 4 generating units with a combined capacity of 3,200 kilowatts; (10) a tailrace channel; and (11) related facilities.

Santa Ana Development No. 2 consists of: (1) Two intake structures; (2) a diversion and intake structure on Alder and Keller creeks; (3) a flowline system comprised of tunnels, siphons, and pipeline; (4) a concrete forebay; (5) a 36-inch-diameter, 644-foot-long steel penstock; (6) a powerhouse containing two generating units with a combined installed capacity of 800 kilowatts; (7) a tailrace channel; (8) a 33–Kv transmission line; and (9) related facilities.

The licensee is proposing to modify project facilities and operation.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, of the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. In accordance with § 4.32(b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional

scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

m. The Commission's deadline for the applicant's filing of a final amendment to this application is July 11, 1994.

8a. *Type of Application:* Major License (Notice of Tendering & Final Amendment).

b. *Project No.:* 1934–010.

c. *Date filed:* April 29, 1994.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Mill Creek ⅔ Hydroelectric Project.

f. *Location:* On Mill Creek in San Bernardino County, California near the town of Yucaipa. The project is located within the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791 (a)–825(r).

h. *Applicant Contact:* C. Edward Miller, Manager, Hydro Generation, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (818) 302–1564.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Brief Description of Project:* The existing project consists of two developments, Mill Creek 2 and Mill Creek 3. The Mill Creek 2 development consists of: (1) Two 2-foot-high diversion dams; (2) a concrete intake structure with trashracks, a fishscreen and overflow pipe; (3) a 2.9-mile-long flowline systems, comprised of a flume, tunnel and pipeline; (4) a concrete forebay; (5) an 18-inch-diameter, 1,411-foot-long steel penstock. The Mill Creek 3 development consists of: (1) An 80-foot-high, 4,928-foot-long diversion dam; (2) an intake structure with trashracks and a fishwheel; (3) a 5.4-mile-long water conveyance system comprised of a flume, a tunnel, siphon and pipeline; (4) an 8,120-foot-long penstock; (9) a powerhouse used by both developments containing four generating units with a combined installed capacity of 3,250 kilowatts; (10) a tailrace; (11) a 12–Kv transmission line; and (12) related facilities.

The licensee proposes some modification to project facilities.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, of the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. In accordance with § 4.32(b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

m. The Commission's deadline for the applicant's filing of a final amendment to this application is July 11, 1994.

9a. *Type of Application:* Surrender of Exemption.

b. *Project No:* 7480.

c. *Exemptee:* Great Northern Hydro Corporation.

d. *Name of Project:* Antwerp.

e. *Location:* On the Indian River in Jefferson County, New York.

f. *Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Licensee Contact:* Paul Carr, Great Northern Hydro Corporation, Bernier Carr & Associates P.C., 172 Clinton Street, Watertown, NY 13601, (315) 782–8130.

h. *FERC Contact:* Dean C. Wight, (202) 219–2675.

i. *Comment Date:* July 2, 1994.

j. *Description of Proposed Action:* The existing project consists of (1) a concrete dam 12 feet (3.7 m) high and 100 feet (32.8 m) long; (2) a reservoir with 34 acres (138,000 sq m) surface area; and (3) an intake, forebay, powerhouse, and tailrace.

The exemptee states that the project is infeasible to operate because of fluctuating flows and extreme environmental conditions.

k. *This notice also consists of the following standard paragraphs:* B, C1.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (July 11, 1994 for Project No. 2579–010). All reply comments must be filed with the Commission within 105 days from the date of this notice. (August 23, 1994 for Project No. 2579–010).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of

good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: May 24, 1994 in Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13116 Filed 5–27–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–253–000]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 24, 1994.

Take notice that on May 19, 1994, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed below containing changes in rates for effectiveness on June 1, 1994:

Original Sheet No. 32A
Original Sheet No. 34A

Granite State states that the rate changes on Original Sheet Nos. 32A and 34A are submitted as a limited Section 4 filing to pass through to its customers, Bay State Gas Company and Northern Utilities, Inc., transitional costs pursuant to Order Nos. 636, et al., that have been directly billed to Granite State by upstream pipeline suppliers following the effectiveness of their restructuring proceedings. According to Granite State, it has been directly billed transitional costs by Algonquin Gas Transmission Company and National Fuel Gas Supply Corporation and its filing allocates such directly billed costs to its customers.

Granite State states that copies of its filing have been served on its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

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 Sections 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 1, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13117 Filed 5–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–80–003]

National Fuel Gas Supply Corp.; Notice of Proposed Changes in FERC Gas Tariff

May 24, 1994.

Take notice that on May 17, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with a proposed effective date of June 18, 1994:

(a) First Revised Sheet Nos. 131–D, 131–E, 131–K, 131–M, 131–S, 131–V, 133–A, 133–B and 257–A; and
(b) Second Revised Sheet No. 133

National states that the proposed tariff sheets are filed to make corrections to certain of its tariff sheets submitted in its Hub filing in Docket No. RP94–80–000.

National further states that because of questions from its customers, it has discovered a need for clarification in certain of its Hub tariff provisions. Accordingly, National states that it has to make clarifications to Section 4.2 of the W–1, P–1 and IR–1 Hub Rate Schedules and Section 4.3 of the W–1 service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before June 1, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13118 Filed 5–27–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–153–000]

Panhandle Eastern Pipe Line Company; Conference To Discuss Settlement

May 24, 1994.

Pursuant to the Commission's order issued on March 31, 1994, a settlement conference will be held to explore the possibility of settlement of the issues raised in the above-captioned proceeding. All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement.

The settlement conference will be held on Tuesday, June 14, 1994, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All parties and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–13119 Filed 5–27–94; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Boulder Canyon Project—Proposed Power Service Rate

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Boulder Canyon Project Power Service Rate Adjustment.

SUMMARY: The Western Area Power Administration (Western) is announcing a second annual rate adjustment for power service for the Boulder Canyon Project (BCP). The annual rate adjustments are a requirement of the ratesetting methodology of WAPA–58 which was approved by Federal Energy Regulatory Commission on November 3, 1993, Docket No. EF93–5091–000. The power repayment spreadsheet study and other analyses indicate that the proposed rates for BCP power service are necessary to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. The proposed rate for BCP power service is expected to become effective October 1, 1994.

The proposed rate for BCP power service is based on a composite rate of 14.11 mills per kilowatthour (mills/kWh). This composite rate consists of an energy charge of 7.06 mills/kWh and a capacity charge of $1.23 per kilowatt/month (kW/month).

The existing BCP power service composite rate is 12.62 mills/kWh, comprised of an energy charge of 6.31 mills/kWh and capacity charge of $1.07 per kW/month.

The Administrator of Western confirmed and approved the existing rate schedule on a final basis to be placed into effect on February 1, 1994.

The following table compares the BCP existing rates with the proposed rates:

Type of service	Existing rates Feb. 1, 1994 through Sept. 30, 1994	Proposed rates Oct. 1, 1994	Percent change
Composite Rate (mills/kWh)	12.62	14.11	11.8
Energy Rate (mills/kWh)	6.31	7.06	11.9
Capacity Rate (kW/month)	$1.07	$1.23	15.0

Since the proposed rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the proposed rates for approval on a final basis by the Administrator of Western.

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end not less than 90 days later, or August 18, 1994, whichever occurs later. A public information forum will be held at 10 a.m. on June 15, 1994, at Western's Phoenix Area Office, 615 South 43rd Avenue, Phoenix, Arizona. A public comment forum at which Western will receive oral and written comments will be held at 10 a.m. on July 8, 1994, at Western's Phoenix Area Office.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Acting Area Manager, Mr. J. Tyler Carlson, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352–2521.

SUPPLEMENTARY INFORMATION: Power service rates for the BCP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*); the Colorado River Storage Project Act of 1956 (43 U.S.C. 620 *et seq.*); the Boulder Canyon Project Act of 1928 (43 U.S.C. 617, *et seq.*); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*); the Hoover Power Plant Act of 1984 (43 U.S.C. 619 *et seq.*); the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada (43 CFR part 431) published in the **Federal Register** at 51 FR 23960 on July 1, 1986; and the General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project, Final Rule (General Regulations) (10 CFR part 904) published in the **Federal Register** at 51 FR 43124 on November 28, 1986.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove power rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rates for BCP power service are and will be made available for inspection and copying at the Phoenix Area Office, located at 615 South 43rd Avenue, Phoenix, AZ 85005.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the BCP power service rate adjustments are related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the BCP power service rates are of limited applicability, no flexibility analysis is required.

Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive

Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Issued in Golden, Colorado, May 19, 1994.

William H. Clagett,

Administrator.

[FR Doc. 94–13195 Filed 5–27–94; 8:45 am]

BILLING CODE 6450I–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4889–9]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Sterling Chemicals

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Decision on Exemption Reissuance.

SUMMARY: Notice is hereby given that a Petition for reissuance of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Sterling Chemicals, for the Class I injection wells located at Texas City, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Sterling Chemicals of the specific restricted hazardous waste identified in the petition for reissuance, into the Class I hazardous waste injection wells at the Texas City, Texas facility specifically identified in the petition for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued March 15, 1994. The public comment period ended on April 29, 1994. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of May 13, 1994.

ADDRESSES: Copies of the petition for reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mac A. Weaver, P.E., Chief, UIC State Programs, EPA—Region 6, telephone (214) 655–7160.

Myron O. Knudson, P.E.,

Director, Water Management Division (6W).

[FR Doc. 94–13191 Filed 5–27–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4889–3]

Information Resources Management Strategic Planning Task Force 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, Public Law 92463, EPA gives notice of a one-day meeting of the Information Resources Management (IRM) Strategic Planning Task Force. The IRM Task Force is a special task force formed under the Environmental Information and Assessment (EIA) Committee, which is one of the standing committees 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.

The IRM Task Force was formed to provide recommendations on key elements that EPA should include in an Information Resources Management Strategic Plan for the Agency. The meeting is being held to continue discussion of the final report the Task Force plans to submit to the Agency by the end of June.

Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Task Force members for consideration.

DATES: The public meeting will be held on Thursday, June 23, 1994, from 9 a.m. to 5 p.m. in room 333 at the National Governors' Association Hall of the States, 444 North Capitol Street, Washington, DC.

ADDRESSES: Written comments should be sent to: Mark Joyce, Office of Cooperative Environmental Management, U.S. EPA 1601F, 401 M Street SW. Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Official Direct line (202) 260–6889, Secretary's line (202) 260–2692.

Dated: May 19, 1994.

Mark Joyce,

Designated Federal Official.

[FR Doc. 94–13185 Filed 5–27–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4889–4]

Proposed Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, As Amended by the Superfund Amendments and Reauthorization Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, notice is hereby given that a proposed Agreement and Covenant not to Sue associated with the Old Works/East Anaconda Development Area Operable Unit of the Anaconda Smelter Superfund Site in Deer Lodge County, Montana, was executed by the Agency and the State of Montana and approved by the Department of Justice on April 29, 1994. The Agreement and Covenant not to Sue would resolve certain potential EPA claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and State of Montana claims under the Comprehensive Environmental Cleanup and Responsibility Act, Mont. Code Ann. 75–10–701, *et seq.* against the consolidated city/county government of the City of Anaconda and Deer Lodge County and the Old Works Golf Course Authority (the "Purchasers"). The

settlement would require the Purchasers to implement the Anaconda-Deer Lodge Development System, perform operations and maintenance as the contractor of the responsible party, the Atlantic Richfield Company, and enforce restrictive covenants on the property at the site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region VIII, Montana Office, Federal Building, 301 S. Park, Drawer 10096, Helena, Montana 59626–0096.

DATES: Comments must be submitted by June 30, 1994.

ADDRESSES: Availability: The proposed agreement and additional background information relating to the settlement are available for inspection at the U.S. Environmental Protection Agency, Region VIII, Montana Office, Federal Building, 301 S. Park, Drawer 10096, Helena, Montana 59626–0096, during normal business hours, and at the Hearst Free Library, Fourth and Main, Anaconda, Montana, 59711, from 10 a.m. to 7 p.m., Tuesday - Thursday and from 10 a.m. to 5 p.m. Friday and Saturday. A copy of the proposed agreement may be obtained from Charles Coleman, U.S. Environmental Protection Agency, Region VIII, Montana Office, Federal Building, 301 S. Park, Drawer 10096, Helena, Montana 59626–0096. Comments should reference the "Old Works/East Anaconda Development Area Operable Unit of the Anaconda Smelter Superfund Site" and "EPA Docket No. CERCLA VIII–94–12" and should be forwarded to Charles Coleman at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lensink (8RC), Assistant Regional Counsel, U.S. Environmental Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 294–7574.

Dated: May 12, 1994.

Robert L. Duprey,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 94–13187 Filed 5–27–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4888–6]

Garner Road Drum Dump Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Garner Road Drum Dump Site, Cordova, Alabama, with Mr. McRay Gingo. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE. Atlanta, Georgia 30365, (404) 347–5059.

Written comment may be submitted to the person above within 30 days of the date of publication.

Dated: May 19, 1994.

Myron Lair,

Acting Director, Waste Management Division.

[FR Doc. 94–13127 Filed 5–27–94; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–62139; FRL–4780–9]

Accredited Training Programs Under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); notice of availability of new edition.

SUMMARY: Effective May 31, 1994, EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The May 31, 1994, directory, which supersedes the version released on February 28, 1994, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: EPA AHERA - NDAAC, c/o VISTA Computer Services, 3rd Floor, 6430 Rockledge Drive, Bethesda, Maryland 20817, Telephone: 1–800–462–6706.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools or public and commercial buildings, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991. EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

List of Subjects

Environmental protection.

Dated: May 10, 1994.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–12774 Filed 5–27–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4887–5]

Final NPDES General Permit for Placer Mining in Alaska

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of a Final NPDES General Permit.

SUMMARY: The Director, Water Division, of Region 10 is today issuing a final National Pollutant Discharge Elimination System (NPDES) general permit under the Clean Water Act which will authorize discharges from placer mining facilities in the state of Alaska.

Notice of the draft general permit was published January 14, 1994, at 59 FR 2504. This permit is intended to regulate placer mining activities in the state of Alaska. EPA, Region 10 has issued almost identical individual permits to these facilities in the past and intends to relieve some of the administrative burden of issuing individual permits by issuing this general permit.

The final general permit establishes effluent limitations, standards, prohibitions and other conditions on discharges from the covered facilities. These conditions are based on existing national effluent guidelines and material contained in the administrative record, including Alaska Water Quality Standards and the National Toxics Rule. A description of the basis for any changes in conditions and requirements from the proposed general permit to the final general permit is given in the Response to Comments published below.

DATES: Request for Coverage: Written request for coverage under the general permit shall be provided to EPA, Region 10, as described in Part I.E. of the final permit. Coverage under the general permit requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

Administrative Record: The administrative record for the final permit is available for public review at EPA, Region 10, at the address listed below.

ADDRESSES: Requests for coverage should be sent to Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD–134, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Cindi Godsey at 1200 Sixth Avenue, WD–134, Seattle, Washington 98101 or by telephone at (206) 553–1755. Copies of the final general permit, response to comments and today's notice may be obtained by writing to the above address or by calling Jeanette Carriveau at (206) 553–1214.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: May 13, 1994.

Charles E. Findley,

Director, Water Division.

Response to Comments

On January 14, 1994, EPA, Region 10, issued a notice for a proposed National Pollutant Discharge Elimination System (NPDES) General Permit (GP) for Alaskan placer miners (59 FR 2504, Friday, January 14, 1994). During the public notice period, comments were received from National Marine Fisheries Service (NMFS), Trustees for Alaska, Northern Alaska Environmental Center, Sierra Club Legal Defense Fund, Department of Interior (DOI), Alaska Department of Natural Resources (ADNR), Alaska Department of Environmental Conservation (ADEC), Utility Water Act Group, American Rivers, Alaska Miners Association, Livengood/Tolovana Mining District, Karl Hanneman, Steve J. McGroarty, Roger C. Burggraf, Glenn Bouton, Paul Manuel, Steve Masterman, Paul Sayer, Fred Heflinger, Guy L. Wiggs, and Denise Herzog. Public Hearings were held in Anchorage, Alaska on February 7, 1994, and in Fairbanks, Alaska on February 8 and 9, 1994. This document directly responds to the significant comments pertaining to the GP, made in writing and at the Public Hearings, and the Finding of Significant Impact (FNSI) for the Environmental Assessment (EA).

1. *Comment:* Two commentors object to the use of a general permit due to the variations among mine sites. One commentor recommends issuing individual permits for all suction dredges larger than 4 inches. In addition, another commentor objects to regulating discharges from operations utilizing the hydraulic removal of overburden through this GP stating these operations should be considered in individual permits.

Response: EPA's NPDES regulations [40 CFR 122.28(a)] outline the conditions under which the Director may issue a general permit. More specifically, 40 CFR 122.28(a)(2)(ii) lists conditions the sources must meet to be considered for a general permit:

a. The facilities involve the same or substantially similar types of operations.

b. The facilities discharge the same type of wastes.

c. Require the same effluent limitations and operating conditions.

d. Require the same or similar monitoring.

EPA has covered three different classifications of facilities in this GP but feels that each operation is similar to the others in that class. The development of the effluent guidelines for placer mining showed that with treatment, the pollutants of concern were the same for all facilities. In addition, the Alaska Water Quality Standards (WQS) have been taken into account for two parameters as being necessary for additional controls. In EPA's best professional judgement, the second condition applies to facilities utilizing the hydraulic removal of overburden as long as the settleable solids are kept at 0.2 ml/L or below. Also, suction dredges discharging to waters of the United States that operate in the active stream channel would have substantially the same types of discharged waste. EPA believes that each category can be regulated using the same effluent limitations and operating conditions and facilities in each category can be regulated using similar monitoring.

2. *Comment:* Several commentors believe that bucket dredges should be regulated under individual permits. In addition, one commentor feels that small bucket dredges should be regulated under individual permits.

Response: The Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category - Gold Placer Mine Subcategory includes those larger bucket dredges as mechanical operations. Since effluent guidelines and New Source Performance Standards (NSPS) apply to these facilities, the facilities are involved in operations similar to other mechanical operations and thus can be regulated by this GP. Since EPA did not include smaller bucket dredge operations as authorized by this GP, any application for this type of operation would need to be addressed in an individual permit.

3. *Comment:* Two commentors claim that the approach used to comply with National Environmental Policy Act (NEPA) if a new source is determined to have a significant impact violates the NEPA process.

Response: The commentors are correct but this was not the intent of Permit Part I.A.3. This part is rewritten to read, "If there will be a significant impact, the facility will require an Environmental Impact Statement (EIS)." EPA would prepare the EIS as funds became available or the new source could enter a three party agreement with EPA and an agreed upon third party contractor where the new source would pay the contractor but EPA would oversee the work.

4. *Comment:* Two commentors suggest that the GP define "expanding facilities" to distinguish between an expansion and a new source.

Response: The GP has defined "expanding facility" in Permit Part VIII.D. as: "any facility increasing in size such as to affect the discharge but operating within the permit area covered by its GP."

5. *Comment:* Several commentors object to regulating discharges from operations utilizing the hydraulic removal of overburden due to the environmental impacts this method has on the surface.

Response: The NPDES program regulates pollutant discharges to surface waters of the United States as mandated by the Clean Water Act (CWA). EPA does not have authority under the CWA to regulate land use. That authority rests with the appropriate land management agency.

6. *Comment:* Two commentors suggest that EPA clarify Permit Part I.E.1. because they believe that saying: "* * * EPA "may" require individual permits* * *" gives EPA too much discretion.

Response: The language in the GP comes directly out of 40 CFR 122.28(a)(3)(i). The regulations intended EPA to have some discretion in making this determination.

7. *Comment:* Two commentors suggest the addition of the need for a Total Maximum Daily Load (TMDL) as a reason for requiring an individual permit.

Response: EPA agrees and it has been incorporated in Permit Part I.E.1.g.

8. *Comment:* Two commentors claim Permit Part I.E.2. would allow an applicant who falls into a category that may require an individual permit to gain coverage under the GP until a decision is made on the individual permit application.

Response: Permit Part I.E.2. states: "The Regional Administrator will notify the operator in writing that a permit application is required. If an operator fails to submit in a timely manner an individual NPDES permit application as required, then the applicability of this general permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal." The Regional Administrator has the opportunity not only to require an individual permit application from a new applicant, but from an existing facility covered by the GP whose situation is not as indicated on the Notice of Intent (NOI). The GP is applicable to a new applicant only if they are in a category authorized by the GP. Coverage is not granted until the applicant has been notified according to Permit Part I.F.4.

9. *Comment:* Two commentors claim there is a discrepancy between Permit Part I.F.4. and I.E.1. as to when coverage is effective because I.E.1. implies that a facility that may require an individual permit is covered by the GP until notified.

Response: Permit Part I.E.1. states: "The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:"; then lists the situations when an individual permit may be required. There is nothing in this part that indicates an operation would be covered by the GP if it requires an individual permit (see previous comment). The GP indicates in both I.F.1. and I.F.4. that the applicant will be notified in writing that coverage is granted.

10. *Comment:* Two commentors claim that Permit Part I.E.5. gives a permittee automatic coverage under the GP if they are denied an individual permit.

Response: Permit Part I.E.5. states that if a facility, already covered by the GP, applies for and is denied an individual permit that coverage will automatically be reinstated under the GP. This is only the case for permittees already covered, not just authorized, by the GP otherwise coverage could not be reinstated as is specified.

11. *Comment:* Two commentors suggest that a limitation for total suspended solids (TSS) be required in the placer mining NPDES permits because the settleable solids effluent guideline value of 0.2 ml/L does not provide reasonable assurance that the state water quality standards for sediments is met or in the alternative that TSS should be technology-based limited on the permit writer's Best Professional Judgement (BPJ).

Response: Effluent guidelines do not contain TSS limits but Section 301 (b)(1)(c) of the CWA requires permits to contain conditions necessary to comply with state water quality standards. The Alaska WQS contain no specific criteria for TSS. Therefore, limits on TSS would be required only when such limits are needed to assure compliance with regulations or Alaska water quality standards such as sediment or turbidity.

Because settleable solids is a more direct measure of sediment impacts than TSS, it would not be appropriate to establish a TSS limit for purposes of compliance with sediment criteria. EPA evaluated the possibility of using a TSS limit in lieu of the turbidity limit to assure compliance with state turbidity criteria. A review of the data showed there was no direct correlation between TSS concentrations and turbidity values. Therefore, no TSS limit could be established which would assure compliance with the state turbidity criteria. The effluent limitations for settleable solids and turbidity adequately address compliance with WQS that may be impacted by TSS in placer mining discharges. Therefore, EPA determined that it is not necessary to establish limits for TSS. However, if the state of Alaska were to include a limitation for TSS in their Section 401 Certification, EPA would include it in the GP. But the Section 401 Certification has been waived by the State according to the time specified in 40 CFR 124.53 so no limitation for TSS is included.

12. *Comment:* Two commentors object to EPA granting turbidity modifications to permittees under the GP because it does not provide the public with formal notice and opportunity to comment as did the individual permits.

Response: Turbidity modifications were not available for public comment for the individual placer mining permits issued in the past. The additional information to calculate the modifications was always called for and supplied during the public comment period. The GP has allowed public comment on the method of determining the turbidity modifications just as did the individual permits.

13. *Comment:* Two commentors object to the turbidity limitation based on the following issues:

a. It contradicts the basic principle of pollution control,

b. EPA has granted a mixing zone without going through the procedures required by the Alaska water quality standards,

c. EPA has failed to account for the effects of multiple sources of turbidity on the same receiving water, and

d. The State of Alaska has historically taken the approach that mass balance equations are inappropriate basis for determining effluent limitations.

Response: The WQS at 18 AAC 70.032(a) states: "In applying the water quality criteria set out in this chapter, the department will, upon application and in its discretion, prescribe in its permits or certifications a volume of dilution for an effluent or substance within a receiving water * * *". The state water quality standards describe dilution as an allowable method of pollution control. The proposed permit does take into account other man-made sources of turbidity on the receiving water. Permit Part II.D.1.c. states that the "natural" background shall be measured for turbidity, where "natural" background is defined as the level upstream from all mining and other man-made disturbances. The state has taken the position that a mass balance equation is not appropriate for volume based limitations. Turbidity is not a volume based limitation. The values used in the mass balance equation for turbidity assume the worst case scenario. The summer low flow for the stream (3Q2) is the upstream flow and the highest estimated effluent flow is used. This should account for slight variations in operation.

14. *Comment:* Two commentors indicate that the arsenic limitations in the placer permits will not have sufficient public participation to determine if they are protective.

Response: This option is an EPA interpretation of the WQS and discharges up to "natural" background will be included in the permit as an option to determine the arsenic limitation. If the state of Alaska disagrees with this interpretation in their Section 401 Certification, then this option would not be included in the GP. The Section 401 Certification has been waived according to the timeframe specified in 40 CFR 124.53.

15. *Comment:* Several commentors indicate that the effluent limitations in the permit will not prevent placer miners from violating the water quality standard for metals other than arsenic and limitations should be included in the permit based on site specific information. One commentor indicates that there are two studies by Hamilton and Buhl dated 1990 which should be considered.

Response: The combination of the recirculation of process water and the removal of settleable solids in any waters discharged from the mines will adequately control all pollutants found in effluents in this subcategory. These pollutants include metals which are reduced with a reduction in the solids. The decision by EPA to rely on the settleable solids limitation as an indicator was specifically upheld by the Ninth Circuit in *Rybachek* v. *EPA*. It was also upheld by the Superior Court for the State of Alaska in *Stein* v. *State* because Trustees did not produce post-1989 National Effluent Guideline evidence that toxic metals, other than arsenic, discharged from placer mines violate WQS. Although the publication dates on the studies cited are post-1989, the actual studies were conducted prior to guideline development.

16. *Comment:* Two commentors claim that EPA must apply technology-based limitations from the National Effluent Guidelines to suction dredges.

Response: In the development of the Effluent Guidelines for placer mining, the only type of dredge specified as being covered by the guidelines were bucket dredges so effluent guidelines do not apply directly to suction dredges. Suction Dredges are regulated by BPJ according to 40 CFR 125.3. Based on BPJ, the effluent guidelines for mechanical operations do not apply to suction dredges and the requirements included in the GP do apply to this category of discharger.

17. *Comment:* Several commentors suggest that Permit Part IV.A. be changed to reflect that the turbidity measurement should be made at natural background.

Response: EPA agrees and has modified this part of the GP.

18. *Comment:* Two commentors claim that the GP lacks an effective reporting requirement for the technology-based limits in Permit Parts II.A.1.a. and II.B.1.a. They suggest specifying an exact procedure to determine compliance with these requirements.

Response: This is accomplished in two parts of the GP. The first is in Permit Part III.A.4. which states that the amount of new water allowed to enter the plant site for use in ore processing shall be limited to the minimum amount required as makeup water for processing operations. The second is in Permit Part II.A.2. and II.B.2. which state that effluent discharges are prohibited during periods when new water is allowed to enter the plant site. Additionally, there shall be no discharge as a result of the intake of new water. The combination of these two provisions prevents the discharge volume from being any more than the volume of groundwater infiltration, drainage and mine drainage at the site. Reporting of non-compliance is required in Permit Part IV.G.2.c.

19. *Comment:* Two commentors claim that EPA's proposed reliance on self-monitoring is an abdication of EPA's regulatory responsibility.

Response: The Clean Water Act prescribes self-monitoring in Section 308(a)(4)(A)(iv) which says that the Administrator shall require the owner or operator of any point source to sample such effluents in accordance with such manner as the Administrator shall prescribe. Self-monitoring is a cornerstone of the NPDES program and shall remain incorporated into this GP.

20. *Comment:* Two commentors claim that recreational suction dredgers utilize dredges with 4 to 6 inch intake hoses and recommends that EPA change the size of the dredges regulated by this permit to greater than 6 inch intake hoses.

Response: EPA has completed a literature research project considering the environmental effects of all suction dredge operations and potential controls that could be placed on them. Based on this research, EPA has concluded that suction dredges with intake hoses of greater than 4 inches may cause environmental impacts and will be covered by this GP. EPA has observed commercial miners using dredges with intake hoses less than 6 inches. It does not matter if a suction dredge is recreational. Larger recreational suction dredges may cause environmental impacts similar to small commercial operations.

21. *Comment:* Two commentors suggest that new facilities should be allowed to submit an NOI and have a permit within thirty days of the submission. Also, another commentor claims that the GP notification requirements are too restrictive because the average summer tourist bringing a five or six inch dredge to Alaska for vacation cannot dredge because their application should have been received by January 1.

Response: EPA cannot guarantee a permit within a specified timeframe because there may be instances where information needs to be clarified or the facility may require an individual permit and it would not be feasible to issue a permit in 30 days. The language in Permit Part I.F. has been changed to require NOIs by January 1 only for those new facilities subject to NSPS. Other new facilities will only be required to submit an NOI 90 days prior to discharge. This allows time to review the NOI and for the applicant to receive a permit.

22. *Comment:* Several commentors suggest that the methodology for determining a turbidity modification be included in the permit as well as the Fact Sheet.

Response: EPA agrees and has modified Part II.A.1.b. and II.B.1.b. to include the methodology for turbidity modifications.

23. *Comment:* Two commentors recommend inserting "where applicable" after the term "recycle system" in Permit Part II.D.1.b. concerning the visual inspection of a facility because all facilities do not utilize recycle systems.

Response: The addition of the phrase "where applicable" may be confusing to the permittee because the permittee may decide that recycle is not applicable to a certain site and that discharging is the applicable way to operate. EPA does not require the records to show a daily inspection of the recycle system if it is determined that recycle is not necessary.

24. *Comment:* Several commentors suggest that the phrase "dredging in the waters of the United States is permitted only within the active stream channel" be modified to make it possible to operate dredges that do not discharge to waters of the United States or do so only after treatment.

Response: Permit Part III.B.1. is quoted above and it applies only to those suction dredges operating in waters of the United States. This requirement does not apply to those suction dredges operating and discharging outside waters of the United States. Those facilities with treatment would be expected to meet the limitations for mining operations utilizing similar treatment.

25. *Comment:* One commentor recommends that the GP specifically not prevent the removal of settleable solids from settling ponds for use in reclamation activities.

Response: Permit Part V.F. does not prevent solids from being removed from the pond for reclamation activities. However, care should be taken during reclamation that solids do not enter waters of the United States. Totally reclaimed areas, released from bond, are subject to no water discharge permits.

26. *Comment:* Two commentors recommend that the GP require notification for planned alterations when the affected pollutant that is discharged is subject to the effluent limitations in the permit.

Response: EPA agrees and this provision has been added to Permit Part VI.B. of the proposed GP. This will make it possible to re-issue a GP to a facility to reflect changes made that may affect effluent limitations, especially turbidity.

27. *Comment:* Two commentors recommend that if modifications are made to the proposed GP that corresponding modifications be made to the Fact Sheet.

Response: The Fact Sheet is the document that supports the draft general permit and is in its final form when it goes to public notice. Any changes to the general permit from proposed to final will be supported through this Response to Comments and the State's Section 401 Certification, if any.

28. *Comment:* One commentor would like Permit Part I.E.2. to specify that EPA will notify the permittee by certified mail due to the fact that they may leave the state for several months and not receive their mail until they return.

Response: This change has been made to the GP although it is EPA's experience that after a short period of time, even unclaimed certified mail is returned to the sender.

29. *Comment:* One commentor suggests that Permit Part I.F.1.a. be changed to remove the phrase "no later than 90 days after the effective date of the permit" due to circumstances that may make the deadline impossible to meet.

Response: Permit Part I.F.1.a. is applicable to existing facilities whose permits are expiring or those needing permits. Provisions have been made for new facilities not subject to New Source Performance Standards (NSPS) in Permit Part I.F.1.c. and for existing facilities in Permit Part I.F.1.e.

30. *Comment:* One commentor suggests the issue of a GP being automatically terminated upon issuance of an individual permit be addressed in the conditions of the individual permit in case the facility needs the individual permit as well as the GP.

Response: If EPA were to issue an individual permit to a facility, it would incorporate the necessary requirements of the GP into the individual permit to lessen the paperwork the permittee would need to keep track of (i.e., one discharge monitoring report, one reapplication, etc.). Thus, the GP would no longer apply and would automatically terminate upon the issuance of an individual permit.

31. *Comment:* Two commentors suggest modifying Permit Part I.F. to allow the use of the ADNR's Annual Placer Mining Application (APMA) to serve as the NOI for the GP.

Response: EPA will accept, but cannot require, an APMA as an NOI for this GP as long as the APMA contains all the information on the information sheet in Appendix A of the GP.

32. *Comment:* One commentor objects to the requirement to monitor settleable solids once per day of discharge suggesting that this is a new definition and recommends that the monitoring frequency be returned to the previous requirement of once per day of operation.

Response: Previously issued permits did not contain a requirement that settleable solids be monitored "once per day of operation." In *Ackels* v. *United States Environmental Protection Agency* (9th Cir. 1993), the issue of monitoring settleable solids was decided on the 1985 and 1987 permits for placer mining which states: "The CWA [Clean Water Act] regulates, and NPDES permits place conditions on, 'discharges' of pollutants. To monitor for compliance with an NPDES permit, therefore, a placer miner must monitor discharges of pollutants caused by his or her placer miner activities whenever such discharges occur, not just on days when sluicing occurs." 7 F3d 862.

33. *Comment:* One commentor objects to the monitoring frequency for flow and suggests once per week while operating instead of once per day. In addition, others request that the flow monitoring requirement of the permit be decreased from once per day to once per month because:

a. Effluent flow is static unless there is a storm event;

b. In a storm event, the volume of the receiving stream will increase much more in proportion to the effluent; and

c. During a storm event Alaskan streams naturally exceed any limits in the permit.

Response: Since the 9th Circuit Court upheld the requirement of monitoring settleable solids once per day of discharge, the flow monitoring frequency is not an onerous additional burden to the settleable solids monitoring. See the previous comment for further details.

34. *Comment:* Several commentors are opposed to any requirement for written reports other than the annual Discharge Monitoring Report (DMR). The objection is to Permit Part IV.G.2.c. which says that any violation of the effluent limitations in Permit Parts II.A. and II.B. should be reported in writing to EPA within the shortest reasonable period of time.

Response: In the past, placer mining permits have not contained reporting requirements which other NPDES permits contain including notice of violations by phone within 24 hours and a written report submitted within 5 days of becoming aware of the violation. This is due to the unreasonableness of the imposed timeframe. EPA does not believe that requiring a report in writing in the shortest reasonable period of time is unreasonable. The commentors

themselves have indicated in other comments that there would be times when the miner would need to leave the mine site to get supplies. It does not seem unreasonable that, at this time, the miner could send a report to EPA if it is necessary.

35. *Comment:* One commentor indicates that turbidity modifications should be done for the body of water that the receiving stream flows into and not for the receiving stream directly because the discharge does not affect the receiving stream. The commentor objects because another permittee on a nearby stream has a much higher turbidity modification than does his permit.

Response: The WQS serve to protect the water which is first and most severely impacted by the discharge. The WQS used not only protect aquatic life but also protect the receiving water for use as a water supply and contact recreation. The application of a turbidity modification considers several things including the size of the receiving water's drainage area and the effluent flow from the facility. These are the factors which can cause one permittee's turbidity modification to be different than another.

36. *Comment:* Several commentors indicate that the arsenic standard should be changed in the GP because it is too low. Several other commentors express concern over the arsenic limit being lower than the detection limit.

Response: In establishing the arsenic limit, the "Amendments to the Water Quality Standards Regulation; Compliance with CWA Section 303(c)(2)(B); Final Rule" (57 FR 6084, Tuesday, December 22, 1992) are used. This rulemaking promulgated the chemical-specific numeric criteria for priority toxic pollutants necessary to bring all States into compliance with the requirements of the CWA Section 303(c)(2)(B). The primary focus of the rule is the inclusion of the federal water quality criteria for pollutant(s) in State standards as necessary to support water quality-based control programs (e.g. NPDES permits). The federal human health standard of 0.18 µg/L total recoverable arsenic is applicable to Alaska and this number has been used to derive the end-of-pipe limitation for the GP.

37. *Comment:* Two commentors mention that there should be a mixing zone for arsenic. Additionally, several other commentors believe this GP does not prohibit a mixing zone and suggest that the permit specify that a mixing zone is available if ADEC approves.

Response: Mixing zones are allowed under the Alaska standards for some pollutant discharges. However, 18 AAC 70.032(a) states, "In applying the water quality criteria set out in this chapter, the department will, upon application and in its discretion, prescribe in its permits or certifications a volume of dilution for an effluent or substance within a receiving water unless pollutants discharged could bioaccumulate; concentrate or persist in the environment; cause carcinogenic, mutagenic, or teratogenic effects; or otherwise present a risk to human health * * *" Arsenic is a carcinogen. In a letter, dated March 24, 1992, from the Alaska Department of Environmental Conservation Commissioner, John Sandor, to EPA Water Division Director, Charles Findley, the State has interpreted this to mean that "* * * a mixing zone may be prescribed where there is no reasonable expectation of an adverse effect on human health or aquatic life, based on site-specific, chemical, physical and biological characteristics." EPA did not propose a mixing zone for arsenic but would include a method for determining a mixing zone in the permit if ADEC determines, in their § 401 Certification, that such a mixing zone is appropriate and is in compliance with its WQS. The Section 401 Certification has been waived by the State according to the time specified in 40 CFR 124.53 so no mixing zone is included.

38. *Comment:* One commentor suggests EPA use Method 3005A for sample preparation in advance of 206.2 so the detection level would be below the permit limitation.

Response: This sample preparation method is for Resource Conservation Recovery Act (RCRA) sampling only and not appropriate for NPDES permits.

39. *Comment:* One commentor recommends changing the permit limitation to the minimum level specified in the GP as 4 µg/L. This commentor claims that this level would be protective of aquatic life.

Response: The WQS protect most fresh water sources for use in drinking, agriculture, aquaculture and industrial water supply, contact and secondary recreation and the growth and propagation of fish, shell fish, and other aquatic life [18 AAC 70.050]. The criteria for growth and propagation of fish, shellfish, aquatic life and wildlife and also for harvesting for consumption of raw mollusks or other raw aquatic life are as stringent as any requirement except perhaps industrial water supply and secondary recreation. EPA cannot arbitrarily choose a number to be used as an effluent limitation in an NPDES permit. There are regulations that must be adhered to in setting any limitation. To use the arbitrary effluent limitation of 4 µg/L would violate 40 CFR 122.44(d) which states that: "any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 of CWA necessary to achieve water quality standards established under section 303 of the CWA." "Amendments to the Water Quality Standards Regulation; Compliance with CWA Section 303(c)(2)(B); Final Rule" (57 FR 6084, Tuesday, December 22, 1992) were used to determine the arsenic limitation. This rulemaking promulgated the chemical-specific numeric criteria for priority toxic pollutants necessary to bring all States into compliance with the requirements of the CWA Section 303(c)(2)(B). Since 40 CFR 122.4(a) states: "No permit may be issued when the conditions of the permit do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under CWA," an arbitrary number cannot be used. The Fact Sheet (page 13) states that: "This reporting threshold does not authorize the discharge of this parameter in excess of the effluent limitation."

40. *Comment:* One commentor points out that the 16th Edition of Standard Methods (1985) is referenced in the permit and that there have been two editions since then and they suggest EPA update this reference.

Response: EPA has updated this to the 17th Edition of Standard Methods (1989) since this is referenced in 40 CFR 136, revised July 1, 1993.

41. *Comment:* Several commentors pointed out that Permit Part II.D.4. referenced on pages 8 and 9 of the proposed GP does not exist in this permit.

Response: The reference has been corrected to read Permit Part II.D.1.d.

42. *Comment:* Several commentors point out that Permit Part II.D.1.c. contains a reference to a definition in Permit Part V.I. which does not exist in the GP.

Response: The reference has been corrected to read Permit Part VIII.K.

43. *Comment:* One commentor requests a definition of new facility and active stream channel.

Response: The GP has defined "new facility" as one that has not operated in the area specified prior to the submission of the NOI. The "active stream channel" is defined as that part of the channel that is below the level of the water. These definitions appear in Part VIII. of the GP.

44. *Comment:* One commentor recommends that the wording be

changed in Permit Part I.F.1. from "owners or operators of facilities authorized by" to "owners or operators of facilities to be authorized by."

Response: The facilities authorized by this GP are specified in Permit Part I.B. whose title has been changed to reflect this. The facilities to be covered by the GP may be a smaller universe, specifically those filing NOIs and being granted coverage in writing.

45. *Comment:* One commentor recommends EPA initiate coordination under Section 7 of the Endangered Species Act due to the presence of critical habitat for sea lions in the coastal areas.

Response: EPA received a species list including the NMFS species of concern. Comments received from NMFS indicated that the concern was the critical habitat of the species. Since this water discharge GP is written to protect aquatic life or human health (whichever is more stringent), no alterations of habitat due to water discharges authorized by this GP should occur. Consequently, formal consultation for Section 7 of the Endangered Species Act is not necessary.

46. *Comment:* One commentor states that this GP requires 100% recycle and this is unnecessarily restrictive because some miners can operate without recycling or discharging.

Response: The GP requires no discharge of process water. It does not specify that 100% recycle is the only way to accomplish this.

47. *Comment:* One commentor objects to the use of 5 Nephelometric Turbidity Units (NTUs) above background for the turbidity limitation because this is the limit for waters classified for contact recreation. He recommends changing this to 25 NTUs above background because this level is the threshold at which impact on aquatic vertebrates occurs.

Response: The WQS protect most fresh water sources for use in drinking, agriculture, aquaculture and industrial water supply, contact and secondary recreation and the growth and propagation of fish, shell fish, and other aquatic life [18 AAC 70.050]. The turbidity limitation must protect all of these and to ensure compliance with the WQS, EPA assumed worst case conditions and used 5 NTUs above natural background as a limit.

48. *Comment:* Two commentors object to using "total recoverable" as the way to measure arsenic because it does not take into account the toxicity of the various valence states of arsenic and the compounds it can form.

Response: In establishing the arsenic limit, the "Amendments to the Water Quality Standards Regulation; Compliance with CWA Section 303(c)(2)(B); Final Rule" (57 FR 6084, Tuesday, December 22, 1992) are used. This specifies that the metals are expressed in terms of total recoverable [40 CFR 131.36(c)(4)(iii)] and 40 CFR 122.45(c) states that "All permit effluent limitations, standards, and prohibitions for a metal shall be expressed in terms of 'total recoverable metal' as defined in 40 CFR part 136."

49. *Comment:* One commentor claims that the measurement of background for arsenic is different from that of turbidity.

Response: The tables in Permit Parts II.A.1.b. and II.B.1.b. express the measurement of background as the "natural background" for both turbidity and arsenic. The commentor may be referring to Permit Part II.D.1.c. which stated that the background be monitored with no reference to natural background. This part has been changed to correspond to the rest of the GP.

50. *Comment:* One commentor indicates that the Management Practices in Permit Parts III.B.1. and 2. of the proposed GP contradict each other because one says dredging should take place in the active channel and the other says to do it in quiet pools.

Response: Permit Part III.B.1. does say that dredging should take place in the active stream channel, whereas Permit Part III.B.2. states that discharges from dredging operations, wherever practicable, shall be set into a quiet pool. It is possible for the discharge to be guided away from the actual dredging site and discharged to any area where it will settle out faster.

51. *Comment:* Several commentors suggest that Permit Part I.C. be clarified.

Response: To clarify the meaning of this part, the title has been changed to "Additional Requirements."

52. *Comment:* Several commentors believe that the expiration date of the permit is unclear and suggest this permit expire 5 years from the date of issuance for each facility.

Response: The language in Permit Part I.G. has been clarified. This GP will expire 5 years from its effective date as determined by 40 CFR 124.20.

53. *Comment:* Several commentors object to the definition of "natural background" and suggest that the definition of "natural conditions" from the WQS [18 AAC 70.110(29)] be used in its place because it says that the natural condition is the condition of the water at the site prior to impacts from the facility.

Response: The WQS at 18 AAC 70.110(29) states "*natural condition* means the sum of the physical, chemical, biological, or radiological conditions that exist in a water body before any human-caused discharge to, or addition of material to the water." The Alaska Department of Environmental Conservation does not interpret this definition to mean that this is the condition of the water before a facility discharges to it with no regard as to what is upstream of the site. On the contrary, ADEC considers *natural condition* to be the condition of the water prior to any man-made disturbances in the watershed and suggest that if this cannot be determined in the watershed that a similar undisturbed watershed should be used to determine the *natural condition.*

54. *Comment:* Several commentors have concerns about the once per day visual inspection and suggest that the GP require the inspection only when the operator is on-site.

Response: The commentors concerns are valid. The GP has been changed to require a visual inspection daily during the mining season when the operator is on-site.

55. *Comment:* Several commentors wished EPA to clarify Permit Part II.D.b. relating to what the records should include.

Response: To clarify this part, it has been changed from "These records shall include, but are not limited to, an evaluation of the condition of all water control devices such as diversion structures and berms and all solid retention structures such as berms, dikes * * *" to "These records shall include an evaluation of the condition of all water control devices such as diversion structures and berms and all solid retention structures including, but not limited to, berms, dikes * * *"

56. *Comment:* Several commentors express concern over the method of measuring flow for the GP and request guidance on how to measure flow from a facility that has no discharge from a pipe or constructed pond overflow.

Response: To provide the requested guidance, the sentence, "If measurement is impractical, the operator must make a good faith effort to estimate seepage discharging to waters of the United States each day that seepage occurs," has been added to Permit Part II.D.1.f.

57. *Comment:* Several commentors request that reasonableness be taken into account in Permit Part III.A.5. and suggest that the Management Practice read "* * * berms, dikes, pond structures, and dams shall be *reasonably* maintained to continue their effectiveness * * *"

Response: EPA does not view the addition of the word "reasonably" to this management practice as changing

the intent of it; consequently, this change has been made to the GP.

58. *Comment:* Several commentors would like the term "mining season" defined.

Response: EPA has never contended that there was a set timeframe for a mining season. Recognizing that there are various levels of mining intensity, however, EPA has defined mining season for a particular facility in Permit Part VIII.I. as "the time between the start of mining in a calendar year and when mining has ceased for that same calendar year."

59. *Comment:* Several commentors recommend that Permit Part III.B.6.:

a. Distinguish between requirements for reclaimed and unreclaimed areas and which need to be addressed at the end of the mining season:

b. Change the words "after the mining season" to "when mining has ceased for a particular season;" and

c. Claim the word "additional" is superfluous.

Response: The commentors are correct that a distinction should be made between unreclaimed and reclaimed lands. Runoff from lands that are fully reclaimed and have been released from bond are not subject to any water discharge permits. The permit has been changed to reflect this distinction. The term "mining season" has been defined in Permit Part VIII.I. (see previous comment) so the language in the GP will remain. Because it is redundant to have a sentence containing the word "additional" and the phrase "over those resulting from natural causes," the word "additional" has been deleted from the GP.

60. *Comment:* Several commentors recommend that EPA clarify Permit Part V.G. so that bypasses of water around a site for the essential maintenance and efficient operation of the mine are not included as effluent. The commentors recommend that Permit Parts V.G.2. and 3. be deleted.

Response: Bypass, as referred to in Permit Part V.G., is defined in Permit Part VIII.B. as "the intentional diversion of *waste streams* around any portion of a treatment facility" (emphasis added). Since water that has no contact with the mine site is not considered a waste stream, the bypasses that the commentors refer to are diversions not bypasses as defined in the GP. The GP contains this condition based on 40 CFR 122.41(m).

61. *Comment:* Several commentors request that the Fact Sheet be included with the proposed GP along with other supporting material be maintained as part of the GP.

Response: The Fact Sheet and other supporting material will be maintained as part of the Administrative Record for the final GP.

62. *Comment:* One commentor recommends that more guidance be given to the operator in taking samples for turbidity, both effluent and natural background. One commentor suggests specifying a time frame of 15 minutes rather than a "reasonable time."

Response: While EPA would like to give more guidance to the operator in taking samples, a timeframe of 15 minutes between effluent and natural background would be unworkable in some cases. The natural background is defined as being upstream from any man-made disturbance and while this may be right upstream from the first mine on a stream, it could be many miles for an operator close to the end of the stream. Specifying a "reasonable time" is appropriate under these circumstances.

63. *Comment:* One commentor urges implementation of additional Best Management Practices (BMPs) to protect stream banks and riparian habitat; restore pool, riffle, and stream habitat for fish; and remove fish barriers.

Response: EPA does not believe these practices are reasonably necessary to achieve effluent limitations or standards under 40 CFR 122.44(k).

64. *Comment:* One commentor objects to turbidity modifications and a visual turbidity location for suction dredges stating that these are federally sanctioned mixing zones and have not gotten full treatment under NEPA.

Response: Mixing zone designations or implementation of WQS are not, per Section 511(c) of the CWA, defined as a "major federal action" subject to NEPA.

65. *Comment:* One commentor requests information on the standard of proof EPA will hold ADEC to if a mixing zone is proposed for arsenic.

Response: ADEC would have to show that there would be no reasonable expectation of an adverse effect on human health or aquatic life from the mixing zone.

66. *Comment:* One commentor recommends including guidelines, objectives, or criteria to prevent mines being left at the end of the season in such a way that flushing, erosion and degradation will not occur.

Response: The Management Practice in Permit Part III.A.6. addresses this issue.

67. *Comment:* One commentor recommends that the Standard Conditions of Alaska Department of Fish and Game's (ADFG) placer permits be adopted as part of the proposed GP.

Response: EPA has incorporated several of these Standard Conditions into the proposed GP as deemed appropriate. The other conditions in ADFG's permits contain issues that the NPDES program has no authority over and as such, cannot be regulated in the GP.

68. *Comment:* One commentor requests the scientific basis for requesting suction dredges to discharge into "quiet pools" where fish routinely hold.

Response: EPA does not require discharges into "quiet pools" at all, much less "quiet pools where fish routinely hold". The purpose of discharging to a quiet pool is to increase the opportunity for discharge material to settle more without going downstream.

69. *Comment:* One commentor objects to the storm exemption stating that reasonably predictable flooding is more along the lines of a fifteen or twenty year flood event of 12–16 hours rather than the 5 year, 6 hour storm event as stated in the proposed GP.

Response: The storm exemption is designed to provide an affirmative defense to an enforcement action. EPA recognizes that mines should not be required to construct treatment for the maximum precipitation event or series of precipitation events that could occur with the resulting effects on wastewater and mine drainage discharge flows. EPA has established, through the development of Effluent Guidelines, the criteria for designing, constructing, and maintaining the wastewater treatment facilities. The facilities must be able to contain and treat the maximum volume of wastewater resulting from processing ore during a 4 hour period plus the volume that would be discharged from a 5-year, 6-hour precipitation event. The storm exemption is contained in 40 CFR 440.141(b) but can only be used as an affirmative defense if all requirements of the regulation are met [i.e., compliance with the BMPs in 40 CFR 440.148 and related provisions of its NPDES permit, and compliance with the notification requirements in 40 CFR 122.41(m) and (n)].

70. *Comment:* One commentor objects to the use of the GP to cover mine sites that are located over known minable deposits of heavy metals other than gold and if the mine site has been historically mined using mercury.

Response: In the development of the Effluent Guidelines for Placer Mining, EPA conducted sampling and analysis at facilities which represented a wide range of locations, operating conditions, processes, water use rates, topography, production rates, and treatment technologies. From the sampling, EPA

selected settleable solids as the only pollutant of concern to be regulated by the effluent guidelines and the sampling indicated no high levels of any metals. The quantities and treatability of pollutants in these treated wastewaters form the basis for selection of pollutant parameters for regulation. The Administrator is required by the CWA to consider the regulation of all toxic pollutants and categories of pollutants listed under Section 307 but is not specifically required to regulate any of them.

71. *Comment:* Two commentors object to the "mixing zone" given to suction dredges.

Response: The WQS at 18 AAC 70.032(a) states that "In applying the water quality criteria set out in this chapter, the department will, upon application and in its discretion, prescribe in its permits or certifications a volume of dilution for an effluent or substance within a receiving water . . ." The state water quality standards describe dilution as an allowable method of pollution control. EPA proposed the mixing zone in the proposed GP and if the State disagrees in its Section 401 Certification with this mixing zone determination, EPA would insert the State's determination of the mixing zone into the GP. The Section 401 Certification has been waived according to the timeframe specified in 40 CFR 124.53.

72. *Comment:* Several commentors object to the monitoring frequency for turbidity and arsenic. One commentor objects to the monitoring frequency for arsenic because one sampling per season of effluent and natural background is not statistically valid.

Response: Monitoring for these pollutants has been established at less frequent intervals because sampling and analysis for these parameters are more difficult and costly due in part from requiring natural background samples. Samples for monitoring purposes must be taken during discharge at a time when the operation has reached equilibrium. EPA believes that the required monitoring frequencies will be sufficient to determine compliance with permit limitations.

73. *Comment:* Two commentors suggest EPA clarify the procedure for suction dredgers conducting visual inspections.

Response: The procedures are outlined in Permit Part II.C. The visual inspection of the stream should be done 500 feet downstream from the operating dredge. If there is any visual increase in the cloudiness or muddiness of the water, it would be considered a violation. If this does occur, the operator must slow down or stop operations until there is no longer a violation.

74. *Comment:* Two commentors request a discussion of the applicability of the GP to marine operations and coastal areas.

Response: This GP does not apply to marine operations. Permit Part I.B.1.b. should have included the exception of dredges operating in open waters as specified in 40 CFR 440.140(b). This part has been changed to reflect this comment. Operations that are authorized by this GP and are in coastal areas may apply for coverage under this GP. The Alaska Department of Governmental Coordination (ADGC) has not given EPA a consistency determination on the GP under the Alaska Coastal Zone Management Act. EPA would like to expedite the issuance of this GP and has made provisions in Permit Part I.A.5. so that facilities in the coastal zone seeking coverage under the GP would be able to obtain coverage after ADGC has made a determination, either for the facility individually or on the GP. ADGC's determination on the GP could come in the form of a formal determination or as a waiver due to the six month review timeframe which will elapse on July 24, 1994.

75. *Comment:* One commentor objects to the use of a visual inspection for turbidity for suction dredge operations.

Response: The visual monitoring for suction dredging has been included in the GP pursuant to 40 CFR 122.43 which says that conditions not specifically required in the regulations can be placed in permits to provide for and assure compliance with all applicable requirements of the CWA. EPA has used best professional judgement in determining this requirement.

76. *Comment:* Several commentors state that the permit only covers gold placer mines and that other placer mines (i.e., platinum and tin) should be included since the mining techniques are for all practical purposes identical to those covered for gold placer operations.

Response: EPA will consider these operations in the next issuance of the GP. EPA would consider it inappropriate to include these operations without an opportunity for public comment or inclusion in the EA.

77. *Comment:* Several commentors object to EPA not including small mechanical operations not authorized by the effluent guidelines in this general permit. Further, two other commentors object to EPA not authorizing small suction dredges in this GP.

Response: See comment 76.

78. *Comment:* Several commentors object to the use of the GP to regulate placer mines in wild and scenic rivers and conservation system units.

Response: EPA has included in possible requirements for an individual permit, facilities where other federal or State legislation, rules or regulations directly or indirectly related to water quality may apply to that facility. This provision is found in Permit Part I.E.1.i.

79. *Comment:* One commentor would like Permit Part I.C. clarified so it is understood that the GP applies in wild and scenic rivers, conservation system units and in anadromous streams.

Response: The GP would apply in these areas except where it has been determined according to Permit Part I.E.1.i. that an individual permit is required.

80. *Comment:* Several commentors object to natural background being defined as above all man-made disturbances on the stream for measurement of arsenic and turbidity. One commentor suggests that EPA designate the natural background point.

Response: According to EPA's experience, the number of miners who report discharging has dropped significantly in the past few years. EPA expects this trend to continue. For those few miners that do discharge, EPA will determine, upon request, the point at which the natural background sample will be taken. In determining the sample point, EPA will consider, with the input of the permittee and/or the Alaska Division of Mining, geologic factors, drainage patterns, access, and the location of active and historic manmade disturbances. This has been incorporated into Permit Part II.D.1.c. for turbidity and Permit Part II.D.1.d. for arsenic.

81. *Comment:* Two commentors suggest that Permit Part III.B.4. is too all-inclusive and should be changed to say that other permits and restrictions may apply if there is a possibility of fisheries being affected by suction dredging. Two other commentors claim that Permit Part III.B.4. is loosely worded and unenforceable. Two commentors recommend that the reference to harassment of fish should be defined or deleted from Permit Part III.B.4.

Response: EPA believes that Permit Part III.B.4. is a duplication of Permit Part I.C. and has deleted the former from the GP.

82. *Comment:* One commentor claims EPA should distinguish between the critical parameters of both intake size and engine power.

Response: EPA did not consider engine power along with size of intake hoses because the requirements of the GP should suffice to minimize impacts.

The daily inspections for downstream impacts with the requirement to decrease or cease operations if impacts occur are applicable to all authorized suction dredges regardless of engine size.

83. *Comment:* One commentor objects to EPA not considering river bottom variability in permitting suction dredges and suggest that EPA issue basin specific general permits to account for this.

Response: EPA recognizes the variability of sediment sizes throughout a fluvial system. It is this recognition that prompts the restriction confining the activity to the active stream channel. At least in this area, the percentage of fines is typically at a minimum with respect to the entire fluvial system and impacts will be minimized.

84. *Comment:* Two commentors claim that EPA has never enforced its own or the state of Alaska's antidegradation policy.

Response: EPA does not have an antidegradation policy but does mandate antidegradation as part of a state's water quality standards [40 CFR 131.6 and 131.12]. To date, the state of Alaska has not implemented their antidegradation policy. The pending standards revision address antidegradation. The State plans to begin their implementation soon and EPA intends to work with the State in the implementation of their policy. If a placer mine is shown to be affected by the policy, it may be required to apply for an individual permit. This condition has been added to the proposed GP as Permit Part I.E.1.h.

85. *Comment:* Two commentors suggest revising Permit Part III.A.6. to include detailed reclamation procedures to ensure that seasonally or permanently abandoned mines do not pollute the receiving waters.

Response: Permit Part III.A.6. was included in the GP pursuant to 40 CFR 122.44(k)(3). This regulation requires NPDES permits to contain BMPs that serve to control or abate the discharge pollutants when the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA. EPA does not believe that detailed reclamation procedures are reasonably necessary. The requirement of the GP does carry out the purposes and intent of the CWA.

86. *Comment:* Several commentors object to the reporting requirements for arsenic that require any measurement less than the detection level to be reported as zero, anything between the detection level and the minimum level (4) to be reported as ½ the minimum level or 2 and anything over the minimum level to be reported as the actual number.

Response: This reporting requirement was based on draft policy that has changed since the proposed GP was public noticed. The GP now reflects the latest draft policy from EPA Headquarters which states that a minimum level (ML) can be calculated from a method detection level (MDL). For arsenic in this GP, the MDL of 1 µg/L is multiplied by 3.18. The product is rounded to 3 and this becomes the ML. Samples measuring less than the ML are to be reported as 0 µg/L while analysis greater than the ML should be reported as the actual measure. The Fact Sheet (page 13) and the GP in Permit Part II.D.1.d. state: "This reporting threshold does not authorize the discharge of this parameter in excess of the effluent limitation."

87. *Comment:* One commentor suggests that EPA give some consideration to the 1989 Alaska Supreme Court Decision regarding the lowest measurement practical for settleable solids.

Response: EPA believes that settleable solids can be measured with an Imhoff cone accurately to 0.2 ml/l. However, Permittees are asked to estimate readings below this level even though they are less accurate. If ADEC does not agree that this is protective of WQS and specifies it in their Section 401 Certification, EPA would make the required changes to the GP. The Section 401 Certification has been waived according to the timeframe specified in 40 CFR 124.53.

The following comments were received on the EA from National Marine Fisheries Service, Alaska Department of Natural Resources and Alaska Miners Association. These comments have not been addressed in the above responses.

88. *Comment:* One commentor suggests that the Purpose and Need for Action section of the EA covering cumulative impacts does not do so properly.

Response: Cumulative effects will be more specifically addressed in the EAs which will continue to be prepared for the individual new source NPDES permit actions (i.e., in the context of site-specific conditions and those cumulative effects associated with a proposed project). Where the potential for significant cumulative impact exists, an environmental impact statement will be required. The proposed general permit action evaluated in the EA will not alter the methodology by which cumulative effects are assessed under the National Environmental Policy Act (NEPA) prior to the permit decisions.

89. *Comment:* One commentor suggests that DOI, Mineral Management Service be included in the section on Placer Mining Regulatory Programs since it administers leases and permits mining activities within Alaska's Outer Continental Shelf.

Response: This additional information will be incorporated into the EAs prepared for new source projects. It should be noted that the final GP does not cover those offshore operations (see Comment #74).

90. *Comment:* One commentor suggests that discussion of the Army Corps of Engineers regulatory program for placer mining be expanded especially regarding general permits and specific activities which fall under their jurisdiction.

Response: See response 89.

91. *Comment:* One commentor suggests that no additional discharges into water quality limited segments be authorized until TMDL determinations are completed.

Response: EPA will continue to assess potential for exceedances of water quality standards for all new source projects subject to NEPA review (regardless of their location) prior to the decisions whether or not to authorize the discharges. Permit limitations would also reflect TMDLs for any stream segment for which a TMDL is prepared.

92. *Comment:* One commentor requests clarification of how mitigative measures would be handled under the GP.

Response: Additional mitigation measures which EPA may impose as permit conditions, as a result of the NEPA (EA or EIS) review, are limited to those authorized by the NPDES program, and therefore must be reasonably necessary to carry out the purposes and intent of the CWA. CWA-related conditions other than those already in the general permit which are determined in an EA or EIS to be necessary in order to avoid the potential for significant impact to water quality can be incorporated into an individual NPDES permit. The general permit includes a provision allowing for the drafting of an individual permit as necessary. EPA may issue or deny an NPDES permit taking into consideration all impacts (discharge related or other) disclosed in the NEPA review, and the extent to which potentially significant adverse impacts can be mitigated. Mitigation may also be developed by the applicant or be required by the land management agency or other agency regulatory program with jurisdiction over the project.

93. *Comment:* One commentor claims there is a typographical error in the

section "Description of Proposed Action, Permit Coverage," that the phrase intake nozzles less than 4 inches should be intake nozzles greater than 4 inches.

Response: The phrase is included in the list of facilities not authorized by this GP. The GP only authorizes suction dredges with intakes greater than 4 inches so the phrase in the EA is correct.

94. *Comment:* One commentor suggests that there will be significant impacts because the permit will likely force some operators out of business or force them to risk being charged with non-compliance, fined and charged as a criminal due to the arsenic limitation in the proposed GP.

Response: The GP limitation for arsenic is the same as it is in the individual permits that have been issued since the "Amendments to the Water Quality Standards Regulation; Compliance with CWA Section 303(c)(2)(B); Final Rule" (57 FR 6084, Tuesday, December 22, 1992) went into effect. Therefore, there is no change in impact.

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM FOR ALASKAN PLACER MINERS

[General Permit No.: AK–G–37–0000]

In compliance with the provisions of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the "Act",

Owners and operators of facilities engaged in the processing of placer gold are authorized to discharge to waters of the United States, in accordance with effluent limitation, monitoring requirements, and other conditions set forth herein.

A Copy of This General Permit Must be Kept at the Site Where Discharges Occur.

This permit shall become effective June 30, 1994. This permit and the authorization to discharge shall expire 5 years from the effective date of the permit.

Charles E. Findley,

Director, Water Division, Region 10, U.S. Environmental Protection Agency.

Table of Contents

Cover Page

I. Coverage Under This Permit

A. Coverage and Eligibility
B. Authorized Placer Mining Operations
C. Additional Requirements
D. Prohibitions
E. Requiring an Individual Permit
F. Notification Requirements
G. Permit Expiration

II. Effluent Limitations

A. Mechanical Operation (Traditional Sluicing)
B. Hydraulic Removal of Overburden
C. Suction Dredging
D. Monitoring Requirements

III. Management Practices

A. Mechanical Operations and Hydraulic Removal of Overburden
B. Suction Dredges
C. Other Requirements
D. Storm Exemption

IV. Monitoring and Reporting Requirements

A. Representative Sampling
B. Reporting of Monitoring Results
C. Monitoring Procedures
D. Additional Monitoring by the Permittee
E. Records Contents
F. Retention of Records
G. Notice of Noncompliance Reporting
H. Other Noncompliance Reporting
I. Inspection and Entry

V. Compliance Responsibilities

A. Duty to Comply
B. Penalties for Violations of Permit Conditions
C. Need to Halt or Reduce Activity not a Defense
D. Duty to Mitigate
E. Proper Operation and Maintenance
F. Removed Substances
G. Bypass of Treatment Facilities
H. Upset Conditions
I. Toxic Pollutants

VI. General Requirements

A. Changes in Discharge of Toxic Substances
B. Planned Changes
C. Anticipated Noncompliance
D. Permit Actions
E. Duty to Reapply
F. Duty to Provide Information
G. Other Information
H. Signatory Requirements
I. Availability of Reports
J. Oil and Hazardous Substance Liability
K. Property Rights
L. Severability
M. State Laws

VII. Reopener Clause

VIII. Definitions

IX. Special Conditions—Effluent Limits Below Detection Levels

A. Reporting Levels
B. Reporting Details
Attachment 1
Attachment 2
Attachment 3
Appendix A

I. Coverage Under This Permit

A. Coverage and Eligibility

1. *Existing Facilities:* Existing facilities (those facilities having individual National Pollutant Discharge Elimination System [NPDES] permits) are authorized under the terms and conditions of this permit. Upon the submittal of a Notice of Intent (NOI) to gain coverage under this permit, coverage will be granted according to Permit Part F.4.

2. *Pending Applications:* Upon submittal of an NOI, all facilities which have submitted applications in accordance with 40 CFR 122.21(a) are authorized under the terms and conditions of this permit. Coverage will be granted according to Permit Part F.4.

3. *New Facilities:* New facilities that are determined to be new sources under the CWA will be required to have an Environmental Assessment (EA) completed pursuant to the National Environmental Policy Act (NEPA). A finding of no significant impact (FNSI) by EPA is necessary prior to receiving coverage under this permit. If there will be a significant impact, the facility will require an Environmental Impact Statement (EIS). Facilities determined to be new dischargers will be covered by the terms and conditions of this permit if they meet all the necessary requirements of coverage.

4. *Expanding Facilities:* Facilities that contemplate expanding shall submit a new NOI that describes the new discharge. The current permit will be terminated and a new permit, reflecting the changes, issued in its place if the facility meets all the necessary requirements of coverage.

5. *Coastal Zone Facilities:* Facilities located in the coastal zone as determinedby the Alaska Coastal Zone Management Act shall submit, with their Notice of Intent (NOI), an individual consistency determination from Alaska Division of Governmental Coordination (ADGC) unless ADGC makes an overall determination on this General Permit after its issuance.

B. Authorized Placer Mining Operations

1. Facilities that mine and process gold placer ores using gravity separationmethods to recover the gold metal contained in the ore.

a. Open-cut gold placer mines except those open-cut mines that mine less than 1,500 cubic yards of placer ore per mining season.

b. Mechanical dredge gold placer mines (not suction dredges) except those dredges that remove less than 50,000 cubic yards of placer ore per mining season or dredge in open waters.

2. Suction dredges with intake hoses of greater than 4 inches.

3. Operations utilizing hydraulic removal of overburden.

C. Additional Requirements

1. Many streams and stream reaches in Alaska have been designated as part of the federal wild and scenic rivers system or as Conservation System Units (CSUs) by the federal government.

Permittees should contact the district offices of the federal agencies that administer the designated area for additional restrictions that may apply to operating within the area.

2. Many streams in Alaska where placer mining occurs have been designatedby the Alaska Department of Fish and Game (ADF&G) as anadromous fish streams. Placer mining activities in these streams require an ADF&G Fish Habitat Permit which may include additional restrictions. The "Atlas to the Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fish" lists the streams in the State which require prior ADF&G authorization. In addition, placer mining activities in resident fish streams require an ADF&G Fish Habitat Permit if the proposed activity will block or impede the efficient passage of fish. Permittees operating in anadromous or resident fish streams should contact the ADF&G to determine permitting requirements and additional restrictions that may apply.

D. Prohibitions

Discharges from the following beneficiation processes are not authorized under this permit: Mercury amalgamation, cyanidation, froth floatation, heap and vat leaching.

E. Requiring an Individual Permit

1. The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

a. The single discharge or the cumulative number of discharges is/are a significant contributor of pollution;

b. The discharger is not in compliance with the terms and conditions of the general permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

d. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;

e. A Water Quality Management plan containing requirements applicable to such point sources is approved; or

f. An Individual Control Strategy (ICS) is required under Section 304(L) of the Act, or

g. A Total Maximum Daily Load (TMDL) and corresponding wasteload allocation has been completed for a waterbody or a segment of a waterbody, or

h. A review of the facility shows that it is subject to the State of Alaska's anti-degradation policy.

i. There are other federal or State legislation, rules or regulations pertaining to a site directly or indirectly related to water quality.

2. The Regional Administrator will notify the operator in writing by certified mailthat a permit application is required. If an operator fails to submit, in a timely manner, an individual NPDES permit application as required, then any applicability of this general permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

3. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2C or 2D) with reasons supporting the request to the Regional Administrator no later than 90 days after the effective date of the permit.

4. When an individual NPDES permit is issued to an owner or operator otherwise covered by this permit, the applicability of this permit to the facility is automatically terminated on the effective date of the individual permit.

5. When an individual NPDES permit is denied to an owner or operator otherwise covered by this permit, the permittee is automatically reinstated under this permit on the date of such denial, unless otherwise specified by the Regional Administrator. A new facility can receive coverage under this general permit by submitting an NOI. See Permit Part I.A.3. for details.

6. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

F. Notification Requirements

1. Owners or operators of facilities authorized by this permit shall submit an NOI to be covered by this permit. The information required for a complete NOI is in Appendix A of this permit. Notification must be made:

a. Within 90 days of issuance of this permit; or

b. By January 1 of the year of discharge from a new facility or a facility established since 1988 subject to New Source Performance Standards (NSPS) that has not previously been covered by a permit; or

c. 90 days prior to discharge from a new facility not subject to NSPS; or

d. 90 days prior to the expiration of an existing individual permit, or

e. 90 days prior to discharge for any other facilities. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

2. The NOI shall be signed by the owner or other signatory authority in accordance with Permit Part VI.H. (Signatory Requirements), and a copy shall be retained on site in accordance with Permit Part IV.F. (Retention of Records). The address for NOI submission to EPA is: United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD–134, Seattle, Washington 98101.

3. A copy of the NOI must also be sent to the regional office of the Alaska Department of Environmental Conservation (ADEC) that has jurisdiction over the mine. The addresses are:

Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801

Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, Alaska 99709

Alaska Department of Environmental Conservation, Southcentral Regional Office, 3601 "C" Street, Suite 1350, Anchorage, Alaska 99503.

4. A copy of the general permit will be sent to the permittee when it is determined that the facility can be granted coverage under this general permit. If it is determined that coverage cannot be granted under this permit, the applicant will be informed of this in writing.

G. Permit Expiration

This permit will expire five (5) years from the effective date. For facilities submitting a new NOI 90 days prior to expiration of this general permit, the conditions of the expired permit continue in force until the effective date of a new permit.

II. Effluent Limitations

A. Mechanical Operation (Traditional Sluicing) [Not including Suction Dredges]

During the term of this permit, no wastewater discharges are authorized except as specified below.

1. Effluent Limitations

a. The volume of wastewater which may be discharged shall not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make-up water required for operation of the beneficiation process.

b. The wastewater discharged shall not exceed the following:

Effluent characteristic	Instantaneous maximum
Settleable Solids	0.2 ml/L
Turbidity	5 NTUs above natural background[1]
Arsenic, Total Recoverable.	(1) 0.18µg/L (2) natural background[2]

[1] Subject to Turbidity Modification outlined in Permit Part VIII.T.
[2] See Permit Part II.D.1.d. for details.

2. Effluent discharges are prohibited during periods when new water is allowed to enter the plant site. Additionally, there shall be no discharge as a result of the intake of new water.

B. Hydraulic Removal of Overburden

During the term of this permit, no wastewater discharges are authorized except as specified below.

1. Effluent Limitations

a. The volume of wastewater which may be discharged shall not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make-up water required for operation of the hydraulicking process.

b. The wastewater discharged shall not exceed the following:

Effluent characteristic	Instantaneous maximum
Settleable Solids	0.2 ml/L
Turbidity	* 5 NTUs above natural background
Arsenic, Total Recoverable.	(1) 0.18 µg/L ** (2) natural background

* Subject to Turbidity Modification outlined in Permit Part VIII.T.
** See Permit Part II.D.1.d. for details.

2.Effluent discharges are prohibited during periods when new water is allowed to enter the plant site. Additionally, there shall be no discharge as a result of the intake of new water.

C. Suction Dredging

1. At any point in the receiving stream 500 feet downstream of the dredge's discharge point, the maximum allowable increase in turbidity over the natural receiving stream turbidity while operating is 5 NTUs.

2. A visual increase in turbidity (any cloudiness or muddiness) 500 feet downstream of the suction dredge during operations would be considered a violation of the 5 NTU limit.

3. If noticeable turbidity does occur 500 feet downstream of the work site, operation of the suction dredge must decrease or cease so that a violation as defined above does not exist.

D. Monitoring Requirements

1. Mechanical Operations and Hydraulic Removal of Overburden

a. During the period beginning on the effective date of this permit and lasting until the expiration date, the following monitoring shall be conducted:

Effluent characteristic	Monitoring location	Monitoring frequency	Sample type
Settleable Solids (ml/L)	Effluent	Once per day each day of discharge.	Grab.
Turbidity (NTU)	Effluent natural background	Once per season	Grab
Arsenic (µg/L) total recoverable	[1] Effluent natural background	Once per season	[2] Grab
Flow (gpm)	Effluent	[3]	Instantaneous

[1] Only when choosing Option (2).
[2] Analyzed by EPA Method 206.2 with a detection limit of 1 µg/L.
[3] See Part II.D.1.f. for details.

b. Visual Inspection

The Permittee shall institute a comprehensive visual inspection program to facilitate proper operation and maintenance of the recycle system and the wastewater treatment system. The Permittee shall conduct an inspection of the site once per day, while on site, during the mining season. The Permittee shall maintain records of all information resulting from any visual inspections. These records shall include an evaluation of the condition of all water control devices such as diversion structures and berms and all solids retention structures including, but not limited to, berms, dikes, pond structures, and dams. The records shall also include an assessment of the presence of sediment buildup within the settling ponds. The Permittee shall examine all ponds for the occurrence of short circuiting.

c. Turbidity Monitoring

The Permittee shall monitor the turbidity values of the effluent stream and the natural background turbidity values of the receiving stream then compare the two samples. The sample results shall be reported on the annual Discharge Monitoring Report (DMR). The Permittee shall take one sample at a point that is representative of the discharge prior to entering the receiving stream. The Permittee shall take another sample above the discharge point at a location that is considered to be the "natural" background of the receiving stream as defined in Permit Part VIII.K. EPA has recognized the complex nature of determining the point above "natural" background and upon request will determine this point for the miner. In determining the sample point, EPA will consider, with the input of the permittee and/or the Alaska Division of Mining, geologic factors, drainage patterns, access, and the location of active and historic manmade disturbances. Both samples shall be taken within a reasonable time frame. Monitoring shall be conducted in accordance with accepted analytical procedures. See attachment 1 for sampling protocol.

d. Arsenic Monitoring

Arsenic samples shall be representative of the discharge and shall be taken at a point prior to entering the receiving stream. Arsenic samples taken to determine "natural" background shall be representative of the receiving water upstream from any man-made disturbances as determined above for turbidity. Monitoring shall be conducted in accordance with accepted analytical procedures. The Permittee shall report the sample results on the DMR. See attachment 2 for sampling protocol.

The effluent limitation for total recoverable arsenic is not quantifiable using the EPA approved analytical method, EPA method 206.2. Thus, EPA has set forth reporting thresholds to measure the highest acceptable quantification level for this parameter. This reporting threshold does not authorize the discharge of this parameter in excess of the effluent limitation. For more information, see special conditions in Permit Part IX.

e. Settleable Solids Monitoring

Settleable solids samples shall be representative of the discharge and shall be taken at a point prior to entering the receiving stream. Monitoring shall be conducted in accordance with accepted analytical procedures (Standard Methods, 17th Edition, 1989). The Permittee shall report the sample results on the Annual DMR. See attachment 3 for sampling and analysis protocol.

f. Flow Monitoring

Effluent flow shall be measured at the discharge prior to entering the receiving water. Effluent flow shall be measured at least once per day, for continuous discharges, or once during each discharge event if discharges are intermittent. If measurement is impractical, the operator must make a good faith effort to estimate seepage discharging to waters of the United States each day that seepage occurs. The flow shall be measured in gallons per minute (gpm). The flow measurements, the number of discharge events, and the duration of each discharge event shall be reported in the Annual DMR for each day of the mining season.

2. Suction Dredges

a. Suction Dredge operations shall visually monitor for turbidity as described in Permit Part II.C. once per day of operation. The Permittee shall maintain records of all information resulting from any visual inspections.

b. The Permittee will report the period of suction dredging on the DMR. Visual violation occurrences will also be reported on the DMR along with the measures taken to comply with the provisions of Permit Part II.C.3.

III. Management Practices

A. Mechanical Operations and Hydraulic Removal of Overburden

1. The flow of surface waters (i.e., creek, river, or stream) into the plant site shall be interrupted and these waters diverted around and away to prevent incursion into the plant site.

2. Berms, including any pond walls, dikes, low dams, and similar water retention structures shall be constructed in a manner such that they are reasonably expected to reject the passage of water.

3. Measures shall be taken to assure that pollutant materials removed from the process water and wastewater streams will be retained in storage areas and not discharged or released to the waters of the United States.

4. The amount of new water allowed to enter the plant site for use in material processing shall be limited to the minimum amount required as makeup water for processing operations.

5. All water control devices such as diversion structures and berms and all solids retention structures such as berms, dikes, pond structures, and dams shall be reasonably maintained to continue their effectiveness and to protect from failure.

6. The operator shall take whatever reasonable steps are appropriate to assure that, after the mining season, all unreclaimed mine areas, including ponds, are in a condition which will not cause degradation to the receiving waters over those resulting from natural causes.

B. Suction Dredges

1. Dredging in waters of the United States is permitted only within the active stream channel.

2. Wherever practicable, the dredge shall be set to discharge into a quiet pool, where settling of dredge spoils can occur more rapidly.

3. Care shall be taken by the operator during refueling of the dredge to prevent spillage into public waters or to groundwater.

C. Other Requirements

Mechanical Operations and Hydraulic Removal of Overburden

The operator shall maintain fuel handling and storage facilities in a manner which will prevent the discharge of fuel oil into the receiving waters or on the adjoining shoreline. A Spill Prevention Control and Countermeasure Plan (SPCC Plan) shall be prepared and updated as necessary in accordance with provisions of 40 CFR Part 112 for facilities storing 660 gallons in a single container above ground, 1320 gallons in the aggregate above ground, or 42,000 gallons below ground.

The permittee shall indicate on the DMR if an SPCC Plan is necessary and in place at the site and if changes were made to the Plan over the previous year.

D. Storm Exemption

The permittee may qualify for a storm exemption from the technology-based effluent limitations in Permit Part II.A.1.b. and II.B.1.b. of this NPDES general permit if the following conditions are met:

1. The treatment system is designed, constructed and maintained to contain the maximum volume of untreated process wastewater which would be discharged, stored, contained and used or recycled by the beneficiation process into the treatment system during a 4-hour operating period without an increase in volume from precipitation or infiltration, plus the maximum volume of water runoff (drainage waters) resulting from a 5-year, 6-hour precipitation event. In computing the maximum volume of water which would result from a 5-year, 6-hour precipitation event, the operator must include the volume which should result from the plant site contributing runoff to the individual treatment facility.

2. The operator takes all reasonable steps to maintain treatment of the wastewater and minimize the amount of overflow.

3. The source is in compliance with the Management Practices in Permit Part III.A.

4. The operator complies with the notification requirements of Permit Parts IV.G. and IV.H.

IV. Monitoring and Reporting Requirements

A. Representative Sampling

All samples for monitoring purposes shall be representative of the monitored activity, 40 CFR 122.41 (j). To determine compliance with permit effluent limitations, "grab" samples shall be taken as established under Permit Part II.D. Specifically, effluent samples for settleable solids, turbidity, and arsenic shall be collected from the settling pond outlet or other treatment systems' outlet prior to discharge to the receiving stream. Additionally, turbidity and arsenic (for Option 2) samples shall also be taken above the discharge point at a location that is representative of the receiving stream's natural background. Samples for arsenic and turbidity monitoring must be taken during sluicing at a time when the operation has reached equilibrium. For example, samples should be taken when sluice paydirt loading and effluent discharge are constant.

B. Reporting of Monitoring Results

Monitoring results shall be summarized each month and reported on EPA Form 3320–1 (DMR). The DMR shall be submitted to the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Enforcement Section WD–135, Seattle, Washington 98101–3188, no later than November 30 each year.

If there is no mining activity during the year or no wastewater discharge to a receiving stream, the permittee shall notify EPA of these facts no later than November 30 of each year.

The DMR shall also be sent to the regional office of ADEC that has jurisdiction over the mine. The addresses can be found in permit part I.F.3.

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit.

D. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

E. Records Contents

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

F. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director or ADEC at any time. Data collected on-site, copies of DMRs, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

G. Notice of Noncompliance Reporting

1. Any noncompliance which may endanger health or the environment shall be reported as soon as the permittee becomes aware of the circumstance. A written submission shall also be provided in the shortest reasonable period of time after the permittee becomes aware of the occurrence.

2. The following occurrences of noncompliance shall also be reported in writing in the shortest reasonable period of time after the permittee becomes aware of the circumstances:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit (See Permit Part V.G., Bypass of Treatment Facilities.); or

b. Any upset which exceeds any effluent limitation in the permit (See Permit Part V.H., Upset Conditions.).

c. Any violation of the effluent limitations in Permit Parts II.A. and II.B.

3. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

4. The Director may waive the written report on a case-by-case basis if an oral report has been received within 24 hours by the Enforcement Section in Seattle, Washington, by phone, (206) 553–1213.

5. Reports shall be submitted to the addresses in Permit Part IV.B., Reporting of Monitoring Results.

H. Other Noncompliance Reporting

Instances of noncompliance not required to be reported in Permit Part IV.G. above shall be reported at the time that monitoring reports for Permit Part IV.B. are submitted. The reports shall contain the information listed in Permit Part IV.G.3.

I. Inspection and Entry

The permittee shall allow the Director, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

V. Compliance Responsibilities

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions

1. Administrative Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to an administrative penalty, not to exceed $10,000 per day for each violation.

2. Civil Penalty. The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

3. Criminal Penalties:

a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes

any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in Permit Part V.G., Bypass of Treatment Facilities and Permit Part V.H., Upset Conditions, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner so as to prevent any pollutant from such materials from entering waters of the United States.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. Notice:

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Permit Part IV.G., Notice of Noncompliance Reporting.

3. Prohibition of bypass.

a. Bypass is prohibited and the Director or ADEC may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under paragraph 2 of this section.

b. The Director and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Director and ADEC determine that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. An administrative review of a claim that noncompliance was caused by an upset does not represent final administrative action for any specific event. A determination is not final until formal administrative action is taken for the specific violation(s).

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required under Permit Part IV.G., Notice of Noncompliance Reporting; and

d. The permittee complied with any remedial measures required under Permit Part V.D., Duty to Mitigate.

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

VI. General Requirements

A. Changes in Discharge of Toxic Substances

Notification shall be provided to the Director and ADEC as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

B. Planned Changes

The permittee shall give notice to the Director and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under Permit Part VI.A.1.

3. The alteration or addition will significantly change the location, nature or volume of discharge or the quantity of pollutants, subject to the effluent limitations, discharged.

C. Anticipated Noncompliance

The permittee shall also give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

E. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The NOI should be submitted at least 90 days before the expiration date of this permit.

F. Duty To Provide Information

The permittee shall furnish to the Director and ADEC, within a reasonable time, any information which the Director or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director or ADEC, upon request, copies of records required to be kept by this permit.

G. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director or ADEC, it shall promptly submit such facts or information.

H. Signatory Requirements

All applications, reports or information submitted to the Director and ADEC shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director and ADEC, and

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph IV.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph VI.H.2. must be submitted to the Director and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

I. Availability of Reports

Except for data determined to be confidential under 40 CFR Part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Director and ADEC. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Act.

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

N. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this final general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submission made for the NPDES permit program under the provisions of the CWA.

VII. Reopener Clause

If effluent limitations or requirements are established or modified in an approved State Water Quality Management Plan or Waste Load Allocation and if they are more stringent that those listed in this permit or control a pollutant not listed in this permit, this permit may be reopened to include those more stringent limits or requirements.

VIII. Definitions

A. "Active Stream Channel" means that part of the channel that is below the level of the water.

B. "Bypass" means the intentional diversion of waste streams around any portion of a treatment facility.

C. "Drainage Water" means incidental surface waters from diverse sources such as rainfall, snow melt or permafrost melt.

D. "Expanding Facility" means any facility increasing in size such as to affect the discharge but operating within the permit area covered by its general permit.

E. A "Grab" sample is a single sample or measurement taken at a specific time.

F. "Infiltration Water" means that water which permeates through the earth into the plant site.

G. "Instantaneous Maximum" means the maximum value measured at any time.

H. "Mine Drainage" means any water, not associated with active sluice water, that is drained, pumped or siphoned from a mine.

I. "Mining Season" means the time between the start of mining in a calendar year and when mining has ceased for that same calendar year."

J. "Monitoring Month" means the period consisting of the calendar weeks which begin and end in a given calendar month.

K. ""Natural" Background" means the level upstream from all mining and other man-made disturbances.

L. "New Facility" means a facility that has not operated in the area specified in the NOI prior to the submission of the NOI.

M. "NTU" (Nephelometric Turbidity Unit) is an expression of the optical property that causes light to be scattered and absorbed rather than transmitted in a straight line through the water.

N. "Make-up Water" means that volume of water needed to replace process water lost due to evaporation and seepage in order to maintain the quantity necessary for the operation of the beneficiation process.

O. "New Water" means water from any discrete source such as a river, creek, lake or well which is deliberately allowed or brought into the plant site.

P. "Plant Site" means the area occupied by the mine, necessary haulage ways from the mine to the beneficiation process, the beneficiation area, the area occupied by the wastewater treatment storage facilities and the storage areas for waste materials and solids removed from the wastewaters during treatment.

Q. "Receiving Water" means waters such as lakes, rivers, streams, creeks, or any other surface waters which receive wastewater discharges.

R. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

S. "Short circuiting" means ineffective settling ponds due to inadequate or insufficient retention characteristics, excessive sediment deposition, embankment infiltration/percolation, lack of maintenance, etc.

T. "Turbidity Modification" means the procedures used to calculate a higher turbidity limit based on a mass balance equation which relates upstream receiving water flow and turbidity to effluent flow and turbidity. The basic form of this equation is:

$Q_1C_1+Q_2C_2=Q_3C_3$,

where C_1=upstream turbidity;

C_2=effluent turbidity;

C_3=downstream turbidity after mixing where the allowable increase is 5 NTU above background (C_1+5 NTU);

Q_1=stream flow downstream from any diversion and upstream from the discharge;

Q_2=effluent flow *; and,

Q_3=total stream flow downstream from discharge after complete mixing.

* A default value of 10 gallons per minute (gpm) will be used if the NOI states that zero discharge will be achieved.

U. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

V. "Wastewater" means all water used in and resulting from the beneficiation process (including but not limited to the water used to move the ore to and through the beneficiation process, the water used to aid in classification, and the water used in gravity separation), mine drainage, and infiltration and drainage waters which commingle with mine drainage or waters resulting from the beneficiation process.

IX. Special Conditions—Effluent Limits Below Detection Levels

A. Reporting Levels

1. For purposes of reporting, the Permittee shall use the reporting threshold equivalent to the interim minimum level (IML). The IML is defined as the concentration in a sample equivalent to the concentration of the lowest calibration standard analyzed in a specific analytical procedure, assuming that all the method-specified sample weights, volumes and processing steps have been followed. As such, the permittee must utilize a standard equivalent to the concentration of the IML for arsenic which is 3.18 µg/L.

2. For the purpose of reporting on the DMR, actual analytical results should be reported whenever possible. All analytical values at or above the IML (rounded to 3 µg/L) shall be reported as the measured value. When the results cannot be quantified, values below the IML shall be reported as zero (0 µg/L).

B. Reporting Details:

In the "Comment" section of the DMR, the permittee shall report the lowest calibration standard used and the ML achieved.

Attachment 1

Turbidity Sampling Protocol

1. Grab samples shall be collected.

2. Samples shall be collected in a sterile one liter polypropylene or glass container.

3. Samples must be cooled to 4 degrees celsius (iced).

4. Samples must be analyzed within 48 hours of sample collection.

Attachment 2

Arsenic Sampling Protocol

1. Grab samples shall be collected.
2. Samples shall be collected in a sterile one liter polypropylene or glass container.
3. Samples must be cooled to 4 degrees celsius (iced).
4. Samples must be sent to a laboratory for analysis as soon as possible.
5. Samples must be acidified with nitric acid (HNO3), to a pH less than 2, upon receipt at the laboratory.
6. Samples must be acidified for at least 16 hours prior to analysis.

Attachment 3

Settleable Solids Sampling Protocol

1. Grab samples shall be collected.
2. Samples shall be collected in a sterile one liter polypropylene or glass container.
3. Samples must be cooled to 4 degrees celsius (iced), if analysis is not performed immediately.
4. Samples must be analyzed within 48 hours of sample collection.

Settleable Solids Analysis Protocol

1. Fill an Imhoff cone to the liter mark with a thoroughly mixed sample.
2. Settle for 45 minutes, then gently stir the sides of the cone with a rod or by gently spinning the cone.
3. Settle 15 minutes longer, then record the volume of settleable matter in the cone as milliliters per liter. Do not estimate any floating material. The lowest measurable level on the Imhoff cone is 0.1 ml/l. Any settleable material below the 0.1 ml/l mark shall be recorded as trace.

Appendix A—Notice of Intent Information

Permittee Name
Address & Phone Number (Summer)
Address & Phone Number (Winter)
Operator Name (if different than Permittee)
Address & Phone Number (Summer)
Address & Phone Number (Winter)
Facility Name
Facility Location (Nearest Town)
Mining District
Latitude and Longitude
Township, Section, Range
Previous NPDES permit number
Receiving Water
Maximum Effluent Flow
Summer Lowflow stream flow
Type of Operation (Traditional, Suction Dredge, Hydraulicking)
Amount of Material processed
Signature and Date (certified according to permit part VI.H.4.)
A drawing or sketch of the operation

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Recordkeeping and Reporting Under Title VII and the ADA

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Extension of Expiration Date of Currently Approved Collection Without Any Change Under the Paperwork Reduction Act.

SUMMARY: As required by the Paperwork Reduction Act, the Equal Employment Opportunity Commission is submitting to the Office of Management and Budget a request that it approve the extension of the expiration date of its collection requirements under its Recordkeeping and Reporting Regulations at 29 CFR part 1602. No change is being made to the existing regulations. Organizations or individuals desiring to submit comments for consideration by OMB on these information collection requirements should address them to the Office of Information and Regulatory Affairs, OMB Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph Lackey.

For the Commission.

Kassie A. Billingsley,

Acting Director, Office of Management.

[FR Doc. 94–12824 Filed 5–27–94; 8:45 am]
BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

May 24, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions 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 these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0514.
Title: Secton 43.21(c) Holding Company Annual Report.
Action: Revision of currently approved collection.
Respondents: Businesses or other for-profit.
Frequency of Response: Annual reporting requirement.
Estimated Annual Burden: 20 responses; 1 hour average burden per response; 20 hours total annual burden.
Needs and Uses: The Commission has adopted a Report and Order eliminating the requirement that common carriers file pension and benefits documents. The Order also revises the revenue threshold for certain affiliates to file the Securities and Exchange Commission Annual Form 10–K reports with the FCC. The FCC issued this Order to fulfill its obligation to review reporting requirements as they meet current regulatory needs. The change will result in savings to the public by reducing industry reporting burdens and to the Commission by reducing the cost of processing these filings and maintaining them in storage. The information filed pursuant to Section 43.21(c) is used by FCC staff members to regulate and monitor the telephone industry and by the public to analyze the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication.

OMB Number: 3060–0040.
Title: Application for Aircraft Radio Station License and Temporary Aircraft Radio Station Operating Authority.
Action: Extension of a currently approved collection.
Form Number: FCC Form 404/404–A.
Respondents: Individuals or households, state or local governments and non-profit institutions, businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting requirement.
Estimated Annual Burden: 28,000 responses; .33 hours average burden per response; 9,240 hours total annual burden.
Needs and Uses: FCC Rules require that applicants file the FCC Form 404, or a new station license, renewal, or modification of an existing license. An applicant filing for a new station license may operate the aircraft radio station pending issuance of a station

license for a period of 90 days under a temporary operating authority evidenced by a properly executed certification on FCC Form 404–A. The FCC staff will use the data to determine eligibility for a radio station authorization, and to issue a radio station license. Data is also used by compliance Division personnel in conjunction with Field Engineers for enforcement and interference resolution purposes.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–13159 Filed 5–27–94; 8:45 am]

BILLING CODE 6712–01–M

[Report No. AUC–94–01, Auction No. 1]

Common Carrier Public Mobile Services Information Auction Notice and Filing Requirements for Ten Nationwide Licenses for Personal Communications Services in the 900 MHz Band

May 23, 1994.

The Federal Communications Commission ("FCC") plans to hold a simultaneous multiple round auction for ten nationwide Personal Communications Service (PCS) licenses in the 900 MHz band ("narrowband PCS"). The auction will begin at 10 a.m. on Monday, July 25, 1994. Bidding will begin at 9 a.m. and end at 6 p.m. each day thereafter until bidding has closed on all licenses. The auction will be held in the Blue Room at the Omni Shoreham Hotel at 2500 Calvert Street NW., Washington DC, Telephone number (202) 234–0700. Those wishing to participate in the auction must submit an FCC Form 175 in accordance with the Commission's rules and the instructions in this Public Notice. The FCC Form 175 must be received on or before 5:30 p.m. EDT, Friday, July 1, 1994. Applicants are also required to submit an upfront payment of $350,000 per license (in U.S. dollars) for the maximum number of licenses on which they expect to bid in any single round. The upfront payment must be by wire transfer or cashier's check payable to the Federal Communications Commission or "FCC" and must be received on or before 3 p.m. EDT on Monday, July 11, 1994. Limited space will be available at the auction for members of the public to observe the auction.

1. Summary of Licenses To Be Auctioned

The following lists by market number and frequency block number the 10 nationwide narrowband PCS licenses grouped by category of license. All ten licenses will be auctioned simultaneously:

(1) Five 50 kHz channels, each paired with another 50 kHz channel:

Market No. N–1, Frequency Block No. 1: 940.00–940.05 and 901.00–901.05 MHz;

Market No. N–2, Frequency Block No. 2: 940.05–940.10 and 901.05–901.10 MHz;

Market No. N–3, Frequency Block No. 3: 940.10–940.15 and 901.10–901.15 MHz;

Market No. N–4, Frequency Block No. 4: 940.15–940.20 and 901.15–901.20 MHz; and,

Market No. N–5, Frequency Block No. 5: 940.20–940.25 and 901.20–901.25 MHz; **

(2) Three 50 kHz channels, each paired with another 12.5 kHz channel:

Market No. N–6, Frequency Block No. 6: 930.40–930.45 and 901.7500–901.7625 MHz;

Market No. N–7, Frequency Block No. 7: 930.45–930.50 and 901.7625–901.7750 MHz; and,

Market No. N–8, Frequency Block No. 8: 930.50–930.55 and 901.7750–901.7875 MHz;**

(3) Two 50 kHz unpaired channels:

Market No. N–10, Frequency Block No. 10: 940.80–940.85 MHz.

Market No. N–11, Frequency Block No. 11: 940.85–940.90 MHz,**

Please note that Market No. N–9, Frequency Block No. 9: 940.75–940.80 MHz will not be offered at the auction. The market numbers and frequency block numbers outlined above should be used in filling out FCC Form 175, discussed more fully below. Businesses owned by women and/or minorities will be eligible for a 25 percent bidding credit on all license designated by an (**) above. See Third Report and Order at ¶¶ 72–80.

2. Procedures, Terms, and Conditions

The auction will be conducted by Tradewinds International, Inc. and Cantor Fitzgerald Securities, Inc. Prospective bidders must thoroughly familiarize themselves with the procedures, terms and conditions (collectively, "Terms"), contained in the Second Report and Offer in PP Docket No. 93–253, FCC 94–61, released April 20, 1994, and the Third Report and Order in PP Docket No. 93–253, FCC 94–98, released May 10, 1994. Copies of the Second Report and Order are available for a fee from International Transcription Services, Inc. at (202) 857–3800. A copy of the Third Report and Order will be included in the Bidder Information Package ("Bidder Package") described below. The Terms contained in the Commission Reports and Orders and in the Bidder Package are not negotiable. Prospective bidders should review these auction documents thoroughly prior to the auction to make certain that they understand all of the provisions and are willing to be bound by all the Terms before making any bid.

3. Bidder Package

The Bidder Package (as amended and supplemented from time to time) may be obtained by prospective bidders by contacting Tradewinds International, Inc. at General Aviation Terminal, No. 7 Thomas Avenue, Washington National Airport, Washington, DC, 20001, telephone number (202) 637–3221, facsimile number (202) 637–3222. The business hours of Tradewinds International Inc., are Monday through Friday 9 a.m. to 6 p.m., EDT.

The Bidder Package will contain the following information:

(1) A list of licenses to be offered simultaneously;

(2) The procedures, terms and conditions of the auction;

(3) A copy of the Third Report and Order in PP Docket No. 93–253, FCC 94–98;

(4) An Application Form to participate in an FCC auction ("FCC Form 175" and "175S" or "Short-Form") including instructions on filling out the form and a sample of a completed Form 175;

(5) An FCC Remittance Advice (FCC Form 159) to be submitted by bidders together with their upfront payment, down payment and final payment (described below);

(6) Wire transfer instructions;

(7) An application for a narrowband PCS license (FCC Form 401 or "Long-Form" application) to be submitted by winning bidders only; and

(8) Other general auction information.

4. Short Form Application (FCC Form 175)

In order to be eligible to bid in the auction, bidders must submit an application for one or more narrowband PCS licenses on FCC Form 175 prior to the auction in compliance with applicable FCC Rules and Regulations and with the requirements set forth below. Only the person or persons identified on FCC Form 175 as qualified to make a bid will be permitted to bid at the auction. The FCC Form 175 may be submitted anytime after the release of this Public Notice but must be received no later than 5:30 p.m. EDT, Friday, July 1, 1994. Certain information necessary to complete FCC Form 175, such as market numbers and frequency block

numbers for nationwide narrowband PCS licenses as well as the Auction No., may be found at the top of this Public Notice.

Completion of Form 175

Applicants are required to complete all the items on the application. The applicant must also identify all parties to the application, including members of bidding consortia, joint ventures or any other agreements, arrangements or understandings relating to the auction or post-auction market structure. In completing FCC Form 175, bidders should note the following:

1. In item 6 of FCC Form 175, Auction No., applicants should enter "1".

2. Item 7 requires applicants to make up a ten digit FCC Account Number, a personal identification number that the Commission will use to identify and track applications. Applicants have two options to create this FCC Account Number. Option 1—an applicant may use its taxpayer identification number (TIN) with a prefix of "0", i.e., 0123456789. Option 2—an applicant may use its ten digit telephone number (i.e., 5552345678). Each applicant should use this same number when submitting additional information/material regarding its application, including any required fees submitted to the Commission on FCC Remittance Advice, (i.e. use the same number for the Form 175 and the FCC Account Number on FCC Form 159). This number must be used whenever an applicant writes, calls, or otherwise inquires about its application. Applicants will also need this number to register for the auction.

3. Items 9 and 10 will be used to determine whether the applicant is claiming a preference in the bidding process. As discussed more fully in the Third Report and Order, certain preferential measures are available to small businesses and businesses owned by members of minority groups and/or women. Applicants claiming a preference should refer to § 1.2110 of the Commission's Rules (47 CFR 1.2110) for definitions and eligibility requirements applicable to small businesses and businesses owned by women and minorities. See also Third Report and Order at ¶¶ 66–90.

4. In Item 11, applicants should identify the market number for each narrowband PCS license they want to bid on. The market number for each license is listed above. Applicants should list the market number for each license they are interested in bidding on in the first column labeled "Market No." If applicants want to bid on more than five markets, they should list each additional market number on FCC Form 175–S. For the Frequency Block No. in item 11, applicants should indicate the frequency block numbers associated with each license they expect to bid on at the auction.

5. In item 12, applicants should list the name(s) of a person(s) authorized to represent them at the auction. Only one bidding number per applicant will be assigned.

6. Applicants should read the "Certifications" listed on the FCC Form 175 carefully before signing the application. These certifications help to ensure a fair and competitive auction and require, among other things, disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the auction. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license revocation(s), being barred from future auctions, and/or criminal prosecution.

The Commission has established a Help Line to assist applicants in filling FCC Form 175. That number is (202) 637–3221. Applicants may call the Help Line for assistance Monday through Friday from 9 a.m. to 6 p.m. EDT.

Microfiche copies of the FCC Form 175 or 175–S are not required.

Failure to sign the FCC Form 175 will result in dismissal of the application and inability to participate in the auction.

Where to Send the FCC Form 175

In order to be eligible to bid, an FCC Form 175 application must be received by 5:30 p.m., EDT on Friday, July 1, 1994. Late applications will not be accepted. Applications should be submitted either by hand delivery, certified U.S. mail (return receipt requested) or sent by private courier. Whether mailed, hand delivered or sent by private courier, applications must be addressed to: Tradewinds International, Inc., General Aviation Terminal, No. 7 Thomas Avenue, Washington National Airport, Washington, DC, 20001, Attention: Narrowband PCS Processing.

Applications will not be accepted if deliver to any other location.

5. Application Fee

No application fee or FCC Form 159 need accompany the FCC Form 175 for the auction.

6. Procedures After FCC Form 175 Applications Are Filed

After the deadline for filing FCC Form 175 applications has passed, the Commission will process all applications to determine whether they are accepting for filing. The Commission will issue a Public Notice listing all applications which are accepted for filing, rejected, and those which have minor defects that may be corrected. The Public Notice will also announce the deadline for filing corrected applications. As described more fully in the Commission's general auction rules, applicants may only make minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications such as changes in ownership to their applications. Failure to sign an FCC Form 175 cannot be corrected and will cause the application to be dismissed and the applicant to be ineligible to participate in the auction. See § 1.2105 of the Commission's Rules. 47 CFR 1.2105.

After the deadline for resubmitting corrected applications the Commission will release another Public Notice announcing all applications that have been accepted for filing, including applicants who have corrected defective applications.

7. Upfront Payments

In order to be eligible to bid at the auction, applicants must submit an upfront payment together with an FCC Form 159 to the Mellon Bank. The upfront payment is $350,000 per license for the maximum number of license on which an applicant expects to bid in any single round of bidding. Payment must be made in U.S. dollars and must be received by 3 p.m. EDT, Monday, July 11, 1994, in accordance with the terms and procedures set forth below and the Commission's Rules. The upfront payment may be submitted by wire transfer or cashier's check payable to the "Federal Communications Commission" or "FCC." Wire transfer instructions and the delivery address will be provided in the Bidder Package. Check(s) must be drawn on a bank whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). An applicant intending to bid on more than one nationwide narrowband license must submit an upfront payment of $350,000 per license for the maximum number of licenses on which it intends to bid in any single round of bidding. The upfront payment submitted by each applicant will define the maximum number of licenses on which the applicant will be permitted to bid in any single round of bidding. Narrowband PCS licensees will be permitted to aggregate up to three licenses. An applicant may apply for every license on its Form 175, but its actual bidding in any round will be limited to the number of licenses

covered by the amount of its upfront payment. No later than seven (7) business days before the auction the Commission will issue a Public Notice announcing all qualified bidders for the nationwide narrowband PCS auction. Qualified bidders are those whose Form 175 applications have been accepted for filing and who have timely submitted their upfront payment.

8. Registration

All qualified bidders or their designated representatives identified on Form 175 will be required to register for the auction. Registration will be held from 1 p.m. to 9 p.m. on Sunday, July 24, 1994 and from 8 a.m. to 9:30 a.m. on Monday July 25, 1994 at the Omni Shoreham Hotel at 2500 Calvert Street, NW., Washington, DC. A confidential bidder number will be assigned to each qualified bidder at registration. Further information regarding registration will be provided in the Bidder Package. All bidders will be required to bring two forms of identification, one form of photo identification (*e.g.*, a valid drivers license or passport) and one additional form of identification.

9. Method of Competitive Bidding

The winning bidders for the nationwide narrowband PCS licenses will be selected through a simultaneous multiple round auction. Bids will be accepted on all licenses in each round of the auction. High bid amounts will be posted at the end of each round of bidding. Bidding will remain open on all licenses until bidding closes on every license. Thus, bidding will stop simultaneously on all licenses.

Bid Submission and Withdrawal Procedures

All bidders or their representatives are required to be present at the auction site in order to place their bids. Each bidder will be required to provide its confidential bidder number and FCC account number in order to place or withdraw a bid. Bids will be placed with bid assistants on site who will input the bids into the auction database. All accepted bids for each license and the minimum bid increment for the next round will be announced at the conclusion of each bidding round. Bidders will have no less than one hour after accepted bids are posted to place their bids for the next round. A high bidder who wants to withdraw its high bid during the course of the auction may do so subject to the bid withdrawal penalty specified in the Third Report and Order at ¶¶ 49–59. A high bidder who wants to withdraw its high bid should notify a bid assistant as soon as possible after its bid is posted as the high bid. If a high bid is withdrawn, the license will be offered in the next round at the second high bid price.

Bid Increments

The bid increment is the amount or percentage by which a bid must be raised above the previous high bid in order to be accepted as a valid bid in the current round. The minimum bid in the first round of bidding will be $.02 per pop per MHz (rounded down to the nearest $25,000). The bid increment in subsequent rounds will be $.01 per pop per MHz (rounded down to the nearest $25,000) or 5% of the previous high bid, whichever is greater. The amount of the minimum bid increment may be reduced in later rounds as the number of active bidders declines. The amount of the minimum bid increment for each license will be announced along with the accepted bids from the preceding round. The following table shows the amounts of the minimum bid increment for each category of license:

License category	Minimum bid in the first round	Minimum bid increment after first round [1]
50/50 kHz paired licenses	$500,000	$250,000
50/12.5 kHz paired licenses	300,000	150,000
50 kHz unpaired licenses	250,000	125,000

[1] (or 5% of the previous high bid, whichever is greater)

Activity Rule

In order to ensure that the auction closes within a reasonable period of time, we will impose an activity rule to prevent bidders from waiting until the end of the auction before participating. Because of the relatively small number of licenses being offered in this auction we will impose a simplified version of the Milgrom-Wilson activity rule (discussed in the Third Report and Order at ¶¶ 37–40). During the first stage of the auction bidders will be required to be active on at least one license in every round of bidding. A bidder will be considered active on a license if it either is the high bidder from the previous round or submits a bid which exceeds the previous round's high bid by at least the amount of the minimum bid increment. Bidders will be permitted five automatic waivers from the activity rule during the course of the auction. A bidder must notify a bid assistant of its intent to exercise one or more of its waivers at the time such bidder submits its next bid. Bidders in the first stage of the auction who fall below the required activity level and who have used all five of the automatic waivers will have their eligibility reduced to 0 and will not be eligible to bid in future rounds. See Third Report and Order at ¶¶ 36–40. To speed up the auction the Commission may declare at any time after 15 rounds have passed that the auction will move into a final stage, with an increased activity level. If the Commission declares such an additional stage, bidders would be required to be active on the maximum number of licenses they desire to be awarded. In the final stage, bidders would have their eligibility reduced to the number of licenses on which they are active, unless they invoke an automatic waiver or waivers, in which case they would retain their current eligibility.

Stopping Rules

Bidding will remain open on all licenses until bidding stops on every license. The auction will close if one round passes with no new acceptable bids on my license. Thus, bidding will stop for all nationwide licenses simultaneously. The Commission, however, may declare at any time after 20 rounds that the auction will end after one additional round (or some other specified number of rounds).

Bid Withdrawal, Default or Disqualification Penalty

Any high bidder who withdraws a high bid in any round, defaults by failing to remit the required 20% down payment within the prescribed time or is disqualified after bidding is declared closed will be subject to a penalty described in Section 24.304 of the Commission's Rules. 47 C.F.R. § 24.304.

Down Payment and Final Payment

The winning bidder for each license must submit sufficient additional funds (a "down payment") to bring the amount of money on deposit with the government to 20% of their winning bid amount within five (5) business days after bidding is declared closed. Winning bidders that are qualified small businesses are required to submit only a 10% down payment within five (5) business days after bidding is closed, with an additional 10% due within five (5) business days after grant of the license. No interest will be paid on any funds on deposit with the Commission.

10. Long-Form Application (FCC Form 401)

As detailed in the narrowband PCS and general auction rules, winning bidders must timely submit a properly

completed FCC application for a narrowband PCS license (FCC Form 401) within ten (10) business days after being notified that they are the winning bidder. The Form 401 must be sent to: Office of the Secretary, Federal Communications Commission, 1919 M St., NW., room 222, Washington, DC 20554, Attention: Auction Application Processing Section.

After submission of the FCC Form 401, the Commission will determine whether there are any reasons why the license should not be granted; if there are none, it will grant the license. Winning bidders will be required to pay the remainder of the winning bid amount within five (5) business days after grant of the license. Qualified small businesses will be permitted to pay the remaining 80% of their winning amount in installments over the term of the license. See Third Report and Order at ¶¶ 86–90. All license grants will be conditioned on timely payment in full of the bid price.

11. Delay, Suspension, or Cancellation of the Auction

The Commission may by Public Notice or announcement during the auction, delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Commission may, in its sole discretion, resume the auction starting from the beginning of the current or some previous round or may cancel the auction in its entirety.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–13257 Filed 5–27–94; 8:45 am]

BILLING CODE 6712–01–M

[Report No. ABC–94–02, Auction No. 2]

Private Radio Bureau Information; Notice and Filing Requirements for the First Auction of Interactive Video Data Service Licenses

May 23, 1994.

The Federal Communications Commission ("FCC") plans to hold a series of oral and sealed bid auctions for approximately 1400 Interactive Video Data Service (IVDS) licenses. The first auction, which will be an oral auction, will be for 297 IVDS markets. The auction will begin promptly at 9 a.m. each day on July 28–29, 1994, and will be held in the Regency Ballroom at the Omni Shoreham Hotel at 2500 Calvert Street, NW., in Washington, DC. As explained in more detail below, those wishing to participate in the first auction must submit an application in accordance with the Commission's rules and the instructions in this Public Notice on or before Monday, June 27, 1994, and must bring to the auction a cashier's check payable to "FCC" or "Federal Communications Commission" in the amount of $2500 for each five licenses that they expect to win in order to be eligible to bid.

Summary of Licenses To Be Auctioned

The first auction will cover 297 IVDS markets: markets 5 and 11–306.[1] Two licenses are available in each market, license A and license B.[2] Bidders may only hold one IVDS license in each market. The Commission will not auction the licenses strictly by largest to smallest IVDS market. Rather, the licenses will first be grouped to conform as closely as possible with Areas of Dominant Influence (ADIs)[3]. The IVDS license group associated with the largest ADIs will be auctioned first. Within ADIs, the largest IVDS markets will be auctioned first, with smaller markets following. The exact order in which the markets are to be auctioned is listed as an Appendix to this Public Notice.[4]

During the auction, both license A and license B will be auctioned at the same time, with the two highest bidders generally[5] awarded a license. The highest bidder will receive first choice between the two licenses at its bid price and the next highest bidder will receive the other license at its bid price.

Procedures, Terms, and Conditions

The auction will be conducted by Tradewinds International, Inc. and Larry Latham Auctioneers, Inc. Prospective bidders are urged to thoroughly familiarize themselves with the Procedures, Terms and Conditions in the Bidder's Package (collectively, "Terms"), the Second Report and Order in FCC Docket No. 93–253, FCC 94–61, released April 20, 1994, and the Fourth Report and Order in Docket No. 93–253, FCC 94–99, released May 10, 1994. Copies of the Second Report and Order are available for a fee from International Transcription Services, Inc. at (202) 857–3800. The Terms and the auction documents in the Bidder's Information Package ("Bidder's Package") discussed below are not negotiable. Prospective bidders are urged to read, review and analyze the auction documents prior to bidding at the auction, to make certain that they completely understand the provisions therein, and are willing to be bound by all of the Terms before making any bid.

1. Bidder's Information Package

The Bidder's Package (as amended and supplemented from time to time) may be obtained by a prospective bidder by contacting the Commission's contractor, Tradewinds International, Inc. at General Aviation Terminal, suite 200, No. 7 Thomas Avenue, Washington National Airport, Washington, DC 20001, telephone (202) 637–FCC1 (3221) and (202) 637–FCC2 (3222).

The Bidder's Package will contain the following information:

(1) List of licenses to be offered in the sequence they will be offered;

(2) Procedures, Terms and Conditions of the auction;

(3) Application form to participate in an FCC auction ("FCC Form 175" (and 175–S)[6] or "Short Form") including instructions on filling out the form and a sample form 175 correctly filled out;

(4) High Bid Acknowledgment Form[7];

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[1] Licenses for IVDS markets 1–10 except for market 5 (Detroit) were awarded pursuant to a lottery held last year. Licenses for IVDS markets 307–734 will be conducted later by sealed bid.

[2] License A is at 218–218.5 MHz; License B is at 218.5–219 MHz.

[3] ADIs are geographic areas that are designed to reflect the coverage of a broadcast television station. This standard market definition, developed by the Arbitron Ratings Company, places each county in the continental U.S. within one of 210 ADIs. Usually, an ADI is composed of several IVDS markets (Metropolitan Statistical Areas or MSAs). A list which reflects the exact order in which the Commission intends to auction the MSAs can be found in the far left hand column of the attached Appendix under the heading "Auction No." and will also be included in the Bidder's Package discussed below.

[4] The following IVDS areas being auctioned are located along the US/Canadian or US/Mexican borders: 5, 16, 18, 20, 25, 34, 48, 53, 77, 81, 128, 130, 136, 141, 162, 248, 270, 281, 285 and 306 and are also identified as "Border" in the right hand column of the list of IVDS markets attached as an Appendix to this Public Notice. Applicants should be aware that there may be licensing delays and/or additional restrictions on operation in these areas because of the need to coordinate with foreign governments. IVDS markets 1–4 and 6–10 were awarded by lottery. The IVDS licenses associated with the ADIs for IVDS markets 1–4 and 6–10 but which were not lotteried will be auctioned last in the oral auction.

[5] The only exception will be when the two high bidders are designated entities using bidding credits. In that event the highest bidder will be offered the license of its choice and the second highest bidder will be given the option of accepting the license without the credit or declining the remaining license. In the latter event, the second license will be reauctioned without the use of bidding credits.

[6] Form 175–S is a continuation of Form 175 for those who wish to bid on more markets than there is space for on Form 175.

[7] The High Bid Acknowledgment Form is a form that the high bidders must sign at the conclusion of each round of bidding confirming the amount of their bid and the license they have won.

(5) Wire transfer instructions for winning bidders wishing to use wire transfer of funds;

(6) Application form for an IVDS license ("FCC Form 574" or "Long Form") to be submitted by winning bidders only;

(7) Copies of the FCC decision on auction rules for IVDS (the Fourth Report and Order) and of the general auction rules established in the Second Report and Order; and

(8) Other general auction information.

2. Short Form (FCC Form 175) License Application

Bidding at the oral IVDS auction is open only to bidders who submit an application on FCC Form 175 to participate in an FCC auction that complies with FCC rules that is received by Tradewinds no later 5:30 p.m. EDT Monday, June 27, 1994. If you have not submitted a Form 175 by that time, you cannot bid. Instructions for filling out the Form 175 are on the back of that form; please read them before completing the Form. We call special attention to several items on the Form 175.

1. In item 6 of Form 175, Auction No., applicants should enter "2".

2. Item 7 requires you to make up a ten digit FCC Account Number, a personal identification number that we will use to identify and track your application. You have two options to create this FCC Account Number. Option 1—you may use your taxpayer identification number (TIN) with a prefix of "O", i.e., 0123456789. Option 2—you may use your ten digit telephone number (i.e. 5552345678). You should use this same number when submitting additional information/material regarding this application, including any required fees submitted to the Commission on FCC 159, FCC Remittance Advice, (i.e. use the same number for the Form 175 and the FCC Account Number of FCC 159). Please use this number whenever you write, call, or otherwise inquire about your application. You will need that number to register for the auction on auction day.

3. Items 9 and 10 ask whether the applicant is claiming a preference in the bidding process. As discussed more fully below, certain preferential measures are available to entities listed in item 9. Please ensure that you qualify for a preference before checking "yes" in item 10; the Commission has specific rules defining a "minority" and "small business."

4. For item 11, Market No., the Market No. for each IVDS license to be auctioned is listed in the second column of the Appendix to this Public Notice under the heading "MSA"; please list the markets you are interested in bidding on in the first column under item 11 labeled "Market No." If you want to bid on more than five markets, you must continue on Form 175–S. For the Frequency Block No. in item 11, applicants should check Block No. 1 if they wish to bid on license A (218–218.5–MHz) Block No. 2 if they wish to bid on license B (218.5–219MHz). Applicants who wish to hold either license in a particular market should check both Block No. 1 and Block No. 2. Leave the other Frequency Block Nos. blank.

5. In item 12, applicants should list the name(s) of a person(s) they want to represent them at the auction. Only one of the individual(s) listed in item 12 will be permitted to display the bidding card.

6. Please read the "Certifications" carefully before signing. These certifications help to ensure a fair and open auction and require, among other things, the disclosure to the Commission of certain information on applicant ownership and agreements or arrangements concerning the licenses. Submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocation(s), being barred from future auctions, and/or criminal prosecution.

A sample Form 175, properly completed, will be provided as part of the Bidder's Package.

No microfiche copies of the Form 175 or 175–S are required.

Where To Send the Form 175

Each individual application (Form 175 and attachments, including Form 175–S, if needed), whether mailed or hand delivered, must be in an individual sealed envelope and properly addressed. Multiple applications, properly packaged, may be delivered in one larger, properly addressed container.

In order to be eligible to bid, Tradewinds must receive your Form 175 application by 5:30 p.m. EDT on Monday, June 27, 1994. Late applications will not be accepted.

Whether mailed, hand delivered, or sent by private courier, they must be addressed only to: Tradewinds International, Inc., General Aviation Terminal, suite 200, No. 7 Thomas Avenue, Washington National Airport, Washington, DC 20001, Attention: IVDS Auction, (202) 637–3221 in an envelope addressed as above and marked "IVDS Auction" on the outside. The business hours of Tradewinds International are between 9 a.m. and 6 p.m. Applications taken or sent to any other location will not be accepted.

We strongly recommended that you use certified mail, return receipt requested or a delivery service that obtains a receipt showing when, where, and to whom the application was delivered. Tradewinds International will time stamp file copies of applications upon request.

When To Submit Form 175

The completed Form 175, application to participate in an FCC auction, can be submitted only to the address above anytime after release of this Public Notice but must be received by 5:30 p.m. EDT on Monday, June 27, 1994. The Form 175 requires the bidder to supply certain information which is explained more fully in the instructions accompanying that application. Please read the instructions thoroughly before attempting to complete the form. Certain information necessary to complete Form 175, such as the Auction No., and IVDS Market Nos., can be found either at the top of or in the Appendix to this Public Notice.[8]

Application Fee

No application fee or fee form need accompany the Form 175 for the IVDS auction, but you must bring an upfront payment with you to the auction as described below in order to be able to bid. As discussed further below, winning bidders will have to submit an application on FCC Form 574 to be an IVDS licensee.

Upfront Payment

You must have at least one cashier's check in the amount of two thousand five hundred dollars ($2,500.00) U.S. at the auction in order to bid. One cashier's check in the amount of $2,500 entitles you to be the successful high bidder on up to five licensees. If you intend to win more than five licenses, you must bring additional $2,500.00 cashier's checks, each of which will cover up to five additional licenses. For example, if you wish to win seven IVDS licenses, bring two $2,500.00 cashier's checks. If you wish to win twelve IVDS licenses, bring three $2,500.00 cashier's checks. If you wish to win thirty two IVDS licenses, bring seven $2,500.00 cashier's checks.

The cashier's check(s) must be drawn on a bank insured by the Federal

[8] Applicants interested in bidding on licenses for more than five IVDS licenses must use FCC Form 175–S to list the additional markets on which they wish to bid. Applicants may bid only on licenses for which they applied, and may only be awarded one of the two IVDS licenses in each market.

Deposit Insurance Corporation (FDIC) and be made payable to "FCC" or "Federal Communications Commission". No cash will be accepted.

Please calculate carefully the number of IVDS licenses you expect to bid on before the auction, as you will not be permitted to bid on additional licenses if you do not have sufficient cashier's checks. Also, if you plan to bid on more than five licenses, please do not bring a single cashier's check in an amount that is a multiple of $2,500. Bring several cashier's checks, each in the amount of $2,500.00. The Commission cannot process upfront payments in amounts other than $2,500.00 and you may not be able to bid on more than five licenses without checks of $2,500.000. Furthermore, the Commission will not refund any monies if you bring cashier's checks in amounts larger than $2,500.00. Your upfront payment(s) will be credited towards the balance due on the license(s) you win, but FCC cannot make refunds on auction day if the amount of your check(s) exceeds the value of the license(s).

You will be required to show your cashier's check(s) on auction day in order to receive the bidding card enabling you to bid. If you are the successful high bidder on a license, the auctioneer will take your check from you although you will still be able to win up to four more licenses without having to submit another cashier's check. The amount of your cashier's check(s) will be credited towards the balance due the Commission on the license(s) you have won.

3. What Happens After the Form 175 Applications Are Filed?

After the period for filing applications has closed on Monday, June 27, 1994 at 5:30 p.m. EDT, the Commission will process the received applications and issue a Public Notice listing all accepted and rejected applications and also listing those which have minor defects that can be corrected. The Public Notice will also announce the time and manner for correcting these defects. As described more fully in the Commission's general auction rules, you may only make minor changes to your application such as the correction of typographical errors. You may not make major modifications such as changes in ownership to your application. Failure to sign the Form 175 cannot be corrected and will cause the application to be dismissed and the applicant ineligible to participate in the auction. See § 1.2105 of the Commission's general auction rules.

Later, the Commission will release another Public Notice announcing the names of all applicants, including applicants who have corrected their defective applications, whose applications have been accepted for filing and who are therefore eligible to participate in the auction.[9] Bidder numbers and cards will be assigned at registration. Further information, such as directions to the auction location and auction registration procedures, will be provided in the Bidder's Package. All bidders will be required to bring two forms of identification (one form of photo identification, e.g. a valid driver's license or passport, and one additional form of identification.)

4. Auction Day and Post-Auction Procedures

Registration

You must register at the auction site in order to bid either the night before the first day of the auction or on the morning of both auction days before 9 a.m. Details of registration will be in the Bidder's Package. You may bid on both license A and license B in a single IVDS market, but you may only win one license. The FCC will verify and inspect the number and validity of your cashier's check(s) at registration.

Collection of High Bid Acknowledgment Form and Upfront Payments

At the end of each round of bidding, the two high bidders will be required to sign a High Bid Acknowledgment Form. The upfront payment ($2,500 cashier's check) will be collected from the successful bidder immediately after the first license is won in each group of five licenses. No interest will be paid on any funds deposited with the Commission.

Payment of Down Payment and Remaining Balance Due

The winning bidder for each license must submit sufficient additional funds (a "down payment") to bring the amount of money on deposit with the government to 20% of their winning bid within five (5) business days after the auction. This down payment must be deposited at the Commission's lockbox bank. Winning bidders that are qualified small businesses, however, need only submit an amount sufficient to bring their monies on deposit with the government up to 10% of their winning bid within five (5) business days after close of bidding, with the remaining 10% due within five (5) business days after grant of the license. Further details are in the Commission's general auction rules and its IVDS specific auction rules and will be supplied in the Bidder's Package. Except for winners entitled to installment financing, payment of the 80% remaining balance will be due after the Commission processes the winning bidder's Form 574 (see below) and grants its license. No interest will be paid on any funds deposited with the Commission.

Filing of FCC Form 574

As detailed in the IVDS and general auction rules, winning bidders must timely submit a properly completed FCC application for an IVDS license (FCC Form 574) within ten business days after being notified that they are the winning bidder(s). Send the Form 574 to: Office of the Secretary, Federal Communications Commission, 1919 M St., NW., room 222, Washington, DC 20554, Attention: Auction Application Processing Section.

The Commission has decided to waive § 1.1102(7)(a) of its rules on its own motion so that winning bidders need not submit an application fee or Form 159.

After submission of the 574, the Commission will determine whether there are any reasons why the license should not be granted; if there are none, it will grant the license. The continuing validity of the license will be conditioned upon full payment of the remaining balance of the winning bid within five business days after license grant.

Default Penalties

Certain penalties apply if a bidder withdraws a high bid or defaults (e.g. is unable to pay the balance due) after winning the bidding. These penalties are designed to ensure that only serious, qualified bidders participate in the auction and are explained more fully in the Commission's Fourth Report and Order and in its general auction rules.

5. Designated Entities

Benefits for Designated Entities

The Commission has provided three basic benefits, described below, for IVDS auction participants who are "minorities", "women" or "small businesses" (collectively, the "Designated Entities"). Definitions of these entities are listed in subpart Q of part 1 of the Commission's Rules and in the Bidder's Package.

The first of these benefits is government sponsored installment financing, which is available only to small businesses. The FCC is offering to

[9] If the Commission receives only one application for an available IVDS license or licenses in a particular market, it will not auction that license and will invite the applicant or applicants for those licenses to file an application on FCC Form 574 to acquire those licenses without having to participate in an auction.

finance up to 80 percent of a small business's winning bid (high bid minus the monies on deposit with the FCC) over the 5 year term of their IVDS license. Interest will be charged at a fixed rate equal to that in effect for 5 year treasury notes on the day the license is issued. Payments will be interest only for the first two years, with principal amortized over the remaining three years of the license term. The FCC will provide coupon payment books.

The second of these benefits is a bidding credit. Businesses owned by minorities of women are entitled to a 25% bidding credit to win one of the two IVDS licenses in each market. A bidding credit allows the winning bidder to pay less than the amount of its bid. For example, if the winning bid is $1,000, a business owned by a minority or a woman need actually pay only $750 for the license. A bidding credit is available for either license A or license B in each IVDS market, but not both. If the two high bidders for licenses A and B are both designated entities using bidding credits, the highest bidder will be offered the license of its choice and the second highest bidder will be given the option of accepting the license without the credit or declining the remaining license. In the latter event, the second license will be reauctioned, this time without the use of bidding credits.

If a bidder is both a small business and a minority/woman owned business, it can obtain installment financing and use bidding credits.[10] Bidding credits will not be available on the second IVDS license in a market if the other IVDS license was already won using a bidding credit, however.

The third benefit is the availability of tax certificates to initial investors in minority and women-owned IVDS licensees upon divestiture of their non-controlling investment interests in an IVDS license. Tax certificates are also available to IVDS licensees who transfer or assign their licenses to minority or women-owned businesses who are also designated entities. Tax certificates enable initial investors or the IVDS licensee to defer the taxable gain upon sale of their interest or license. More information on tax credits in the Fourth Report and Order.

Unjust Enrichment

Certain penalties apply if a designated entity obtains an IVDS license using the benefits available to designated entities and subsequently transfers or sells its license prematurely. These penalties are explained more fully in the Commission's Fourth Report and Order and in its general auction rules.

For additional information on IVDS auctions, please call Tradewinds International, Inc. at (202) 637–FCC1 (3221) or FCC2 (3222) between 9 a.m. and 6 p.m. EDT. Messages can be left after business hours.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–13258 Filed 5–27–94; 8:45 am]

BILLING CODE 6712–01–M

[10] For those designated entities utilizing both installment financing and bidding credits, the down payment requirements and installment financing would apply to amounts due after application of the bidding credit.

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1029–DR]

Maine; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine (FEMA–1029–DR), dated May 13, 1994, and related determinations.

EFFECTIVE DATE: May 19, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective May 9, 1994.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–13172 Filed 5–27–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1023–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1023–DR), dated April 21, 1994, and related determinations.

EFFECTIVE DATE: May 18, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated April 21, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 21, 1994:

Barry, Callaway, Clay, Morgan, Phelps, Pulaski, Reynolds, Shannon, Vernon and Washington Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–13173 Filed 5–27–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of March 22, 1994

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 22, 1994.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has expanded appreciably further in the early months of 1994. Severe weather and changes in statistical methodology distorted movements in official labor market data in January and February, but it appears that employment increased somewhat on balance over the two months and that unemployment fell. Industrial production also increased substantially over this period after a sharp rise in the fourth quarter. Consumer spending and housing activity apparently have been held down to some extent by adverse weather in January and February; retail sales were little changed on balance over the two months and housing starts fell considerably. Trends in contracts and orders point to a sizable increase in business fixed investment but at a rate well below that for the fourth quarter of 1993. The nominal deficit on U.S. trade in goods and services in January was

[1] Copies of the Minutes of the Federal Open Market Committee meeting of March 22, 1994, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

slightly smaller than the average in the fourth quarter. Increases in broad indexes of consumer and producer prices have remained moderate in recent months despite a surge in energy prices.

Most market interest rates have risen considerably since the Committee meeting on February 3-4, 1994. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies depreciated over the intermeeting period.

M2 declined somewhat and M3 was down sharply in February, but data for early March point to some rebound in both aggregates. Total domestic nonfinancial debt has expanded at a moderate rate in recent months.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1993 to the fourth quarter of 1994. The Committee anticipated that developments contributing to unusual velocity increases could persist during the year and that money growth within these ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt was set at 4 to 8 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to increase slightly the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with moderate growth in M2 and M3 over the first half of 1994.

By order of the Federal Open Market Committee, May 24, 1994.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 94-13151 Filed 5-27-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items in the Possession of the Nebraska State Historical Society

AGENCY: National Park Service, Interior

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act of 1990 of the intent to repatriate cultural items in the possession of the Nebraska State Historical Society that meet the definition of "unassociated funerary objects" under section 2 of the Act.

The 31,651 unassociated funerary objects were recovered from fourteen archeological sites located in Butler (25BU1, 25BU4), Hamilton (25HM2), Howard (25HW1, 25HW3, 25HW5), Nance (25NC1, 25NC3, 25NC7, 25NC11, 25NC20), Polk (25PK1), Platte (25PT1), and Webster (25WT1) Counties in east-central Nebraska. Objects include abraders, animal bones, arrow points (metal and stone), beads (glass and shell), bells, bracelets, bridle bits, buttons (glass, metal, and shell), cradle board fragments, coins (American and Spanish), cups, ear bobs, fabric, felt, files, fire steels, flints, glass, gun parts, hide, hoes, knives, leather, matting, medals, metal, a mirror frame, paint, pebbles, pigment, pipes, pottery sherds, projectile points, rings, scrapers, seeds, shells, spoons, spurs, stones, thimbles, vegetal material, whetstones, and wood. All of the objects are believed to have been intentionally placed with or near individual Native American human remains as part of a death rite or ceremony. The individual human remains are not in the possession of the Nebraska State Historical Society either because they were not collected during excavation or because they were previously repatriated by the Nebraska State Historical Society to the Pawnee Tribe of Oklahoma in 1990 and 1991.

The sites represent three cultural phases: Pawnee Phase (1750–1876), Lower Loup Phase (1600–1750), and Itskari Phase (1000–1350). Pawnee Phase sites were identified on the basis of historic written records. Lower Loup Phase sites were identified on the basis of material cultural continuities with Pawnee Phase sites. Itskari Phase sites were identified on the basis of geographical coincidence with Lower Loup and Pawnee Phase sites.

On February 1, 1994, the Nebraska State Historical Society agreed to repatriate the above mentioned unassociated funerary objects to the Pawnee Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Gail DeBuse Potter, Museum Curator, Nebraska State Historical Society, P.O. Box 82554, Lincoln NE 68501, telephone: (402) 471-4759, fax: (402) 471-3314, within [*45 days after publication of this notice*]. Repatriation of the objects to the Pawnee Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated:

Dr. Francis P. McManamon

Departmental Consulting ArcheologistChief, Archeological Assistance Division

[FR Doc. 94-13168 Filed 5-27-94; 8:45 am]

BILLING CODE 4310-70-F

FEDERAL RESERVE SYSTEM

Bellevue State Bank Employee Stock Ownership Plan, et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a

hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 20, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

I. Bellevue State Bank Employee Stock Ownership Plan, Bellevue, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Bellevue Service Company, Bellevue, Iowa, and thereby acquire 52.5 percent of the voting shares of Bellevue State Bank, Bellevue, Iowa.

In connection with this application, Applicant also proposes to acquire Bellevue Insurance Agency, Bellevue, Iowa, and thereby engage in the sale of credit-related insurance pursuant to § 225.26(b)(8)(i) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

I. Otto Bremer Foundation, St. Paul, Minnesota, and Bremer Financial Corporation, St. Paul, Minnesota; to acquire Dunn County Bankshares, Inc., Menomonie, Wisconsin, and thereby indirectly acquire Bank of Menomonie, Menomonie, Wisconsin, and Premium Finance Corporation, Menomonie, Wisconsin.

In connection with this application, Applicants also propose to engage in extending credit for the purpose of financing payment of insurance policy premiums by third parties pursuant to § 225.25(b)(1) of the Board's Regulation Y.

In addition, Applicants propose to form a wholly-owned subsidiary, Menomonie Acquisition Corporation, Amery, Wisconsin, which will acquire 97.53 percent of the voting shares of First American Bank Wisconsin, Amery, Wisconsin, which will then merge with Dunn County Bankshares, Inc., Menomonie, Wisconsin, with Dunn County Bankshares, Inc. being the surviving corporation.

Board of Governors of the Federal Reserve System, May 24, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–13154 Filed 5–27–94; 8:45 am]

BILLING CODE 6210–01–M

FNB Financial Services Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 20, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. FNB Financial Services Corporation, Reidsville, North Carolina; to acquire 100 percent of the voting shares of Mutual Savings Bank, F.S.B., Danville, Virginia.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Grant Park Bancshares, Inc., Alton, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Grant Park, Grant Park, Illinois.

Board of Governors of the Federal Reserve System, May 24, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–13152 Filed 5–27–94; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 20, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire Norwest Mortgage, Inc., Minneapolis, Minnesota, and thereby engage in originating and servicing mortgages pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in Silver City, New Mexico.

Board of Governors of the Federal Reserve System, May 24, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–13153 Filed 5–27–94; 8:45 am]

BILLING CODE 6210–01–F

Provident Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 24, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Provident Bancorp, Inc., Cincinnati, Ohio; to engage through its wholly-owned subsidiaries, The Provident Bank, Cincinnati, Ohio, and Hunter Financial, Inc., Cincinnati, Ohio, in a joint venture with West Shell, Inc., pursuant to which Hunter and West Shell would form a general partnership operating under the name of West shell Mortgage Company. Hunter and West Shell would each own a 50 percent interest in West Shell Mortgage Company, and thereby engage in mortgage loan origination activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105.

1. BWC Financial Corporation, Walnut Creek, California; to acquire through a *de novo* wholly-owned subsidiary, BWC Real Estate, Inc., Walnut Creek, California, 51 percent of BWC Mortgage Services, Walnut Creek, California, and thereby engage through a joint venture with Simonich Corporation, San Ramon, California, in mortgage brokering activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of California.

Board of Governors of the Federal Reserve System, May 24, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–13155 Filed 5–27–94; 8:45 am]

BILLING CODE 6210–01–M

Rurban Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 24, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth, Cleveland, Ohio 44101:

1. Rurban Financial Corp., Defiance, Ohio; to acquire 100 percent of the voting shares of The Citizens Savings Bank Company Pemberville, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Commercial BancShares, Incorporated, Parkersburg, West Virginia; to merge with Hometown Bancshares, Inc., Middlebourne, West Virginia, and thereby indirectly acquire Union Bank of Tyler County, Middlebourne, West Virginia; Bank of Paden City, Paden City, West Virginia; and the Community Bank, Pennsboro, West Virginia.

2. Potomac Bancshares, Inc., Charles Town, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Charles Town, Charles Town, West Virginia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First National Bancorp, Farragut, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Farragut, Farragut, Iowa.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. The Templar Fund, Inc., Brentwood, Missouri, and Truman Bancorporation, Inc., Brentwood, Missouri; to become bank holding companies by acquiring at least 53.07 percent of the voting shares of U.S. National Bank of Clayton, St. Louis, Missouri.

E. Federal Reserve Bank of Kansas City (Stephen E. McBride, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Erick Bancshares, Inc., Erick, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Erick Bancorporation, Inc., Erick, Oklahoma, and thereby indirectly acquire First American Bank, Erick, Oklahoma.

Board of Governors of the Federal Reserve System, May 24, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13156 Filed 5-27-94; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Disease Control and Prevention

[CDC-467]

Cooperative Agreement With the International Centre for Birth Defects, Rome, Italy

Summary

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement with the International Centre for Birth Defects to further develop and establish: (1) An international epidemiologic research program, (2) an international surveillance and monitoring system, and (3) a setting for training epidemiologists in the prevention of birth defects. The International Centre for Birth Defects (the Centre) was previously funded by the CDC in 1991. This is a competitive renewal of the program. Approximately $100,000 is available in FY 1994 to support this project. It is expected the award will begin on or about September 30, 1994, for a 12-month budget period within a 3-year project period. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

The purpose of this cooperative agreement is to assist and collaborate with the Centre in establishing and strengthening epidemiologic research, surveillance and monitoring, and training, in order to promote the further understanding of the prevention of birth defects. CDC will provide guidance on program management and administrative matters related to the conduct of the scientific aspects; provide technical and scientific consultation and assistance for the implementation of all epidemiologic and surveillance activities conducted; provide scientific consultation and assistance in formulating the research plan; provide guidance on program management and administrative matters related to conduct of the scientific aspects; and collaborate in the definition and preparation of the scientific epidemiologic reports that result from the cooperative agreement.

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 for reducing morbidity and mortality and improving the quality of life. This announcement is related to the priority areas of Environmental Health, Maternal and Infant Health, and Surveillance and Data Systems. (For ordering a copy of "Healthy People 2000," see the section "Where To Obtain Additional Information".)

Authority

This program is authorized under section 301 (42 U.S.C. 241) and 307(a) (42 U.S.C. 242(*l*)) of the Public Health Service Act, sections 1-6 of the International Health Research Act of 1960 (22 U.S.C. 2101-2104) and section 104 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b).

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission of promoting the protection and advancement of an individual's physical and mental health.

Eligible Applicant

Assistance will be provided only to the International Centre for Birth Defects, Rome, Italy, for this project. No other applications are solicited. The Program Announcement and application kit have been sent to the International Centre for Birth Defects.

The International Centre for Birth Defects is the only appropriate and qualified institution to provide the services specified under this cooperative agreement for the following reasons:

1. Serving as the Clearinghouse headquarters, the Centre is the only organization with access to all the data from the 26 member programs. No one in the United States or its territories has access to this data.

2. The Centre is devoted to the prevention of birth defects through surveillance, training, and epidemiologic research. It is located in Rome, Italy, and was established in 1988 on the initiative of the International Clearinghouse for Birth Defects Monitoring Programs (Clearinghouse). It serves as a headquarters for the Clearinghouse.

3. The International Clearinghouse itself was founded in 1974 with CDC as a charter member. The Clearinghouse's Annual Report provides additional information on the Clearinghouse and each of its program members. It is now comprised of 26 member programs from 20 nations and is affiliated with the World Health Organization (WHO) as a nonprofit, non-Governmental Organization. The primary purpose of the Clearinghouse is to provide a forum for member programs to share information. This sharing is done through regular quarterly reports of data, at annual meetings, and through informal contacts of the staff of member programs. There is no similar organization in the United States.

4. The Clearinghouse programs have participated in many important international collaborative projects related to birth defects. Notable among them was one that led to the discovery that the anti-epileptic drug valproic acid (Depakene) causes spina bifida.

5. The Centre shows promise of providing unique contributions to the understanding and prevention of birth defects. The results of international collaborative scientific work will not only help the Centre and its member countries formulate strategies for the prevention of birth defects through training, surveillance, and epidemiologic research, but the scientific knowledge gained will provide reciprocal and direct benefits to the United States, yielding important data to strengthen the scientific basis in the United States' quest for the prevention of genetic diseases and birth defects.

Executive Order 12372 Review

The application is not subject to review under Executive Order 12372.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for this program is 93.283.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 467 and contact Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E-13, Atlanta, Georgia 30305, telephone (404) 842-6796, for business management technical assistance.

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) referenced in the "Summary" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: May 23, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13133 Filed 5–27–94; 8:45 am]

BILLING CODE 4163–18–P

Preventing the Spread of Vancomycin Resistance; meeting

The National Center for Infectious Diseases (NCID) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Preventing the Spread of Vancomycin Resistance.

Time and Date: 9 a.m.–2 p.m., June 15, 1994.

Place: CDC, Auditorium B, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this open meeting is to receive verbal comments on a draft report entitled, "Preventing the Spread of Vancomycin." This report from NCID's Hospital Infection Control Practices Advisory Committee (HICPAC) was published in 59 FR 25758, May 17, 1994, and contains preliminary recommendations for the prevention and control of the spread of vancomycin resistance, with special focus on vancomycin-resistant enterococci (VRE). It was prepared by HICPAC in collaboration with NCID and in consultation with representatives of the American Hospital Association, American Society for Microbiology, Association for Professionals in Infection Control and Epidemiology, Infectious Diseases Society of America, Society for Healthcare Epidemiology of America, and Surgical Infection Society.

Viewpoints and suggestions regarding the draft recommendations are invited from other professional organizations, industry, academia, other government agencies, and the public. To obtain a five-minute time slot for presenting comments, please provide the following information to the contact person listed below no later than June 7, 1994: name, address, affiliation, and telephone and facsimile numbers. In addition, written comments on the draft recommendations are welcome and should be submitted on or before July 18, 1994, to CDC, Attention: VRE Report Center, Mailstop A–07, 1600 Clifton Road, NE, Atlanta, Georgia 30333, as outlined in 59 FR 25758, May 17, 1994.

Contact person for more information: Julia S. Garner, R.N., M.N., Nurse Consultant, Hospital Infections Program, NCID, CDC, 1600 Clifton Road, NE, Mailstop A–07, Atlanta, Georgia 30333, telephone 404/639–1552 or facsimile 404/639–3838.

Dated: May 24, 1994.

William H. Gimson,

Acting Asociate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–13134 Filed 5–27–94; 8:45 am]

BILLING CODE 4163–18–M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. June 24, 1994, 8:30 a.m., Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 10, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) The report of the National Institutes of Health Consensus Development Conference on the effect of corticosteroids for fetal maturation on perinatal outcomes; and (2) a combined contraceptive proposed by Balance Pharmaceuticals, Inc., consisting of a gonadotropin releasing hormone, estrogen, and progestin, provided at presumably safer levels in respect to oncogenic potential.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any

person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 23, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–13111 Filed 5–27–94; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 59 FR 14666, March 29, 1994 is amended to abolish the Office of Communications and Information Resources Management and transfer the functions to the Immediate Office of the Bureau Director within the Bureau of Health Resources Development.

Under Section HB–20, Organization and Functions, amend the functional statements for the Health Resources and Services Administration (HBB) by deleting the functional statement for the Office of Communications and Information Resources Management (HBB14), in its entirety.

Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

This change will be effective on September 3, 1994.

Dated: May 22, 1994.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 94–13112 Filed 5–27–94; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application(s) for Permit

The Service has received an application from Kuiu Kwan, Inc., Lynnwood, Washington, (PRT–789383) for a Convention on International Trade in Endangered Species (CITES) export permit. The applicant requests a permit to export 3 sea otter (*Enhydra lutris*) pelts, which have Alaskan Native artwork painted on the tanned side of the hide; the pelts are to serve as product samples to determine whether there is a foreign market for these painted pelts.

The Service questions whether there will be an indirect effect on sea otter populations as a result of this activity. Thus, the Service is interested in information on the potential environmental, economic, social, historical/culture impacts or significant controversy over the effects of the proposed action for purposes of National Environmental Policy Act analysis.

Additionally, this is the first complete application received by the Service to export sea otter Native handicrafts through the CITES permit process. The export may raise questions as to what constitutes an authentic Native handicraft under the Marine Mammal Protection Act and applicable regulations. The decision on this permit may set a precedent for future similar activities. Currently the Service is working with the Indigenous Peoples Council for Marine Mammals in Alaska and others on further defining the applicable regulatory language governing Native handicrafts made from marine mammals, especially polar bear hides and sea otter pelts.

Comments are being requested as many individuals, groups and organizations are currently interested in the Native subsistence and handicraft harvest of sea otters in Alaska.

Written data or comments or requests for copies of the complete application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 420(c), Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); Fax: (703/358–2281)

Dated: May 24, 1994.

Ken Stansell,

Acting Chief, Office of Management Authority.

[FR Doc. 94–13125 Filed 5–27–94; 8:45 am]

BILLING CODE 4310–55–P

Availability of the Draft Environmental Assessment on the Proposed Building Re-Construction at Hanalei National Wildlife Refuge, Kauai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the draft Environmental Assessment (EA) on the proposed building re-construction at Hanalei National Wildlife Refuge, Kauai, Hawaii, is available for public review.

WRITTEN COMMENTS INFORMATION: Interested agencies, organizations, and individuals are encouraged to provide written comments to the U.S. Fish and Wildlife Service (Service) within 30 days after publication of this Notice. Address comments to the project leader as shown below.

FOR FURTHER INFORMATION CONTACT: Jerry Leineck, Project Leader, Hawaiian and Pacific Island NWR Complex, P.O. Box 50167, Honolulu, HI 96850, (808) 541–1201.

Copies of the Draft EA have been provided to interested or affected agencies and individuals. Those agencies and individuals not on the Service's mailing list and wishing copies of the this Draft EA for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service, Department of the Interior, has prepared a Draft EA on its proposal to rebuild facilities at Hanalei National Wildlife Refuge to replace those lost during Hurricane Iniki.

This action would re-construct vehicle and shop buildings needed to protect vehicles and equipment. It would also provide a safe working space for maintenance staff. Rebuilding the office and lab will support refuge management activities. Replacement of the residence for a refuge employee will provide 24 hour on call/on-site maintenance of ponds and irrigation systems, improved law enforcement, visitor protection, and protection for endangered waterbirds.

The proposed action would not have a significant effect on the human environment since it repairs and replaces facilities at the existing sites to the approximate conditions and functions at the time of the damage.

The major alternatives under consideration that were analyzed and evaluated during planning are:

(1) Preferred alternative, construct a residence with attached carport and an office/shop building at the existing headquarters site and a reduced storage building at another on refuge site;

(2) Construct a residence with detached garage, a vehicle storage building, and a maintenance shop/office building at the existing site;

(3) Construct all facilities at the Transfer Site;

(4) Construct all facilities at the Impoundment D Site;

(5) Construct all facilities at sites off refuge; and

(6) No Action.

Other government agencies and several members of the general public contributed to the planning and evaluation of the proposal and to the preparation of this draft EA. A series of public information meetings and on-site visits were initiated beginning November 1992. The public was invited to review designs and blueprints at public informational meetings held in June 1993. Detailed information concerning consultation and coordination is contained in section VI of the draft EA.

All interested agencies and individuals are urged to review and provide comments on this Draft EA as soon as possible. All comments received during the designated comment period will be considered in preparation of the final EA for this action.

Dated: May 24, 1994.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–13135 Filed 5–27–94; 8:45 am]

BILLING CODE 4310–55–M

Revised Policy and Procedures for Selecting and Funding Federal Aid in Sport Fish and Wildlife Restoration Projects

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service, Division of Federal Aid is announcing a final revised policy and procedures for funding Federal Aid administrative projects. Revisions to the policy were announced in the **Federal Register,** July 8, 1993, (58 FR 36694) and the policy was implemented as a pilot with the understanding that it would be finalized at a later date. Comments were invited on the revised policy. None were received from individuals or organizations outside of the Fish and Wildlife Service (Service).

This final revised policy is based on comments received from the Service's regional offices in response to the July 8 announcement. It includes information on the amount of funding that will be made available, as well as, the focus areas that will be used to review and select projects that will be awarded in fiscal year 1995. The Service is seeking proposals under this final revised policy for sport fish and wildlife restoration projects. The requirements for submitting proposals and selecting projects are provided in this notice.

DATES: Applications/proposals must be received by July 1, 1994.

ADDRESSES: Proposals must be submitted to: U.S. Fish and Wildlife Service, Chief, Division of Federal Aid, MS 140 ArlSq, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Columbus Brown, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service; (703) 358–2156.

SUPPLEMENTARY INFORMATION: A revised policy was issued under a **Federal Register** Notice on July 8, 1993. The policy was revised in response to criticisms that it did not include a systematic procedure for notifying potential applicants of the availability of Federal Aid Administrative funds; that it was not being applied consistently and that it promoted unrealistic expectations among applicants. Significant revisions to the policy included requiring annual announcements of the availability of funds through Notices in the **Federal Register**; establishing and using focus areas as part of the selection criteria and announcing the focus areas in the **Federal Register.** Focus areas will be used to further promote and encourage efforts that address priority needs of the Fish and Wildlife Service and the States. The revised policy was also intended to clarify the roles and responsibilities of the Division of Federal Aid's Washington and Regional Offices and it established uniform requirements for all applicants.

Based on comments from the Service's regional offices, in response to the July 8 **Federal Register** Notice, section J, paragraphs 1, 3, 4 and 5 and section L, paragraph 4 have been revised. The Service's Regional Offices provide comments about their role in reviewing and ranking proposals. Under the previous revised procedures, the Regions were not involved in the eligibility determinations, instead, they reviewed and ranked eligible projects and submitted their rankings along with any comments and recommendations to the Washington Office. The Regions commented that the best utilization of their expertise would be during the review for eligibility and preparation of the award agreements, after project selection. In response to those comments, the policy was revised to include representatives from the Regional Offices as joint participants with the Washington Office in the eligibility review, including participation in the meeting during which the Chair, Grants-In-Aid Committee (GIAC) sits as an observer. Additionally, representatives from the Regional Offices will assist the Washington Office in refining the project proposals and finalizing the grant agreements.

Another revision to the policy includes placing a cap on the annual amount of administrative funds awarded for any single project. This requirement has been added to section E—Eligibility Requirements. While this change was not made as a result of any comment, the limitation is being established in response to growing concerns within the Fish and Wildlife Service about escalating project costs.

Dated: April 19, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

Policy and Procedures for Administrative Projects Funded by the Federal Aid in Sport Fish and Wildlife Restoration Programs

A. Purpose

This statement establishes policies and procedures for selecting and funding Federal Aid administrative projects. Administrative projects are activities that assist the U.S. Fish and Wildlife Service (Service) in administering Sport Fish and Wildlife Restoration Programs and facilitate the efforts of the States in implementing these programs.

B. Background

The mission of the Federal Aid Program is to strengthen the ability of State and Territorial fish and wildlife agencies to meet effectively the consumptive and non-consumptive needs of the public for fish and wildlife resources. The Federal Aid in Sport Fish Restoration Act and the Wildlife Restoration Act authorize the Secretary of the Interior to cooperate with the States and to use administrative funds for carrying out this mission.

Federal Aid Administrative Funds are those funds deducted from amounts available under the Federal Aid in Sport Fish Restoration Act and the Federal Aid in Wildlife Restoration Act. The statutory provisions related to administrative deductions are as follows:

Federal Aid in Sport Fish Restoration (SFR)—Federal Aid Administrative Funds for sport fish restoration may not exceed 6 percent of the deposits in the Sport Fish Restoration Account of the Aquatic Resources Trust Fund. These funds may be used for administrative projects for the "conduct of necessary investigations, administration, and the execution of this Act and for the aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or fresh waters." (section 4 of the Act is amended by Pub. L. 98–369, 16 U.S.C. 777c)

Federal Aid in Wildlife Restoration (WR)—Federal Aid Administrative Funds for wildlife restoration may not exceed 8 percent of the excise tax receipts deposited in the Federal Aid in Wildlife Restoration Fund. These funds may be used for the "administration and execution of this Act and the Migratory Bird Conservation Act." (section 4 of the Act, 16 U.S.C. 669c)

After making administrative deductions as specified above, the remainder of the administrative funds will be apportioned to the States in accordance with the formulas contained in the Acts. The Service will strive to minimize administrative deductions in order to maximize apportionments to the States.

C. Availability of Funds

In fiscal year 1995, the amount of administrative funds estimated to be made available for administrative projects includes approximately $1,400,000 for sport fish restoration, and $1,100,000 for wildlife restoration.

D. Interstate Compacts

Interstate Compacts may also submit proposals for Federal Aid Administrative Funds. Proposed projects must have discrete objectives and will be subject to all of the requirements below.

E. Eligibility Requirements

The Division of Federal Aid, Washington Office, along with assistance from the Regional Offices, will review each proposal and determine if proposed projects are eligible for funding. To be eligible for funding, projects must meet the following:

1. Projects must provide direct benefits to one-half or more of the States at the national or broad geographic level to meet the needs of the WR and/or SFR Programs.

2. Projects must have specific beginning and ending dates. The maximum duration for any special project is three (3) years.

3. Project costs for any single year may not exceed $200,000.

4. Projects must meet the documentation requirements stated in section G.

5. Projects must meet the minimum threshold of the selection criteria stated in section I.

6. Projects must meet funding and award requirements contained in section L.

7. Projects determined ineligible or that the Service elects not to fund may not be reconsidered during the same year in which the proposal was submitted.

F. Application Process

1. All proposals including funding requests for administrative projects must be submitted to the Chief, Division of Federal Aid, Washington Office. Proposals originating within the Service must be approved by the appropriate Regional Director or Assistant Director.

2. Each year, a Notice will be published in the **Federal Register** announcing the deadline for submitting proposals. The Notice will also announce total Federal Aid funds available for wildlife and sport fish restoration projects. A table with the approximate dates for each step of the process is provided in Appendix A.

G. Submission Requirements

Each proposal submitted for Federal Aid Administrative Funds must contain the following:

1. *Title.*

2. *Background and Purpose.*—Include a comprehensive statement that describes the significance of the problem and addresses the need or problem to be resolved, as well as a brief history of previous work and a statement on State support of the project.

3. *Scope of Work.*—Include a description of work/objectives by year if more than 1 year. State the time required to complete the project and provide milestone to measure accomplishment of the objectives.

4. *Expected results or benefits* related to the States' fish and wildlife programs—In addition to stating how the results will be useful, provisions must be made for making the product or results available and usable to those affected by the problem or need. Benefits must be expressed in quantifiable terms, *i.e.*, angler days, harvest per unit effort, improvements to State administration, dollars saved, etc.

5. *Resumes*—Includes resumes and names of key individuals who will be involved in the project, stating their particular qualifications for undertaking the project.

6. *Project Costs*—Submit cost estimates showing total project costs as well as the Federal and non-Federal shares. Multi-year project proposals must include a summary budget showing funds required for each year and an itemized budget for the first 12-month period. Estimates of direct costs must be provided for each year for each of the subsequent years. In addition, costs must be provided for:

a. Personnel.

(1) Include salaries of employees (by position title), amount of the salaries attributable to the project and identify the percent of each person's time spent on the project.

(2) Identify fringe benefits (amount only)—This entry should be the proportionate cost of fringe benefits paid for time spent on the project. For example, if an employee spends 20 percent of his/her time on the project,

20 percent of his/her fringe benefits are charged to the project.

b. Consultant—Identify specific tasks and work to be performed by consultants, including the basis for the fee paid, *e.g.*, hourly rate.

c. Contracts—Identify all work to be performed by contract. If a commitment is made with a particular vendor, prior to applying for funding, explain how the vendor was selected, type of contract, deliverables expected, time frame, cost, and basis for the cost. All contracts must meet the standards established in Office of Management and Budget Circulars. Grants that are subcontracted are subject to review for compliance with government procedures.

d. Travel and Per Diem—Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs and include transportation, per diem, and miscellaneous expenses. Travel expenses shall be in accordance with rates specified by Federal travel regulations. Registration fees should also be included.

e. Equipment—Identify equipment or items to be purchased or rented that are necessary to support the project.

f. Supplies—Identify specific supplies necessary for the accomplishment of the project. Consumable office supplies may be included under Indirect Costs unless purchased in large quantity.

g. Indirect Costs—Identify those indirect costs where are based on approved indirect cost rates with the Federal Government. Estimates may be included pending approval of a negotiated Federal indirect cost rate.

h. Other Costs—Identify any other costs not identified above that are attributable to the project.

7. Proposals requiring multi-year funding must include goals for each year of funding.

Appendix B contains a sample proposal along with explanations.

These rules do not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The information collection requirements for this grant program are those necessary to comply with 43 CFR Part 12, which include (a) project narrative; and (b) compliance with Federal laws, regulations, and policies. Recordkeeping includes the tracking of costs and accomplishments (43 CFR 12.60), monitoring progress (43 CFR 12.80), and evaluating accomplishments (43 CFR 12.81). Reporting requirements include those required by 43 CFR 12.82. No additional information collection will be contained in this rule.

H. Focus Areas

Focus areas are those specific areas in which the Service and/or the States are seeking information and assistance in administering or implementing the Sport Fish and Wildlife Restoration programs. Focus areas will be determined each year by the Service, based on recommendations from the Grants-In-Aid Committee (GIAC) in accordance with the by-laws of the International Association of Fish and Wildlife Agencies (IAFWA). Each year, the GIAC will be asked to submit recommendations for focus areas after its September meeting. Each year a **Federal Register** Notice will announce the Focus Areas, along with the amount of funds available for administrative projects.

Focus areas that will be used to evaluate proposed projects for funding in fiscal year 1995 are provided below:

Education—Includes training and/or instructing publics and/or resource managers to enhance their knowledge base.

- Projects that provide a better understanding of our constituents and their needs and that provide innovative approaches to reaching new hunters, anglers and boaters, including projects with emphasis on minorities and women.
- Projects that promote natural resource aquatic and environmental education of students in kindergarten through grade 12; including projects with new approaches to teaching hunting and fishing ethics.

Outreach—Includes reaching out to publics with the expectation of expanding opportunities.

- Projects that include analysis of and that focus on the values (economic and social) of fish and wildlife programs, enabling greater public understanding of program benefits.

Management—Includes handling, directing and managing fish and wildlife populations. The management focus links directly to resources and hands-on responsibilities of fish and wildlife agencies.

- Projects that employ new technologies and evaluation in the restoration, creation, enhancement and/or protection of fish and wildlife and their habitats.
- Projects that provide for advancement of collection and management of resource and harvest data on a regional or national basis.
- Projects that demonstrate restoration of fish and wildlife habitats.

Administration—Includes service, supervision and management responsibilities. The administrative focus links directly to supporting fish and wildlife agencies' affairs.

- Projects that identify strategies for future management of fish and wildlife resources based upon changing social, economic and political realities.
- Projects that identify strategies concerning the future management of fish and wildlife resource agencies based upon changing social, economic and political realities.

I. Selection Criteria

Each eligible proposal will be reviewed and evaluated for the following:

1. Focus Areas—Priorities and areas of need announced in the **Federal Register**.

2. Scope—The problem or need addressed in the proposal is of direct concern to one-half or more of the States. The scope of proposed marine resources projects must also address a need that is of direct concern to a majority of States on a specific coast.

3. Significance—The problem or need addressed is deserving of the level of attention proposed and the proposed project is of substantial character and design to address the problem.

4. Feasibility—The proposed objectives can be attained in the amount of time and with the personnel and resources requested. Projects must demonstrate tangible, identifiable benefits/results.

5. Cost-effectiveness—The expected output relative to the total cost of the project is clearly favorable.

J. Proposal Review and Selection Process

1. Each proposal will be reviewed for eligibility as defined in section E. The review will be conducted by the Washington office with assistance from Regional Office staff. The final determination for eligibility will be made at a meeting that includes staff from Washington and the Regional Offices, with the Chair of the GIAC as an observer.

2. All applicants will be notified that their proposal has been determined eligible or ineligible.

3. Copies of eligible proposals will be forwarded to Service Offices and the Chair, GIAC, along with lists of on-going grants and ineligible proposals. The Chair, GIAC, will forward copies to the voting members of the GIAC.

4. Service Offices may provide comments on the eligible proposals. Voting members of the GIAC will review and rate each eligible proposal high, medium or low.

5. All ratings from GIAC voting members and comments from Service

Offices will be returned to the Division of Federal Aid in Washington.

6. The Division of Federal Aid will summarize the ratings and comments.

7. A summary of the comments and ratings will be provided to the Chair, GIAC, for review at the GIAC September meeting. Copies of the summary will also be provided to the Regional Offices.

8. During the September meeting of the IAFWA, the GIAC will evaluate and rank eligible proposals based on the needs of the States. The GIAC will forward its rankings and recommendations to the Service in accordance with IAFWA procedures.

9. The Division of Federal Aid will summarize and consolidate the all rankings, ratings and comments and develop recommendations for project selections and awards. The recommendations may include a part of any proposal or project for funding.

10. The Federal Aid Division's recommendations will be forwarded to the Director of the Service. The Director will review the recommendations and make the final decision on project selections and funding.

11. The Service will notify each eligible applicant in writing of the final disposition of their proposal.

12. The Director will notify the Regional Directors and the Chair, GIAC, of the projects selected for funding.

K. Lobbying Restrictions

During the review of proposals, grant applicants may not engage in any activities that might be considered as attempts to influence reviewers or approving officials. If the activities are determined to be lobbying, the proposal will be disqualified for Federal Aid Administrative Funds.

L. Awards and Funding

1. Projects that are selected and that require more than 1 year of funding will receive subsequent (2nd and/or 3rd) year funding based on project accomplishments and satisfactory progress reports.

2. Funds awarded for administrative projects may not be used in lieu of regular WR/SFR apportioned funds to support individual State projects or for operational activities beyond development and implementation.

3. Funds awarded to Fish and Wildlife Service offices may not be used to replace operational funding. Salaries may be paid if related to an approved project.

4. The Service's Division of Contracting and General Services will prepare and sign the formal award agreement. The Federal Aid Washington Office, along with assistance from the Regional Offices, may provide technical assistance to the Division of Contracting and General Services in finalizing the award agreements. The formal award agreement will be forwarded to the awardee for signature and must be signed by the Service and an authorized awardee official before it becomes a valid agreement. This process may require up to 60 days to complete. The Service is not responsible for costs incurred prior to the effective date of a signed agreement; therefore, the starting date for all projects should be planned accordingly.

5. Non-profit awardees must maintain a financial management system in accordance with the Office of Management and Budget Circular A–110. State and local governments must maintain a financial management system in accordance with OMB Circular A–102 and 43 CFR part 12.

M. Project Administration

Projects awarded funding will be assigned to a Project Officer. Project Officers are those persons representing the Contracting Officer on technical matters relating to the responsibilities of the grantee. They provide assistance that includes:

1. Assisting Service contracting officials in completing the award agreement;

2. Serving as the Service's point of contact after the award agreement is signed;

3. Receiving and approving bills; and

4. Monitoring project performance and assuring that the awardee adheres to the award agreement.

APPENDIX A.—SUMMARY OF EVENTS

Target date	Event
April 1 (subject to change in future)	Washington Office issues FEDERAL REGISTER Notice announcing availability of Federal Aid Funds and focus areas for grant applications.
June 1 (subject to change in future)	Washington Office receives proposals.
June 30	Washington Office with assistance from the regions determines eligibility (Chair of the Grants-In-Aid Committee (GIAC) participates as an observer).
July 15	Washington Office forwards copies of eligible proposals to Regional Offices, other Service offices, e.g. Migratory Bird Office and Chair, GIAC, (Chair of GIAC will distribute proposals to voting members of the GIAC, includes Summary list of on-going grants and list of ineligible proposals).
July 15	Washington Office sends letters to all applicants informing them that their proposal is eligible or ineligible.
August 15	Voting members of the GIAC forward comments and ratings to Chief, FA (Ratings of High, Medium or Low).
September 1	Chief, FA, summarizes comments and ratings and forwards to Chair, GIAC, for review at the September meeting.
September 15	GIAC reviews and ranks proposals and forwards rankings and recommendations to Washington, along with recommendations for Focus Areas for the following year.
October 31	Washington Office with assistance from regions, summarizes all ratings, rankings and recommendations; Final recommendations are forwarded to the Director.
November 15	Director selects projects for funding.
November 30	Washington Office notifies applicants and Chair, GIAC, of the final disposition of proposals.
January-February	Contracting and General Services awards grants.

Appendix B—Sample Proposal for the Use of Federal Aid Administrative Funds

Submitted by Gwyllt Institute

I. Title

Economic Profiles, Data Analysis, and Survey Design for Sport Fishing.

II. Background and Purpose

In the Fall of 1987, the U.S. Fish and Wildlife Service (Service) released the data tapes of the 1983 National Survey of Fishing, Hunting and Wildlife-Associated Recreation. In its current form the data tapes are not easy for the States to use.

The Gwyllt Institute (Institute) proposes to produce State-specific reports on the retail sales, jobs, wages and salaries, years of employment, output, and tax receipts generated by sport fishing in each State.

III. Scope of Work

The Institute will provide each State with a specially designed software package for State-specific economic impact analysis. The differences between the results of the National Survey and State data collection efforts pertaining to the economic impact of sport fishing will be analyzed by the Institute. The results of this analysis will be used to make recommendations for the design of the 1990 Survey, as well as a standardized format for economic questions on State surveys.

A. Description of Work/Objectives

1. The Grantee shall provide to each of the 50 States, Lotus 1–2–3 (or facsimile) spreadsheets that contain trade margins, location quotients, economic multipliers, and tax rates specific to each of the States. The Grantee shall provide a manual to accompany the spreadsheets that will contain detailed instructions on how to use and modify the spreadsheets to derive the economic impacts of sport fishing, hunting, and wildlife-associated recreation.

2. The Grantee shall download all data from the National Survey from the data tapes to State-specific diskettes. The fishing, hunting and wildlife-associated data shall be on separate diskettes. The diskettes must be accompanied by a software package that allows users to download the data from the diskettes to a Lotus 1–2–3 (or facsimile) spreadsheet.

3. The Grantee shall inform State Directors that workshops will be held by the Institute in each of the Regions of the Service to train State agency and Service personnel on how to use the spreadsheets to analyze the economic impact of fishing or other natural resource uses, using State data or Service data. These sessions will be held in conjunction with the Regional Federal Aid meetings or the Regional meetings of the International Association of Fish and Wildlife Agencies. These sessions will be at no cost to the government.

4. The Grantee shall assist States by compiling and analyzing State-specific studies and work with States toward assembling data into a format useful for economic impact analysis.

5. The Grantee shall develop recommendations for modifications, if needed, to the design of the 1990 Survey and work with the Responsive Management Project on their economic modules.

6. The following milestones are applicable to paragraphs 1 through 5 above.

a. On a monthly basis, the Grantee shall submit written progress reports to the Service Project Officer. Each report shall contain a summary of the Grantee's efforts and activities for the reporting period, including problems encountered and efforts undertaken for their resolution.

b. Within 4 months after the effective date of this Agreement, the Grantee shall distribute to each of the 50 States the following items:

(1) Data diskettes
(2) Software to access data diskettes
(3) Manual for diskettes and software

c. Within 6 months after the effective date of this Agreement, the Grantee shall distribute to each of the 50 States the following items:

(1) Economic Impact Spreadsheets
(2) Manual for Economic Impact spreadsheets, and
(3) Existing State data and studies

d. During months 5 through 12, the Grantee shall participate in the planned training sessions. (See section A.3. Description of Work/Objectives.)

e. Within 8 months after the effective date of this Agreement, the Grantee shall prepare the Senate data in the Impact format.

f. Within 10 months after the effective date of this Agreement, the Grantee shall distribute copies of the Economic Impact Manual and comments. one copy shall be submitted to the Service Project Officer.

g. Within 11 months after the effective date of this Agreement, the Grantee shall submit to the Service Project Office an original and one copy of recommendations for the 1990 Survey.

IV. Expected Results of Benefits

In 1985, 46.4 million anglers spent 976.6 million days and $28.1 billion pursing their sport. It is anticipated that providing economic profiles for each State will allow State commissioners of fish and game agencies to argue effectively for the necessary dollars to manage the fishery resources from their respective State legislature. We conservatively estimate that an additional 5 percent of shared resources will be reallocated to recreational anglers.

V. Résumés

VI. Project Cost

A. Personnel:		
Project Manager/Senior Economist (2 Months)	=$8,000	
Resource economist (12 months)	=$35,000	
Secretary (6 months)	=$10,000	
Subtotal	$53,000	
Fringe benefits@ 20%—total	$63,000	$63,000
B. Consultant:		
Computer Programmer (1 month)	$5,000	$5,000
C. Travel and Per Diem (To consult with Federal Aid—Seattle, WA, to Washington, DC:		
Size of staff—1		
Duration (days)—3		
Air Fare	=$385	
Per Diem	=$240	
Rental Car	=$75	

Total	$700	$700
D. Equipment:		
Diskette Storage Cabinet	=$1,300	
Mainframe Computer Time (100 hrs. @ $50)	=$5,000	
Total	$6,300	$6,300
E. Supplies:		
Diskettes (3,500 @ $1.00)	=$3,500	
Printing (50 manuals @ $20)	=$1,000	
Sub-Total	$4,500	$4,500
		$79,500
F. Indirect Costs @ 12% (rate as established by previous Federal audit)	=$9,540	$9,540
Grand Total	$89,040	$89,040

Note: Cost of training sessions is being funded by other that Federal Government sources.

[FR Doc. 94-13027 Filed 5-27-94; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[MT-024-04-4333-01]

Order—Closure of Public Lands to Firearms in Treasure and Custer Counties, MT

AGENCY: Bureau of Land Management, Montana, Miles City District, Power River Resources Area, Interior.

ACTION: Closure of 864.3 acres of public land to use of firearms from December 16 through August 31 annually on Howrey Island, Treasure County, Montana. Closure of 74.38 acres of public land to use of rifles or pistols on the William L. Matthews Recreation and Wildlife Habitat Management Area (formerly Tusler), Custer County, Montana.

SUMMARY: Notice is served that public land southwest of Hysham, Montana known as Howrey Island, is closed to discharge of firearms from December 16 through August 31 annually. Firearms include rifles, shotguns, and pistols. This closure is necessary to protect recreationists using the public land and persons residing in the Howrey Island area. The public land protection by this closure is located at:

Principal Meridian, Montana

T. 6N., R. 35E.,
Sec. 15 Lots 5,6,7,8,9,SW¼SE¼
Sec. 21 Lot 5
Sec. 22 Lots 1,2,6,7,8, and 9
Consisting of 864.3 acres of surface estate.

Notice is served that public land northeast of Miles City, Montana known as the William L. Matthews Recreation and Wildlife Habitat Management Area (formerly Tusler) will be closed to discharge of rifles and pistols. Only use of shotguns and archery equipment will be allowed on the public land. This closure is necessary to protect recreationists using the public land and persons residing is the Tusley ares. The public land protected by this closure is located at:

Principal Meridian, Montana

T. 9N., R. 48 E.,
Sec. 30 Lots 5 & 6, and that portion of the W½SE¼ lying westerly of the Chicago, Milwaukee, St. Paul, and Pacific Railroad right-of-way.
Consisting of 74.38 acres of surface estate.

DATES: Comments must be submitted on or before June 30, 1994.

ADDRESSES: Interested parties may submit comments to the Area Manager, BLM Power River Resource Area Office, Miles City Plaza, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Mary Alice Spencer, Area Manager, BLM Power River Resource Area Office, Miles City Plaza, Miles City, Montana 59301, or all (406) 232-7000.

SUPPLEMENTARY INFORMATION: Opening this area will require an opening order in the **Federal Register** and public participation. Authority for this action is outlined in sections 302, 303, and 310 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C 1716) and Title 43 Code of Federal Regulations subpart 8364 (43 CFR 8364.1). Any person who fails to comply with this closure is subject to arrest and a fine up to $1,000 or imprisonment not to exceed 12 months, or both.

Sandra E. Sacher,

Associate District Manager

[FR Doc. 94-13176 Filed 5-27-94; 8:45 am]

BILLING CODE 4310-ON-M

[NM-921-4120-01]

Coal Leases, Exploration Licenses, etc.: Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice. Availability of Environmental Assessment (EA).

SUMMARY: The Bureau of Land Management requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale and on the accompanying environmental assessment for this project.

The lands include in the Coal Lease Applications are located in Latimer and LeFlore Counties, Oklahoma, around the town of Poteau. The individual Coal Lease Applications are described as follows:

Federal Coal Leases Application OKNM 91190

T. 8 N., R. 26 E.,
Sec. 4, lots 3, 4, and NW¼SW¼NW¼;
Sec. 5, lots 1 to 4 inclusive, SW¼NE¼, N½SE¼NE¼, and S½NW¼;
Sec. 6, lots 1, 2, and S½NE¼.
T. 9 N., R. 26 E.,
Sec. 20, SE¼SE¼;
Sec. 21, S½S½;
Sec. 28, N½, N½SW¼, N½SE¼SW¼, N½N½SE¼, NW¼SW¼SE¼, and SW¼NE¼SE¼;
Sec. 29, E½, NE¼NW¼, S½NW¼, and SW¼;
Sec. 30, lots 3, 4, SE¼NE¼, E½SW¼, and SE¼;
Sec. 31, lots 1 to 4 inclusive, E½W½, and E½;
Sec. 32, NE¼, W½, N½SE¼, SW¼SE¼, N½SE¼SE¼, and SW¼SE¼SE¼;
Sec. 33, NW¼NW¼NW¼.

Total Acreage: 3,429.004 more or less.

This tract has one minable coal seam, the Hartshorne, which averages 5.2 feet thick. The tract contains an estimated 15,320,000 short tons of recoverable coal.

The average, as received, proximate analysis for this tract:

	Percent
Moisture	1.86
Ash	13.32
Volatile Matter	16.37
Fixed Carbon	68.79
Sulfur	1.80
BUT/lb	12834

Federal Coal Lease Application OKNM 91568

T. 5 N., R. 20 E.,
Sec. 1, lots 3 and 4;
Sec. 2, lots 1 to 4 inclusive.
T. 6 N., R. 20 E.,
Sec. 35, S½SW¼SW¼, and S½SE¼;
Sec. 36, S½.
T. 6 N., R. 21 E,
Sec. 31, S½, S½S½N½;
Sec. 32, S½, and S½S½N½;
Sec. 33, S½, and S½S½N½;
Sec. 35, N½S½, and N½S½S½;
Sec. 36, N½S½, and N½S½S½;
T. 6 N., R. 22 E.,
Sec. 31, N½S½, and N½S½S½;
Sec. 32, S½;
Sec. 33, S½;
Sec. 34, S½;
Sec. 35, S½;
Sec. 36, N½S½;
T. 6 N., R. 23 E.;
Sec. 31, N½S½;

Total Acreage: 3,723 more or less.

This tract contains two minable seams, the Upper McAlester averaging 2.2 feet thick and the Lower McAlester averaging 2.9 feet thick. The tract contains an estimated 12,636,900 short tons of recoverable coal.

The estimated, as received, proximate analysis for this tract is:

	Percent
Moisture	2.5
Volatile Matter	31.6
Fixed Carbon	66.3
Ash	11.7
Sulfur	3.2
BUT/lb	—

Federal Coal Lease Application OKNM 91569

T. 5 N., R. 26 E.;
Sec. 23, SE¼SE¼;
Sec. 24, S½S½, and N½SE;
Sec. 25, N½NW¼;
Sec. 26, N½;
Sec. 27, S½N½, N½S½, and SW¼SW¼;
Sec. 28, S½;
Sec. 29, S½SW¼, N½SE¼, NW¼S¼SE¼, and SE¼SE¼;
Sec. 32, NW¼NE¼, N½NW¼.
T. 5 N., R. 27 E.,
Sec. 15, lots 2 and 3;
Sec. 16, SE¼NE¼, and S½;
Sec. 17, SE¼SW¼, S½SE¼;
Sec. 19, NE¼NE¼, S½N½, N½S½, SW¼SW¼;
Sec. 20, N½NE¼, and NW¼;
Sec. 21, NW¼NW¼.

Total Acreage: 2,845 more or less.

This tract contains one minable coal seam, the Lower Hartshorne averaging 5.6 feet thick. The tract contains an estimated 18,290,200 short tons of recoverable coal.

The average, as received, proximate analysis for this tract is:

	Percent
Moisture	—
Volatile Matter	20.4
Fixed Carbon	68.3
Ash	10.5
Sulfur	1.2
BTU	13850

Federal Coal Lease Application OKNM 91570

T. 8 N., R. 24 E.,
Sec. 1, S½SW¼, and SE¼;
Sec. 2, SE¼SE¼;
Sec. 11, NE½NE¼, and S½NE¼;
Sec. 12, N½NW¼.
T. 8 N., R. 25 E.,
Sec. 4, S½SW¼;
Sec. 5, N½S½, and SE¼SE¼;
Sec. 6, lots 6, 7, N½NE¼, E½SW¼, and N½SW¼SE¼.

Total Acreage: 1,017.46 more or less.

This tract contains two minable coal seams, the Upper Hartshorne, averaging 2.7 feet thick and the Lower Hartshorne, averaging 2.8 feet thick. The tract contains an estimated 4,224,600 short tons of recoverable reserves.

The average, as received, proximate analysis for this tract is:

	Percent
Upper Hartshorne Coal:	
Moisture	2.1
Volatile Matter	18
Fixed Carbon	74
Ash	7
Sulfur	0.8
BTU/lb	14125
Lower Hartshorne Coal:	
Moisture	3.0
Volatile Matter	17
Fixed Carbon	75.9
Ash	5.5
Sulfur	0.9
BTU/lb	14600

Federal Coal Lease Application OKNM 91571

T. 8 N., R. 26 E.,
Sec. 14, NE¼, S½NW¼, and N½SW¼;
Sec. 15, N½SE¼, and SW¼SE¼;
Sec. 21, N½NE¼;
Sec. 22, NW¼NW¼.
T. 8 N., R. 27 E.,
Sec. 7, SE¼;
Sec. 8, SW¼, and N½N½S½
Sec. 9, S½N½, and N½N½S½;
Sec. 10, SW¼NW¼, and NW¼SW¼.

Total Acreage: 1,240 more or less.

The tract contains two minable coal seams, the Upper Hartshorne, averaging 2.9 feet thick, and the Lower Hartshorne, averaging 3.4 feet thick. The tract contains an estimated 7,465,600 short tons of recoverable reserves.

The average, as received, proximate analysis for this tract is:

	Percent
Upper Hartshorne Coal:	
Moisture	—
Volatile Matter	18.8
Fixed Carbon	74.5
Ash	6.8
Sulfur	1.1
BTU/lb	14751
Lower Hartshorne Coal:	
Moisture	2.5
Volatile Matter	16.5
Fixed Carbon	73.1
Ash	8.0
Sulfur	0.9
BTU/lb	13750

Federal Coal Lease Application OKNM 91590

T. 7 N., R. 24 E.,
Sec. 9, SE¼SE¼;
Sec. 10, S½NE¼, SW¼, and N½SE¼;
Sec. 16, NE¼NE¼.

Total Acreage: 400.00 more or less.

The tract contains one minable coal seam, the Secor Coal which averages 3.0 feet thick. The tract contains an estimated 369,400 short tons of recoverable coal.

The average, as received, proximate analysis for this tract is:

	Percent
Moisture	1.2
Volatile Matter	—
Fixed Carbon	—
Ash	15.2
Sulfur	4.5
BTU/lb	12991

The public is invited to submit written comments on the fair market value and the maximum economic recovery of the tracts and on the adequacy of the associated environmental assessment.

In addition, notice is also given that a public hearing will be held on June 29, 1994, on the coal lease environmental assessment, the proposed sale, and the fair market value and maximum economic recovery of the proposed lease tract. The public hearing will be held from 7 pm to 9 pm, June 29, 1994 at the Bob Lee Kidd Civic Center, Poteau, Oklahoma. Oral and written comments will be accepted at the public hearing. Any individual or organization wishing to pre-register to speak at the hearing may do so by contacting Don Boyer, BLM New Mexico State Office, at (505) 438–7439, by close of business (4:30 pm, MDT), June 24, 1994.

DATES: Written comments must be received at the BLM New Mexico State Office address listed below on or before July 8, 1994.

ADDRESSES: For additional data on these tracts or for copies of the environmental assessment, please contact Gary Stephens (telephone (505) 438–7451), Bureau of Land Management, New

Mexico State Office, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 or Don Boyer (telephone (505) 438–7439) at the same address.

SUPPLEMENTARY INFORMATION: In accordance with the Federal coal management regulations 43 CFR parts 3422 and 3425, not less than 30 days prior to the publication of a notice of sale, the Secretary of the Interior shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting the exemptions stated in the Freedom of Information Act, will be available for public inspection at the above address during regular business hours (7:45 am to 4:30 pm MDT) Monday through Friday.

Comments should be sent to the Bureau of Land Management at the above address and should address, but not necessarily be limited to, the following:

1. The quantity and quality of the coal resources.
2. The mining method(s) which would achieve maximum economic recovery of the coal, including specifications of seams to be mined and the most desirable timing and rate of production.
3. The configuration of any larger or smaller mining unit of which the tract may be part.
4. Restrictions to mining which may effect coal recovery.
5. The price that the mined coal would bring when sold.

The costs, including mining and reclamation costs, of producing the coal.

7. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation, in which case the anticipated rate of inflation should be given.
8. Depreciation and other tax accounting factors.
9. The value of the privately held surface.
10. Documented information on the terms and conditions of any recent and similar coal land transactions in the lease sale area.
11. Any comparable sales data of similar coal lands. The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Dated: May 24, 1994.

Kathy Eaton,

State Director.

[FR Doc. 94–13136 Filed 5–27–94; 8:45 am]

BILLING CODE 4310–FB–M

[WY–920–41–5700; WYW126755]

Proposed Reinstatement of Terminated Oil and Gas Lease

May 18, 1994.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW126755 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW126755 effective May 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 94–13178 Filed 5–27–94; 8:45 am]

BILLING CODE 4310–22–M

[CA–067–04–4333–04; 2–00160]

McCain Valley Cooperative Wildlife Management Area; Adjustment of Daily Recreation Use Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Daily recreation use fees at Cottonwood and Lark Canyon Campgrounds in the McCain Valley, CA are increased from $4.00 per campsite to $6.00 per campsite. This action is necessary to recover increasing costs associated with campground maintenance.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jim Talent, Outdoor Recreation Planner, El Centro Resource Area, 1661 South 4th Street, El Centro, CA 92243; Telephone (619) 353–1060.

SUPPLEMENTARY INFORMATION: Lark Canyon and Cottonwood Campgrounds were developed and daily recreation use fees established in the late 1960s. The current use fee of $4.00 has been charged for more than a decade; information pertaining to use fees for these sites prior to the 1980s is unavailable.

An increase in daily recreation fees reflects steadily increasing costs associated with maintenance of campground facilities. This action does not result in fees which exceed those established for similar facilities by other Federal agencies, non-federal public agencies and the private sector located within the service area of Cottonwood and Lark Canyon Campgrounds.

Authority for establishing daily recreation fees are found at 36 CFR part 71 as promulgated pursuant to section 4, Land and Water Conservation Fund Act of 1965, 16 U.S.C.A. 4601–6a (Supp., 1974), and section 3, Act of July 11 1972, 86 Stat. 461.

Dated: May 20, 1994.

G. Ben Koski,

Manager, El Centro Resource Area.

[FR Doc. 94–13177 Filed 5–27–94; 8:45 am]

BILLING CODE 4310–40–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development and Economic Cooperation; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the One Hundred and Twentieth Meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on June 21, 1994, from 8:30 a.m. to 12 p.m.

The purposes of the meeting are to receive and consider: (1) A report on the status of Agency reorganization plans; (2) a progress report from the Community College Task Force; and (3) a report from the BIFADEC Budget Panel.

This meeting will be held in the Department of State building, located at 2201 C Street, NW., in Conference room

1107. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent time available for the meeting permits.

All persons, visitors and employees are required to wear proper identification at all times while in the Department of State building. Please let the BIFADEC Staff know (tel # (703) 816–0295) that you expect to attend the meeting. Provide your full name, name of employing company or organization, address and telephone number no later than June 17, 1994. A BIFADEC Staff Member will meet you at the Department of State Diplomatic Entrance at C and 22nd Streets with your pass.

Jiryis S. Oweis, Chief BIFADEC Support Staff will be the A.I.D. Advisory Committee Representative at this meeting. Those desiring further information may write to Jiryis S. Oweis in care of the Agency for International Development, room 900, SA–38, Washington, DC 20523–3801 or telephone him on (703) 816–0264.

Dated: May 19, 1994.

Robert S. McClusky,

Acting Director, Center for University Cooperation in Development.

[FR Doc. 94–13174 Filed 5–27–94; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–290 (Sub-No. 142X)]

Norfolk and Western Railway Company—Abandonment Exemption—at Toledo, OH

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon 0.65 mile of track between milepost CS–0.61 and milepost CS–1.26 at Toledo, OH.

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 30, 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 must be filed by June 10, 1994.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 20, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

NW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by June 3, 1994. Interested persons may obtain a copy of the EA by writing to SEA (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 23, 1994.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–13163 Filed 5–27–94; 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 Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of the 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.

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 USC 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. Robert B. Briggs, on (202) 514–4319. 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, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems

Policy Staff/Information Resources Management/Justice Management Division, suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Visa Waiver Pilot Program Carrier Agreement (Form I–775).
(2) I–775. Immigration and Naturalization Service.
(3) Required as needed.
(4) Businesses or other for profit. The I–775 Form is used to obtain data from the applicant for a Canadian Border Crossing Card. The data is used by the Immigration and Naturalization Service (INS) to determine eligibility of applicant. Any alien may apply for a card if it is believed that the possession of such card will facilitate entry into the United States.
(5) 5,000 annual respondents at 0.03 hours per response.
(6) 150 annual burden hours.
(7) Not applicable under section 3504(h).

Public comment on this item is encouraged.

May 24, 1994.

Robert B. Briggs,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 94–13160 Filed 5–27–94; 8:45 am]

BILLING CODE 4410–10–M

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 USC 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. Robert B. Briggs, on (202) 514–4319. 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 Department of Justice 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, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application for Non-resident Alien's Canadian Border Crossing Card (Form I–175).
(2) I–175. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The I–175 Form is used to obtain data from the applicant for a Canadian Border Crossing Guard. The data is used by the Immigration and Naturalization Service (INS) to determine eligibility of applicant. Any alien may apply for a card if it is believed that the possession of such cards will facilitate entry into the United States.
(5) 5,000 annual respondents at 0.03 hours per response.
(6) 150 annual burden hours.
(7) Not applicable under section 3504(h).

Public comment on this item is encouraged.

Dated: May 24, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–13161 Filed 5–27–94; 8:45 am]

BILLING CODE 4410–10–M

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 USC 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. Robert B. Briggs, on (202) 514–4319. 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, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, suite 850, WCTR, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Application for Admission to Reapply for Admission into the United States after Deportation or Removal (Form I–212).
(2) I–212. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The I–212 Form provides information to be used to determine eligibility for a waiver for an inadmissible alien who is applying for a visa to enter the United States.
(5) 7,250 annual respondents at 0.33 hours per response.
(6) 2,393 annual burden hours.
(7) Not applicable under section 3504(h).

Public comment on this item is encouraged.

Dated: May 14, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–13162 Filed 5–27–94; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Request for copies must be received in writing on or before July 15, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture (N1–95–94–1). Routine and facilitative records of regional offices.

2. Department of the Air Force (N1–AFU–94–6). Administrative records relating to civil engineer activities.

3. United States Department of Education, Office of Inspector General (N1–441–94–2). Electronic and textual records pertaining to non-federal audit reports received by the Office of Inspector General.

4. Department of Energy, Bonneville Power Administration (N1–305–94–1). Administrative records relating to compliance with the Endangered Species Act and to BPA field operations.

5. Office of the Secretary of Defense (N1–330–94–2). Pre-employment files of non-career DoD employees.

6. Department of Health and Human Services, Social Security Administration (N1–47–94–1). Reduction in retention period for Lump Sum Only Death Claims.

7. Department of Health and Human Services, Social Security Administration (N1–47–94–2). Reduction in retention period for paper copies of applications for Social Security numbers (disposition of microform version remains unchanged.)

8. Department of Health and Human Services, President's Council on Youth Fitness (N1–468–94–1). Survey Forms, 1962.

9. Department of Labor, Office of Public Affairs (N1–174–94–2). Program correspondence, news clippings files, audiovisual services control system files, and administrative working papers.

10. Department of Labor, Employment and Training Administration (N1–369–94–2). General administrative records created by the Secretary of Labor's Advisory Panel for the Dictionary of Occupational Titles.

11. Department of State, Bureau of Public Affairs (N1–59–94–15). Routine and facilitative records of the Office of the Historian.

12. Department of State, All Foreign Service Posts (N1–84–94–5). Routine property management records.

13. Railroad Retirement Board (N1–184–93–9). Employment Data Maintenance System records.

14. Department of the Treasury, Internal Revenue Service (N1–58–93–3). Records Control Schedule 112 for the Detroit Computing Center.

15. Department of the Treasury, Office of the Comptroller of the Currency (N1–101–90–1). Comprehensive records schedule.

16. Federal Aviation Administration (N1–237–91–2). Litigation action files.

17. Central Intelligence Agency (N1–263–92–2). Support materials relating to on-site arms control inspection activities.

18. Overseas Private Investment Corporation (N1–420–93–1). Comprehensive schedule providing for destruction of routine and facilitative records and preservation of policy files.

Dated: May 23, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94–13181 Filed 5–27–94; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336]

Northeast Utilities (Millstone Nuclear Power Station), (License Nos. DPR–21, DPR–65); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning the Petition filed by Dr. Donald W. DelCore, Sr., (Petitioner) on July 30, 1993. The Petition requested accelerated enforcement action against Northeast Utilities for willful violation of the employee protection provisions of 10 CFR 50.7. As grounds for this request, the Petitioner asserted that: (1) He was terminated from employment at Millstone Nuclear Power Station, in violation of 10 CFR 50.7, for engaging in protected activity, (2) his termination from the Millstone Nuclear Power Station was directed by an NU corporate

officer and therefore comprises a Severity Level I violation, and that two other corporate officers apparently provided input regarding his termination, affording a basis for enforcement of 10 CFR 50.5 for apparent deliberate misconduct, and also for referral to the Department of Justice; (3) a report released by the Office of the Inspector General indicates that there was a pattern of complaints of retaliation at Millstone, demonstrating that repeated violations occurred; (4) a significant number of NU employees have contacted him, rather than the NRC or NU, claiming that they have been retaliated against for raising safety concerns, indicating that a "chilling effect" has been created at the Millstone Nuclear Station as a result of the NRC's failure to take enforcement action.

The Petition is denied. The reasons for the denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–94–05) which is available for public inspection in the Commission's Public Document Room at 2120 L Street NW., Washington, DC 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 20th day of May 1994.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Deputy Director, Office of Enforcement.

[FR Doc. 94–13142 Filed 5–27–94; 8:45 am]

BILLING CODE 7590–01–M

Miami Valley Hospital, Dayton, OH; Order Imposing Civil Monetary Penalty

[Docket No. 030–02643, License No. 34–00341–06, EA 93–288]

I

Miami Valley Hospital (licensee) is the holder of Byproduct Material License No. 34–00341–06 issued by the Nuclear Regulatory Commission (NRC or Commission) on June 24, 1958. The license authorizes the licensee to use and possess licensed material for the purposes described in 10 CFR 35.100, 10 CFR 35.200, 10 CFR 35.300, 10 CFR 35.400, 10 CFR 35.500, 10 CFR 31.11, and in accordance with the license conditions specified therein.

II

An inspection of the licensee's activities was conducted from October 25 to October 27, 1993. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated March 1, 1994. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for Violation I.A.

The licensee responded to the Notice by letter dated March 28, 1994. In its response, the licensee admitted the violations but requested that the civil penalty assessed for Violation I.A. be mitigated.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that Violation I.A. occurred as stated and that the penalty proposed for Violation I.A. designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The licensee pay a civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether, on the basis of Violation I.A. designated in the Notice, this Order should be sustained.

Dated at Rockville, Maryland this 23rd day of May 1994.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety Safeguards and Operations Support.

APPENDIX—Evaluation and Conclusion

On March 1, 1994, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. Miami Valley Hospital (licensee) responded to the Notice on March 28, 1994. The licensee admitted the violations but requested that the civil monetary penalty proposed for Violation I.A. be mitigated. The NRC's evaluation and conclusion regarding the licensee's request follows:

Restatement of Violation I.A.

Condition 24. of License No. 34–00341–06 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in an application received on September 25, 1988.

Item 10.4 of the section of the referenced application entitled, "Safe Use of Radiopharmaceuticals," requires that the licensee follow Appendix I to Regulatory Guide 10.8, Revision 2. Item 2 of Appendix I requires individuals to wear gloves at all times while handling radioactive materials.

Contrary to the above, on September 10, 1993, an individual handled radioactive material, strontium-89, without wearing gloves.

Summary of Licensee's Request for Mitigation

The licensee admitted the violation and requested that the civil penalty be mitigated because, according to the licensee: (1) The apparent willful nature of the violation was not deliberate or capricious and the authorized user is not a deliberate violator of NRC regulations but rather acted out of conflicting needs dictated by concern for the safety of the technologist, the patient's condition, the authorized user's schedule, and the small risk of a spill; (2) the authorized user was completely candid; (3) the authorized user was fully cooperative; (4) the authorized user has an excellent record of performance with NRC license requirements and this is the first violation in which he has been involved; (5) the violation

is the isolated action of the authorized user and did not result from lack of management oversight; and (6) substantial corrective action has already been taken and documented, concerning this violation.

NRC Evaluation of Licensee's Request for Mitigation

On September 10, 1993, an authorized user physician administered 3.5 millicuries of strontium-89 to a bedridden patient at the patient's home. The physician was not wearing gloves during this palliative treatment, although he had been reminded by the Manager of Nuclear Medicine that he needed gloves for the procedure. As the physician attempted to expel air from the syringe, a small amount of strontium-89 was also expelled from the syringe, which contaminated the physician's right index finger, resulting in an overexposure. The overexposure would have been avoided had the physician worn gloves.

The NRC agrees that the nature of the violation was not deliberate (i.e., the authorized user was not a deliberate violator of NRC regulations). If that had been the case, more stringent enforcement sanctions would have been considered, including enforcement action directly against the authorized user under the Deliberate Misconduct Rule (56 FR 40664). NRC did find that the violation was willful. 10 CFR part 2, Appendix C, "Policy and Procedure for Enforcement Actions; Policy Statement" (Enforcement Policy) provides in Section IV.C. that the term "willfulness" embraces a spectrum of violations ranging from deliberate intent to violate of falsify to and including careless disregard for requirements (emphasis added). In reviewing the incident, the NRC concluded that, based on the reminder from the Manager of Nuclear Medicine and based on the licensee's contention that the physician was not ignorant of NRC license requirements, the physician either knew or should have known that he was required to use gloves during the procedure. While the physician may have believed that other factors, such as convenience or scheduling, outweighed the need to wear gloves, this does not excuse his disregard of the requirements once the issue of the gloves was specifically brought to his attention. If there was any confusion concerning the issue, the authorized user clearly should have sought a clarification, for example by contacting the RSO. Therefore, the matter of not wearing gloves constitutes a willful violation involving careless disregard as those terms are used in the Enforcement Policy. The licensee's argument that the violation is not deliberate provides no basis for mitigation of the civil penalty amount.

Regarding the licensee's characterization of the authorized user (*i.e.*, candid, cooperative, and excellent record of NRC performance), the character attributes of a person are not relevant to whether a civil penalty will be mitigated. Rather, the NRC Enforcement Policy identifies six specific factors to be considered for escalation or mitigation of a civil penalty. (See Section VI.B.2, Enforcement Policy). Furthermore, the NRC expects and requires that licensee personnel be candid and cooperative and comply with all NRC requirements.

The NRC recognizes that this was an isolated event; however, that does not change the fact that the violation occurred. The violation was willful and was appropriately categorized at Severity Level III. Had there been multiple examples of the violation, the base civil penalty would have been increased by as much as 100% based on the escalating factor in the Enforcement Policy for multiple occurrences.

Regarding the licensee's argument that the violation did not result from a lack of management oversight, the NRC acknowledges that management above the level of the authorized user was not involved in the violation. However, the NRC Enforcement Policy, Section IV.C, Footnote 7, defines a "licensee official" as including an authorized user of licensed material whether or not listed on a license. In this case, the authorized user, acting as a "licensee official", did not exercise sufficient oversight over his own actions to ensure that NRC requirements were followed.

Finally, the licensee argues that the civil penalty should be mitigated because of the actions taken to correct the violation. The NRC recognized the licensee's corrective actions and considered whether to allow mitigation for those actions in determining the amount of the civil penalty. The staff fully mitigated the base civil penalty for corrective actions for the violations in Section II, however, the staff exercised discretion as permitted in Section VII of the Enforcement Policy and did not mitigate the base civil penalty for the willful violation in Section I.A. as stated in the NRC's letter of March 1, 1994. NRC did not mitigate the civil penalty for Violation I.A. to emphasize that willful violations cannot be tolerated by either the Commission or the licensee.

NRC Conclusion

The NRC has concluded that this violation occurred as stated and that neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty was provided by the licensee. Consequently, the proposed civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 94–13143 Filed 5–27–94; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34102; File No. SR–NASD–94–22]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Effective Date of the New Rule Governing the Repricing of Open Orders

May 24, 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 May 20, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The NASD has designated this proposal as a policy relating to the administration or enforcement (i.e., the effective date) of a new rule of the Association under 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. 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 NASD is proposing a rule change to change the effective date of new Section 46 of Article III of the Rules of Fair Practice to September 15, 1994.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In SR–NASD–93–52, submitted to the SEC for approval on September 22, 1993, the NASD proposed to amend Article III of the Rules of Fair Practice to add a new section 46 to require members to adjust open orders for securities when the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest. SR–NASD–93–52 was approved by the SEC in Rel. No. 34–33440 on January 6, 1994. In Notice to Members 94–09, published in February 1994, the NASD announced the new Section 46 would be effective on May 15, 1994.

[1] The NASD amended the proposed rule change subsequent to its original filing on April 7, 1994. Amendment No. 1 revised the NASD's statement of the purpose of the proposed rule change. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, Over-the-Counter Regulation, SEC (May 20, 1994).

The NASD has become aware that some members firms rely on the SOES limit order file for the execution of eligible open orders. The SOES limit order file does not currently have an automated repricing capability to assist members in complying with new section 46. Automated repricing is a capability planned for in connection with the implementation of the Nasdaq Stock Market's's N.PROVE improvement system; however, the date for N.PROVE's availability is currently not determined. Accordingly, because some member firms currently rely on the SOES limit order file for execution of open orders, and because they and another member firms which utilize the SOES limit order file from time to time will not be able to rely on SOES limit order file for automated repricing of limit orders in order to assist them with complying with new section 46, and because such member will need to develop alternative methods for repricing open orders when new section 46 takes effect, delaying the effectiveness of new section 46 until September 15, 1994 [2] will permit such members to address their compliance issues prior to the effective date of the new rule.

The NASD believes that the proposed rule change is consistent with the provision of section 154(b)(6) of the Act,[3] which require that the rules of the NASD, among other things, remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest, in that delaying the effective date of section 46 until September 15, 1994, when the NASD anticipates it will implement an automated repricing mechanism for the SOES limit order file, will assist members in complying with the new rule.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appreciate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

[2] The NASD intends that all members will be expected to comply with new section 46 on the September 15, 1994 effective date.

[3] 15 U.S.C. 78*o*–3.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it changes the effective date of a new provision of the NASD's rules and is therefore a policy relating to the administration or enforcement (i.e. the effective date) of a new rule of the Association.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written date views, and arguments concerning the foregoing. Persons making written submission 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 request to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–94–22 and should be submitted by June 21, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegate authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13169 Filed 5–27–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20310; File No. 812–8784]

First Xerox Life Insurance Company, et al.

May 23, 1994.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: First Xerox Life Insurance Company (the "Company"), First Xerox Variable Annuity Account One (the "Variable Account") and Xerox Life Sales Company.

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge under certain variable annuity contracts from the assets of the Variable Account, or any other separate account established by the Company in the future to support materially similar variable annuity contracts.

FILING DATE: An application was filed on January 21, 1994, and amended on April 22, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing 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 June 17, 1994, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. The Company and the Variable Account, 120 Broadway, New York, NY 10271; Xerox Life Sales Company, One Tower Lane, suite 3000, Oakbrook Terrace, Illinois 60181–4644.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 942–0682, or Wendell M. Faria, Deputy Chief, at (202) 942–0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company, a stock life insurance company organized under the laws of New York, is a wholly-owned

subsidiary of Xerox Financial Services Life Insurance Company, a Missouri insurance company.

2. The Variable Account is a segregated investment account of the Company and is registered as a unit investment trust under the 1940 Act. The Variable Account was established to act as the funding entity for certain variable annuity contracts (the "Contracts") to be issued by the Company. The Variable Account is divided into sub-accounts, each of which invests solely in the shares of one of the portfolios of Van Kampen Merritt Series Trust (the "Trust") or Lord Abbett Series Fund, Inc. (the "Fund"). The Trust and the Fund are registered under the 1940 Act as open-end management investment companies.

3. The Contracts are individual flexible payment deferred variable and fixed annuity contracts. The Contracts are available in connection with retirement plans that qualify for Federal tax advantages and for plans that do not so qualify.

4. Xerox Life Sales Company, a broker-dealer registered under the Securities Exchange Act of 1934, is the distributor of the Contracts.

5. Premium taxes, or other taxes payable to a state or other government entity, are charged against Contract values. The Company currently intends to advance any premium taxes due at the time purchase payments are made and then deduct premium taxes from Contract value at the time annuity payments begin or upon surrender, but the Company reserves the right to deduct the premium taxes when incurred. Premium taxes generally range from 0% to 4%.

6. Contract owners may transfer without charge all or a part of their interest in a sub-account to another sub-account at any time prior to the date upon which annuity payments begin, provided there have been no more than 12 transfers per Contract year. If there have been more than 12 transfers in the Contract year, the Company will charge, per transfer, the lesser of $25 or 2% of the amount transferred. After the date annuity payments begin, a Contract owner may make one transfer per Contract year.

7. There is an annual $30 Contract Maintenance Charge. Applicants represent that this charge has not been set at a level greater than its cost and contains no element of profit.

8. The Contracts do not provide for a front-end sales charge to be deducted from purchase payments. Instead, a total or partial withdrawal of a Contract prior to the annuity date is subject to a Withdrawal Charge. The Withdrawal Charge is imposed on a withdrawal of Contract value attributable to a purchase payment within seven years of receipt of the purchase payment. The Withdrawal Charge is equal to 7% of the purchase payment withdrawn within the first and second years following receipt, 5% of the purchase payment withdrawn during the third, fourth and fifth years following receipt and 3% of the purchase payments withdrawn during the sixth and seventh years following receipt. An owner may, not more frequently than once annually on a non-cumulative basis, make a withdrawal each Contract year of up to ten percent of the aggregate purchase payments free from Withdrawal Charges provided the Contract value prior to the withdrawal exceeds $5,000.

9. The Company deducts an Administrative Expense Charge that is equal on an annual basis to .15% of the average daily net asset value of the Variable Account. This charge is designed to cover the shortfall in revenues from the Contract Maintenance Charge to reimburse the Company for expenses incurred in the maintenance of the Contracts and the Variable Account. Should this charge prove insufficient, the Company will not increase this charge and will incur the loss. The Company does not intend to profit from this charge. The Company represents that it will monitor the proceeds of the Administrative Expense Charge to ensure that the proceeds do not exceed expenses. Applicants rely on Rule 26a-1 with respect to the deduction of the Contract Maintenance Charge and the Administrative Expense Charge. Applicants represent that the Administrative Expense Charge will be reduced in the future to the extent that the amount of this charge is in excess of that necessary to reimburse the Company for its administrative expenses.

10. The Company deducts a Mortality and Expense Risk Charge that is equal, on an annual basis, to 1.25% of the average daily net asset value of the Variable Account: approximately .90% for mortality risks and .35% for expense risks.

The mortality risks assumed by the Company arise from its contractual obligation to make annuity payments after the Annuity Date for the life of the annuitant and to waive the Withdrawal Charge in the event of the death of the annuitant or Contract owner. The expense risk assumed by the Company is that all actual expenses involved in administering the Contracts, including Contract maintenance costs, administrative costs, mailing costs, data processing costs, legal fees, accounting fees, filing fees and the costs of other services may exceed the amount recovered from the Contract Maintenance Charge and the Administrative Expense Charge.

Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants request an order under section 6(c) exempting them from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction of the Mortality and Expense Risk Charge from the assets of the Variable Account under the Contracts. Applicants request that the order also permit the deduction of the Mortality and Expense Risk Charge from the assets of any other separate account established by the Company in the future to support variable annuity contracts offered on a basis similar in all material respects to the basis on which the Contracts are offered.

3. Applicants submit that their request for an order that applies to the Variable Account and to future separate accounts issuing contracts that are substantially similar to the Contracts is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity contract market by eliminating the need for the Company to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring the Company to repeatedly seek exemptive relief with respect to the same issues addressed in this Application.

4. Applicants represent that the Mortality and Expense Risk Charge is within the range of industry practice with respect to comparable annuity products. Applicants base this representation on an analysis of the mortality risks, taking into consideration such factors as the guaranteed annuity purchase rates, the expense risks, taking into consideration the existence of charges against separate

account assets for other than mortality and expense risks, and the estimated costs, now and in the future, for certain product features and industry practice with respect to comparable annuity products. The Company represents that it will maintain at its principal office a memorandum, available to the Commission, setting forth in detail this analysis.

5. If the Mortality and Expense Risk Charge is insufficient to cover actual costs, the loss will be borne by the Company. Conversely, if the amount deducted proves more than sufficient, the excess will be a profit to the Company. The Company expects a profit from this charge. To the extent the Withdrawal Charge is insufficient to cover the actual cost of distribution, the Company may use any of its corporate assets, including potential profit that may arise from the Mortality and Expense Risk Charge, to make up the difference. Thus, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the Withdrawal Charge. The Company represents that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and Contract owners. The basis for such conclusion will be set forth in a memorandum maintained by the Company at its principal office and available to the Commission upon request.

6. The Company represents that the Variable Account will invest only in management investment companies that undertake, in the event the company adopts a plan to finance distribution expenses under Rule 12b–1 under the 1940 Act, to have a board of directors, a majority of whom are not interested persons of the company within the meaning of Section 2(a)(19) of the 1940 Act, formulate and approve any such plan.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the Mortality and Expense Risk Charge from the assets of the Variable Account under the Contracts, or from the assets of any other separate account established by the Company in the future to support materially similar variable annuity contracts, meet the standards in section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13114 Filed 5–27–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20311; 811–4093]

McDonald Tax Exempt Money Market Fund, Inc.; Notice of Application

May 23, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: McDonald Tax Exempt Money Market fund, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on May 2, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 17, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 144 Glenn Curtiss Boulevard, Uniondale, New York 11556–0144.

FOR FURTHER INFORMATION CONTACT: Deepak Pai, Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is registered as an open-end management investment company under the Act and organized as a corporation under the laws of the State of Maryland. On August 22, 1984, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on January 4, 1985, and an initial public offering of its shares of common stock commenced on August 7, 1985.

2. Applicant's board of directors determined that it would be in the best interests of applicant's stockholders that applicant be dissolved. On June 21, 1993, the board of directors approved the terms of the liquidation. The board instructed applicant to pay any of its obligations or debts, liquidate and distribute its assets and terminate its existence. Stockholders were given the option to purchase shares of Municipal Cash Series, a tax exempt money market fund managed by Federate Advisers, or to redeem their shares. As a result, all outstanding shares of applicant as of the close of business on September 24, 1993, were liquidated at the then-current net asset value per share and the proceeds of such liquidation were paid to the record holders of such shares.

3. Distributions to all security holders in complete liquidation of their interests have been made. No brokerage commissions were incurred.

4. On September 24, 1993, 134,318,073 shares of common stock, par value $.01 per share, were outstanding at a net asset value of $1.00 per share. At such date, aggregate net assets of applicant were $134,300,777.

5. In connection with its liquidation, applicant incurred approximately $4,000 of aggregate expenses, consisting primarily of outside legal expenses, all of which were paid by McDonald & Company Securities, Inc., applicant's investment adviser.

6. As of the date of this application, applicant has no debts or liabilities and is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

7. Applicant is current with respect to all filings required under the Act, including N–SAR filings for each semi-annual period for which such filing is required.

8. Applicant intends to file all documents required to terminate its existence as a Maryland corporation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–13115 Filed 5–27–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2013]

United States International Telecommunications Advisory Committee; Radiocommunication Sector Working Party 8A; Meeting

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector, Working Party 8A, will meet on June 21, 1994, 1 pm to 4 pm at TIA—suite 800, 2001 Pennsylvania Avenue NW., Washington, DC.

ITU–R Study Group 8 is concerned with systems and networks for the mobile, radiodetermination and amateur services, including related satellite services. U.S. Working Party 8A deals with the land mobile service, excluding FPLMTS.

Mr. Eric Schimmel, of the Telecommunications Industry Association has been appointed Chairman of U.S. Working Party 8A. The meeting on June 21, will begin preparations for the international meeting scheduled for November 28–December 8, 1994 in Geneva.

Members of the General Public may attend the meeting and join in the discussions, subject to the instructions of the U.S. Chairman, Mr. Eric Schimmel. Anyone planning to attend the meeting is requested to contact Mr. Schimmel at (202) 457–7735.

Draft Agenda

1. Call to Order.
2. Approve Agenda.
3. Convener's Remarks.
4. Report of SG 8 Meeting.
5. Report of TB 8/1 New Zealand Meeting.
6. Report of fourth Trilateral "FAMOUS" Meeting.
7. Preparation for WRC–95.
8. Other ITU Reports—VGE, Other Study Groups, Other Sectors.
9. U.S. Contributions for the November/December WG 8A Meeting.
   a. Private Land Mobile Characteristics
   b. Cellular
   c. PCS
   d. New IVHS Question
10. Work Assignments.
11. Other Business.
12. Adjourn.

Dated: May 16, 1994.

Warren G. Richards,

Chairman, U.S. ITAC for ITU Radiocommunication Sector.

[FR Doc. 94–13179 Filed 5–27–94; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Vehicle-Highway Systems; Early Deployment Planning Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for information.

SUMMARY: The FHWA is announcing its procedures for implementing the Intelligent Vehicle Highway Systems Early Deployment Planning Program. This program is intended to provide assistance to State and local transportation agencies and Metropolitan Planning Organizations (MPO) for the development of a multi-year strategic deployment plan for IVHS in major metropolitan areas and on major Interstate intercity corridors. The assistance will take the form of grants which provide funding for planning studies, and development and documentation of strategic deployment plans. The goal is to fund at least 15 metropolitan areas and 5 Interstate intercity corridors each fiscal year. Candidates responding to this announcement will be considered for funding in FY 94 and FY 95.

DATES: Information regarding an area's interest in requesting Early Deployment Planning Program grants should be submitted by August 1, 1994.

ADDRESSES: Division Office in the appropriate State. See appendix A for a listing of Division office addresses.

FOR FURTHER INFORMATION CONTACT: Shelley R. Lynch, Traffic Management Systems Division, Federal Highway Administration, HTV–31, 400 7th Street, SW., Washington, DC 20590, 202–366–2184.

SUPPLEMENTARY INFORMATION: The Intelligent Vehicle-Highway Systems Act of 1991, part B of title VI of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), established and provided funding, including planning grants, for IVHS activities. See sections 6055(b) and 6058(b), Public Law 102–240, 105 Stat. 1914, 2192, 2194 (1991). Section 6055(b) provides for grants to State and local governments for feasibility and planning studies to develop and implement intelligent vehicle-highway systems. The Early Deployment Planning Program implements the planning grants section of the ISTEA. The Early Deployment Planning Program is designed to accelerate the application of IVHS technologies in metropolitan areas and along intercity corridors that have demonstrated a readiness to seriously pursue deployment of IVHS applications. Those areas that are ready to participate in the Early Deployment Planning Program will typically have the following general characteristics:

(a) An understanding of local needs,

(b) A demonstrated commitment to good transportation management,

(c) A cooperative relationship between agencies, and

(d) A general understanding of the type of IVHS user services which will address local needs.

The Early Deployment Planning Program is intended to provide assistance to these metropolitan areas and major corridors to develop a strategic deployment plan for IVHS that would:

(a) Identify and document applicable IVHS user services,

(b) Establish system performance criteria,

(c) Assess the functions and requirements of the system,

(d) Identify and evaluate potential technologies on the basis of performance, compatibility, flexibility, and cost,

(e) Assess potential funding and implementation options, including use of private sector resources, and

(f) Identify time frames for implementation.

The Early Deployment Planning Program will initially target the 75 largest metropolitan areas (listed in appendix B) and 30 of the major intercity corridors linking metropolitan areas. Areas not appearing on the list but meeting the general characteristics described earlier and those which satisfactorily respond to the information requested will also be considered for participation in the Early Deployment Planning Program. Metropolitan and corridor areas demonstrating readiness for participation which are selected for funding will be contacted for development of a grant proposal. Funds will be obligated through the State Transportation Agency, in cooperation with the MPO, by execution of the grant. Early Deployment Planning funds are available at a maximum Federal share of 80 percent with a 20 percent match from non-Federal sources. Funds for approved projects in the amount of the IVHS contribution will be added to the

State's obligational limitation. The goal is to fund at least 15 metropolitan areas and 5 Interstate intercity corridors each fiscal year. Candidates responding to this announcement will be considered for funding in FY 94 and FY 95.

Recipients of Early Deployment Planning Program grants will be evaluated and selected based on responses to the following:

A. Information Requested

States and metropolitan areas that are ready to pursue IVHS technologies for areawide or intercity corridor applications should respond to this announcement by notifying their local FHWA division office. The expressions of interest should include the following information:

1. A general explanation of the local transportation needs. This may include a description of (a) the broad based transportation problems in the area/corridor (*i.e.*, congestion, safety, commercial traffic), and/or (b) the unique transportation needs of the area/corridor (*i.e.*, tourist centers, major employment centers, restrictive topography, or environmental issues).

2. An indication of the local agencies' commitment to good transportation management. This may include a description of: (a) Current traffic and transit management systems and their capabilities, (b) resource commitments for transportation operations, maintenance, and staffing, (c) transportation operation projects underway, planned or completed which will support traffic or transit management and/or IVHS in the area or corridor, and/or (d) an indication of the intent to actively pursue IVHS deployment after completion of the planning study.

3. Demonstration of a cooperative relationship between agencies. This may be shown by: (a) An expression of interest submitted by a lead agency with endorsements from the other agencies involved in the project, (b) a joint letter of interest from a broad range of agencies (highway, transit, tollway, city, State, MPO, etc.) in the area or corridor, and/or (c) descriptions of past or planned joint projects with other agencies.

4. A statement demonstrating a general understanding of the type of IVHS user services applicable to the area or corridor for its future transportation system (in the next ten years). Areas or corridors are encouraged to take a needs-based approach and focus on a broad range of applicable IVHS services. Interested agencies are referred to the FHWA publication "IVHS Planning and Project Deployment Process" for a suggested approach.

5. Estimated project cost and potential funding sources for the matching portion of the project cost.

The information provided in the expression of interest for items one through five will form the basis of the evaluation criteria. The information will be used by the FHWA and the Federal Transit Administration (FTA) personnel to determine the area's current state of readiness, its current capabilities, and appropriateness for participation in the IVHS Early Deployment Planning Program.

B. General Selection Procedures

Based on the expressions of interest and review of all information available, regional offices will arrange in priority order the areas that they have determined to be ready. Initial selection will be made by a national team (composed of FHWA and FTA headquarters and field personnel) based on available funds. When initial selections are made, selected parties will be asked to prepare a more detailed proposal, which will form the basis for the commitment of funding through execution of a grant. Approved planning grants will include a requirement to produce a report which may be given wide distribution in order to assist others who are interested in deployment of IVHS services. Implementation of recommendations from the report will be monitored and evaluated. If a selected area chooses to advertise for consultant services to develop their strategic deployment plan, they are encouraged to consider Small and Disadvantaged Business Enterprise (SBE/DBE) firms, and Historically Black Colleges and Universities (HBCU).

Assistance Provided By FHWA

Technical assistance is available from the FHWA and other sources regardless of the status of an individual metropolitan area or corridor relative to IVHS deployment. Even though an individual metropolitan area or corridor may not be ready for funding in FY 94 or FY 95, technical assistance can be provided as needed to prepare the area for future participation in the Early Deployment Planning Program. The local division offices will be able to identify specific areas where technical assistance is available.

Appendix A—List Of FHWA Division Office Addresses

Alabama (HDA–AL)

Mr. Joe D. Wilkerson, Administrator, 500 Eastern Blvd., suite 200, Montgomery, AL 36117–2018

Alaska (HDA–AK)

Mr. Robert E. Ruby, Administrator, 709 W. Ninth Street, room 443, Juneau, AK 99802–1648

Arizona (HDA–AZ)

Mr. Edward A. Wueste, Administrator, 234 N. Central Ave., suite 330, Phoenix, AZ 85004

Arkansas (HDA–AR)

Mr. William D. Richardson, Administrator, Federal Office Bldg., room 3128, 700 West Capitol Avenue, Little Rock, AR 72201

California (HDA–CA) Mr. Pete Markle, Assistant Administrator, Federal Building, 2nd floor, 801 I Street, Sacramento, CA 95814

Colorado (HDA–CO)

Mr. George H. Osborne, Administrator, 555 Zang Street, room 250, Lakewood, CO 80228

Connecticut (HDA–CT)

Mr. Dwight Horne, Administrator, 450 Main Street, room 635, Hartford, CT 06103

Delaware (HDA–DE)

Mr. John J. Gilbert, Administrator, 300 South New Street, room 2101, Dover, DE 19901–6726

District of Columbia (HDA–DC)

Mr. Arthur J. Hill, Administrator, Union Center Plaza, suite 750, 820 First Street, NE., Washington, D.C. 20002

Florida (HDA–FL)

Mr. Jennings R. Skinner, Administrator, 227 N. Bronough St., room 2015, Tallahassee, FL 32301

Georgia (HDA–GA)

Mr. Larry Dreihaup, Administrator, 1720 Peachtree Road NW., suite 300, Atlanta, GA 30367

Hawaii (HDA–HI)

Mr. William R. Lake, Jr., Administrator, Prince Jonah Kuhio Kalanianaole Federal Building, 300 Ala Moana Blvd., room 3202, Honolulu, HI 96850

Idaho (HDA–ID)

Mr. Jack T. Coe, Administrator, 3050 Lakeharbor Lane, suite 126, Boise, ID 83703

Illinois (HDA–IL)

Mr. Lyle P. Renz, Administrator, 3250 Executive Park Drive, Springfield, IL 62705

Indiana (HDA–IN)

Mr. Arthur A. Fendrick, Administrator, 575 N. Pennsylvania Street, room 254, Indianapolis, IN 46204

Iowa (HDA–IA)

Mr. Hubert A. Willard, Administrator, 105 Sixth Street, Ames, IA 50010

Kansas (HDA–KS)

Mr. Robert J. Deatrick, Administrator, 3300 South Topeka Boulevard, suite 1, Topeka, KS 66611–2237

Kentucky (HDA–KY)

Mr. Paul E. Toussaint, Administrator, John C. Watts Federal Building and U.S. Courthouse, 330 W. Broadway, Frankfort, KY 40602

Louisiana (HDA–LA)

Mr. William A. Sussman, Administrator, Federal Building, room 255, 750 Florida Street, Baton Rouge, LA 70801

Maine (HDA–ME)

Mr. Paul Lariviere, Administrator, Edmund S. Muskie Federal Building, 40 Western Avenue, room 614, Augusta, ME 04330

Maryland (HDA–MD)

Mr. A. Porter Barrows, Administrator, The Rotunda, suite 220, 711 West 40th Street, Baltimore, MD 21211

Massachusetts (HDA–MA)

Mr. Donald E. Hammer, Administrator, 55 Broadway—10th floor, Cambridge, MA 02142

Michigan (HDA–MI)

Mr. A George Ostensen, Administrator, Federal Building, room 211, 315 West Allegan Street, Lansing, MI 48933

Minnesota (HDA–MN)

Mr. Charles E. Foslien, Administrator, Metro Square Bldg., suite 490, Seventh & Robert Streets, St. Paul, MN 55101

Mississippi (HDA–MS)

Mr. John F. Sullivan, Jr., Administrator, 666 North Street, suite 105, Jackson, MS 39202–3199

Missouri (HDA–MO)

Mr. Gerald J. Reihsen, Administrator, 209 Adams Street, Jefferson City, MO 65101

Montana (HDA–MT)

Mr. Henry D. Honeywell, Administrator, Federal Office Building, 301 S. Park, Drawer 10056, Helena, MT 59626–0056

Nebraska (HDA–NE)

Mr. Charles A. Culp, Administrator, Federal Building, room 220, 100 Centennial Mall North, Lincoln, NE 68508–3851

Nevada (HDA–NV)

Mr. Frederick G. Wright, Jr., Administrator, 1535 Hot Springs Rd., suite 100, Carson City, NV 89701–0602

New Hampshire (HDA–NH)

Mr. Gerald L. Eller, Administrator, Federal Building, room 204, 279 Pleasant Street, Concord, NH 03301

New Jersey (HDA–NJ)

Mr. Charles J. Nemmers, Administrator, Suburban Square Building, 25 Scotch Road, 2nd floor, Trenton, NJ 08628–2595

New Mexico (HDA–NM)

Mr. Reuben S. Thomas, 117 U. S. Courthouse, S. Federal Place, Santa Fe, NM 87501

New York (HDA–NY)

Mr. Harold J. Brown, Administrator, Leo W. O'Brien Federal Building, 9th floor, Clinton Avenue & North Pearl St., Albany, NY 12207

North Carolina (HDA–NC)

Mr. Nicholas L. Graf, Administrator, 310 New Bern Avenue, suite 410, Raleigh, NC 27611

North Dakota (HDA–ND)

Mr. George A. Ensen, Administrator, 1471 Interstate Loop, Bismarck, ND 58501–0567

Ohio (HDA–OH)

Mr. Fred J. Hempel, Administrator, 200 North High Street, room 328, Columbus, OH 43215

Oklahoma (HDA–OK)

Mr. Gary E. Larsen, Federal Office Bldg., room 454, 200 NW. Fifth Street, Oklahoma City, OK 73102

Oregon (HDA–OR)

Mr. Robert G. Clour, Administrator, The Equitable Center, Ste. 100, 530 Center Street, NE., Salem, OR 97301

Pennsylvania (HDA–PA)

Mr. Manuel A. Marks, Administrator, 228 Walnut Street, Harrisburg, PA 17108

Puerto Rico (HDA–PR)

Mr. Juan O. Cruz, Administrator, Frederico Degetau Federal Building and U.S. Courthouse, Carlos Chardon Street, room 329, Hato Rey, PR 00918

Rhode Island (HDA–RI)

Mr. Gordon G. Hoxie, Administrator, 380 Westminster Mall, 5th floor, Providence, RI 02903

South Carolina (HDA–SC)

Mr. Robert J. Probst, Administrator, Strom Thurmond Federal Building, 1835 Assembly Street, suite 758, Columbia, SC 29201

South Dakota (HDA–SD)

Mr. Donald F. Kamnikar, Administrator, Federal Building, room 337, 225 South Pierre Street, P.O. Box 700, Pierre, SD 57501

Tennessee (HDA–TN)

Mr. Dennis C. Cook, Administrator, 249 Cumberland Bend Drive, Nashville, TN 37228

Texas (HDA–TX)

Mr. Frank M. Mayer, Administrator, Federal Office Building, 300 East Eighth St., room 826, Austin, TX 78701

Utah (HDA–UT)

Mr. Donald P. Steinke, Administrator, 2520 West 4700 South, suite 9A, Salt Lake City, UT 84118

Vermont (HDA–VT)

Mr. Don West, Administrator, Federal Building, 87 State Street, Montpelier, VT 05602

Virginia (HDA–VA)

Mr. James M. Tumlin, Administrator, Federal Building, 10th floor, 400 N. 8th Street, Richmond, VA 23240

Virgin Islands (HVI–01)

Mr. Donald West, U.S. Federal Building & Courthouse, room 281, St. Thomas, VI 00801

Washington (HDA–WA)

Mr. Barry F. Morehead, Administrator, suite 501, Evergreen Plaza, 711 South Capitol Way, Olympia, WA 98501

West Virginia (HDA–WV)

Mr. Billy R. Higginbotham, Administrator, 550 Eagan Street, suite 300, Charleston, WV 253014

Wisconsin (HDA–WI)

Mr. James E. St. John, Administrator, 4502 Vernon Boulevard, Madison, WI 53705–4905

Wyoming (HDA–WY)

Mr. Frederick A. Behrens, Administrator, 1916 Evans Avenue, Cheyenne, WY 82001–3764

Appendix B—75 Largest Metropolitan Areas By Population

New York, Northern New Jersey, Long Island, NY–NJ [1]
Los Angeles, Anaheim, Riverside, CA
Chicago, Gary, Lake County, IL–IN–WI
San Francisco, Oakland, San Jose, CA [1]
Philadelphia, Wilmington, Trenton, PA–NJ [1]
Detroit, Ann Arbor, MI [1]
Boston, Lawrence, Salem, MA-NH [1]
Washington, DC [1]
Dallas, Fort Worth, TX [1]
Houston, Galveston, Brazoria, TX
Miami, Fort Lauderdale, FL
Atlanta, GA [1]
Cleveland, Akron, Lorain, OH [1]
Seattle, Tacoma, WA
San Diego, CA
Minneapolis, St. Paul, MN–WI
St. Louis, MO–IL [1]
Baltimore, MD
Pittsburgh, Beaver Valley, PA [1]
Phoenix, AZ [1]
Tampa, St. Petersburg, Clearwater, FL [1]
Denver, Boulder, CO [1]
Cincinnati, Hamilton, OH–KY–IN
Milwaukee, Racine, WI
Kansas City MO–KS [1]
Sacramento, CA [1]
Portland, Vancouver, OR–WA [1]
Norfolk, Virginia Beach, Newport News, VA [1]
Columbus, OH
San Antonio, TX
Indianapolis, IN [1]
New Orleans, LA [1]
Buffalo, Niagara Falls, NY [1]
Charlotte, Gastonia, Rock Hill, NC [1]
Providence, Pawtucket, Fall River, RI [1]
Hartford, New Britain, Middletown, CT [1]
Orlando, FL
Salt Lake City, Odgon, UT [1]
Rochester, NY [1]
Nashville, TN [1]
Memphis, TN
Oklahoma City, OK

[1] Metropolitan areas that have received or been identified for IVHS Early Deployment Planning funding through prior announcements. (Secs. 6055(b) and 6058(b), Pub. L. 102–240, 105 Stat. 1914, 2192, 2194; 23 U.S.C. 315; 49 CFR 1.48)

Louisville, KY–IN [1]
Dayton, Springfield, OH
Greensboro, Winston-Salem, High Point, NC [1]
Birmingham, AL [1]
Jacksonville, FL
Albany, Schenectady, Troy, NY
Richmond, Petersburg, VA [1]
West Palm Beach, Boca Raton, Delray, FL
Honolulu, HI [1]
Austin, TX [1]
Las Vegas, NV [1]
Raleigh-Durham, NC [1]
Scranton, Wilkes-Barre, PA
Tulsa, OK
Grand Rapids, MI [1]
Allentown, Bethlehem, Easton, PA–NJ
Fresno, CA
Tucson, AZ [1]
Syracuse, NY
Greenville, Spartanburg, SC [1]
Omaha, NE–IA [1]
Toledo, OH
Knoxville, TN
El Paso, TX
Harrisburg, Lebanon, Carlisle, PA
Bakersfield, CA
New Haven, Meriden, CT
Springfield, MA
Baton Rouge, LA
Little Rock, North Little Rock, AR
Charleston, SC [1]
Youngstown, Warren, OH–PA
Wichita, KS

(Secs. 6055(b) and 6058(b), Pub. L. 102–240, 105 Stat. 1914, 2192, 2194; 23 U.S.C. 315; 39 CFR 1.48).

Issued on: May 24, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–13167 Filed 5–27–94; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

[Docket No. 94–45; Notice 1]

Receipt of Petition for Determination that Nonconforming 1991 and 1992 BMW 525i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1991 and 1992 BMW 525i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that 1991 and 1992 BMW 525i that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) each is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) each is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is June 30, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland ("J.K.") (Registered Importer R–90–006) has petitioned NHTSA to determine whether 1991 and 1992 BMW 525i passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are the 1991 and 1992 BMW 525i that were manufactured for importation into, and sale in the United States, and certified by their manufacturer, Bayerische Motoren-Werke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it carefully compared the non-U.S.-certified 1991 and 1992 BMW 525i to their U.S. certified counterparts, and found those vehicles to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that the 1991 and 1992 model 525i, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1991 and 1992 model 525i are identical to the certified 1991 and 1992 model 525i with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 116 Brake Fluid, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, 301 Fuel System Integrity, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicles are capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays

(a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp;

(b) Recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment

(a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers;

(b) Installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers;

(c) Installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims

Installation of a tire information placard.

Standard No. 111 Rearview Mirrors

Replacement of the passenger side rearview mirror, which is convex but lacks the required warning statement.

Standard No. 114 Theft Protection

Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 Vehicle Identification Number

Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power-Operated Window Systems

Installation of a relay in the power window system so that the window transport is inoperative when the ignition is turned off.

Standard No. 208 Occupant Crash Protection

(a) Installation of a seat belt warning buzzer, wired to the driver's seat belt latch;

(b) Installation of a factory-supplied knee bolster and pad to augment the vehicles' passive restraint system. The petitioner states that the air bags supplied on the non-U.S. certified 1991 and 1992 model 525i have identical part numbers to those found on their U.S. certified counterparts.

Standard No. 214 Side Door Strength

Installation of reinforcing beams.

Additionally, the petitioner states that the bumpers on the 1991 and 1992 model 525i must be reinforced to comply with the Bumper Standard found in 49 CFR part 581. The petitioner further noted that the bumper rub strips on these vehicles must be replaced and U.S.-model marker lights that are mounted in those strips must be added.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 23, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–13131 Filed 5–27–94; 8:45 am]

BILLING CODE 4910–59–M

Aviation Proceedings; Agreements Filed During the Week Ended May 20, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49567.

Date Filed: May 19, 1994.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Mail Vote 685, Fares from Botswana & Zimbabwe, r-1—010L r-2—010m.

Proposed Effective Date: June 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–13140 Filed 5–27–94; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 20, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49561.

Date Filed: May 17, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 14, 1994.

Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity to provide foreign air transportation of persons, property, and mail between the coterminal points New York, Miami, and Dallas/Ft. Worth and the coterminal points Milan and Rome, Italy.

Docket Number: 49565.

Date Filed: May 18, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 15, 1994.

Description: Application of Northwest Airlines, Inc. pursuant to section 401 of the Act, and subpart Q of the Act, applies for a certificate of public convenience and necessity to provide scheduled air transportation of persons, property and mail between Detroit, Michigan and London (Gatwick), England.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–13141 Filed 5–27–94; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1993 Rev., Supp. No. 14]

Aegis Security Insurance Co.; Surety Companies Acceptable on Federal Bonds

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1993 Revision, on page 35779 to reflect this addition:

AEGIS SECURITY INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, Pennsylvania, 17105. PHONE: (717) 657–9671. UNDERWRITING LIMITATION [b]/: $894,000. SURETY LICENSES [c]/: AL, AZ, AR, CA, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, Incorporated in: Pennsylvania.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31

CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6850.

Dated: May 11, 1994.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 94–13171 Filed 5–27–94; 8:45 am]

BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 103
Tuesday, May 31, 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).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

DATE: Week of May 31, 1994.

PLACE: Room 230, Colonnade Building, 1244 Speer Blvd., Denver, CO.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED

Wednesday, June 1, 1994

1. 10:00 a.m., the Commission will hear oral argument on the following in open session:

Energy West Mining Co., Docket No. WEST 92–819–R. (Issues include whether the judge erred in granting summary decision and in concluding that the operator violated a condition in a modification order.)

Immediately following oral argument, the Commission will consider and act upon this matter. This meeting will be closed pursuant to 5 U.S.C. § 552b(c)(10).

2. 2:00 p.m., the Commission will hear oral argument on the following in open session:

Cyprus Plateau Mining Corp. Docket Nos. WEST 92–370–R, & WEST 92–485(A) (Issues include whether the judge erred in concluding that the operator violated 30 C.F.R. § 75.1725(a), and that the violation was caused by the operator's unwarrantable failure.)

Immediately following oral argument, the Commission will consider and act upon this matter. This meeting will be closed pursuant to 5 U.S.C. § 552b(c)(10).

Thursday, June 2, 1994

1. 10:00 a.m., the Commission will hear oral argument on the following in open session:

Cyprus Plateau Mining Corp., Docket Nos. WEST 92–371–R & WEST 92–485(B) (Issues include whether the judge erred in finding that the operator's violation of 30 C.F.R. § 75.220(a)(1) was not significant and substantial and was not caused by the operator's unwarrantable failure.)

Immediately following oral argument, the Commission will consider and act upon this matter. This meeting will be closed pursuant to 5 U.S.C. § 552b(c)(10).

2. 2:00 p.m., the Commission will hear oral argument on the following in open session:

Basin Resources, Inc. & Secretary v. Earl White, employed by Basin Resources, Docket Nos. WEST 92–340, etc. (Issues include whether the judge erred in finding that the operator committed two violations of its ventilation plan and 30 C.F.R. § 75.316, and whether such violations were significant and substantial and caused by the operator's unwarrantable failure, and whether Earl White is liable under 30 U.S.C. § 820(c).)

Immediately following oral argument, the Commission will consider and act upon this matter. This meeting will be closed pursuant to 5 U.S.C. § 552b(c)(10).

Any person wishing to attend any of these oral arguments who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Dated: May 25, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–13333 Filed 5–26–94; 3:33 pm]

BILLING CODE 6735–01–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATES: 10:00 a.m., Tuesday, June 7, 1994.

PLACE: Hearing Room A, Interstate Commerce Commission,12th and Constitution Avenue, NW., Washington, D. C. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 27590 (Sub-No. 2), *TTX Company et al.—Application for Approval of the Pooling of Car Service with Respect to Flat Cars.*

Finance Docket No. 32404, *Central Michigan Railway Company—Trackage Rights Exemption—Detroit and Mackinac Railway Company.*

Finance Docket No. 30965 (Sub-No. 4), *Delaware and Hudson Company—Lease and Trackage Rights—Springfield Terminal Railway Company.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Public Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94–13281 Filed 5–26–94; 1:11 pm]

BILLING CODE 7035–01–P

Corrections

Federal Register
Vol. 59, No. 103
Tuesday, May 31, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Medicaid Program; Limitations on Aggregate Payments to Disproportionate Share Hospitals: Federal Fiscal Year 1994

Correction

In notice document 94-10417 beginning on page 22674 in the issue of Monday, May 2, 1994, make the following correction:

On page 22676, in the table, under the state entry for MI, in section D, "817,700" should read "617,700".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Public Health Service

Final Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Entity Guidelines

Correction

In notice document 94-11643 beginning on page 25110 in the issue of Friday, May 13, 1994, make the following corrections:

(1) On page 25111, in the second column, under the heading *Entity Participation*, in the second paragraph, in the last line "549-4992" should read "594-4992".

(2) On page 25112, in the second column:

(a) In the first line "OHS" should read "PHS".

(b) In the second full paragraph, in the third line "venter" should read "vendor".

BILLING CODE 1505-01-D

federal register

Tuesday
May 31, 1994

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 795, 870, et al.
Abandoned Mine Land Reclamation Fund Reauthorization Implementation; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 795, 870, 872, 873, 874, 875, 876, and 886

RIN 1029–AB49

Abandoned Mine Land Reclamation Fund Reauthorization Implementation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior is issuing final rules to amend its abandoned mine land regulations, 30 CFR Subchapter R implementing amendments made to Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, by the Omnibus Budget Reconciliation Act of 1990 (November 5, 1990) (which included the Abandoned Mine Reclamation Act of 1990, as amended), and by the Energy Policy Act of 1992 (October 24, 1992).

EFFECTIVE DATE: June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–2949.

SUPPLEMENTARY INFORMATION:

I. Background
II. Organization
III. Final Rules and Disposition of Comments
IV. Procedural Matters

I. Background

A. Summary of the Abandoned Mine Land Program—Public Law 95–87

The Abandoned Mine Land (AML) Reclamation Program was established by SMCRA, Public Law 95–87, 30 U.S.C. 1201 *et seq.*, in response to concern over extensive environmental damage caused by past coal mining activities. In effect, the Abandoned Mine Reclamation Fund (Fund) and the program it supports is the coal industry's equivalent to the "Superfund" administered by the Environmental Protection Agency to address hazardous waste discharges.

As originally enacted, only areas abandoned prior to the date of enactment of SMCRA, where there is no continuing reclamation responsibility by any person under State or Federal law, were eligible for reclamation under Title IV. Funding of reclamation projects is subject to a priority schedule. For example, "priority 1" projects concern those that involve the protection of public health, safety, general welfare and property from extreme danger of the adverse effects of coal mining practices. "Priority 3" projects, on the other hand, concern environmental problems associated with past coal mining practices that do not necessarily constitute a public health or safety threat.

The Fund, administered by the Secretary of the Interior through OSM, is financed by a reclamation fee assessed on every ton of mined coal at the rate of 35 cents per ton of surface mined coal, 15 cents per ton of underground mined coal and 10 cents per ton for lignite. Expenditures from the Fund are subject to appropriation by Congress. The authority to collect the reclamation fee was due to expire on August 3, 1992, 15 years after the date of enactment of SMCRA.

The Fund is divided into the State/Tribal and Federal shares with each State or Indian tribe under a federally approved reclamation program (generally referred to as "program" or "primacy" States) entitled to 50 percent of the reclamation fees collected from coal operations within the State or Indian lands. Annually, these States/Indian tribes receive reclamation project construction grants and administrative grants from their share of the Fund. States are also authorized to use up to $3 million of their State share funds to establish State coal mine subsidence insurance programs, and deposit ten percent of their annual grants into special interest-bearing State trust accounts for use after August 3, 1992, to carry out reclamation activities.

The Federal share of the Fund is allocated among a number of Federal programs such as emergency projects (involving sudden and life-threatening situations which demand immediate attention), high-priority reclamation projects in States and Indian tribes without federally approved reclamation programs (referred to as "nonprogram" States), the Rural Abandoned Mine Program (RAMP) administered by the Secretary of Agriculture through the Soil Conservation Service (SCS), and the Small Operators Assistance Program (SOAP) which provides financial assistance to coal operators who produce less than 100,000 tons per year to help defray certain costs associated with the surface coal mining permitting process. Remaining funds are distributed to program States under an allocation formula. At present, 23 States and three Indian tribes have OSM-approved abandoned mine reclamation programs.

Noncoal abandoned mine reclamation projects can be undertaken in only two instances. Program States and Indian tribes can utilize State or Tribal share monies to reclaim an abandoned noncoal mine site if the request is made by the State governor or Tribal head and the project represents a public health and safety hazard. Moreover, once a program State or Indian tribe certifies it has completed the reclamation of all eligible abandoned coal mine projects, it can then use the full amount of its State or Tribal share for abandoned noncoal mine land reclamation projects.

B. AML Regulations

On October 25, 1978, OSM published final regulations implementing an abandoned mine land reclamation program incorporating the provisions of Title IV of the Act. The regulations establish procedures and requirements for the preparation and implementation of State and Indian reclamation programs, consisting of reclamation plans, submission of annual projects, and applications for annual grants. Additional parts of this subchapter include provisions for Federal, State, and Indian Abandoned Mine Reclamation Funds, general reclamation objectives, rights-of-entry, liens, emergency reclamation acquisitions, disposition of lands and waters, reclamation on private lands, and Indian reclamation programs.

Regulations relating to the amount and collection of fees were promulgated in 30 CFR part 837 on December 31, 1977 (42 FR 62713). This part has since been redesignated as part 870.

On June 30, 1982, OSM published revisions to its abandoned mine land regulations in response to the Administration's request for regulatory review. These revised rules concerned the establishment and administration of the Abandoned Mine Land Reclamation Program by the States, Indian tribes, and Federal Government, as required by SMCRA. For more information regarding the exact nature of these revisions refer to 47 FR 28574–28604 (June 30, 1982).

C. Accomplishments of the Abandoned Mine Land Reclamation Program

AML Fee Collections

From the beginning of the program through the Fiscal Year 1992, reclamation fee collections into the Abandoned Mine Land Reclamation Fund amounted to approximately $3.2 billion. The Fund also received donations, user charges, and other recovered amounts such as late-payment fines.

AML Emergency Program

Since the beginning of the program, OSM has encouraged States to take over emergency project responsibility. Beginning in 1983, Arkansas and Montana assumed emergency project responsibility, followed by Illinois in 1984. During 1988–89, Kansas, Virginia, and West Virginia took over responsibility for their emergency projects, and Alabama assumed responsibility in 1990. In 1992, Ohio and Alaska assumed responsibility. In 1989, OSM established a new emergency program policy that provided Federal share funds, in addition to the formula-based allocation, to States with emergency programs. Since 1988, it has been OSM policy to stabilize the emergency portion of AML problems permanently, and then to refer any remaining work at the site to the State for consideration under its regular AML reclamation program. In 1992, OSM declared 179 new emergency projects, while States with emergency programs initiated 110.

State and Tribal AML Programs

Beginning with Texas in 1980, OSM has approved State reclamation programs so that currently all primacy States except Mississippi have approved AML programs. During 1988 the Navajo and Hopi Tribe programs were approved, and in 1989 the Crow Tribe received approval for its program. States and the Indian tribes received grants totaling $143,541,172 in 1993. Since 1981, when the States began receiving AML administrative grants to operate their programs and construction grants to complete reclamation projects, through 1993, they have received over $1.9 billion from the Fund.

Minimum Programs

The minimum-level AML program was established by Congress in 1988 to assure funding for existing high-priority projects in States where the annual State share allocation is too small for the State to administer a program and initiate reclamation. Eleven States and Indian tribes (Alaska, Arkansas, Iowa, Kansas, Maryland, Missouri, New Mexico, North Dakota, Oklahoma, Utah, and the Crow Tribe) were eligible for minimum-level program funding during 1993 and received such grants during the year. Authorized funding of the minimum-level program was up to $2,000,000 per eligible State/Indian tribe for 1993. The minimum-program States/Indian tribes received $14,669,719 of Federal share money in 1993, to bring these States to the minimum program level.

D. Abandoned Mine Reclamation Act (AMRA) of 1990

Since 1977, when the AML Fund was established, many of the scars left from past mining practices have been reclaimed. Thousands of acres have been contoured, revegetated and brought back to productive uses. Despite such accomplishments, the inventory of unreclaimed high priority public health and safety problems is still significantly high. All such problems would not have been addressed with AML Funds collected through 1992, the original expiration date for fee collection.

In light of this continuing need to address high priority coal problems, Congressman Rahall introduced a bill, H.R. 2095, in the 101st Congress to extend the AML fee and adjust the allocation of AML Funds. A detailed examination of this bill, as amended, can be found in H.R. Report 294, 101st Congress, 1st Session (October 18, 1989). H.R. 2095, as amended, was passed by the House of Representatives on October 23, 1989.

On October 16, 1990, the House again passed H.R. 2095 as part of H.R. 5835, the Omnibus Budget Reconciliation Act of 1990. In conference with the Senate, the text of H.R. 2095 was retained except for six modifications and one addition. They are as follows: First, the authority to collect reclamation fees was extended through September 30, 1995, rather than the year 2007. Second, a provision that provided for modified reclamation fees after 1992 in States which have certified the completion of all abandoned coal mine projects was dropped. Third, provisions that would have expanded the scope of the emergency program were deleted. Fourth, while the House bill limited the objectives of the Fund to the first three priorities listed in current law, the amendments maintain the current law list of project priorities. Fifth, the requirement that the Secretary promulgate environmental standards for reclamation projects was deleted. Sixth, the bill's authorization of a new abandoned minerals and mineral materials mine reclamation fund was dropped. Finally, an amendment relating to certain projects in certified States was adopted.

On November 5, 1990, the President signed into law the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, which included the Abandoned Mine Reclamation Act of 1990, as amended. Besides extending the authority to collect reclamation fees, the amendments to Title IV contain several other significant provisions as follows:

The amendments concentrate a greater amount of resources toward combating the highest priority abandoned coal mine reclamation projects. This goal is accomplished by allocating forty percent of the Federal share of funds to program States and Indian tribes until they complete all of their priority 1 and 2 abandoned coal mine reclamation projects.

The new provisions also provide additional resources to combat abandoned coal mine hazards by enabling interest to accrue to amounts in the AML Fund and by strengthening reclamation fee collection and auditing authority.

The legislation also recognizes the severe hazards to public health and safety caused by water supplies contaminated by past mining practices.

The new amendments allow States and Indian tribes to establish comprehensive acid mine drainage programs to combat the devastating effects on land, water and quality of life in areas affected by acid mine drainage.

The new provisions allow States and Indian tribes to address high priority coal sites abandoned after enactment of the 1977 Act. Sites which were abandoned prior to a State receiving primacy pursuant to Title V of SMCRA, or which remain unreclaimed due to the insolvency of a surety company, can now be addressed with Title IV funds.

The new legislation provides for a specific allocation of collected fees from which funds may be transferred annually to the Department of Agriculture to administer RAMP under Section 406 of SMCRA.

The new legislation expands the rights of States and Indian tribes which have certified the completion of all known coal problems to utilize State/Indian tribe share funds for noncoal reclamation purposes, including the protection, repair, replacement, construction, or enhancement of public facilities damaged by past mining practices or which exist in communities adversely impacted by present mining.

The new legislation also provides that mineral owners and purchasers be reported to OSM each quarter with the filing of the Form OSM–1.

Finally, the new legislation raised the annual coal production limit from 100,000 to 300,000 tons for eligibility under the Small Operator Assistance Program authorized at Section 507(c).

E. Proposed Rules

OSM published proposed rules implementing the 1990 amendments to Title IV and Title V of SMCRA and requested comments from the public. In addition, other changes were proposed

for part 795, Small Operator Assistance, based on statutory authority existing under SMCRA. 56 FR 57376–57401 (November 8, 1991). During the comment period on the proposed rules, OSM received comments through three public hearings as well as written comments from a variety of sources.

Pursuant to Executive Order 12866, every Federal agency is required within applicable statutory limits to choose regulatory goals that maximize benefits to society and to select the most effective means to achieve these goals. To this end OSM has met with and received comments and recommendations from the representatives of coal mining States/ Indian tribes.

All comments received during the comment period were considered in this rulemaking process, and all substantive comments received are addressed in the following preamble. All comments received, as well as summaries of meetings held and the record of the public hearings, are available for inspection in the OSM Administrative Record, room 660, 800 N. Capitol Street, NW., Washington, DC.

F. The Energy Policy Act of 1992

On October 24, 1992 the President signed into law the Energy Policy Act of 1992, Public Law 102–486. Included in this law were several amendments to the Abandoned Mine Reclamation Program under Title IV of SMCRA and to the Small Operator Assistance Program established pursuant to Section 507(c) of SMCRA. The legislative changes to the AML program include: an extension of the AML reclamation fee; the transfer of AML funds to the United Mine Workers of America Combined Benefit Fund; a reallocation of interest earned by the AML Fund; the deletion of the reclamation priority regarding AML funded coal research; the extension of reclamation eligibility for AML water problems created after August 3, 1977; new mine fire control procedures; and the modification of AML eligibility criteria for sites affected by remaining operations.

The Energy Policy Act of 1992, Public Law 102–486, also amended the Small Operator Assistance Program (SOAP) authorized at Section 507(c) of SMCRA. The changes to the SOAP at Section 2513 of the Energy Policy Act fall into two areas that will be covered in this rulemaking. First, enhancements have been added to the basic technical services to provide a more complete permitting package. These enhancements include: Engineering analyses and designs necessary for the determination of probable hydrologic consequences; cross-section maps related to the permitting requirements of SMCRA; collection of archaeological and historical information required by SMCRA and regulatory authorities and development of associated plans; collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the regulatory authority; and pre-blast surveys required by SMCRA. Geologic drilling for collection of samples associated with the statement of results of test borings and core samplings is also authorized by the Energy Policy Act.

Second, This rulemaking also includes another SOAP provision from the Energy Policy Act that deals with reimbursement of costs. A coal operator who has received assistance must reimburse the regulatory authority if the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

Except for provisions dealing with mine fire control procedures and the training of eligible small operators concerning the preparation of permit applications (which will be the subject of separate rulemakings), OSM has included in these final rules the provisions made by the Energy Policy Act, as outlined above for the Small Operators Assistance Program and for the Abandoned Mine Reclamation Program. Such changes are mandated by statute and do not require additional implementing provisions or conditions. Accordingly, OSM is adopting these provisions, as enacted, without interpretation or the addition of any new requirements. Notice and comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553 is not required. All amendments made by the Energy Policy Act of 1992 that are adopted by these final rules are specifically explained in more detail in Part III—Final Rules and Disposition of Comments.

II. Organization

The regulatory revisions are intended to implement the requirements of the Act consistent with the purposes stated in Section 102(h), its legislative history, and the Secretary's commitment to avoid excessive and burdensome rules. The material concerning the Abandoned Mine Land Program is organized into parts which comprise Subchapter R. The material regarding the Small Operator Assistance Program (SOAP) is found in Subchapter H. At the end of each part, comments received from interested parties are addressed. It should also be noted that the term "allocated" as used in this preamble refers to the earmarking of funds for a specific purpose. This administrative identification in OSM records of monies in the Fund for a specific purpose does not mean that such monies will be appropriated in a specific appropriation or will be available for use in the year in which they were allocated.

In response to comments from Indian tribes, OSM has inserted throughout the regulations references to Indian tribes when it uses the word "State". Section 405(k) of SMCRA specifically provides that an Indian tribe should be considered as a "State" for purposes of Title IV. OSM has also made one further adjustment for Indian tribes. Regarding the reclamation of post-SMCRA sites pursuant to Section 402(g)(4)(E) of SMCRA, the new amendments reference the date in which the Secretary approved a State program pursuant to Section 503. Indian tribes, however, do not have approved regulatory programs. To rectify this problem, OSM has used September 28, 1984, as the applicable date for Indian tribes. This date was chosen because it is the date that the permanent Federal regulatory program on Indian lands took effect.

III. Final Rules and Disposition of Comments

Part 795—Permanent Regulatory Program—Small Operator Assistance Program

General

The initial authorization for the SOAP at Section 507(c) of SMCRA provided certain technical permitting services for hydrology and overburden and geology for operators annually producing 100,000 tons or less of coal from all locations. These technical services are directly linked to the permitting requirements associated with the determination of probably hydrologic consequences (PHC) and the statement of results of test borings.

The Abandoned Mine Land Act of 1990 amended Section 507(c) by raising the annual coal production cap from 100,000 to 300,000 tons at all locations for eligibility for the technical permitting services provided under the program.

The Energy Policy Act of 1992, Public Law 102–486, further amended Section 507(c) by adding enhancements to the program's basic services in order to provide a more complete permitting package. These enhancements include:

Engineering analyses and designs necessary for the PHC; cross-section maps required by the permitting provisions of SMCRA; collection of archaeological and historical information; collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitat and other environmental values; and pre-blast surveys. Furthermore, geologic drilling for the collection of samples associated with the requirements for the statement of the results of test borings is authorized. The Energy Policy Act also reduced the operator's liability period for reimbursement of costs from up to five years or the length of the permit, whichever is shorter, as specified in OSM regulations, to 12 months starting with the date the operator is issued the permit.

Discussion

Section 795.3 Definitions

The definition of "qualified laboratory" is being amended by adding "or other services as specified at § 795.9." This will ensure that qualified laboratories provide all technical services authorized for the SOAP, i.e., the new technical services mandated by the Energy Policy Act, as well as the basic hydrologic and geologic services.

Section 795.4 Information Collection

Section 795.4 contains a list of the information collection requirements contained in part 795 and the Office of Management and Budget (OMB) clearance number. The proposed revision updates the data contained in this section by including the estimated reporting burden per respondent for complying with the information collection requirements. The revision also provides the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

No comments were received on this section which is therefore adopted as proposed.

Section 795.6 Eligibility for Assistance

In paragraph 795.6(a)(2), OSM proposed revising the production level of 100,000 tons to 300,000 tons with respect to operator eligibility under the SOAP program. This change is nondiscretionary and has been mandated by the Abandoned Mine Land Reclamation Act of 1990. OSM wishes to emphasize that past production will be used as the standard for evaluating whether an operator's probable total attributed annual production from all locations is reasonably expected to be within the 300,000 ton limit for eligibility under the SOAP. This approach will reduce the potential for fraud and abuse by eliminating large independent operators who might otherwise qualify under the reduced liability period of paragraph (a)(2).

No comments were received on this paragraph.

Regarding paragraphs 795.6(a)(2)(i) and (a)(2)(ii), OSM proposed changing the five percent to ten percent with respect to the baseline above which ownership will play a role in determining "attributed coal production." The basis for the ten percent baseline is Section 507(b)(4) and regulations for determining ownership and control, as well as permit information requirements promulgated thereunder. The change would make SOAP eligibility provisions for ownership and control consistent with all other similar requirements in the permanent program rules.

One commenter stated that the proposal to change five percent to ten percent with respect to the baseline above which ownership would play a role in determining attributed coal production is logical and necessary to have SOAP consistent with the normal permitting requirements of ownership and control.

Another commenter, however, disagreed stating that the change from five to ten percent for the purposes of attributing coal production mistakenly links the percentage of ownership to the other provisions of the Act where ownership is relevant only for permit-blocking and other enforcement purposes. The commenter noted that existing part 795 already contains self-limiting language and believes that threshold for attributed production should be set low so that assistance through the SOAP is provided to those most in need. The commenter offered that the Security and Exchange Commission (SEC) considers five percent ownership significant for reporting purposes.

OSM disagrees with the dissenting comment. SOAP provides permitting services and like all permitting requirements is authorized under Section 507 of SMCRA. Furthermore, eligibility for the SOAP is tied to eligibility for a permit at existing § 795.6(a)(3) as explained at 48 FR 2268, January 18, 1983. OSM is unaware of any significance or benefits to be gained by linking the percentage of attributed production to SEC reporting requirements and the commenter provided none. For these reasons, attributed production in the final rule will be tied to the ten percent ownership as proposed and thus be consistent with related permitting requirements.

Section 795.9 Program Services and Data Requirements

Paragraph (a) contains a general description of the basic technical services available under the SOAP and references paragraph (b). The language "and provide other services" is being added to reference the list of enhancements added to paragraph (b) by the Energy Policy Act of 1992.

Paragraph (b) lists the specific technical services authorized for the SOAP. Paragraph (b)(1) authorizes the determination of probable hydrologic consequences. The phrase "including the engineering analyses and designs necessary for the determination" is being added based on the similar provision in the Energy Policy Act.

Under § 795.9(b)(2), OSM proposed adding "Drilling and" at the beginning of § 795.9(b)(2). The objective is to clarify, consistent with Section 507(c) of the Act, that drilling where it is needed to provide the rock samples for overburden analysis is an authorized service under the program. OSM believes that to link these services is both logically and technically sound. Drilling of ground observation wells is authorized currently on a case-by-case basis. To coordinate any drilling with respect to serving needs for both rock samples and ground water monitoring for baseline data would integrate several important technical components of SOAP assistance and help to create a sounder environmental analysis. It would also have the added benefit of shortening the time frame for completion of technical studies.

OSM wishes to emphasize that drilling would be used only in situations where adequate samples cannot be obtained from other sources such as existing cores or nearby freshly exposed highwalls. Furthermore, drilling is in no way intended to be explorative in nature. Exploration activities are the responsibility of the operator and the program administrator must ensure that the information on coal depth, thickness, and reserves required under existing § 795.7 is reasonably accurate before authorizing drilling.

In the proposal, the phrase "drilling and" was inadvertently placed in the middle of the rule instead of at the beginning. The objective of the proposal as discussed in the preamble at 56 FR 53379, November 8, 1991, would authorize drilling under the SOAP.

Two comments were received on this proposal and both were supportive. One

of the commenters pointed out the editorial error discussed above and recommended that section 795.9(b)(2) be reworded, as done in this final rule, to reflect that drilling is being added as an authorized SOAP service. The other commenter noted that adding the words "Drilling and" at the beginning of this paragraph to allow for the payment of geologic drilling services is a long sought change and totally supported.

This paragraph is being adopted as proposed with the exception of the editorial changes highlighted earlier.

Paragraphs (b)(3) through (b)(6) are being added based on specific provisions contained in the Energy Policy Act.

Statutory references to SMCRA contained in the Energy Policy Act for these provisions have been changed to the corresponding permanent program regulations.

Paragraph (b)(3) authorizes cross-section maps and plans as required by 30 CFR 779.25 and 783.25 of the permanent program regulations.

Paragraph (b)(4) authorizes the collection of archaeological and historical information and related plans required by 30 CFR 779.12(b), 780.31, 783.12(b) and 784.17 of the permanent program regulations, as well as other information required by the regulatory authority.

Paragraph (b)(5) authorizes pre-blast surveys required by 30 CFR 780.13 of the permanent program regulations.

Paragraph (b)(6) authorizes the collection of site-specific resources information and production of protection and enhancement plans for fish and wildlife habitats required by 30 CFR 780.16 and 784.21 of the permanent program regulations and information and plans for any other environmental values required by the regulatory authority under SMCRA.

Section 795.12 Applicant Liability

Paragraph (a) sets forth an introduction for the liability factors. An editorial change is being made by substituting the phrase "services rendered" for the existing phrase "laboratory services performed" to be consistent with similar language associated with the Energy Policy Act codified in paragraph (a)(2) below.

Paragraph (a)(2) deals with the liability period during which the operator must reimburse the regulatory authority if the operator's production exceeds the 300,000 annual ton limit. Paragraph (a)(2) is being revised by substituting the following language from the Energy Policy Act for the current requirement which references a liability period of five years or the length of the permit, whichever is shorter: "A coal operator who has received assistance pursuant to § 795.9 shall reimburse the regulatory authority for the cost of the services rendered if * * * (2) The program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit."

One commenter stated all operators being monitored under a liability period should be held to the 300,000 ton standard for any coal produced after October 1, 1991. The commenter believed this option to be simple, logical and fair and consistent with the intent of Congress in raising the eligibility standard for new operators to 300,000 effective that date. Another commenter stressed that it made little sense to be providing SOAP services to a new company mining 300,000 tons while at the same time penalizing a smaller company for exceeding a 100,000 ton production cap.

OSM agrees with the first comment and believes a dual standard for liability as proposed, would cause confusion and disenchantment with the SOAP, contrary to the intent of Congress. The final rule deletes the phrase "exceeds coal tonnage governing SOAP eligibility in effect at the time assistance was approved" from the proposal and in its place the final rule will provide for an annual liability limit of 300,000 tons as mandated by AMRA. The 300,000 ton limit will not be retroactive. Coal production prior to October 1, 1991, must be less than 100,000 tons to avoid liability and reimbursement under the SOAP.

Section 795.12(a)(3) deals with transferred liability in the event a permit acquired with SOAP assistance is sold, transferred, or assigned to another person. OSM proposed removing this section and thus eliminating liability in cases where SOAP supported permits were sold, transferred, or assigned to others as a normal business practice. Notwithstanding this view, OSM believed there to be a potential for abuse by removing 795.12(a)(3) and specifically sought comments on this concern or on regulatory criteria that could be used to distinguish between normal business practices and those practices that could result in abuse of the SOAP.

Two comments were received. One commenter supported the proposal and stated that no significant potential for abuse is perceived. The other commenter opposed the proposal and stated that requirements such as contained in § 795.12(a)(3) are essential to ensuring that SOAP funds are not raided through the use of sham entities and further that SOAP is not mandatory and thus anyone believing transferred liability to be disruptive need not participate in the SOAP.

Because of the potential for abuse and the fact that no substantive reasons were provided to balance this concern and no regulatory criteria were offered to distinguish between normal business practices and those that could result in abuse of the SOAP, the proposal to remove § 795.12(a)(3) which deals with transferred liability in the event a permit acquired with SOAP assistance is sold, transferred, or assigned to another person, has been rejected. This paragraph is being updated to reflect the Energy Policy Act provisions by replacing the phrase "100,000 ton annual production limit during any consecutive 12-month period of the remaining term of the permit" with the new phrase "300,000 ton production limit during the 12 months immediately following the date on which the permit was originally issued."

Part 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting

General

Title IV of the Surface Mining Control and Reclamation Act of 1977 directed the Secretary of the Interior to collect per-ton reclamation fees from coal mine operators to support the reclamation and other activities listed under this Title. OSM developed a reclamation fee collection program and published rules in the **Federal Register** to assist mine operators in meeting their fee obligations, to specify management activities for fee collection, and to define a range of compliance activities that include compliance audits, debt collection, and litigation procedures.

The major components of the fee collection program are the fee collection system, the fee compliance system, and the litigation system.

Fee collection system: OSM operates and maintains the Abandoned Mine Land Fee Collection System (AMLFCS) in Denver, Colorado.

The AMLFCS is an automated system which records and accounts for: (1) Collections and deposits of reclamation fees into the Federal depository, (2) fee payments and delinquencies, and (3) identification of collections for appropriation and use by States and Indian tribes under OSM approved reclamation programs.

Fee compliance system: Duly authorized officers, employees, or representatives of the Secretary are located in the coal producing regions to ensure that fees are collected through appropriate investigations and audits.

Litigation system: The Associate Solicitor, Division of Surface Mining, in concert with the Department of Justice (Justice), is responsible for litigation associated with the collection of delinquent fees. The Division initiates enforcement action through Justice to collect delinquent fees and provides legal assistance to OSM on fee-related issues.

On December 13, 1977, OSM published final rules as part 837 (42 FR 62713) setting forth procedures for payment of reclamation fees and recordkeeping requirements. On May 15, 1978, OSM published an amendment to these rules (43 FR 20793) to establish the interest rate on late payments. These rules were later renumbered in the Code of Federal Regulations as part 870.

Discussion

Section 870.5 Definitions

OSM has amended the definitions in section 870.5 for "eligible lands and water," and "left or abandoned in either an unreclaimed or inadequately reclaimed condition," and added new definitions for "mineral owner" and "qualified hydrologic unit." The new definitions update these terms so that they are consistent with the amendments made by the Abandoned Mine Land Act of 1990, Public Law 101–508 (November 5, 1990) and the Energy Policy Act of 1992, Public Law 102–486 (October 24, 1992). Although, due to oversight, most of these definitions were not presented in the proposed rules published November 8, 1991 (56 FR 57376–57401), OSM is publishing them in the final rule. These definitions merely reflect the eligibility criteria already presented in the proposed rule. OSM therefore believes that it has received adequate comment on the eligibility criteria. In addition, the changes to the definitions reflect the mandatory changes to eligibility as set forth in the 1990 and 1992 amendments to Title IV of SMCRA. The definitions now reflect the additional eligibility for lands adversely affected by mining between August 3, 1977 and November 5, 1990; for noncoal lands after certification of the reclamation of all known coal problems; for water projects; and finally for lands affected by qualifying remaining operations.

Section 870.10 Information Collection

OSM has revised section 870.10 which contains a list of the information collection requirements contained in part 870 and the OMB clearance numbers. The revision updates the data contained in the section by including the estimated reporting burden per respondent for complying with the information collection requirements. The revision also provides the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

Section 870.12 Reclamation Fee

New section 870.12(d) has been added to specify the new termination date for the payment of reclamation fees. As originally passed by Congress in 1977, the reclamation fee obligation was for a 15-year period starting in the last quarter of 1977 and extending to September 30, 1992. Congress extended this date 3 years through the enactment of Public Law 101–508. The reclamation fee obligation was applicable to coal produced through September 30, 1995. As noted in H.R. Report No. 294, 101st Congress, 1st Session 17–18 (1989), the extension of the reclamation fee was based in large measure on the continuing need to address high priority coal problems. Though the AML program over the last 13 years has reclaimed a significant number of acres of abandoned lands, Congress found that the "inventory of unreclaimed high priority coal mine sites was still overwhelming". *Id.* at 17.

In 1992 Congress once again took up the issue of an AML fee extension as part of the Energy Policy Act of 1992. H.R. Report No. 474, accompanying H.R. 776, recommended that the AML fee be extended until 2010. Of significance to the House Committee was an OSM estimate that when the existing authority to collect the reclamation fee expires in 1995, approximately $1.6 billion worth of high priority health and safety threatening sites would remain unreclaimed. In order to finance the reclamation of these remaining sites, the Committee recommended extending the AML fee until 2010 (H.R. Rept. No. 474, 102d Cong., 2d Sess. 90 (May 5, 1992)). In conference this date was revised to September 30, 2004. The amendment to 30 CFR 870.12 would implement this new fee extension date.

One commenter stated that based on the estimated costs for reclaiming all AML sites under its jurisdiction, OSM would not complete this task under current funding levels until 2035 AD. Thus, OSM is urged to consider extending the AML fee.

OSM does not accept this comment. Extensions of the fee collection authority are a matter to be addressed by legislation and are considered to be beyond the scope of this rulemaking.

Section 870.15 Reclamation Fee Payment

OSM has amended Form OSM–1 to collect additional coal production and ownership information. Public Law 101–508 requires that additional information be reported in the quarterly report filed by operators; specific requirements include identification of the permittee, the permit number, the Mine Safety and Health Act (MSHA) number, the owner of the coal, the preparation plant, tipple, or loading point for the coal, and the purchaser of the coal.

In OSM's proposed rule the Agency sought comments regarding the detail to which this information must be collected so as to ensure that information that is to be collected is useful. Also, as a means of achieving Congress' intent of minimizing the reporting burden, OSM noted its consideration of the establishment of thresholds (percentage of coal purchased, or percent of mineral ownership) for purposes of determining who qualifies as a reportable mineral owner and reportable purchaser, with the requirement that each Form OSM–1, when the thresholds are not met, identify at least the largest mineral owner and purchaser.

Information contained in the quarterly reports, including information updates would be maintained in a computerized data base by OSM. In enacting these new reporting requirements, Congress believed that this information would be necessary for the agency to determine the identity of entities from whom to seek payment in the event of under-payment or non-payment of the reclamation fees. H.R. Report. No. 294, 101st Congress, 1st Session 26 (1989).

OSM has also made a minor editorial change to section 870.15(C) consistent with its proposed rule. This modification changes the title of the current Form OSM–1 from "Coal Production and Reclamation Fee Report" to "Coal Sales and Reclamation Fee Report." This is intended to more closely reflect the rules under section 870.15(b) which require operators to report tonnage of coal sold, used, or transferred as opposed to coal produced.

The SMCRA amendments require that mine operators report changes in mineral ownership, purchasers, tipples, preparation plants, loading points, and other information required to be reported as part of the quarterly Form

OSM–1 process. Congress stated it did not expect these new requirements to place a significant additional reporting burden on operators.

The revised Form OSM–1 incorporates the new information required by the amendments. The instructions accompanying the Form OSM–1 set forth the new data reporting requirements, including mineral owner, purchaser, tipples, loading points, etc. As part of OSM's analysis of the new amendments for this part, the Agency conducted a study of owner/purchaser profiles in large, medium, and small coal producing companies to develop an estimate of the nature and extent of the owner/purchaser information which OSM might collect (and require operators to report) as a result of the 1990 AML amendments.

OSM analyzed data from eight coal companies to determine how the amendments could impact their administrative reporting burden. The Agency gathered ownership and sales statistics for two large companies, four medium companies and two small companies in order to evaluate the potential impact of the SMCRA amendments. While the study was not based on statistical selection criteria, the data fairly represents the kind of owner/purchaser relationships that OSM would expect to encounter across the industry.

The study supports the need to establish reasonable interpretations of the terms "owner" and "purchaser" in order that the data furnished by operators to OSM is both manageable and useful. The eight companies examined represent a wide spectrum of purchaser and owner relationships. For example, during 1990, one large company in Kentucky operated its own mines, bought coal from contract miners, brokered coal representing several purchasers, and sold coal to 90 individual purchasers. Four purchasers (major public utilities) accounted for about 90 percent of its sales. The company reported 2,100,000 tons of coal sales during 1990.

In contrast, a small Colorado coal company operated a single mine. Except for one major buyer, the company sold coal on a cash basis to as many as 652 customers during a single quarter, each purchasing one ton or less. Annual sales amounted to 24,500 tons.

Another coal company located in Ohio operates eight company mines and purchases coal from seven contract miners. There are 47 permits associated with the 8 MSHA–ID's under which the company reports and pays its quarterly fees. On one permit number which OSM selected for review, there were three mineral owners registered with the regulatory authority. Similar profiles exist for other companies selected for review.

Although OSM's study was limited, the data suggests that thresholds would assure that the information collected identifies only those mineral owners and purchasers who are in a position to influence the coal operations that are reported. This would avoid a proliferation of reporting and data collection and the associated significant administrative and cost burden that would otherwise result.

On the basis of this study and other information, OSM proposed the following threshold definition of "owners" and "purchasers" for Form OSM–1.

> The name and address of any person or entity who, in a given quarter, is the owner of ( ) percent or more of the mineral estate for a given permit, and any business entity or individual who, in a given quarter, purchases ( ) percent or more of the production from a given permit shall be reported to OSM on a quarterly basis. In the event that no single mineral owner or purchaser meets the ( ) percent rule, then the largest single mineral owner and purchaser shall be reported.

OSM suggested that the threshold value of 10 percent be incorporated into the above definition, and accordingly requested comments on this or other threshold values. Without thresholds, OSM believed that data reporting and collection would proliferate without significant benefit. However, by establishing reporting limits, OSM would not only minimize its own administrative burden and that of the operator, but it would assure the usefulness of the data by identifying only those individuals and entities who, by the significance of their ownership and/or purchasing power, may influence coal mining operations.

Three commenters provided detailed comments regarding their opposition to the reporting requirements in 30 CFR 870.15, particularly the requirements relating to the submission of information on persons who own 10 percent or more of the mineral or who purchase 10 percent or more of the production. The commenters note that the current proposal would amend the regulations at 30 CFR 870.15 to require operators to report tonnage on a revised Form OSM–1. One of these commenters refers to the preamble wherein OSM states that the legislation reauthorizing the AML fee expanded the reporting requirements to include the identification of the permittee, the permit number, any operator in addition to the permittee, the owner of the coal, the preparation plant, tipple, or loading point for the coal and the purchaser of the coal. 30 U.S.C. 1232(c), 56 FR 57379, 57396.

OSM's own study, however, reveals that the reporting of all ownership and purchaser data would impose costly reporting burdens on companies with multiple operations and/or purchasers. Requiring the operator to report all ownership and purchaser information on a quarterly basis would be a wasteful and costly exercise. Thus, OSM set the threshold value at 10 percent.

The commenters agree that the results of the OSM study demonstrate the need to establish reasonable interpretations of the terms "owner" and "purchaser" in order that "the data furnished by operators to OSM is both manageable and useful." 56 FR 57380 (col. 1). They further agree that establishing limits on such reporting data would "minimize [OSM's] own reporting burden and that of the operator."

The commenters disagreed, however, with several aspects of the proposal. First, they disagree with the establishment of an arbitrary 10 percent threshold (or any numerical threshold) for reporting mineral purchases and ownership. Instead, they suggest that OSM simply require the operator to report the single largest mineral owner and purchaser. In many cases, they assert, the operator/lessee will be the single largest mineral owner, often leasing reserves from several different mineral owners prior to submitting a permit application. Requiring the identification of all lessors will only increase the administrative burden on the operator and OSM, and will duplicate the existing permit application information requirements at Section 507(b), 30 U.S.C. 1257(b).

The commenters further state that while the OSM proposal to reduce the reporting burden is a step in the right direction, there is no rational basis for establishing a minimum 10 percent threshold for reporting mineral ownership or coal purchases on Form OSM–1. In fact, the commenters assert, OSM itself provides no justification in the preamble for its suggestion that a 10 percent threshold be set. They argue that, while the ownership and control rules provide that the ownership of 10 percent of the voting stock of an entity creates a rebuttable presumption of control over the surface coal mining operation, 30 CFR 773.5(b)(5), the rules do not establish a similar presumption for 10 percent mineral owners, nor has OSM cited evidence demonstrating that such owners/purchasers are responsible for payment of the fee. Moreover, many operations lease the coal from several

different owners, and are, for all practical purposes, the owners of the coal. The commenters assert that requiring the additional listing of all coal owners who lease to any company will only increase the reporting burden on operators and OSM, without providing any meaningful information on the person responsible for the fee payment.

The commenters believe that in order to meet the requirements of Section 402(c) of SMCRA, it should be sufficient for an operator/lessee, especially one that leases coal from multiple lessors and that sells to more than one purchaser, to list the single largest purchaser and mineral owner on Form OSM–1. They argue that requiring coal operators to list all mineral owners or purchasers would impose a heavy administrative burden on both the industry and the Secretary, without any corresponding benefit. In the commenters' view, identifying all of the coal purchasers or purchasers of 10 percent or more of the coal or all of mineral owners or owners of 10 percent or more would reveal no useful information and would subvert the Congressional intent that the agency collect and computerize the information required by Section 402(c) for the purpose of determining "what parties are responsible for payment of the reclamation fees, and * * * the identity of entities from whom to seek payment in the event of under or non-payment of the reclamation fees." H.R. Rep. No. 101–294, 101st Cong., 1st Session 26 (1990).

The commenters further state that identifying the mineral owners and purchasers is a costly, time-consuming task. One company that is among the nation's "top 10" coal producers, reported that it took 8 man-days to compete approximately 50 OSM–1 forms, with each form listing an average number of 3 purchasers. This substantial amount of time does not include the time it would take to list all mineral lessors, as the company/lessee has listed itself as the owner of the coal on each form.

Secondly, these commenters also raised concerns regarding OSM's revised Form OSM–1 and the agency's proposed 10 percent threshold for reportable mineral ownership or coal purchaser information. They state that the proposed rules refer to the revised Form OSM–1 and request comment on whether the agency should establish a 10 percent threshold for reportable mineral ownership or coal purchaser information. 30 CFR 870.15. Yet the agency has proceeded to implement the 10 percent threshold requirement prior to the close of the comment period. The revised Form OSM–1 currently requires operators to list "the names and addresses of any person or entity owning 10 percent or more of the mineral estate for [the] permit." Similarly, a purchaser of coal is defined as follows:

> * * * those persons or entities who purchased 10 percent or more of the production from a given permit.

See, Instructions for Completing Form OSM–1, Part 3.

The commenters questioned the agency's apparent predisposition to establish a 10 percent threshold without benefit of public comment on the issue, pursuant to the Administrative Procedure Act.

Third, a commenter stated that the 10 percent threshold for reporting mineral ownership is the same definition used in 30 CFR 773.5 in the context of ownership and control (as it pertains to permit applications). The commenter argued that, although it is conceivable that an entity who owns the coal may indeed have the authority to directly or indirectly determine the manner an applicant, operator, or other entity conducts the coal mining operations, OSM must also realize that many mineral owners do not exercise "control" of the surface mining operations.

Even more troubling to the commenter is the assertion that the definition as used on the Form OSM–1 is one for which there is no rebuttable presumption, particularly if it is the same definition that OSM uses for "owned or controlled and owns or controls."

Another commenter disagreed. This commenter stated that the establishment of thresholds for mineral owners and purchasers undercuts the collection of information that may be of significance for both Title IV purposes, and for supporting the database for ownership and control under Title V. Particularly in the case of contract mining situations, the purchaser and mineral owner information becomes of critical importance.

Typically, the commenter noted, the mineral owner information is readily available to the reporting entity, since it appears on the mine lease or other document authorizing coal removal, or is readily accessed in courthouse records. Establishment of a threshold in this case is unnecessary. Similarly, direct marketing of small amounts of coal is unheard of, and the reporting entity can readily access the information relating to where the coal was marketed or brokered.

Alternatively, the commenter said, if a tonnage or percentage of sales threshold is to be used, it should be set at a level so as to exclude *de minimis* amounts but low enough to "capture" all information that might reflect ownership or control of the disposition of the coal.

In response to the first general comment, regarding the appropriateness and practicality of the 10 percent threshold, OSM has carefully reviewed these concerns but has elected to retain the 10 percent threshold. A strict interpretation of the language of the Act might require collection of information on *all* mineral owners and purchasers. OSM, on the basis of its experience and the study conducted after this legislation was enacted, however, has determined that a lesser level of information collection is justified and is consistent with Congressional intent.

OSM believes that Congress' intent in enacting this language was to provide information relevant to the collection of ownership and control data on mining operations. For instance, it must be noted that Congress specifically required that the information be retained in a computerized database. Clearly, the best known computerized database maintained by OSM, both at the time that the AML legislation was enacted and currently, is the Applicant/Violator System (AVS). The information provided under Section 402(c) would be relevant to the identification of ownership or control links pursuant to 30 CFR 773.5. Such identified owners or controllers might, under certain circumstances, be responsible for implementing certain requirements under the Act, such as the payment of AML fees. See 30 CFR 773.5(a)(3) and 30 773.5(b)(6). See also *United States* v. *Rapoca Energy Co.*, 613 F. Supp 1161 (1985).

Application of Section 402(c) to all mineral owners and purchasers would impose an excessive administrative burden on the agency. If information on every owner or purchaser, no matter how minor their interest, were collected and maintained on AVS, AVS would be cluttered with irrelevant information that would not clearly identify actual owners or controllers of surface coal mining operations. The net effect of such extraneous information would be to hinder the effective implementation and maintenance of AVS. Accordingly, OSM believes that limiting the collection of information to owners or purchasers with interest of 10 percent or more fulfills the intent of the legislation by enabling OSM to identify the most likely owners or controllers of surface coal mining operations. In substance,

the larger percentage owners or purchasers are more likely to be the actual owners or controllers of surface coal mining operations.

On the other hand, with respect to the concern that OSM should require identification of only the single largest owner or purchaser, OSM believes that this could create a misleading picture of a surface coal mining operation. For instance, under the theory of this comment, a surface coal mining operation with a significant number of both mineral owners and purchasers would only report the single largest owner and purchaser. The difference between the largest purchaser or owner and the smallest purchaser or owner could be a *de minimis* amount. There is no useful purpose in distinguishing one small percentage owner or purchaser from another. This in no way would advance OSM's mission of identifying the true owners or controllers of the site. Further, under the theory of this comment, a site with only a few owners or purchasers would report only one of each category under this theory. Thus, OSM would not have access to information identifying potentially influential persons who can exercise control over the site.

With respect to the concern about how time-consuming it is to identify purchasers and mineral owners, OSM recognizes that this task will require some commitment on the part of the regulated community. Nevertheless, the task has been imposed by the Congress in its revision of Section 402(c). OSM has made every attempt to make this a manageable task by establishing the 10 percent threshold, which should ensure that no more than 10 owners and 10 purchasers are required for each Form OSM–1 submission. Furthermore, the commenters should remember that information on all mineral owners is already a requirement of the permit application; this information thus should be readily available for Form OSM–1 compliance.

OSM also understands the commenters' concern regarding the collection of information prior to promulgation of this rule. This rule is prospective in its application, and OSM's actions prior to promulgation were not intended to affect the decisions made in this rulemaking. However, the relevant provisions of SMCRA contained in Section 402(c) went into effect on October 1, 1991. As of that date, OSM was required to collect the information required by the Federal statute, and did so. In the absence of a reasonable threshold standard for the information collection, OSM and the AVS would have been inundated with information which would have included *de minimis* owners and purchasers. Such information would have been of limited utility for purposes of identifying parties responsible for the payment of reclamation fees and the owners and controllers of surface coal mining operations. Accordingly, OSM acted to limit the amount of information collected to assure that useful information was collected in a manageable manner for storage and use on AVS. To the extent that the commenter believes that insufficient information was collected prior to the promulgation of this rule, that issue is beyond the scope of the current rulemaking, and may be addressed in another forum.

The third issue raised by the commenters concerned the use of ownership and control concepts in AML reporting requirements. In substance, the commenters' concern appears to be that OSM has inappropriately mixed the statutory requirements of Title IV with the regulatory requirements of Title V. For instance, they note that OSM has applied the 10 percent threshold of presumed control by stockholders under 30 CFR 773.5(b) to the reporting of mineral owners and purchasers under Section 402(c) of SMCRA.

OSM disagrees with the view that ownership and control concepts are irrelevant to the implementation of Section 402(c) of SMCRA. The reporting requirements imposed by Congress in the legislation appear to track the needs of OSM's ownership and control regulation at 30 CFR 773.5(b)(6) which provides a presumption of control of surface coal mining operations for certain mineral owners. Further, the legislation contains an explicit reference to OSM's computerized database (i.e., AVS), which indicates that the focus of the amended reporting requirements of Section 402(c) is to assist the ownership and control review process.

Accordingly, the use of ownership and control concepts, such as a 10 percent threshold, are appropriate in OSM's implementation of Section 402(c) of SMCRA. Although the 10 percent threshold is not applied to mineral owners or purchasers under the current ownership and control rule, application of a 10 percent threshold to such individuals under Section 402(c) of SMCRA is consistent with Congressional intent, serves the public interest, and is within the spirit of the ownership and control rules.

OSM further recognizes that the application of the 10 percent threshold to purchasers and mineral owners may not identify the controllers of a surface coal mining operation in every case, or those otherwise responsible for the payment of AML fees in every case. Nevertheless, such a threshold for reporting is a good starting point to enable OSM to identify potential owners or controllers, and represents an achievable level of reporting and record keeping for both the agency and the regulated community.

Further, in response to the concern that the use of ownership and control concepts creates an irrebuttable presumption that the purchasers or mineral owners control surface coal mining operations, OSM observes that the disclosure of the purchaser, mineral owner, or other information pursuant to Section 402(c) would not, in and of itself, establish a presumption of ownership or control for either Title IV or Title V purposes. OSM's use of concepts from the ownership or control rule is undertaken to simplify reporting by the regulated community and data collection by OSM under section 402(c) in a manner which OSM believes is consistent with Congressional intent in revising Section 402(c) and requiring such disclosure.

Besides those comments regarding the 10 percent threshold issue, other comments were submitted on 30 CFR 870.15, raising issues of privacy regarding information collected under the revised Form OSM–1 requirements. The commenters state that requiring disclosure of owners and purchasers raises serious concerns about the potential disclosure of sensitive and confidential information about coal markets, royalty rates and utility customers. They argue that release of this information could prove extremely damaging and that there is no guarantee in the statute or the proposed rules that such information shall remain confidential. They indicate that although the information on owners and controllers of surface coal mining operations is a matter of public record, the proposed regulations would go well beyond that, to require operators to list all purchasers and coal owners whose interests exceed 10 percent of the resources produced. Thus, the commenters assert, operators should have the right to request confidentiality of such information, in order to avoid the disclosure of sensitive information about coal purchasers and markets that might be used unfairly by competitors. This, they argue, is consistent with the Freedom of Information Act (FOIA) policy against disclosure of commercial or financial information deemed privileged or confidential. 5 U.S.C. 552(b)(4). They assert that the identity of all coal purchasers from a mine is not

a matter of public record and should remain confidential.

OSM permitting regulations allow coal operators to request that certain data be withheld from public disclosure. 30 CFR 773.13(d)(3). The commenters believe that OSM should incorporate similar protection for confidential financial information in the rules governing the submission of Form OSM–1.

With regard to these comments on privacy, OSM accepts the comments in part. OSM has concluded that the comments, by themselves, do not establish a reason to believe that disclosure of this information may result in competitive harm. However, OSM recognizes commenters' concerns that they be able to request confidentiality for certain information submitted under Section 402(c) of SMCRA. In response to these concerns, OSM has revised § 870.15(b) to allow submitters to request confidentiality.

Section 870.15(b) includes a provision specifically intended to afford submitters of information under Section 402(c) with the opportunity to designate such information as confidential. Following such opportunity, if a submitter does not designate the information as confidential, OSM will treat the infornation as subject to disclosure upon request. Conversely, if a submitter in good faith designates the information as confidential, OSM will treat the information as subject to disclosure upon request. Conversely, if a submitter in good faith designates the information as confidential, OSM will notify the submitter of any request for that information unless an exception to the notification requirement applies. Such exceptions appear in the Department's FOIA regulations at 43 CFR 2.15(d)(4).

For example, under 43 CFR 2.15(d)(4)(iii) OSM would not be required to notify submitters of Section 402(c) information when the information is required to be disclosed by statute or regulation. Two sections of SMCRA, Sections 507(e) and 517(f), require public disclosure of permit applications and other information on file with regulatory authorities. 30 U.S.C. 1257(e) and 1267(f) (1988). The information required to be listed in permit applications, in part, is set forth in 30 CFR part 778, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information. Specifically, 30 CFR 778.13(d) requires permit applicants to list their owners or controllers. Under 30 CFR 773.5(b)(6), "owners" or "controllers" presumptively include persons who own or lease coal to be mined by another and who have a right to receive the coal after mining. Thus, in permit applications coal operators are required to identify coal purchasers when such persons own or control surface coal mining operations. As previously noted, these applications are required to be publicly disclosed under Sections 507(e) and 517(f) of SMCRA (30 U.S.C. 1257(e) and 1267(f)). Consequently, to the extent a submitter provides OSM with coal purchaser information that identifies owners or controllers, the exception in 43 CFR 2.15(d)(4)(iii) applies, regardless of a confidentiality designation.

In addition, Congress authorized disclosure of coal purchaser information to the extent such information is available on OSM's AVS. Section 402(c), as amended, requires the Secretary of the Interior to maintain coal production and purchaser information on a computerized database. 30 U.S.C. 1232(c), as amended by Public Law 101–508 (November 5, 1990). At the time of the 1990 amendments, Congress was aware that OSM maintained the AVS as the pertinent computerized database for including such information. In accordance with Section 402(c) as amended, OSM thus intends to place such information on the AVS.

Congress also was aware, at the time the 1990 AML amendments were enacted, that it is the function of the AVS database to disclose ownership and control information: To Federal, State, and local authorities responsible for investigating and enforcing violations of SMCRA; to the Internal Revenue Service when assisting OSM in collecting civil penalties and AML fees; to Congressional offices upon request; to public interest groups as may be required by court order; to applicants and permittees pursuant to permit determinations; and to individuals or entities in response to their requests for permit-related information about themselves and related entities. See, 52 FR 29570 (1987), amended 53 FR 22575 (1988). Thus, the statutory requirement that Section 402(c) information be placed in a computerized database that, as its function, discloses information to various parties, falls squarely within the exception to notification found in 43 CFR 2.15(d)(4)(iii). Consequently, to the extent information is available on the AVS, the exception in 43 CFR 2.15(d)(4)(iii) applies, regardless of a confidentiality designation.

The commenters are also concerned about the structure of the revised Form OSM–1. Part 3 provides that the operator list the mineral owners and purchasers of coal by permit number. For large companies operating mines under several different permit numbers, tracking the coal produced by permit number and consumer presents an impossible burden. Typically an operator delivers the coal produced from its mines to a preparation plant, where it is blended with coal produced at other mines operated by the same company and then delivered to the utility consumer. The companies do not possess the ability to report the specific amount of coal purchased by a customer from a particular permit number. The company simply reports the total tonnage produced at its various mines. While it can identify purchasers of coal, it cannot link the specific amount purchased to a particular permit number.

For these reasons, the commenters believe that Form OSM–1 should be further revised to allow the company to report the tonnage produced from its mines, without having to track that tonnage to a particular utility purchaser or broker, and that simply reporting the tonnage and identifying the largest purchaser meets the requirements of SMCRA.

OSM appreciates the commenter's concern, but disagrees with the commenter's suggested solution. Instead of only identifying one purchaser, it would be acceptable to report purchasers on a pro rata basis in situations involving the commingling of coal produced under several permits and sold to multiple purchasers. For example, if coal produced from five permitted mines was commingled and sold to three purchasers, operators would identify each of the three purchasers on the Form OSM–1 filed for each permit, according to their percentage of the total coal sold.

In response to these comments OSM has included a definition of "mineral owner" in Form OSM–1 and revised § 870.5 to include a similar definition. "Mineral owner" is defined as any person or entity owning 10 percent or more of the mineral estate for a permit. If no single mineral owner meets the 10 percent rule, then the largest single mineral owner shall be considered to be the mineral owner. If there are several persons who have successively transferred the mineral rights, OSM is requesting in Form OSM–1, information on the last owner(s) in the chain prior to the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal. If the permittee has obtained the right to mine the coal directly from the fee simple property owner(s), then those owners should be shown.

Sections 870.16 and 17 Production records and Compliance Authority

Although the regulations in § 870.16 have not been amended, OSM notes that provisions in Public Law 101–508 have clarified and ratified the Secretary's authority to conduct compliance audits of coal operators. Moreover, the provisions would require the Secretary to share information obtained through audits of coal operators with the Internal Revenue Service. In addition, the provisions in § 870.17 have been expanded and clarified, utilizing the authority in Sections 201(c) and 413(a) of SMCRA, to cover all persons involved in a coal transaction, including without limitation, permittees, operators, brokers, purchasers, and persons operating preparation plants and tipples.

Section 870.17 currently provides that fee compliance officers have the authority to examine records of the second party involved in the sale or transfer of ownership of coal by the operator. The amended section no longer refers to the terms "fee compliance officers" or "second party," and specifies that the Secretary or any duly authorized officer, employee, or representative of the Secretary would have access to relevant documents. The final language regarding duly authorized persons makes this section consistent with the language in § 870.16.

These revisions are supported by a number of provisions of SMCRA in addition to Section 402(c). Section 413(a) of SMCRA provides that the Secretary shall have the power and authority, if not granted otherwise, to engage in any work and to do all things necessary or expedient, including the promulgation of rules and regulations, to implement and administer the provisions of Title IV. Section 201(c) (1) and (2) also provides authority for these rules.

The legislative authority to conduct audits of coal production and the payment of fees, including tipples and preparation plants as well as the authority to have access to relevant documents of any other person involved in a coal transaction, including purchasers of coal whether or not the purchase is from one who originally produced the coal, a secondary seller or an ultimate end user of the coal is a means to provide reasonable assurance that coal operators are properly reporting coal produced and subsequently sold, used, or transferred. This authority is necessary for the Agency to determine the identity of entities from whom to seek payment in the event of underpayment or nonpayment of the reclamation fees. The Agency believes that the new provisions in Section 402(d)(2) of SMCRA reinforce OSM's ongoing audit activities and do not mandate any specific level of tipple or preparation plant audit. OSM auditors have always verified the AML fee payment or non-payment and the accuracy of the tonnage reported. The legislative amendments confirm OSM's interpretation of its existing authority as implemented through current regulations.

In enacting these provisions, Congress sought to provide OSM the authority to verify for accuracy and completeness the representations made in the quarterly reports. H.R. Report No. 294, 101st Congress, 1st Session 26 (1989). Moreover, through these amendments Congress provided that the Secretary report any failure to pay the full amount of the reclamation fee to the federal agency responsible for ensuring compliance with provisions of Section 4121 of the Internal Revenue Code.

Congress believed that this sharing of information would foster greater compliance under the Black Lung Disability Trust Fund.

Two commenters state that the proposed rules dramatically expand the powers of OSM to conduct audits of coal sales, transfers and use, beyond the authority contained in SMCRA. Under the proposed rules at 30 CFR 870.17, OSM would gain access not only to records of the permittee or the operator of a surface coal mining operation, but also to "* * * any person involved in a coal transaction, including without limitation * * *" brokers, purchases, persons operating preparation plants and tipples, and any recipients of royalty payments for the coal.

The commenters oppose the expanded audit requirements that allow the OSM compliance officers access, without guarantee of confidentiality, to records of mineral owners, brokers and other parties to a coal transaction. The commenters assert that matters involving royalties paid to mineral owners are matters of utmost secrecy within the industry and their potential disclosure through an audit to third parties could have substantial anti-competitive impacts.

The commenters believe that under the proposed regulation, OSM seeks to gain access to the records of mineral owners, as well as utilities and other end users of the coal, without limitation and without any showing that the information is needed to identify the person responsible for payment of the fee or the tonnage produced. In the commenters' view, such sweeping, limitless authority to conduct audits of persons whose only involvement with the permittee or operator is through a coal purchase or royalty agreement exceeds the authority conferred by Congress in Section 402(d)(2) of SMCRA that only permits the Secretary to audit the books and records of "any person who is subject to the provisions of this Title." 30 U.S.C. 1232(d)(2). Title IV of SMCRA does not apply to mineral owners, coal brokers, or end users of the product. Thus, the commenters argue, such persons are "not subject to the provisions of this Title," as that term is used therein. Section 402(a) of SMCRA limits the provisions of Title IV and the levy on coal production to "operators of coal mining operations subject to the provisions of this Act." 30 U.S.C. 1232(a). Thus, the statute only empowers the Secretary to "conduct audits of any surface coal mining and reclamation operation, including without limitation, tipples and preparation plants," but goes no further. 30 U.S.C. 1232(d)(2).

The commenters further stated that as defined by SMCRA, the term "operator" includes a person "engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth," a term that does not automatically include coal brokers, owners and particularly end users. 30 U.S.C. 1291(13). According to the commenters, OSM had offered no explanation of the reasons why the authority to audit operators is not sufficient to ensure that the Secretary has access to the documents and other records needed to determine the accuracy of AML fee reporting.

The commenters stated that OSM also has failed to explain why such a dramatic expansion of its auditing authority is needed to implement the changes in the AML program enacted by Congress. The statute clearly does not command or authorize such a rule, they asserted. OSM itself admits that the new provisions in Section 402(d)(2) "do not mandate any specific level of tipple or preparation plant audit * * * and merely confirm OSM's interpretation of its existing authority as implemented through current regulations." 56 FR at 57380 (col. 3). If anything, the commenters said, OSM's preamble explanation demonstrates that the existing regulatory scheme is adequate and sufficient to ensure that the agency has reasonable access to books and records verifying the accuracy of the tonnage reported and/or fees paid. OSM has pointed to no evidence of under collection or noncollection of AML fees that necessitates granting it the sweeping powers of audit virtually

every person connected with the coal transaction, regardless of whether they are in a position to control the operation, nor does such evidence exist.

The commenters believe that OSM's current regulations provide sufficient authority to audit the books and records of persons associated with a coal transaction most likely to be responsible for the payment of AML fees. Compliance officers possess the authority to examine the records of: (1) The second party involved in the sale or transfer of coal by the operator and (2) any party selling coal to the operator. 30 CFR 870.17. The ability to review the records of the second party enables the fee compliance officer to review the records maintained by coal tipple operators and those immediately involved in the coal sales transaction who might exercise control over the surface coal mining operation, to determine the person ultimately responsible for payment of the fee. There is no indication that OSM has ever used such authority to audit the records of the end user of the coal, nor is such authority necessary or appropriate, the commenters stated. 47 FR 28579 (June 30, 1982).

According to the commenters, OSM's reliance on its general powers in Section 413(a) and 201(c) of SMCRA to do all things necessary or expedient to implement the provisions of SMCRA, including the promulgation of rules and regulations, provides no independent basis for this rulemaking. As the Supreme Court has held, an administrative agency's powers to promulgate regulations is limited to the authority delegated by Congress. *Bowen* v. *Georgetown University Hospital,* 109 S. Ct. 468, 471 (1988). An "agency may not bootstrap itself into an area in which it has no jurisdiction." *SEC* v. *Sloan,* 436 U.S. 103, 118–119 (1978). Congress limited the agency's authority to audit the records of the operator of a "surface coal mining operation," the commenters stated, including tipple and preparation plant operators subject to the provisions of Title IV of SMCRA, a term that does not include end users of coal or minerals owners not engaged in coal mining operations. Thus, in the commenters' view, the general powers to do all things necessary an expedient to implement the provisions of SMCRA provide no basis for the current rulemaking proposal, where no authority to promulgate such rules exists in the first place.

OSM does not accept these comments. Section 402(d)(2) states, in part, that "The Secretary shall conduct such audits * * * as may be necessary to ensure full compliance with the provisions of this title." The rule, as proposed, is a proper and natural interpretation of the congressional intent to recognize a need to expand and strengthen OSM's audit powers. Experience gained by OSM auditors is evidence of the need for that authority. In Fiscal Year 1993, OSM's audit staff identified $7.3 million in unreported or under reported AML fees. In identifying those amounts, the audit staff has used the existing authority in § 870.17 to examine the records of a second party involved in a coal transaction, with little or no objection from those parties. This produced was necessary because the operators failed to meet their recordkeeping obligations. In effect, the expanded rule language in § 870.17 further defines and identifies the term "second party" in a way that will enable OSM to more effectively execute and enforce the Section 402 provisions of SMCRA in those cases where such action is necessary. For OSM to ensure compliance with the reclamation fee provisions of SMCRA, it is essential for the audit staff to have access to information of all parties involved in coal transactions. The OSM auditors frequently encounter cases involving missing or incomplete operator records, thus necessitating a determination of the correct tonnage through other means. While data from buyers is useful in these circumstances, royalty information is also an invaluable aid in validating the tonnage subject to fees.

These comments also opposed the expanded audit authority due to concerns about potential disclosure of financial information. OSM rejects these comments for two reasons: (1) As explained previously, the rule is consistent with Congressional intent; and (2) the need for expanded audit authority outweighs commenters' concerns, which can be accommodated in other ways. Where requested, all copied information shall be protected to the extent authorized or required by the Privacy Act and the Freedom of Information Act (5 U.S.C. 522, 552a). OSM would point out that § 870.16(c) already provides that if the AML fee is paid at the maximum rate, fee compliance officers shall not copy information relative to price.

Furthermore, OSM does not intend to use this expanded authority as a primary means of identifying audit targets. Instead, it generally will be used to provide the agency with additional sources of information to identify coal sales or transfers.

Part 872—Abandoned Mine Reclamation Funds

General

The United States Department of the Treasury established an account on its books in accordance with Title IV provisions of Public Law 95–87 and Treasury's rules for a fund of this type. Section 401(a) creates the authority for the account:

> There is created on the books of the Treasury of the United States a trust fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund") which shall be administered by the Secretary of the Interior.

Section 401(d) delineates availability and purpose of account monies:

> Moneys from the fund shall be available for the purposes of this Title, only when appropriated therefor, and such appropriations shall be made without fiscal year limitations.

These provisions provide the authority for a fiduciary relationship whereby Congress controls the use of fund monies for Title IV purposes by the appropriation process, and the Treasury maintains the amounts collected in a special account.

Fund revenues are derived from per-ton reclamation fees and late payment interest charges, sales of acquired lands, and donations. The fees and interest charges are paid by coal mine operations and submitted with coal sales and reclamation fee reports for payment identification and credit through a lockbox operation to OSM's Finance Center in Denver.

Collections and related transactions are controlled by Deposit Tickets (prepared by the collection officer), Debit Vouchers issued by the Federal depository for uncollected checks, and Refund Schedules for overpayment. These transactions are identified by mine operators as well as by mine and geographic location. Data from the OMB approved Form OSM–1 submitted by mine operators with their payments are coded and stored in OSM's automated system for compliance and disbursement purposes. Net collections (per deposit tickets, debit vouchers and refund schedules) are reconciled on a monthly basis with the amounts reported by mine operators on OSM's approved forms.

All accounts are closed at the end of business on September 30, the final day of the Federal fiscal year. The system is reconciled and collections are identified by State and Indian lands. Fifty percent of the fiscal year collection is reserved for use by States and Indian tribes to carry on approved reclamation

programs. The remainder is to be allocated or expended by the Secretary of the Interior through the Director, OSM, as set forth in Section 402(g) of Title IV. Any errors found in prior year allocations are corrected in current allocations. This financial information is one of the inputs for budget requests to support Title IV programs.

SMCRA, as originally enacted, did not authorize the investment of the AML Fund. In the new amendments to Title IV, however, Congress specifically provided for the investment of the AML Fund into interest-bearing accounts.

To comply with this mandate OSM has developed, with the assistance of the Department of the Treasury, a cash management plan providing for the investment of AML monies not required for current withdrawals.

Discussion

Section 872.10 Information Collection

This section deals with information collection requirements and includes the estimated reporting burden per respondent for complying with these requirements. Due to oversight this section did not appear in the proposed regulation, however, it is now being included in the interest of providing a comprehensive regulation.

Section 872.11 Abandoned Mine Reclamation Fund

OSM has added a new paragraph 6 to § 872.11(a) to note that interest and any other investment income from the AML Fund would be earned and credited to the Federal share of the Fund. Options for splitting the earned interest between the State and Federal shares were not accepted. As explained in the response to comments below, it is clear from the language of the amendments and the legislative history that Congress sought to place the interest only in the Federal share. H.R. Report No. 294, 101st Congress, 1st Session 19, 20 (1989). See amended Section 402(g) of SMCRA.

The Energy Policy Act of 1992 established a different use relating to the interest earned by the AML fund, however. Rather than using the money to supplement Federal reclamation responsibilities, Congress directed that an amount equal to the interest earned by the AML fund be available for transfer to a private pension fund. Beginning on October 1, 1995, the Secretary is directed to transfer from the AML fund to the United Mine Workers of America Combined Benefit Fund (Combined Benefit Fund) an amount goal to: (1) the interest estimated to be earned and paid to the AML fund during the fiscal year and (2) to the extent that such amount transferred is less than $70,000,000, and amount sufficient so that the total of the amounts transferred equal $70,000,000, or the amount requested by the Trustees of the Benefit Fund, whichever is less. OSM has implemented these provisions in the final rules.

Congress did limit these additional funds, however, so that the aggregate amount transferred under (2) for all fiscal years could not exceed an amount equivalent to all interest earned and paid to the fund after September 30, 1992 and before September 30, 1995. Additionally, the aggregate amount transferred for any fiscal year may not exceed the amount of expenditures which the trustees of the Combined Benefit Fund estimate may be debited against the unassigned beneficiaries premium account under Section 9704(e) of the Internal Revenue Code of 1986 for the fiscal year of the Combined Benefit Fund in which the transfer is made.

To summarize, interest earned by the AML Fund in fiscal year 1992 would be credited to the Federal-share of the AML fund and used to carry out the Federal reclamation responsibilities enumerated in Title IV. All interest earned in fiscal years 1993, 1994, and 1995, would be recorded and, beginning in fiscal year 1996, an amount equal to such interest would be used to supplement the funds transferred to the private pension fund if the AML interest amounts earned and the amount necessary to be transferred were less than $70,000,000. Assuming that the trustees of the pension fund document the need for additional funds, as set forth in Section 402(h) of SMCRA, an amount equal to all interest earned by the AML fund starting in fiscal year 1996 would be transferred by the Secretary to the pension fund. Such transfers would continue under the present statutory scheme as long as a need is documented by the trustees and the AML fund earns interest.

The United Mine Workers of America (UMWA) health and retirement funds were established in 1974 pursuant to an agreement between the UMWA and the Bituminous Coal Operator's Association (BCOA) to provide pension and health benefits to retired coal miners and their dependents. The funds have been maintained for this purpose through a series of collective bargaining agreements. The funds created in 1974 were a restructuring of the original benefit fund which was established in 1946.

The funds consist of four different plans, each of which is funded through a separate trust. The 1950 Pension Plan provides retirement benefits to miners who retired on or before December 31, 1950 and their beneficiaries. The 1950 Benefit Plan provides health benefits for retired mine workers who receive pensions under the 1950 Pension Plan and their dependents. The 1974 Pension Plan provides retirement benefits to miners who retire after December 31, 1975 and their beneficiaries. The 1974 Benefit Plan provides health benefits to miners who retire after December 31, 1975. It also provides health benefits to miners whose last employers are no longer in business or, in some cases, no longer signatory to the applicable bargaining agreement. These miners are generally referred to as "orphaned" retirees.

The Energy Policy Act of 1992 provides that the 1950 Benefit Plan and the 1974 Benefit Plan are to be merged into a new UMWA Combined Benefit Fund to provide health and death benefits for eligible retirees and their dependents. The Combined Benefit Fund is to be financed by health benefit premiums, death benefit premiums, and unassigned beneficiaries premiums imposed on assigned operators. The Combined Benefit Fund would also receive additional funding from transfers from the 1950 Pension Plan and, as discussed above, moneys from the AML Fund. The Energy Policy Act also created a 1992 Benefit Fund to provide benefits for persons not eligible under the Combined Benefit Fund. Congressional Record H–12169–70 (October 5, 1992) (Conference Committee statement on H.R. 776).

The final rules in section 872.11(a)(6) implement the statutory scheme discussed above. This is, AML interest payments earned in fiscal year 1992 would be allocated to the Federal share for use in carrying out Federal reclamation responsibilities as outlined in Title IV of SMCRA. An amount equal to interest earned in succeeding years would be available for use as specified in Section 402(h) of SMCRA regarding transfers to the Combined Benefit Fund. OSM is also revising the language of § 872.11(b)(3) regarding allocation of AML fees and interest to the Rural Abandoned Mine Program (RAMP). In 1992 RAMP would be allocated 20% of the interest earned from the AML fund. This represents RAMP's percentage allocation of the Federal share of the AML fund. Further allocations of AML interest would be made to RAMP; however, an amount equal to such interest might have to be transferred to the Combined Benefit Fund unless the trustees of the Combined Benefit Fund notify OSM pursuant to Section 402(h) of SMCRA that the estimated expenditures to be debited against the unassigned beneficiaries premium

account for the fiscal year of the Combined Benefit Fund in which the transfer is made would be less than the AML interest estimated to be earned that year.

The following comments address OSM's proposed rule for allocating interest income. As noted in the preceding discussion, however, subsequent to the publication of the proposed rule, Congress in the Energy Policy Act of 1992 designated a new scheme relating to interest. Accordingly, the comments received on the proposed rule do not reflect the current statutory scheme. Because of certain Federal/State issues raised by the comments, OSM has decided to respond to these comments.

The majority of the comments received on section 872.11(a)(6) disagree with OSM's proposed rule regarding the allocation of related income and believe that interest income should be credited to the entire Fund (i.e., Federal and State share). Commenters state that the controlling authority for allocating interest is found in Section 401(e) (e.g., credited to and form a part of the Fund) and that OSM's references to the legislature history to support its proposal is invalid.

Another commenter, however, disagreed with the other commenters and stated that it supported OSM's allocation of interest.

Although OSM is sympathetic to the arguments raised by the commenters favoring the distribution of interest payments to the State accounts, OSM believes that it is constrained by the specific statutory language of SMCRA and the legislative history of the 1990 and 1992 amendments, and therefore has decided to allocate interest income only to the Federal share accounts consistent with the rationale set forth above.

Specifically, Section 402(g)(1) of SMCRA allocates to the States/Indian tribes only 50 percent of the fees collected. There is no mention of interest payments as was done for RAMP in Section 402(g)(2). In addition, the language regarding the allocations to the different Federal accounts does not refer to percent allocations as was done for State/Indian tribe allocations, but instead refers to distributions of monies from the Fund not previously allocated (see Sections 402(g) (2), (3), (4), and (5)). OSM therefore interprets the language of SMCRA as directing that interest allocations are only to be distributed to the Federal accounts. Commenters argue that OSM should give greater credence to the language in Section 401(e) which specifies that interest income is to be "credited to, and form a part of, the fund." This language, however, is not dispositive. The interest income does become a part of the AML Fund. The States/Indian tribes, though, have no additional rights to this income money merely because the income is credited to the Fund. The AML fees result from a Federal tax and are Federal funds. Their distribution to the States must be based on specific Congressional direction and, based on OSM's review of the statute, there is no explicit directive to allocate income money to the individual State/Indian tribe accounts.

To support this decision, OSM has also reviewed the legislative history of this section, and it is clear that Congress intended that the interest income to be distributed only to the Federal accounts. For example, the following three excerpts from the House Report accompanying H.R. 2095 (the legislation which formed the core of the 1990 amendments) clearly demonstrate how Congress envisioned the distribution of interest income.

H.R. Report 294, 95th Cong., 1st Sess. 19 (1989)

* * * The remaining 50 percent of reclamation fees collected would continue to be dedicated to the Secretary's discretionary share of the Abandoned Mine Land Reclamation Fund for Federal programs. However, the legislation provides for the Secretarial share to be augmented by interest authorized to accrue to the unappropriated balance in the entire Fund * * *

H.R. Report 294, 95th Cong., 1st Sess. 20 (1989)

* * * Under the bill, after allocation of the State and tribal shares, the remaining amounts in the Fund (the Secretary's share of the reclamation fees plus all interest which would accrue to the unappropriated balances as authorized by legislation) would be available for a number of current Federal Title IV programs * * *

H.R. Report 294, 95th Cong., 1st Sess. 27 (1989)

* * * The Committee further notes that while interest would accrue to the entire unappropriated balance in the Fund, amounts earned from this interest would be dedicated solely to programs financed under the Secretarial share of the Fund * * *

Some commenters argue that OSM should not resort to this legislative history since the bill was never enacted as originally passed by the House of Representatives. OSM, however, discounts this argument. Although H.R. 2095 was not passed as a separate bill, it was included in the Omnibus Budget Reconciliation Act of 1990. Accordingly, the legislative history for H.R. 2095 is relevant. Additionally, although the bill was ultimately amended during the House-Senate conference review process (see previous discussion in preamble regarding conference amendments), these amendments did not alter the statutory provisions regarding interest. Moreover, if the commenters are correct in their assertion, logic would dictate that the House-Senate Conference Committee would have noted such concerns about the relevance of the legislative history. However, there are no such references. Accordingly, OSM believes that the legislative history to H.R. 2095 is relevant in determining Congressional intent.

Based on the specific language in SMCRA and the legislative language discussed above, OSM has decided to keep the provisions originally set forth in the proposed rule to allocate interest income only to Federal accounts.

Section 872.11(b) has been revised to incorporate the provisions of Section 402(g) of the Act as amended by the Abandoned Mine Reclamation Act of 1990. Section 872.11(b) describes the manner in which monies deposited into the Fund are allocated by the Secretary. These funds, once appropriated by Congress, would be used to accomplish the purposes of Title IV of SMCRA.

Existing paragraph (b)(1) has been removed and allocations of funds of SOAP are addressed at new paragraph (b)(5) as specified at Section 401(c)(11) of SMCRA. The distribution of AML Funds for RAMP is funded from the 20 percent to the funds remaining after allocation of collections to the States/Indian tribes in accordance with Section 402(g)(2) of the Act. The distribution of funds for RAMP is set forth in paragraph (b)(3).

In response to comments regarding the discretionary authority to withdraw granted unexpended AML funds, OSM has deleted § 872.11(b)(1)(ii) and (b)(2)(ii) and merged the language in (b)(1)(i) and (b)(2)(i) into the main text of those sections. OSM's practice is not to withdraw funds. Rather, it is to deobligate funds and make them available to the States/Indian tribes in future years. This policy is further explained in the following comment response section.

Existing paragraphs (b)(2) and (b)(3) of the regulations are revised and redesignated as paragraphs (b)(1) and (b)(2). These redesignated and revised paragraphs continue to require the allocation of 50 percent of annual fee collections to a specific State or Indian tribe. This fulfills the requirements of the Act at Section 402(g)(1). The new amendments use the grant award date as the time from which to calculate the three year period the States and Indian tribes have to use appropriated funds. Monies which remain unexpended by a

State or Indian tribe after the three year period may, under certain conditions, or withdrawn and expended by the Secretary to accomplish the purposes of Title IV.

Existing paragraph (b)(4) of the regulations has been redesignated as paragraph (b)(3) and revised to require that 10 percent of the monies collected and deposited annually, and 20 percent of the interest, if such amount is not necessary for transfer to the Combined Benefit Fund based on the provisions of 402(b) of SMCRA under the 1992 amendments, and other miscellaneous receipts to the Fund, be allocated for use by the Secretary of Agriculture for the purpose of funding RAMP. Twenty percent of funds, if withdrawn from the State's and Indian tribe's unexpended grant awards under Section 402(g)(1)(D) of the Act, would also be reprogrammed to RAMP. This requirement is consistent with Section 402(g)(2) of the Act.

A new paragraph (b)(4) has been added to the regulations to fulfill the requirement of Section 402(g)(5) of SMCRA. New paragraph (b)(4) requires that 40 percent of the monies deposited in the Fund annually after making the allocations of subparagraphs (b) (1) and (2) shall be allocated for use in making additional grants to the States and Indian tribes. To be eligible for funds allocated under this provision, a State or Indian tribe would not have certified under Section 411 (a) of SMCRA and would have priority 1 and priority 2 coal problems within the State or on Tribal lands. Under this paragraph, the distribution of funds would be based on a formula addressing the respective State's or Indian tribe's historical coal production prior to August 3, 1977, as a percentage of the nationwide total for eligible States and Indian tribes.

Also, funds to be granted under this paragraph could be reduced or curtailed under two specific conditions relating to the adequacy of funding. These two conditions are: (1) if State or Tribal share funds to be granted in a given year are sufficient to address remaining eligible priority 1 or priority 2 coal sites, no additional funds will be provided during that year; and (2) if the cost to reclaim all remaining priority 1 or priority 2 coal sites exceeds the amount of State or Tribal share funds to be granted in a year pursuant to Section 402(g)(1), but is less than the total amount of funds to be granted to the State or Indian tribe in that year under paragraphs (b) (1), (2), (3) and (4) of this section, Federal funds granted under this paragraph will be reduced to that amount required to fully fund all remaining priority 1 or priority 2 coal sites after utilizing all available State share funds. To make the above determination each year on September 30, OSM will continue to use its Abandoned Mine Land Inventory System in order to determine the dollar amount of remining (i.e., unfunded) eligible priority 1 and priority 2 coal problems.

Existing paragraph (b)(5) of the regulations has been revised to list the purposes for which the Secretary may expend funds from the remaining or unallocated balance of the AML Fund (not already allocated to the States, Indian tribes, and RAMP), in accordance with Section 402(g)(3) of the Act. These purposes would include SOAP, emergency projects, nonemergency projects in nonprogram States and on nonprogram Tribal lands, funding for eligible interim program and insolvent surety sites, and administration of Title IV of the Act.

Two million dollars is the minimum program level established at Section 402(g)(8) of the Act. A new paragraph (b)(6) is added to the regulations to specify that not less than $2,000,000 would be distributed annually to States and Indian tribes having an approved abandoned mine reclamation program and eligible lands and waters pursuant to Section 404, so long as an allocation of funds is necessary to achieve the priorities stated in paragraphs (1) and (2) of Section 403(a) (priority 1 or priority 2 coal problems). However, annual State share funds must be utilized first, and supplemental funds granted under paragraph (b)(4) and this paragraph shall not exceed the costs of reclaiming all remaining priority 1 and priority 2 sites. In response to comments, OSM notes that minimum program States, like all other AML States, will still be able to do associated priority 3 work when they do priority 1 or 2 reclamation projects. No change to the proposed rule was deemed necessary.

A new paragraph (b)(7) is also added to the regulations to specify that additional funds allocated or expended annually by the Secretary would not be deducted from funds allocated or granted annually to a State or Indian tribe pursuant to Sections 402(g)(1), (5) or (8) of SMCRA. In response to comments, OSM added the word "allocate" to ensure States and Indian tribes that there will be no reduction against allocated funds.

Finally, the new statutory provisions in Section 402(g)(3)(C) authorize the Secretary to expend monies for reclamation purposes in States or on Indian lands which do not have an approved abandoned mine land program. Section 872.11(b)(8) implements this provision.

One commenter stated that the word "expended" in § 872.11(b) (1) and (2) should be defined so that it can be used consistently. In the past words like "expended" and "obligated" have had different meanings depending on the context. "Expended" could mean obligated, paid out for goods or services, drawn down from the Federal account, etc., the commenter said.

The term "expended" is already defined in § 870.5. For purposes of these regulations "expended" means that monies have been obligated, encumbered, or committed for reclamation by contract by OSM, State, or Indian tribe for work to be accomplished or services to be rendered.

Another commenter stated that proposed regulation 872.11(b)(1)(ii) concerning the withdrawal after three years of unexpended grant funds is too subjective and could result in arbitrary OSM Field Office recommendations.

The commenter suggested that this term be defined as follows:

> * * * as a result of avoidable delays that are beyond the direct control of the state AML Program director * * *.

This language would not hold the State AML programs hostage to delays caused by other State agencies, programs, or policies over which the State program director has no direct control or authority, the commenter argued.

Another commenter stated that the phrase "granted to a State or Indian tribe that have not been expended" does not appear to include those unspent funds from a prior grant which are deobligated for grants management purposes and are again available to be regranted to that State. Such funds should not be included in the three year limitation, the commenter stated.

The regulations should clarify this. Also, all funds withdrawn from a State or Indian tribe because of the three year limitation should be returned to the Federal share of the Fund and should then be available for any other discretionary share purpose, not restricted solely to those purposes identified under § 872.11(b)(5), as proposed. If these are discretionary share funds, they should be made available for any and all discretionary purposes, the commenter asserted.

OSM has accepted the spirit of the comments. The language regarding the withdrawal of funds in § 872.11(b) (1) and (2) implements a specific statutory provision in Section 402(g)(1) of SMCRA. OSM notes, however, that the

authority to withdraw is discretionary. OSM's practice since the beginning of the AML program is not to withdraw funds from the States/Indian tribes. Rather, funds which are not expended by a State/Indian tribe during the grant period are returned to the State/Indian tribe account for future grants. This practice is within the discretionary language of the Act and still provides States/Indian tribes flexibility to manage their programs. To avoid any misunderstanding regarding this practice, OSM has decided to delete the language in proposed § 872.11(b)(1)(ii) and (b)(2)(ii) and to merge the language found in (b)(1)(i) and (b)(2)(i) into the main text in those sections.

One Indian tribe commented that there are 11 abandoned coal sites located on Tribal land. Three of these sites are priority 1. The total estimated cost to reclaim the sites is $2 million. There are 86 abandoned noncoal sites located throughout the reservation. Four sites are priority 2. The estimated cost to reclaim all sites is $17.9 million. The Indian tribe has $3.2 million available as Tribal share money, but has inventoried $19.9 million of abandoned sites. It is apparent that the current allocation method will leave numerous sites which present a hazard to public health and safety unreclaimed. Due to this inadequate funding and due to the fact that the Indian tribe has no historical production records for coal which was stolen from the Indian tribe, the Indian tribe urges OSM to amend the proposed regulations to allow a State/Indian tribe with a demonstrated need for reclamation to qualify for minimum program funding of priority 3 projects. In addition, since there are no historical records of the stolen coal, OSM should provide some special consideration under this regulation.

OSM has not been able to implement this comment due to the specific provisions contained in Section 402(g)(8) of SMCRA which limits allocations for minimum program States and Indian tribes to those necessary to carry out priority 1 and 2 coal projects. OSM has looked into the matter of historic coal production from Indian lands and determined that the three Indian tribes with approved AML programs would not qualify for more funds pursuant to Section 402(g)(5) of SMCRA. This is caused by the amount of unfunded priority 1 and 2 coal projects in each Indian tribe and not historical coal production.

Other commenters also stated that prohibiting minimum program States and Indian tribes from doing priority 3 work would be discriminatory. Minimum program States need the latitude to determine when associated priority 3 reclamation is necessary and beneficial to the total priority 1 and 2 reclamation within the State. All States and Indian tribes receiving discretionary and or minimum program monies should be treated equally and impartially.

OSM has accepted these comments. OSM will treat minimum program States/Indian tribes the same as other States/Indian tribes. That is, all States/Indian tribes with approved AML programs under Title IV of SMCRA will be able to do priority 3 projects that are associated with a priority 1 or 2 site. There will be no artificial limitation on minimum program States. In addition, OSM will be reviewing the criteria for priority 1 and 2 projects to provide the States and Indian tribes greater flexibility in selecting eligible projects. Due to the limitations in SMCRA regarding the funding of priority 1 and 2 projects from minimum program and historic coal production allocations, however, OSM believes States/Indian tribes must still maintain their focus on projects that qualify as a priority 1 or 2 site.

Another commenter stated that the Act in Section 402(g)(5) provides that 40 percent of discretionary funds should be allocated to the States and Indian tribes on a historical production basis as inventoried high priority problems require. This 40 percent of the remaining funds includes the interest and other fund revenues including withdrawn funds from States and Indian tribes plus other miscellaneous receipts to the Fund. According to the commenters, the regulations should specifically state this to be consistent with the Act. This is consistent with the allocation of 20 percent of the interest and other fund revenues to RAMP in § 872.11(b)(3).

OSM has declined to implement this comment. As previously discussed in this preamble, interest earned by the AML fund will be allocated among the three Federal accounts based on the percentages specified in SMCRA. OSM does not believe that such language needs to be specified in a regulation. Furthermore, as previously noted, under Section 402(h) an amount equal to the interest earned by the AML Fund needs to be available, if necessary, to transfer to the United Mine Workers of America Combined Benefit Fund.

Another commenter stated concerning § 872.11(b)(4)(ii) that the proposed regulation should provide that if the actual cost of reclamation to accomplish all inventory priority 1 and 2 problems is less than the Federal share funds actually granted for minimum program States or Indian tribes, then any excess funds must be returned to the Federal share of the Fund.

OSM has not accepted this comment. The preamble to the rules specifies how distributions will be made as a State or Indian tribe funds all remaining 1 or 2 priority projects. Further references in the regulations regarding funding procedures are unnecessary.

Another commenter agreed with OSM's proposed rule which provided funding only until all priority 1 and 2 problems have been addressed. This commenter states, however, that the rules should further provide that no supplemental grants under this provision will be expended on any site other than a priority 1 or 2 problem area as defined in Section 403(a) of SMCRA.

As noted previously, OSM has decided to fund the reclamation of priority 3 problems if they are associated with priority 1 or 2 problem sites. This should avoid artificial distinctions and arguments on what qualifies as a priority 2 or 3 problem and allow States and Indian tribes greater flexibility in selecting eligible projects. By allowing States and Indian tribes the authority to do associated priority 3 work, OSM believes that the cost effectiveness and overall efficiency of the AML program will be improved.

Most commenters responding to OSM's proposed rules in 872.11(b)(4) (historical coal production allocation) and 872.11(b)(6) (minimum program funding) disagreed with OSM's approach and stated that minimum program States should be able reclaim priority 3 projects. Some commenters felt that minimum program States or Indian tribes should be able to do any priority 3 reclamation work; others, however, were more limited. Some felt that minimum program States should be able to do priority 3 work if it is associated with higher priority reclamation activities, and others felt that minimum program States should be able to utilize their State share funds for any priority. Most commenters requesting authority to do some type of priority 3 work felt that such authority was consistent with the intent of Congress and the purposes of the AML program. According to these commenters, such authority is cost-effective and provides the States the management authority which OSM's consolidated grant approach is supposed to provide.

Other commenters, however, disagreed and stated the minimum program States should be required to complete all known priority 1 and 2 sites before funding priority 3 projects. Moreover, OSM should consider funds

set-aside by the State for future reclamation purpose (§ 873.12(a)) in determining the appropriate distribution amount.

Given the various limitations in SMCRA regarding program funding, OSM's options regarding distributions to minimum program States and Indian tribes are somewhat constrained. Federal share funds are limited to priority 1 or 2 problem coal sites. Accordingly, comments suggesting no restrictions concerning the funding for priority 3 sites could not be accepted. Similarly, OSM does not believe it would be proper to go to the opposite extreme and deny funding for all types of priority 3 work. States and Indian tribes are still receiving State/Indian tribe share funds and in many instances doing associated priority 3 work would increase the efficiency of the State/Indian tribe program. OSM has, instead, chosen a middle ground. OSM will not single out minimum program States/Indian tribes for more stringent funding criteria, but instead will treat all States/Indian tribes equally. OSM will fund associated priority 3 work.

OSM has not accepted the part of the comment requesting that OSM require minimum program States and Indian Tribes to use their future set-aside funds first. By statute once these funds have been granted and placed in a special trust fund, the monies are considered to be State funds. In addition, the purpose behind the establishment of specific State set-aside funds was to allow the AML States to prepare for a time when the AML program had ended and the AML funding had ceased. At that time States could utilize the set-aside funds if AML problems arose. Mandating the use of such funds at this time would be contrary to this purpose.

One commenter commended OSM for funding emergency projects separately from grants allocated to the States pursuant to the annual reclamation plan. This funding mechanism encourages States which do not presently administer an emergency program to work toward eliminating those obstacles which prevent them from assuming these responsibilities. The unpredictable nature of emergencies coupled with the potential for expensive reclamation techniques could seriously disrupt a State's reclamation plan if emergency funding had to come from the State's annual grant.

Another commenter observed that under § 872.11(b)(7), "Funds allocated or expended annually by the Secretary under Sections 402(g)(2), (3) or (4) of SMCRA for any State or Indian tribe shall not be deducted against funds to be granted annually to a State or Indian tribe under the authority of Section 402(g)(1) (5) or (8) of SMCRA." According to the commenter, the use of the word "granted" as opposed to "allocated" suggests that Section 402(g)(2), (3) or (4) expenditures may still ultimately be deducted from State share allocations, even though OSM will not reduce annual grants. This should be clarified to provide that such expenditures shall not reduce annual grants or be deducted from total allocations, the commenter said.

OSM notes the language in § 872.11(b)(7) implements language in Section 402(g)(5) of SMCRA. This provision controls funds that are either "allocated or expended." To avoid any misunderstanding OSM has made the change suggested by the comment and has added the word "allocated" to the regulatory language.

Part 873—Future Reclamation Set-Aside Program

General

In 1987 Congress amended Section 402(g)(3) SMCRA authorizing States to deposit up to ten percent of their annual State share grant funds into special trust accounts. Such funds deposited, together with any interest earned, could then be utilized by a State after August 3, 1992, to carry out the purposes of Title IV. The purpose behind the 1987 provision was to ensure that a State would have AML Funds available after the expiration of the AML fee provisions to handle future reclamation problems.

The new statutory amendments in Public Law 101–508 also include a future reclamation set-aside program with five specific differences. First, this new set-aside program does not supersede or transfer funds deposited under the original set-aside program established in 1987. Funds deposited under that program can still be utilized by a State/Indian tribe at its discretion after August 3, 1992, to carry out the purposes of Title IV. Second, the new trust fund accounts have a new timeframe. Funds deposited pursuant to the amendments of 1990 may only be utilized after September 30, 1995. Third, the new trust accounts would only be utilized to reclaim eligible coal problems. The original set-aside accounts could be used for any purposes in Title IV; thus both coal and noncoal problems could be addressed. Fourth, rather than being limited to up to ten percent of the State/Indian tribe share funds granted annually, the States/Indian tribes can now deposit up to ten percent of the total State/Indian tribe share and historic coal production (Federal share) funds granted annually. Fifth, the State/Indian tribe now has an option on whether to utilize funds for the future reclamation set-aside program or to deposit the monies in a special trust account for use in a State/Indian tribe acid mine drainage program. The statute and regulations allow States/Indian tribes to utilize available funds for either the acid mine drainage program or the future reclamation set-aside program. However, a ten percent cap is placed on the total funds available annually.

Discussion

Section 873.1 Scope

This section provides requirements for the award of grants to States/Indian tribes for the creation of special trust accounts to provide funds for coal reclamation purposes after September 30, 1995.

Section 873.11 Applicability

This section provides that provisions of this Part would apply only to the granting of funds and their use by the States/Indian tribes for coal reclamation purposes after September 30, 1995.

Section 873.12 Future Reclamation Set-Aside Program Fund Criteria

This section tracks the legislative language of Congress and limits the use of the monies to eligible coal reclamation purposes after September 30, 1995. To be eligible to receive a grant for such purposes, a State/Indian tribe would have to first establish a special trust fund account which would limit the use and withdrawal of the funds as specified earlier.

If the conditions are met and monies are properly deposited, § 873.12(c) specifies that the monies so deposited, together with interest earned, would be considered State/Indian tribe monies. The 1987 amendment originally establishing the special State set-aside specified that monies deposited in the special State trust accounts, as well as interest earned, would be considered State monies. Although the 1990 amendments do not contain equivalent language, OSM intends to provide the same treatment under these proposed rules because the legislative history of the 1990 Act does not evidence Congressional intent to change this feature of the set-aside.

All comments received on this Part objected to OSM's proposal to limit future set-aside funds to coal problems only. These commenters argued that OSM's reliance upon the legislative history to H.R. 2095 was inappropriate given the vast difference between the

original bill and the fund language in the Omnibus Budget Bill. Moreover, these commenters believe that Sections 403(a) and 404 can be interpreted to include both coal and noncoal problems.

OSM is unable to accept this comment and therefore has made no changes to part 873. OSM interprets the 1990 amendments to SMCRA as limiting future set-aside grants to coal projects only. This interpretation is consistent with the statutory language and the legislative history. As stated in H.R. Report 294:

> * * * Provision is made for a State to deposit up to 10% of its annual state share allocations, including amounts available to the State from Secretarial share supplemental grants, into a special interest-bearing trust fund established by the State for the purpose of undertaking abandoned coal mine reclamation * * *. The Committee notes that several states have already established such a program under the current law provision limiting use of set-aside amounts for use after August 3, 1992. The current law provision does not necessarily restrict the use of set-aside amounts for abandoned coal mine reclamation projects. As such, the Committee intends for states to have the opportunity, at their discretion, on or after August 3, 1992, either to withdraw or maintain as a separate account for the purpose of accomplishing authorized Title IV purposes, as set forth prior to the amendment of this Title by the legislation, amounts set-aside prior to enactment of the Abandoned Mine Reclamation Act of 1989.

H.R. Report 294, 101st. Cong., 1st. Sess. 28 (1989).

The modifications made to Section 403(a) do not expand this authority as urged by the commenters. These modifications merely cross reference another set of priorities which would be applicable to a State's noncoal program. The commenters' position is not supported by any references in the legislative history. As demonstrated above, however, the opposite is true. House Report 294 specifically directs that set-aside funds be limited to coal projects only and that this future set-aside program (limited to coal only) is different than the previous set-aside program which authorized expenditures to carry out any Title IV purposes. See H.R. Report 294, 101st. Cong., 1st. Sess. 28 (1989). Finally, if the commenters' position were correct that Congress wanted to fund both coal and noncoal projects with future set-aside monies, logic would dictate that the language in the old law would have been repeated, i.e. "accomplish the purposes of this title." However, this was not the case. Instead, Congress referenced the coal eligibility section only.

Part 874—General Reclamation Requirements

General

Part 874 sets forth requirements relating to eligibility and selection of reclamation projects that are equally applicable to those reclamation activities to be carried out by OSM and to the Rural Abandoned Mine Program administrated by the Secretary of Agriculture under Title IV.

Discussion

Section 874.11 and 12 Applicability and Eligible Coal Lands and Water

SMCRA, as enacted in 1977, specified that lands and water eligible for reclamation funding are those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the date of enactment (August 3, 1977) and for which there is no continuing reclamation responsibility under State or other Federal law.

The amendments to Title IV significantly enlarge these original eligibility criteria. Most notably, Congress has extended in two instances the eligibility criteria for reclamation funding to priority 1 or 2 coal problems on lands which have been mined and abandoned after August 3, 1977. The first time interval involves land mined and abandoned between August 4, 1977 and the date on which the Secretary approved a State program under Section 503 of SMCRA and specifies that any funds for reclamation or abatement which are available pursuant to a bond or other form of financial guarantee or from any other source must not be sufficient to provide for adequate reclamation or abatement at the site. Regarding the reclamation of post-SMCRA sites pursuant to Section 402(g)(4)(E) of SMCRA, the new amendments reference the date on which the Secretary approved a State program pursuant to Section 503. Indian tribes, however, do not have approved regulatory programs. To rectify this problem, OSM has used September 28, 1984 as the applicable date for Indian tribes. This date was chosen because it is the date that the permanent Federal regulatory program on Indian lands took effect. The second time interval would extend eligibility to lands mined and abandoned between August 3, 1977 and November 5, 1990, where the surety of the mining operator became insolvent and funds immediately available from other proceedings or sources are not sufficient to provide for adequate reclamation or abatement at the site.

The eligibility requirements for sites abandoned prior to August 3, 1977, are set forth in § 874.12 (a), (b), and (c). To these general eligibility requirements, OSM has added subsections 874.12 (d), (e), (f), (g) and (h) to address eligibility for sites abandoned after August 3, 1977.

In order for sites abandoned after August 3, 1977, to be eligible for funding, lands adversely affected during either of the time intervals as discussed above and specified in § 874.12(d), must be abandoned and must qualify as a priority 1 or 2 problem pursuant to Section 403(a) of SMCRA.

Subsection 874.12(e) establishes the eligibility criteria for States and Indian tribes to reclaim lands adversely affected after August 3, 1977. It is similar to subsection (d), and includes the same criteria with one additional requirement. In addition to making the findings required for subsection (d), a State or Indian tribe would also have to find in writing that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water adversely affected prior to August 3, 1977 and that the site qualifies as a priority 1 or 2 site. This subsection implements Section 402(g)(4)(E) of SMCRA.

In extending eligibility to high priority sites left abandoned after August 3, 1977, Congress noted that tens of thousands of acres of land mined since August 3, 1977 remain unreclaimed due to the less stringent standards applicable during the "interim program" period and the bankruptcies of the mining companies and their insurers. The damage to these lands has created a new generation of abandoned mine problems unforeseen by the original law. Indeed, Congress notes in its report on H.R. 2095 that the public health and safety threat posed by these acres may exceed those of eligible but lower priority pre-August 3, 1977, sites. H.R. Report No. 294, 101st Congress, 1st Session 24 (1977).

Although not part of the amendments passed by Congress in 1990, the Secretary is utilizing his rulemaking authority granted under Section 413(a) of SMCRA in establishing two additional subsections to § 874.12. Subsection (f) provides that any monies recovered or available from other sources to reclaim sites abandoned after August 3, 1977, should be either utilized to offset the cost of the reclamation or transferred to the AML Fund. This ensures that monies available for reclamation purposes are ultimately used for such purposes and

not lost due to the intervention of Title IV activities. The operative language in the statutory amendments states that "available funds are insufficient to reclaim" the lands. This language addresses only availability and does not specifically state that the monies must be utilized. Subsection (f) resolves this ambiguity by requiring that the monies either be used to reclaim the land or transferred to the AML Fund if no longer needed to reclaim the entire permitted site.

Subsection (g) is similar to the intent and purpose of subsection (f) in that it tries to prevent unjust enrichment. This subsection specifies that a person shall be liable for reclamation expenses which are in excess of any bond forfeited to ensure reclamation. The permittee shall reimburse the Abandoned Mine Land Fund for the cost of reclamation. This ensures that a party liable for the reclamation damages does not evade his legal and financial responsibilities to reclaim the land. Further, this subsection specifies that neither the Secretary nor a State or Indian tribe performing reclamation on these sites would be held liable for any Title V violations, whether they occur before, during or after the reclamation. As provided in § 874.13(a), the reclamation activities need only comply with the AML Final Guidelines for Reclamation Programs and Projects (45 FR 14810–14819, March 6, 1980). These requirements should protect the public and health and safety, while also protecting a State or Indian tribe or the Secretary from potential liability and provide the State flexibility to utilize its scarce resources in the most efficient manner.

The Energy Policy Act of 1992 affected the eligibility criteria in two ways. First, Congress extended eligibility to lands which are reaffected by remining operations. OSM has added a new § 874.12(h) to specify that surface coal mining operations on lands eligible for reclamation under SMCRA Sections 404 (abandoned prior to August 3, 1977), 402(g)(4)(B)(i) (affected between August 3, 1977 and the date on which the Secretary approved the State program pursuant to Section 503), and 402(g)(4)(B)(ii) (affected between August 3, 1977 and November 5, 1990) would not affect the eligibility of such lands for reclamation and restoration following the release of the bond for any such operation as provided for under Section 519 of the Act. In the event the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under Title IV of the Act may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if the conditions warrant, the Secretary may immediately exercise his emergency authority under Section 410 of the Act. The regulatory text tracks the amended language of SMCRA and is not intended to impose additional requirements.

One commenter stated that Section 402(g)(4)(B)(i) does not seem to require that eligible interim sites must be abandoned prior to primacy. Specifically, mining must have "*occurred during the period* beginning on August 4, 1977, and ending on or before the date in which the Secretary approved a State program * * *" (emphasis added). Mining activities prior to August 4, 1977 may be eligible as provided under Section 404 of SMCRA. According to the commenter, mining activities occurring after States achieved primacy should be eligible to the extent that "mining occurred" during the statutory period and those mining activities were not conducted under authority of permanent program permits. Not until after State primacy was granted were operators confronted with the new mining constraints and required to make a decision as to whether they would proceed with mining under permanent program permits. The interim program regulations, 30 CFR 773.11, allowed operators eight months after primacy to obtain these permits. In reality, it took much longer. If they did not proceed, abandonment and forfeiture frequently occurred in some cases, several years after primacy. The commenter did not believe Congress desire to exclude these sites from eligibility through Public Law 101–508. The Civil Penalty program which funds reclamation of similar forfeiture sites does not preclude reclamation of sites mined after State primacy.

The commenter said that the interim reclamation program is, in many respects, a continuation of the Civil Penalty program, and, therefore, the cut-off date should be the date of the issuance of the permanent program permit for the site, if there was one. In other words, eligible interim sites should be defined as sites without permanent program permits where mining activities occurred during the period beginning August 4, 1977, and ending on or before the date at which the State was awarded primacy.

Similarly, the commenter believes that site eligibility under Section 402(g)(4)(B)(ii) should be addressed in the same manner with the further requirement that the surety of the mine operator became insolvent sometime during the period from August 4, 1977 through November 5, 1990. A literal interpretation of § 874.12(d)(3) may require that mining end exactly on November 5, 1990. The section seems to extend eligibility for Title IV funding to primacy sites. The commenter asked if this possibility is consistent with OSM's position.

OSM has not accepted this comment. Although OSM realizes that certain interim sites were allowed to exist after a State received primacy, the language of the 1990 amendments does not allow flexibility. The amendment states that it applies to coal operations abandoned between two specific dates. The ability to alter those dates does not exist.

Another commenter stated that OSM appears to favor retention by States and Indian tribes of flexibility in determining standards to be achieved for these interim program and insolvent surety sites. The commenter asked how this flexibility will be implemented in a consistent manner by the various OSM Field Offices. The commenter believes that OSM must strive to assure consistent application of Title IV regulations and policies nationwide. Additionally, this commenter questioned whether environmental assessments were necessary for mined and permitted sites.

OSM will develop the necessary guidance documents to ensure that the regulations are consistently applied by its Field Offices. In addition, OSM will be reviewing its procedures for complying with the National Environmental Policy Act (NEPA). OSM will ensure that all NEPA requirements are met.

Another commenter stated that under the new SMCRA amendments post-1977 sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community should be considered a priority 1 or 2 site. Furthermore, the commenter asserted, consistent with Section 402(g)(4)(E) of SMCRA, the State is the sole determiner of reclamation priorities and the extent of reclamation. This SMCRA section provides that if the reclamation priority of a post-1977 site is the same or more urgent then sites eligible under Section 404, the State may make the sole determination of the priority.

OSM has accepted this comment in part. Sites that are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community will be considered priority 1 or 2 sites eligible for funding. Similarly, if a State makes a determination that the priority of a site is the same or more urgent than the reclamation priority of sites eligible

under Section 404, and meeting the criteria in Sections 403(a) (1) or (2), that site automatically will become a priority 1 or 2 site eligible for funding.

One commenter stated that § 874.12(d)(2) expands eligibility to include interim program sites where bonds are insufficient to provide for adequate reclamation at the site. The commenter believes that the site would be eligible if mining ended before the date on which the Secretary approved a State program if the site qualified as a priority 1 or 2. Further, Section 506(a) of the Act allows mining activities under the interim program for up to eight months beyond the date of primacy. The commenter believes that the interim period should include this eight month grace period, and in certain circumstances could even extend further. The commenter requested clarification of this section in order to assure that all sites which can be technically defined as interim could be considered under this section.

OSM has examined this issue and, as discussed previously, the new amendments to SMCRA do not provide flexibility on this point. The dates on eligibility are specific and OSM does not believe that it has the authority to extend such dates to take into account the "grace period" mentioned in the comment.

Several commenters noted that § 874.12(d)(3) would expand eligibility to include sites where mining ended prior to November 5, 1990 where the surety of the mining operator became insolvent and funds available from proceedings are not sufficient to provide for adequate reclamation at the site. In some States alternate bonding pools have been set up to provide a more economic method of such bonding opportunities. In these cases, the commenters stated, when an alternate bonding pool is insufficient, such sites should remain eligible and if the alternate bonding source is insufficient the State or Indian tribe should not incur any additional financial liability for the reclamation. The commenters requested clarification in this regard in the rules.

OSM has not made any changes to its regulations based on these comments. The new amendments to SMCRA do not specifically prohibit eligibility for sites abandoned after 1977 in primacy States which utilize bonding pools. However, where bond pools are solvent and applicable, such sites would not be eligible.

An additional commenter suggested that the term "immediately available" in Section 402(g)(4)(B)(ii) should be interpreted in the AML regulations to mean "in-hand" as illustrated by an account deposit entry on or before November 5, 1990. Any funds collected after that date and before completion of construction should simply be expended to pay billings, to the extent necessary to settle obligations, in preference to using grant funds. Money recovered in excess of remaining billings during construction and money recovered after project completion would be payable to the Fund, limited to the total cost and consistent with the statute. Bond recovered in excess of the total cost of reclamation and specific to the site would be returned consistent with surety law. Recoveries or settlements, not site specific, resulting from State actions would be managed at the discretion of the State.

Another commenter urged OSM to revise the proposal in 30 CFR 874.12(d)(3) to enable States with alternative bonding systems to qualify for Title IV monies on sites with insolvent surety bond. Further, this commenter does not believe that the proposed rule at § 874.12(g) is consistent with OSM's established regulation at 30 CFR 800.50(b)(2) (relating to the use of bond forfeiture funds). The commenter received notification in 1985 under 30 CFR 732.17 that its program was deficient, and subsequently revised its regulation in response to OSM's interpretation. The commenter's regulations now require permanent permit sites to be reclaimed to Title V standards; they do not allow for reclamation under Title IV requirements. If it is not OSM's intention that the relaxed reclamation standards suggested in 30 CFR 874.12(g) be extended to insolvent surety sites that were permitted and eventually forfeited under a State's approved permanent regulatory program, OSM should clarify this in the regulation.

This commenter believes that OSM could better meet its goal stated in the preamble (56 FR 57385), to "* * * provide the State flexibility to utilize its scarce revenues in the most efficient manner," by eliminating the restrictions on funding eligibility at 30 CFR 874.12(d) (3) and (4) pertaining to other sources of funding and the AML priority 1 and 2 criteria.

OSM has accepted these comments in part. As stated before regarding another comment, the alternative bonding system in a State would normally foreclose the AML eligibility of sites abandoned after a State achieves primacy so long as the alternative system was solvent and applicable to the remaining work. This is a matter that may require a case-by-case determination. OSM does not however, believe that it has to adopt a definition of "immediately available" to mean "in-hand". The term "immediately available" is one that may depend on State specific criteria. OSM believes that it is necessary for each State to address this issue in its legal eligibility opinion. Furthermore, if a site is reclaimed using Title IV funds, there is no requirement that the site be reclaimed to Title V standards. The State bond pool where applicable, or the operator, is still liable for meeting the full Title V standards. The State AML program may design the reclamation it believes best addresses the situation within its own budget restraints and such reclamation could, but does not have to, meet Title V standards. Finally, OSM has not accepted that part of the comment that asked for the deletion of § 874.12(d) (3) and (4). These requirements are found directly in the language of the 1990 amendments.

One commenter stated that it was unclear whether the term "site" in 30 CFR 874.12(f) referred to the actual site where the AML funds are applied or the entire interim permit. This commenter stated that it would be more appropriate to use the term "permit" rather than "site". The proposed regulation did not appear to give the State/Indian tribe the authority to reclaim a priority 1 or 2 site within an interim permit site using AML funds and use the posted bond money, once collected, to supplement reclamation on other areas of the same permit, the commenter said. A scenario would be an interim program permit with incremental bonding that is currently under a time consuming bond forfeiture process. There is an extremely dangerous highwall requiring immediate attention on Bond Area A which has a $75,000 bond earmarked for this reclamation. The State/Indian tribe elects to apply for and is awarded $100,000 of AML funds to reclaim the dangerous highwall. After the highwall is reclaimed, the entire bond for all increments is collected. According to the proposed regulations, the State/Indian tribe could not retain the $75,000 earmarked for Bond Area A to supplement the remaining reclamation, but rather must reimburse the AML Reclamation Fund for the amount expended, unless the bond money was needed to do additional work at the site that was reclaimed with AML money.

OSM has accepted this comment and has clarified the regulation to note that recovered monies need only be transferred if no further reclamation of the "permitted site" is required.

Another commenter stated that it supported including of language in subsection (f) that would require the

utilization of existing monies from bond forfeitures and likewise inclusion of language in subsection (g) to prevent unjust enrichment.

The commenter believes the Act's language "available funds are insufficient to reclaim[,]" plainly suggest that those other funds must be expended on the reclamation in conjunction with the AML funds that might be dedicated to reclamation. The commenter believes that it is pivotal that the operator who defaulted on reclamation obligations remain liable, both for additional reclamation at the site where AML funds are expended in conjunction with available forfeiture funds, and further that the responsible entity be blocked from obtaining Title V permits until such time as both the site is reclaimed and all monies expended from AML awards be repaid to the State or OSM as appropriate.

In Kentucky, for example, current law allows a party who has defaulted on reclamation obligations to regain access to new mining permits on abatement of violations and restoration of the site. It is important that violations that have been written against the responsible entity not be vacated, as one commenter suggested, to avoid both unjust enrichment and subsequent mining by an entity whose failures have been offset through the use of AML funds. Repayment should be included in subsection (g).

Sections 874.12 (f) and (g) in the final regulations require the use of existing monies from bond forfeitures and avoids unjust enrichment of defaulting operators. The regulations require the permittee of a site to reimburse the AML fund for the cost of reclamation which is in excess of any bond forfeited to ensure reclamation.

Another commenter stated that in providing that neither the Secretary nor the State performing reclamation is liable for Title V violations, the rules do not properly recognize that a third party performing reclamation pursuant to a State or Federal AML contract must meet the obligations of the National Pollutant Discharge Elimination System program under the Clean Water Act. This continuing obligation to control sediment and other parameters to assure that no water quality violations occur during reclamation should be clarified in the final rule or preamble.

OSM has declined to make any changes to the regulations based on this comment. All AML programs are responsible for insuring that all Federal, State, or local permitting laws or requirements are met. There is nothing in SMCRA which relieves an AML agency from such responsibilities. This has been standard agency practice since the beginning of the AML program and is already clearly set forth in the 1980 AML reclamation guidelines.

Another commenter stated that it supported the statement in OSM's preamble to the proposed rules at page 57387 that the reclamation standards applicable to AML work on bankrupt surety sites and other post-August 3, 1977 sites are not those specified in Title V but instead are the AML program's reclamation guidelines. Any other interpretation would be inconsistent with past practice and would greatly inhibit effective AML work at these sites. OSM agrees with this comment and has made no changes to the final rules regarding reclamation guidelines.

Section 874.13 Reclamation Objectives and Priorities

This section sets forth the reclamation priorities listed in Section 403(a) of the Act. The provisions in this regulation have been expanded and clarified. Subsection (a), like the original § 874.13, specifies that reclamation projects, as applicable, should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810–14819, March 6, 1980). Subsection (b) specifies that the priorities in Section 403(a) of the Act be followed.

To implement the directive that AML resources be directed to the highest priority problems, OSM is including a new requirement in § 874.13(b) specifying that, in general, lower priority projects (priority 3 or below) should only be undertaken if (1) All known higher priority projects either have been addressed or are in the process of being reclaimed (i.e., included in a current grant request) or (2) such lower priority projects are undertaken in conjunction with a priority 1 or 2 site. However, it must also be noted that final rule language differs from that proposed in that the word "generally" has been inserted in § 874.13(b). This was done to expand the original proposed language to allow greater flexibility in performing lower priority reclamation work.

Two commenters questioned whether OSM would allow States to do priority 3 projects when remaining priority 1 or 2 projects are either in the process of being reclaimed or should be deferred (e.g., due to a potential for private reclamation, lack of adequate reclamation technology, lack of landowner consent, or proper grant management).

One commenter noted that the proposed § 874.13(b) states that projects lower than a priority 2 may not be undertaken until all known high priority projects have been or are in the process of being reclaimed, are funded, or are done in conjunction with priority 1 or 2 sites in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (1980 Guidelines). The commenter notes that the selection criteria in the 1980 Guidelines require that the following criteria, among other things, be considered prior to selecting sites for reclamation:

- Landowner consent for post reclamation maintenance
- Public and/or multiple benefits
- Probability of success using current technology
- Future remining potential
- Post reclamation plan use benefits

In response to these comments, OSM has included the word "generally" in the final regulation in order to allow greater flexibility in performing lower priority reclamation work. Further, OSM recognizes that site-specific situations related to the criteria listed above can develop which may require postponement of priority 1 or 2 sites. If this occurs, and no other priority 1 or 2 sites are available or meet the selection criteria of the Guidelines, a State or Indian tribe may reclaim lower level priorities if it is consistent with the State or Indian tribe's approved Reclamation Plan and such work reflects the order of priorities listed in Section 403 of the Act. Likewise, there may be instances when a State or Indian tribe is aware of eligible land previously affected by coal mining but believes it does not warrant expending AML funds to restore or reclaim that area since current site conditions do not warrant consideration under the priorities established under the Act. Also, where a landowner refuses access to the property, reclamation need not be undertaken unless site conditions meet the standards established in Section 407(a) (1) and (2) and the State/Indian tribe reclamation plan provides a mechanism for implementing Section 407 at the subject site. Postponement of higher priority sites in accordance with the 1980 Guidelines, for reasons beyond the control of the administering agency, does not preclude a State/Indian tribe from utilizing State share funds for lower priority work, as long as all discretionary funds still go toward priority 1 and 2 work. The regulations have been revised to add this flexibility. The general rule, however, is that the States/Indian tribes should follow the priorities in the order stated; lower priority projects should be undertaken in conjunction with high priority

projects. In addition, Federal share funds cannot be utilized to fund lower priority projects due to the specific limitations in the 1990 amendments.

Additional guidance concerning the reclamation of lower priority projects in conjunction with the reclamation of higher priority projects is found in OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810–14819, March 6, 1980).

Although no regulatory changes have been proposed, OSM notes that the Energy Policy Act of 1992 deleted the fourth priority regarding coal research originally found in Section 403(4). OSM has notified all States that grant requests for research funding pursuant to Section 403(4) of SMCRA is no longer authorized.

Section 874.14 Utilities and Other Facilities

Section 874.14 sets forth the requirements for funding water projects, including the protection, repair, replacement, construction, or enhancement of facilities relating to water treatment, supply or distribution. In the 1990 amendments to SMCRA, Congress specifically recognized the severe public health hazards that are associated with water supplies contaminated by abandoned coal mine workings. As pointed out in the Committee report accompanying H.R. 2095:

> For many areas of the Appalachian Region groundwater resources used for household water supply have been contaminated as a result of drainage from abandoned underground and surface mines. The Committee strongly believes that when abandoned mines have degraded groundwater quality or depleted groundwater quantity to such an extent that citizens no longer have an acceptable supply, an adverse impact on health, safety and the general welfare is self evident.

H.R. Report No. 294, 101st Congress, 1st Session 24 (1989).

To reflect the new provisions regarding the funding of water projects, OSM is promulgating a new § 874.14. Subsection (a) provides that a State/Indian tribe not certified under Section 411(a) of the Act may expend up to 30 percent of the funds granted annually from State share or historic coal distribution share to such State or Indian tribe for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by past coal mining practices.

Subsection (b) implements Section 403(b)(2) of the Act by modifying the eligibility standards in 30 CFR 874.12(b) by stating that the water supply projects remain eligible if the State or Indian tribe finds in writing that the adverse effects to the water system processes are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

Subsection (c) as proposed would have provided criteria for not only funding projects to repair or replace existing water facilities, but also to enhance them. In order to receive monies to enhance public facilities, States would have had to demonstrate and the Director concur in the finding that: (1) Monies from other sources are either not available or such other sources are contributing their fair share of construction funds, (2) there is an urgent need to undertake the project which gives it the same or higher priority than projects remaining, and (3) the enhancement of the facility is necessary to achieve the objectives set forth in Title IV of SMCRA. These requirements, however, have been removed from the final rules based on the comments received.

Several commenters objected to the detailed requirements set forth in proposed § 874.14(c) regarding alternative funding sources for water projects. They state that the statutory language in Section 403(b) and its legislation history do not provide any basis for this financial information. If a State chooses to fund a water project involving water supplies predominantly contaminated prior to August 3, 1977, and that condition is a hazard to human health and safety, OSM, they believe, should have no discretion to disapprove it. The availability of other funding sources is irrelevant to the inquiry.

Some commenters objected further by stating that OSM has no authority to require documentation that the water supply is a public health hazard. Many of the typical mine drainage pollution constituents such as iron, manganese and sulphur are considered secondary recommended water quality parameters. They believe that it is almost impossible to establish a direct health hazard without extensive research that might take years to accumulate at a significant expense. Water supply loss and quantitative diminution, as well as qualitative damage to ground supplies, should be accorded the highest priorities for abatement, giving particular emphasis to the loss of or damage to private water wells where no public water supply system is available as an alternative source of water. The treatment of AML projects related to replacement of water supplies damaged in quality or quantity by past mining, as priority 5 projects, is inconsistent with the language of the Act and with the expressed legislative concern.

Two commenters agreed with OSM's conditions on the funding of projects related to the construction or enhancement of water facilities. These commenters also urge OSM to adopt further limitations which were discussed in the proposed rule preamble and to deny funding for projects when the agency cannot by clear and convincing evidence determine the extent to which problems result from past mining practices or their non-AML problems. Even priority 5 projects must involve facilities adversely affected by coal mining.

OSM has reviewed carefully all comments regarding water projects and, as urged by the vast majority of commenters, has decided to delete the requirements regarding alternative funding sources. The States and Indian tribes have been granted the exclusive responsibility to administer their AML programs. This approval carries with it the responsibility to administer the AML program in an efficient manner and to carefully consider all expenditures. States are responsible for specific funding selections; however, compliance with the State's approved reclamation plan is subject to OSM oversight. States/Indian tribes are granted only limited funds, and it is ultimately their responsibility to use such monies wisely.

The Energy Policy Act of 1992 also affected the eligibility criteria as they relate to water projects specified in Section 403(b) of SMCRA and 30 CFR 874.14 of the proposed regulations.

In 1992, as part of the Energy Policy Act amendments to Title IV, Congress extended authority to States and Indian tribes to undertake water projects on lands eligible under Section 402(g)(4) of SMCRA, that is, certain lands affected after August 3, 1977. Accordingly, projects now remain eligible for reclamation if the States or Indian tribes find that the adverse effects to the water supplies are due predominantly to effects from mining practices undertaken prior to November 5, 1990 (see dates listed in Section 402(g)(4) of SMCRA). To implement this statutory requirement, OSM has deleted proposed paragraph (c) as discussed above and replaced it with a new paragraph (c) regarding the eligibility of water supply projects. The new language in paragraph (c) tracks the statutory requirements; no comments are therefore needed.

Finally, a new subsection (d) is added stating specifically that an enhancement

of a facility or utility would include upgrades necessary to meet local, State, or Federal health, safety or other applicable code requirements. For example, access ramps for handicapped individuals would be eligible improvements. Enhancement would not include, however, any service area expansion of the utility or facility which is not necessary to address a specific AML problem. For example, if a water system is damaged by subsidence, a State could possibly increase the size of the replacement pipes for the water system and thereby increase the carrying capacity. The State, however, would not be allowed to use AML funds to extend the water system to an area or town not adversely affected by the AML problem.

Section 874.15 Limited Liability

A new § 874.15 (Limited liability) reiterates the language of Section 405(l) of SMCRA which provides that no State or Indian tribe shall be liable under Federal law for any costs or damages as a result of any action or omitted action while carrying out an approved abandoned mine reclamation plan. This section, however, does not preclude liability for gross negligence or intentional misconduct by a State or Indian tribe. OSM intends to conduct discussions with the Environmental Protection Agency (EPA) regarding the funding of projects which may be eligible under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA).

One commenter sought clarification of the language in 30 CFR 874.15 as to whether this provision limits liability only under SMCRA or also under other Federal laws. The statutory language limits liability under all Federal laws, not just SMCRA, in carrying out an approved State or Tribal abandoned mine reclamation plan.

Section 874.16 Contractor Responsibility

A new § 874.16, "Contractor responsibility" has been added to the regulations. This regulation specifies that to receive AML funds every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Such eligibility must be confirmed by OSM's automated AVS.

In the proposed rules published November 8, 1991, 56 FR 57376, 57401, OSM had proposed a similar provision as part of the state grants provisions in 30 CFR part 886. This provision would have established a grant condition requiring States, prior to contract award, to ensure that a successful bidder for a project funded by the grant is not precluded under § 773.15(b)(1) from receiving a permit or conditional permit to conduct surface coal mining operations. To satisfy this condition, the State would have had to check OSM's automated AVS for each contract to be awarded, and verify such information with OSM. By making those who are listed as violators or linked to violators through ownership or control ineligible for AML contracts, OSM intended to deny those certain parties the opportunity to share in the utilization of public AML funds.

Due to comments regarding grant conditions and the applicability to Federal agencies, OSM decided to move the provision to Part 874—"General Reclamation Requirements". By placing the requirement in this part, OSM is able to specify that the section applies to both the Federal Government and the States/Indian tribes. If the State or Indian tribe does not now have the legal authority to implement such requirements, then pursuant to 30 CFR 884.15, the State or Indian tribe must adopt the appropriate statutory and/or regulatory authority as an AML plan amendment. OSM will cooperate with the States and Indian tribes to assist in making the required statutory and/or regulatory changes and provide a phase-in period as determined on a case specific basis that takes into account the particular regulatory process in each jurisdiction. OSM considers the implementation of these changes to be an important priority item in view of the shared OSM and State/Indian tribe commitment to implement this concept and will work to achieve prompt action.

The requirement in § 874.16, as now formulated, stipulates that in order to receive a contract to conduct AML activities, a person must be eligible under the regulations implementing Section 510(c) of the Surface Mining Act to receive permits the regulations implementing to conduct surface coal mining activities. This provision provides a tool to OSM as well as the States/Indian tribes to help them prevent persons with outstanding violations from conducting further mining or AML reclamation activities in the State. Those persons who have outstanding violations should not be allowed to benefit under Title IV of SMCRA while such outstanding violations exist. Preclusion of Title IV contract eligibility to persons owning and controlling surface coal mining operations encourages compliance with Title IV and V requirements by persons seeking AML contracts.

While OSM believes that there are a number of methods which might be used by a State/Indian tribe to achieve this end, it acknowledges that an "AVS check" is probably the least burdensome and time-consuming. However, such a check presupposes that the potential contractor has submitted ownership and control information and violation history information to either OSM or the State regulatory authority, for entry into the AVS. Once such data entry is accomplished, the workload and time delay impacts on the Federal Government, the State, or the potential contractor, should be minimal. OSM, through its AVS Office in Lexington, will provide assistance to any potential contractor to enter needed information into the AVS.

In order to provide information that will allow the States to meet this requirement, potential contractors may submit to either OSM or the State regulatory authority that ownership and control information enumerated at 30 CFR 778.13(c) and (d). OSM believes that it is not necessary to require other information listed in 30 CFR 778.13 and 778.14 from potential AML contractors. The AVS contains extensive information on the ownership and control relationships and violation history of a large majority of persons with outstanding violations of the Act. This information should prove sufficient, when compared to the information submitted by the potential contractor, to ensure that the contractor is eligible under Section 510(c).

Several commenters stated that OSM's proposal to deny AML contracts to successful bidders who may be listed on OSM's AVS, though appearing sensible, has serious problems which need to be addressed before a final rule is adopted.

One commenter outlined 8 problem areas. The following is a response to those highlighted problems.

1. Pre-certification process. The commenter expressed concern that AML emergency projects could be delayed for many weeks pending receipt of contractor eligibility checks from the AVS office. This commenter suggests that OSM adopt a pre-certification procedure in order to facilitate the contracting process and to prevent such delays.

OSM will be available to work with any prospective AML contractor to enter required ownership and control information into the AVS. AVS Office staff in Lexington, Kentucky, routinely work with industry to ensure that such information is complete and up-to-date. Once this information is in the system, an AVS check requires a few minutes. There is no requirement for a company

to be actively seeking an AML contract before it provides such ownership and control information to OSM. Accordingly, OSM does not see any need to establish a formal pre-certification procedure, nor does it anticipate time consuming delays in achieving an AVS check.

Inquiries regarding AVS matters can be handled simply and efficiently. They can be, and generally are, made by telephone. Responses to such inquiries are routinely given in a matter of minutes, not hours or days. In order to facilitate such requests, OSM's AVS Office Program Support Branch maintains a toll free number, 1–800–643–9748, that is available to answer eligibility questions. Further, permit eligibility queries can be made by telephone, facsimile, in person, or by overnight or regular mail directly to the AVS at its Washington, DC. Headquarters, or at its Lexington, Kentucky, Field Office. All State offices have similar capabilities to process AVS checks.

OSM believes that companies bidding on projects should have the responsibility to remain eligible to receive contracts by maintaining current ownership and control information in the AVS system, and avoiding the occurrence of violations which would make them ineligible.

2. Contract mining arrangements. The commenter is concerned that companies who provide construction services to a mining company which is permit blocked might be prevented from bidding on an AML project because of their relationship to the blocked company. OSM holds entities which "own or control" operations with outstanding violations of the Surface Mining Act responsible for those violations. Depending on the specific nature of the relationship between the company seeking the AML contract and the blocked company, the AML contractor may or may not be blocked. If the AML contractor simply provided construction services to the blocked company, and was therefore not an "owner or controller" of the operation in violation, the AML contractor would not be blocked. On the other hand, if the AML contractor was an owner or controller of the operation with the violation, it would be blocked—which is the intent of this regulatory provision.

3. State contracting authority. The commenter said that OSM did not consider the impact of the regulation on State contracting systems.

OSM has considered the overall impact that complying with the requirements of the regulation would have on reclamation contracting procedures. It has concluded that the impact would be very slight. This is especially true if the burden is placed on bidders to show their eligibility early in the bidding process. (See 2 above).

4. Lack of statutory authority. A commenter said there is no authority under SMCRA to regulate construction contractors. Therefore, the regulation attempts to do what the Statute does not permit.

OSM disagrees. Section 201(c)(2) of SMCRA, 30 U.S.C. 1211(c)(2), authorizes the Secretary to "publish and promulgate such rules and regulations as may be necessary to carry out the purposes and provisions of this act." This grant of power is repeated in Section 413(a) of SMCRA, 30 U.S.C. 1243, which provides that "the Secretary or the State pursuant to an approved State program, shall have the power and authority, if not granted it otherwise, to engage in any work and to do all things necessary or expedient, including the promulgation of rules and regulations, to implement and administer the provisions of this title."

OSM is of the opinion that these statutory grants of power amply support the authority of the Secretary to promulgate this regulation.

5. APA requirements. The commenter claims that 30 CFR 773.15(b)(1) was not intended to be applied to contractors bidding on AML projects. To apply it now is contrary to the Administrative Procedures Act (APA).

OSM disagrees. OSM complied with all requirements of the APA in promulgating and adopting 30 CFR 773.15(b)(1), and is complying with all such requirements in promulgating this rule. This requirement was discussed in the proposed rule published November 8, 1991 (56 FR 57376, 57401). OSM has received many comments on this proposed rule and after carefully considering these comments, has decided to promulgate this final rule with only slight modifications.

6. Constitutional challenge. The commenter claims that the ownership and control rules adopted October 3, 1988, are constitutionally deficient.

OSM disagrees. This question has already been raised, and is currently being considered by the United States District Court for the District of Columbia, *National Wildlife Federation* v. *Lujan*, No. 88–3117 (D.D.C.), (consolidated with Nos. 88–3464, 88–3470). The court has not yet ruled, nor did it enjoin OSM from enforcing the rule during the pendency of the court challenge. OSM considers its actions to be proper.

7. Innocent parties. The commenter said that innocent individuals are being prevented from pursuing their occupations simply because of their past associations.

OSM disagrees. Congress, in adopting Section 410(c) of SMCRA, 30 U.S.C. 1260, did not believe that individuals who own or control operations with outstanding violations were "innocent" but instead should be held accountable. All such persons have an opportunity to rebut their ownership or control relationship to the violator. If they cannot rebut this relationship, OSM believes it to be appropriate, as well as consistent with Congressional intent, to prevent such individuals from mining or benefiting from mining and reclamation activities.

8. Unnecessary burden. The commenter says that adopting this rule will cause an unnecessary burden because there is no limitation on how far up or across the ownership and control chain an applicant must go in providing information.

OSM disagrees. As mentioned earlier, this rule does not impose separate information submittal requirements. In many instances, information currently contained in the AVS will suffice. OSM currently has proposed new "permit information" provisions in relationship to AVS ownership and control requirements, Proposed Rule, Use of the Applicant/Violator Computer System in Surface Coal Mining and Reclamation Permit Approval, 56 FR 45780 *et seq.*, (September 6, 1991). As part of the process of considering comments on this proposal and finalizing the rule, OSM is considering issues related to the limits placed on permit information requirements.

In addition to the eight issues raised by the above commenter, other commenters stated their opposition to the proposed rule, on the basis that it would (a) be contrary to State contracting law and unenforceable; (b) be time consuming; and (c) needlessly intrude upon State sovereignty.

OSM disagrees with all these points. In addressing (a), OSM notes that States must adopt statutes and regulations that implement the Federal requirements. Accordingly, if this requirement does conflict with State contracting laws, the States will be required to remedy this situation by adopting the appropriate statutory and regulatory authority. As previously noted, OSM considers the adoption of these statutory and/or regulatory changes to be an important priority item. OSM will cooperate with the States and Indian tribes to assist in making required changes and provide a phase-in period as determined on a case specific basis that takes into account the particular regulatory process in each

jurisdiction. As to (b), as OSM noted above under 1, AVS checks can be performed very rapidly. Furthermore, regarding (c), OSM does not believe this intrudes upon State sovereignty. Rather, OSM believes that this regulation represents an additional tool to be used by the States to ensure that mining and reclamation activities are conducted to the highest possible standards by the most qualified and responsible persons available.

Another commenter noted that the rule was unnecessary, since States already have the ability to prevent contractors from receiving AML contracts based on their record of past performance and other factors without mandatory AVS checks. OSM points out that this regulation requires mandatory AVS checks. That is, it requires that a successful bidder for an AML contract be eligible to receive permits to mine under 30 CFR 773.15.

Part 875—Noncoal Reclamation

General

Part 875 sets forth the requirements for reclamation of noncoal mined lands and water conducted under Title IV of SMCRA by State and Indian Reclamation Programs. OSM is altering the contents of several provisions and adding additional subsections to reflect Congress's new directive regarding the funding of noncoal projects. Sections 875.1 and 875.11 are not being revised. In essence, Congress has created a two-tiered process for addressing noncoal problems. Prior to completing all known coal problems, Congress has limited a State's/Indian tribes's ability to do noncoal work. This is shown in § 875.12. A State/Indian tribe desiring to implement a greatly expanded noncoal reclamation program (see §§ 875.14–19), or what could be called the second tier, would first have to certify that it had completed all known coal problems and the Director would have to concur in the finding (see § 875.13).

Section 409 of SMCRA, as enacted in 1977, authorized States and Indian tribes to undertake noncoal reclamation activities if: (a) the Governor of a State or the Chairman of an Indian tribe requested funding and the State had either completed all known coal reclamation objectives or (b) if coal problems remained, the project for which funding was requested was necessary to protect the public health and safety. The Secretary has no independent authority to undertake noncoal reclamation activities, and only the States and Indian tribes, utilizing AML funds allocated pursuant to Section 402(g)(2) (as amended in 1990, this section is now Section 402(g)(1)), could carry out such tasks.

In 1982 OSM established the eligibility criteria for noncoal projects utilizing its rulemaking authority under Section 412(a) of SMCRA. Essentially, the eligibility criteria that applied to coal were also applied to noncoal. OSM had reviewed the legislative history of Section 409 and concluded that Congress intended the eligibility requirements for noncoal reclamation be consistent with the statutory eligibility requirements contained in Section 404 of SMCRA that applied to coal mined lands and waters. Since the source of the funds for all reclamation conducted under Title IV of SMCRA comes from a fee collected from coal mine operators, less stringent requirements for noncoal reclamation cannot be logically justified in fairness to the coal mine operators. Moreover, there is no basis in the legislative history of Section 409 (30 U.S.C. 1239) to justify a conclusion that Congress intended to allow funding for reclamation on noncoal mineral lands and water abandoned after August 3, 1977.

The noncoal regulations did not contain a definition of what constituted a threat to the public health and safety (i.e. in order to receive funding for a noncoal project prior to the completion of all coal problems) nor did they explicitly establish a formal procedure to follow regarding the transition from a coal reclamation program to a noncoal reclamation program.

As to the issue of what constituted a threat to the public health and safety, OSM did establish a policy providing that: (a) There must be a clearly definable threat; (b) the threat must present a danger that results in a high probability of serious physical harm to the health or safety of people; (c) the threat cannot await resolution until all coal projects have been completed; (d) the project must be necessary and appropriate to abate, control, or prevent the threat; and (e) there is no private party legally responsible under any other Federal or State law to abate, control, or prevent the threat.

Similarly, in regard to a State's transition to a noncoal program, OSM established a procedure requiring a specific review of a State's finding prior to funding noncoal projects. The significant features of the procedure were: (1) Coordination with the State regarding its finding that all coal problems had been addressed; (2) notification of the public, through publication in the Federal Register, regarding the State's finding of the completion of all coal problems and/or specific request for comments; and (3) assuring no known coal problems are unaddressed and an agreement with the State that if eligible coal problems occur in the future, the State would give such projects its highest funding priority.

OSM has in the past provided flexibility to the States in making the finding that all known coal problems have been addressed. This was done in two specific ways. First, OSM did not order an independent analysis of the State's certification since such an analysis would not only be time consuming and costly, but it could cause an unnecessary disruption of the efficient distribution of funds to the State (i.e. no monies would be granted to a State until a study had been completed). Second, the Secretary did not require that all coal projects actually be completed; rather, it was sufficient that all coal problems had either been addressed or were in the process of being addressed through a current grant application. Again, the rationale for not waiting until the coal projects were completed was to avoid, as much as possible, an interval where the State's administrative staff would be idle awaiting the completion of one final project. OSM believes this process was in accord with the Congressional mandate in Section 405(d) granting the State "exclusive responsibility and authority to implement the provisions of its approved program."

Such flexibility, OSM believed, was warranted since it provided for the efficient utilization of funds and personnel and did not jeopardize the State's ability to address any coal problems which might have been missed or might arise in the future. In order to obtain the Secretary's concurrence that all known coal problems had been addressed, a State or Indian tribe would have to agree to give any coal problem which might arise in the future its top funding priority. Thus, the transition from a coal program to a noncoal program did not jeopardize funding future coal reclamation and allowed States flexibility in how they utilized their funds and planned for the transition.

The amendments to Title IV enacted in 1990 significantly affect how and when a State/Indian tribe undertakes noncoal reclamation activities. There are eight major provisions.

First, prior to the completion of all coal problems, a State or Indian tribe now can undertake only noncoal projects which protect the public health, safety, general welfare, and property from the extreme danger of the adverse effects of mining practices. In other words, a priority 1 type of project (see Section 403(a) of SMCRA).

Second, the amendments specifically adopt the same eligibility requirements that are applicable to coal reclamation work.

Third, following certification by a State or Indian tribe of the completion of all known coal problems and the Secretary's concurrence, the State or Indian tribe may establish a noncoal reclamation program which utilizes the top three priorities applied to coal projects (extreme danger, danger, and environmental—Section 411(c)); establishes eligibility criteria for lands and water which are similar in most respects to the criteria originally enacted in Section 404 of SMCRA in Public Law 95–87; and utilizes the same lien requirements and land acquisition authorities that would be applicable to coal.

Fourth, Congress specifically expanded the scope of funding involving projects relating to the protection, repair, replacement, or enhancement of facilities utilized by the public which are affected by coal or noncoal mining activities.

Fifth, Congress adopted language which would allow the Secretary to approve funding for projects where the Governor of a State or the head of a governing body of an Indian tribe determined there is a need for activities or construction of specific buildings or facilities related to coal or mineral industry in States or on Indian lands impacted by coal or minerals development.

Sixth, Congress specifically prohibited funding for projects which are designated for remedial action pursuant to the Uranium Mill Tailings Control Act of 1978 (42 U.S.C. 7901) or which have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601).

Seventh, Congress enacted limited immunity for States and Indian tribes under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved abandoned mine reclamation plan.

Eighth, Congress provided that nothing in the amendments should be construed to affect the certifications made by the States of Wyoming, Montana, and Louisiana.

To explain these eight major revisions to the noncoal reclamation authority in SMCRA, OSM has made several amendments to part 875.

Discussion

Section 875.10 Information Collection

OSM added a § 875.10 which deals with the information collection requirements contained in part 875. This section contains a list of the information collection requirements contained in part 875, the OMB clearance number, the estimated reporting burden per respondent for complying with the information collection requirements and the OSM and OMB addresses where comments regarding the information collection requirements may be sent.

Section 875.12 Eligible Lands and Water Prior to Certification

OSM has established two eligibility sections. The first, § 875.12, reflects Congress' directive to limit expenditures for noncoal projects until a State had certified that all known coal problems had been addressed. Subsection 875.12 specifically limits funding prior to certification to lands which were mined and abandoned prior to August 3, 1977; when there is no continuing reclamation responsibility; and when the project relates to the protection of the public health, safety, general welfare, and property from extreme danger of adverse effects of noncoal mining practices (i.e., a priority 1 project—see Section 403(a) of SMCRA). SMCRA as enacted in 1977 was broader in scope and had allowed States to undertake noncoal projects, prior to completing all coal projects, if the noncoal project related to the protection of the public health and safety. OSM has tried to treat States and Indian tribes similarly. Thus, the language in § 875.12 would provide that the Governor of a State or the equivalent head of an Indian tribe would have to request the noncoal funding.

Congress directed the limiting language of Section 409 due to a perception that OSM had been lax in allowing the States to use funds for noncoal purposes prior to their certifying the completion of all known coal projects. By limiting noncoal projects to a priority 1 type problem (extreme danger), Congress intended to limit the use of AML monies for noncoal projects in States which had not completed all abandoned coal mine projects. H.R. Report No. 294, 101st Congress, 1st Session 32 (1977).

The second eligibility section is § 875.14 which greatly expands the noncoal reclamation capabilities of the States and Indian tribes and is only applicable after a State or Indian tribe has met the certification requirements set out in § 875.13. This subsection is discussed after § 875.13.

One commenter stated the preference that noncoal AML reclamation be allowed as long as all known coal projects are completed or have been funded by OSM and the State/Indian tribe is in the process of certification. This would be in keeping with past practices and would allow the proper transition to noncoal reclamation.

Another commenter stated that States/Indian tribes should be required to certify the completion of all coal problems prior to obtaining certification and the right to proceed to noncoal reclamation activities.

OSM has decided not to place new limitations when noncoal projects can be initiated by the States/Indian tribes. Noncoal projects may be funded when all AML coal projects have either been accomplished or funds have been granted to carry out the remaining coal projects. If States/Indian tribes had to wait until the last coal projects were actually completed, the State AML staff might be idle for two or three years. Nothing would be gained by such a delay. OSM currently requires that if coal projects are identified, such projects must be given top priority by the States/Indian tribes. Thus, even though States/Indian tribes may be allowed to move on to noncoal projects prior to the actual completion of all coal reclamation activities, OSM is confident that coal work, whenever it is identified, will be given top priority. Moreover, given the certification review process, OSM believes that if known abandoned coal lands still exist, they will be identified through this review process. Once identified and brought to the State's/Indian tribe's attention, such coal projects would then have to be addressed before certification could be finalized.

Section 875.13 Certification of Completion of Coal Sites

This section sets forth the requirements necessary for a State/Indian tribe to fully implement a noncoal reclamation program. In order to fully implement a noncoal reclamation program as set forth in Section 411 of SMCRA, a Governor of a State or the equivalent head of an Indian tribe would have to certify to the Secretary, who has delegated this certification authority to the Director of OSM, that the State/Indian tribe had achieved all known coal related reclamation objectives (i.e., priorities 1 to 5). Section 875.13(a) provides the requirements for this certification. Briefly, a State/Indian tribe has to provide a discussion regarding the process and rationale for its certification, along with an analysis of

the public involvement process it used and any public comments. These materials would assist the Director in his concurrence finding and ensure that the State/Indian tribe properly canvassed the public to ascertain whether, indeed, all coal problems had been addressed.

Subsection (b) describes the Director's review of the certification process. At a minimum the Director would prepare a Federal Register notice informing the public of the State's/Indian tribe's proposed certification. After a review of the public comments and any other relevant information, the Director would publish a final notice regarding his decision. If the Director concurs in the State's/Indian tribe's finding, such concurrence would be premised on the State's/Indian tribe's pledge to immediately give the highest priority to any coal problems which thereafter arise. If a coal problem does occur, the State/Indian tribe would carry out the coal reclamation activity under the State/Indian tribe authorities relating to coal and not pursuant to the noncoal authority in Section 411 of SMCRA.

Section 875.14 Eligibility of Lands and Water Subsequent to Certification

This is the second eligibility section for noncoal. This subsection marks the beginning of the provisions relating to a State's/Indian tribe's noncoal reclamation program, a program which is only implemented after the requirements set forth in § 875.13 have been met.

The new eligibility requirements allow funding for lands, waters, and facilities which were mined and abandoned in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws. In determining eligibility under this subsection, for Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977 date, the applicable dates are August 28, 1974 and November 26, 1980, respectively. As noted in H.R. Report 294, these dates refer to the promulgation of surface management regulations for Mining Law of 1972 operations by these agencies. H.R. Report No. 294, 101st Congress, 1st Session 34 (1989).

A subsection (b) has also been included in section 875.14 to clarify that if a coal problem is found or occurs after certification a State/Indian tribe is required to address this problem utilizing State/Indian tribe share monies no later than the next grant cycle. No Federal share monies will be distributed to a certified State/Indian tribe regardless of whether coal problems occur. In addition, States/Indian tribes would be required to address the coal problems utilizing its coal authority; that is, the State/Indian tribe plan provisions relating to Sections 401 through 410 of SMCRA.

Section 875.15 Reclamation Priorities for Noncoal Program

This section establishes the reclamation priorities applicable to a State/Indian tribe noncoal reclamation program following the certification of all known coal problems. Reclamation projects involving the restoration of lands and water adversely affected by past mineral mining, as well as projects involving the protection, repair, replacement, construction, or enhancement of utilities, such as those relating to water supply, roads and other such facilities serving the public adversely affected by mineral mining and processing practices and the construction of public facilities in communities impacted by coal or other mineral mining, would have to reflect three priorities.

The first priority is the protection of public health and safety and general welfare from the extreme danger of adverse effects of mineral mining processes. The second priority is the protection of public health, safety, and general welfare from the adverse effects of mineral mining. The third priority is the restoration of lands and waters previously degraded by the adverse effects.

OSM notes that Section 411(c) of SMCRA only contains three priorities. There was some confusion, therefore, expressed by commenters regarding a fourth priority set forth in OSM's proposed rule. Based on comments received, and its review of the statutory language OSM has decided to delete this fourth priority in the final rule.

OSM agrees with the commenters that the best way to deal with community impact assistance issues is not to create a fourth priority, but rather to follow the explicit language of the amendments to Title IV of the Act and to relate these projects back to one of the three priorities listed in Section 411(c) of SMCRA. Accordingly, OSM has deleted the reference to a fourth priority in the final rules. If a State wishes to undertake a project relating to community impact assistance pursuant to Section 411(e) of SMCRA, then it must prioritize such a project based on the priority language specified in Section 411(c) of the Act.

Subsection 875.15(c) addresses the issue of "enhancement." The noncoal reclamation priorities provide for projects which protect, repair, replace, or "enhance" facilities or utilities that may be adversely affected by mining processes or practices. In order to provide some parameters involving the scope and size of "enhancement" projects, OSM's proposed rules contained detailed criteria relating to the availability of alternative funding sources. This information would have been used to assess the necessity for funding these types of projects. In response to comments received on the proposed rule, however, OSM has elected to drop these criteria. They are not mandated by SMCRA, and they could infringe upon the Congressional directive in Section 405(d) of SMCRA that States are to be given the exclusive responsibility and authority to implement the provisions of the approved program.

States and Indian tribes will be allowed to enhance facilities or utilities in order to meet local, State, or Federal public health, safety or other applicable code requirements but would not be able to use AML funds to expand the service area of a utility or facility service to another area under § 875.15(a), (b) or (c) if it is not necessary to address an AML problem. For example, although a State may replace and upgrade (enhance) a waterline damaged by past mining, it would not be able to use the authority in Section 411(e) regarding "enhancement" to use AML funds to extend the waterline to a nearby community not impacted by the AML problem. We note, however, that such an extension might be authorized under the provisions of Section 411(f).

Subsection (d) addresses a new provision in SMCRA (Section 411(f)) which allows a State to request funding notwithstanding the priorities in Section 411(e) for a public facility if a Governor of a State or the head of a governing body of an Indian tribe determines there is a need for the construction of the public facility related to the coal or minerals industry in States or on Tribal lands impacted by coal or minerals development.

The proposed rules had required extensive public review and detailed accounting of alternative funding sources. Many commenters objected to such requirements as being unauthorized by SMCRA and an intrusion into their "exclusive responsibility" to administer their approved program. Section 411(f) requires that where a State/Indian tribe determines there is a need for activities or construction, the Secretary must

concur in that need prior to the funding of such activities or construction. It is clear that the State/Indian tribe must first justify a need and then OSM must concur. OSM is concerned that the AML Program, which is financed by a tax on coal production, not be "side tracked" from its primary mission to reclaim lands and waters damaged by coal and noncoal mining processes. Accordingly, prior to approval, projects involving the construction of facilities pursuant to Section 411(f) of SMCRA would be given extensive public review.

Subsection (e) would specify that each State grant application for funding under Section 411(f) of SMCRA would have to include information regarding (1) the need or urgency of the activity or facility; (2) the expected impact on the mining industry in the State; (3) the availability of funding from other sources; (4) the impact on the State if the activity or facilities is not undertaken; (5) the reason why the project was selected over other projects related to the public health and safety or to the environment; (6) the extent of the public involvement in the State's decision, and (7) funding decisions made by other local, State, and Federal agencies with oversight for such facilities.

These requirements would assist the Director in determining whether a "need" exists, whether the public has been fully appraised and informed of the request, and whether other Federal and State agencies with primary responsibility for such facilities or activities have been contacted and involved in the project design and funding request.

Several commenters objected to the requirements regarding the submission of information on alternative funding sources for the construction or enhancement of public facilities relating to Section 411(f) of SMCRA. The information is either not available or is irrelevant, they argued. The State or Indian tribe need only meet the requirements set out in Section 411 of SMCRA in order to qualify for funding. Other commenters questioned how the "availability of funds" from other sources could ever be documented. These commenters believed that all conditions other than those expressed in Part 411 of SMCRA should be deleted.

OSM disagrees with this comment and has decided to retain requirements regarding the submission of alternative funding sources for the reasons discussed above. Since Congress has specifically directed that the Secretary concur in any State decision regarding the requirements set forth in Section 411(f) of SMCRA, OSM believes that this information is necessary to carry out such responsibilities.

Commenters also stated that OSM needs to clarify the distinction between eligible assistance under Sections 411(e) and (f).

OSM sees no need to provide further regulatory language clarifying the difference between Sections 411(e) and (f). Section 411(f) is clearly outside the normal reclamation priorities and may be utilized at any time after certification by the Governor of a State or head of a governing body of a Indian tribe if the criteria in Section 411(f) are met. OSM has not included detailed information requirements for public facilities funding provided pursuant to Section 403(b) or 411(e) of SMCRA. These sections specifically deal with facilities which have been adversely affected by past mining abuses. SMCRA does not require any concurrence by the Secretary for funding such projects. The scope of public facilities funded under Section 411(f) of SMCRA, however, is much greater. These projects are not related to any physical damage from past mining. Rather they relate solely to situations where the Governor of a State or equivalent head of an Indian tribe believes there is a need for the facility and the facility is related in some way to the coal or minerals industry in the State or Indian tribe. Under such circumstances, the Secretary must concur. OSM views this requirement and this situation as being distinct from other public facility funding.

One commenter stated that neither Title IV nor the proposed AML rule defines the term "minerals industry" as it is used in Section 411(f) of SMCRA. The commenter states that OSM should make it clear whether the definition is the same as that found in Title V of the Act.

OSM agrees with the commenter. The term "minerals industry" as used in section 411(f) of SMCRA refers to the same minerals as are specified in Section 701(14) of SMCRA. However, no new regulatory provisions are required.

A commenter stated that they did not believe that congress intended to allow for the construction of public facilities under Section 411(f) prior to reclamation of all adverse effects of past mining activities. Accordingly, the agency should include language mandating the completion of the priorities in Section 411(c) prior to approving any such funding.

OSM disagrees with this comment and has made no changes to the final regulations as suggested. As stated previously, OSM interprets the language in Section 411(f) as being independent of the priorities specified in Section 411(c) of SMCRA. That is, a State Governor or head of a governing body of an Indian tribe may request funding for activities pursuant to Section 411(f) at any time after certification. There is no requirement that a State or Indian tribe complete all known noncoal reclamation before utilizing this authority. The commenters' premise is based on the original statutory language of Section 402(g)(2) as enacted in 1977. This section provided that once a state had completed all of its coal and noncoal reclamation, it could utilize AML funds for community impact assistance. This old statutory scheme was deleted, and OSM can find no references in the legislative history which supports the commenter's position. Indeed, if the commenter's position were proper, logic would dictate that Congress would have merely made the language in Section 411(f) the last priority specified in Section 411(c) of SMCRA. This was not done, however, and there is no reference to the priority section. In the absence of restricting language in Section 411(f) or qualifying language in Section 411(c), OSM believes the proper interpretation is to permit States and Indian tribes to utilize the authority in Section 411(f) without regard to the completion of the priorities specified in Section 411(c).

In line with the preceding rationale, OSM also declines to add the additional language urged by the commenter. This language does not specifically add any additional guidance that is not already available to the States and Indian tribes.

Other commenters stated that they agreed generally with the need to establish criteria for funding noncoal construction projects, as set forth in proposed § 875.15(d). However, they urged OSM to include a provision that would prohibit any funding from AML sources to the extent that funding is available form other State or Federal sources. Otherwise, the State will have not made the requisite showing of "need" to construct such facilities. Insertion of such a limitation would avoid using funds inappropriately for projects entirely unrelated to correcting environmental problems from past mining practices.

OSM has declined to implement this comment. OSM does not interpret the language in Section 411(f) as narrowly as the commenters suggest. "Need" does not necessarily mean that there are no other possible sources of funds. How could one ever say that a certain government has no available funds? Monies can always be transferred, or taxes raised. The term "need" refers instead to the need for construction or the need to undertake a specific activity.

The allocation of State funds is an internal State matter in which the Federal Government should not be involved. The State has the responsibility to allocate its limited AML funds in order to carry out the purposes of Title IV. This program is but one small component of a much larger State budget system. When reviewing a State or Indian tribe request for funding OSM will not look at alternative funding sources but instead will confine its review to analyzing the "need" identified by the State or Indian tribe.

One commenter noted that OSM plans to conduct discussions with EPA regarding the funding of projects which may be eligible under CERCLA. This commenter questioned whether States should check all potential Title IV noncoal projects to ensure that they have not been listed on EPA's National Priority List.

As stated in the rule, sites listed for remedial action under the CERCLA are ineligible for funding under SMCRA. OSM believes therefore that the Sates should take whatever measures they deem necessary to ensure that this requirement is met.

Section 875.16 Exclusion of Certain Noncoal Reclamation Sites

This section sets forth noncoal reclamation sites which Congress has specifically excluded from the coverage of SMCRA. Monies cannot be used for the reclamation of sites designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 *et seq.*). OSM interprets this provision as allowing reclamation activities to proceed on any noncoal site which is not listed on EPA's National Priority List pursuant to Section 105 of CERCLA, 42 U.S.C. 9605(a)(8)(B).

Section 875.17 Land Acquisition Authority—Noncoal

This section makes the land acquisition provisions set out in Section 407 of SMCRA and 30 CFR parts 877 and 879 of the Secretary's regulations applicable to a State's/Indian tribe's noncoal reclamation program. This section implements the provisions set forth in Section 411(g) of SMCRA.

Section 875.18 Lien Requirements

Section 875.18 makes the lien provisions of Section 408 of SMCRA and 30 CFR part 882 of the Secretary's regulations applicable to a State's/Indian tribe's noncoal reclamation program. This provision does not alter OSM's original regulations in 30 CFR part 882 which holds the lien requirements applicable to all reclamation on private land regardless of whether it was mined for coal or noncoal purposes. Monies recovered through the satisfaction of liens filed against privately owned lands will continue to be handled in accordance with 30 CFR 872.12.

Section 875.19 Limited Liability

This section reiterates the language in Section 405(e) of SMCRA which provides that no State or Indian tribe shall be liable under Federal law for any costs or damages as a result of any action or omitted action while carrying out an approved abandoned mine reclamation plan. This section does not preclude liability for gross negligence or intentional misconduct.

Section 875.20 Contractor Responsibility

A new § 875.20, "Contractor responsibility" has been added to the regulations. This regulation specifies that to receive AML funds every successful bidder for an AML noncoal contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Such eligibility must be confirmed by OSM's automated AVS. This section is being added to assure consistency between coal and noncoal reclamation programs.

The reader is referred to § 874.16 for a parallel discussion of this requirement. Comments received concerning the contractor responsibility requirement may be found in the discussion of that section and are applicable to both coal and noncoal reclamation.

Part 876—Acid Mine Drainage Treatment and Abatement Program

General

Because thousands of miles of Appalachian streams and numerous waterways have been degraded and the biological life significantly impaired or destroyed by acid mine drainage, Congress acknowledge a need too engage in an abatement and treatment program for acid mine damage through the Abandoned Mine Reclamation Act of 1990.

In response to the mandate by Congress, OSM promulgated Part 876. Part 876 is an optional program for States/Indian tribes having an approved abandoned mine land program. Up to ten percent of the funds a State/Indian tribe receives through its annual grants, both from the State/Indian tribe share and from amounts based on historical coals production, may be deposited in a special interest-bearing fund and used, without regard to lapsing of fund authority, for the purpose of acid mine drainage treatment and abatement projects in qualified hydrologic units. Plans for the use of this acid mine drainage treatment and abatement fund, which must be authorized by State law, are subject to approval by the Secretary who had delegated this authority to the Director of OSM.

The acid mine drainage abatement and treatment plan is encouraged to be developed in coordination with SCS. OSM will ask SCS and the Director of the Bureau of Mines to comment on each proposed plan. The intent of this coordination is to encourage joint efforts with projects initiated by SCS under the Rural Abandoned Mine Program. This will allow States/Indian tribes to address acid mine drainage problems on a broader basis, i.e. qualified hydrologic units, instead of a more restricted site specific approach. Through this joint approach it is anticipated that more environmentally sound and cost effective methods will be utilized. Projects to address acid mine drainage problems in hydrologic units as defined as § 870.5 are independent of the order of priorities for projects under Section 403(a) of SMCRA.

Discussion

The term "qualified hydrologic unit" has been defined at section 870.5. OSM has interpreted the statutory language to mean those lands and waters which are (1) eligible pursuant to Section 404 and include any of the first three priorities as stated in Section 403(a), or (2) proposed to be the subject of expenditures by the State/Indian tribe (from amounts available from the forfeiture of bonds required under Section 509 or from other State/Indian tribe sources) to mitigate acid mine drainage. Based upon the legislative history, it was apparent that the intent was to make both categories independently eligible for funding.

Five comments were received regarding this interpretation. The comments to a large degree merely pointed out the difference between an "and" found in Section 402(g)(7) of SMCRA and the "or" used in OSM's proposed regulations. The issue is whether this term should be limited to those units which contain both eligible Title IV and Title V sites or whether it should also encompass units where only Title IV sites exist or eligible Title V sites. OSM believes that Congress contemplated all situations. OSM

believes its definition for qualified hydrologic unit is within the intent of Congress to provide a broad comprehensive approach to the problem of acid mine drainage. A qualified hydrologic until under a strict reading of the statute would have to contain both Title IV and Title V AML sites contributing acid mine drainage. Under the proposed and final rule, either Title IV lands contributing acid mine drainage or Title V lands contributing acid mine drainage could qualify. Adoption of this interpretation does not preclude a combination of Title IV and Title V sites and thus allows States significant discretion in setting priorities and focusing on the most serious acid mine drainage problems within their boundaries. The goal of the legislation is to contain and abate acid mine drainage problems. To artificially limit this authority to only those units which contain both Title IV and Title V sites appears unduly restrictive and illogical and therefore not in furtherance of Congress' intended goal.

One commenter raised the concern that the independent eligibility of either Title IV or Title V sites provided in the proposal would allow States to use the Fund to supplement inadequate Title V bonding systems. This cannot be done. Bonding and bond-pool requirements have no relationship to the Fund and its objective to deal with acid mine drainage on a comprehensive basis. While it is true that the eligibility of Title V sites, in part, is tied to the bond forfeiture sites by the definition of qualified hydrologic unit found at 870.5, this is not intended to provide authority in any way to use the Fund to supplement inadequate bonding systems. OSM wishes, however, to stress that other Title IV funds or existing bond pool funds, or both, can be used to address acid mine drainage problems under this program.

The same commenter asked for clarification for the reference to "other State sources" in the definition of qualified hydrologic unit relative to qualified Title V units. OSM believes Congress' intent was for State/Indian tribes to share a financial commitment to the acid mine drainage problem associated with Title V activities while at the same time providing ample flexibility to the State/Indian tribes. Many sources of funding beyond bond forfeitures would be acceptable provided there is a direct connection between the funding and the qualified hydrologic unit.

It is noted that, with the exception of § 876.1, the numerical designations of the sections of part 876 have been revised in the final regulation to reflect a more concise sequence.

Section 876.1 Scope

This paragraph describes the scope of the program to address acid mine drainage treatment and abatement. No comments were received on this paragraph which is adopted as proposed.

Section 876.10 Information Collection

This section deals with information collection requirements. Since there were no comments, this section is being adopted as proposed.

Section 876.12 Eligibility

This section establishes eligibility criteria for States/Indian tribes to receive funds and authorizes such funds to be deposited in either an interest-bearing special fund established under State/Tribal law or an acid mine drainage treatment and abatement fund established under State/Tribal law.

One comment was received dealing with § 876.12(b) and recommended that States and Indian tribes have the authority to consult directly with SCS and, at the option of the State or Indian tribe, with or without OSM involvement. OSM wishes to clarify that it has no planned involvement at the planning or implementation stages. OSM's involvement is limited to approval of acid mine drainage abatement and treatment plans by the Director prior to implementation. By statutory mandate, however, the Director must give priority to those plans which will be implemented in coordination with measures undertaken by the Secretary of Agriculture under RAMP. The Director's action does not preclude the States or Indian tribes from consulting with SCS during development of the plan. Such coordination would have tangible benefits and is encouraged.

The section is being adopted as proposed with one minor change to § 876.12(b). The reference to the Secretary approving plans in the proposal is being changed to the Director in the final rulemaking. This change is consistent with § 876.14 of the proposal which provides authority for approving plans to the Director and also reflects that such program authorities in the past have commonly been delegated through rulemaking to the Director for efficiency.

Section 876.13 Plan Content

This section outlines the major components of the State plans for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage affected by coal mining practices.

No comments were received on this section. The section is being adopted as proposed.

Section 876.14 Plan Approval

This section sets forth that the Director's process for approving plans, obtaining comments from the Director of the U.S. Bureau of Mines (BOM) with regard to acid mine drainage abatement and treatment measures and associated costs and giving priority to plans that complement efforts under RAMP.

One commenter raised concern with the perceived role of the SCS in plan approval based on its limited expertise for this purpose. The commenter also wished to work directly with SCS at the State level in the development and approval of the plans with limited involvement of OSM and SCS headquarters. OSM wishes to clarify that SCS at either the State or National level has no direct responsibility for plan approval. This responsibility rests exclusively with the Director of OSM. As mentioned previously, however, coordination with RAMP efforts and SCS at the State level is encouraged. This is expected to have the added benefit of providing a basis for the Director to assign priority for those plans that complement RAMP efforts as required § 876.14.

The same commenter believed BOM was better suited than SCS to have a lead role in plan approval. For the reasons explained above, BOM has no direct role in plan approval. The BOM role has been limited by Congress to a technical supporting role of providing comments on abatement and treatment measures and associated costs for each plan as needed by the Director of OSM in order to analyze the plans.

Part 886—State Reclamation Grants

General

This part sets forth procedures for grants to States having an approved State reclamation plan for the reclamation of eligible lands and water and others activities necessary to carry out the plan as approved.

Discussion

OSM set forth a grant condition in the proposed rules requiring States, prior to grant award, to ensure that a successful bidder for an AML project funded by the grant is not precluded under 30 CFR 773.15(b)(1) from receiving a permit or conditional permit to conduct surface coal mining operations. OSM has decided in the final rules to retain this language. This requirement, however,

will not be a grant condition but rather has been placed in 30 CFR 874.16 and 875.20, "Contractor responsibility," as an AML program requirement. For a discussion of this rule and responses to comments, refer to 874.16 and 875.20 in this preamble.

Section 886.16 Grant Agreements

A new provision was proposed for § 886.16(a). OSM has decided to move this proposed section in the final rule to "Contractor responsibility" in §§ 874.16 and 875.20. For further discussion regarding contractor responsibility see §§ 874.16 and 875.20 of the regulation and the associated preamble discussion. For consistency, all comments regarding contractor responsibility and the AVS are discussed in § 874.16.

Section 886.23 Reports

In section 886.23, a new paragraph (c) has been added to incorporate the reporting requirement under State and Indian tribe reclamation grants that, upon project completion, States and Indian tribes are required to submit to OSM a completed Form OSM–76 (Problem Area Description Forms) for any completed coal and noncoal project. The OSM–76 is used to provide the data for the Abandoned Mine Land Inventory System. Instructions for completing and processing the completed Form OSM–76 are available in the National Abandoned Mine Lands Inventory Problem Area Description Manual. This requirement is necessary so that the Secretary may provide an updated inventory of abandoned mine land problems to Congress on an annual basis as required by Section 403(c) of the Act. Also, the information is necessary to track and report on accomplishments of the AML Program. For the purposes of updating the National Inventory, completed projects are defined as those AML construction projects funded through an approved reclamation grant, where on-the-ground reclamation has been completed and the cost figures represent final funding on the project. In promulgating this rule, OSM acknowledges that because of the nature of grant funded projects, preliminary cost figures given prior to grant closeout may be revised at a later time.

Several commenters agreed that the Secretary should provide updated AML information to Congress on an annual basis. However, they asserted, Form OSM–76 needs further modification before it can provide Congress with more accurate AML accomplishments by States an Indian tribes.

Form OSM–76 itself is not a subject of this rulemaking. In 1990, OSM conducted a separate outreach effort to solicit State and Tribal views on proposed changes to Form OSM–76. OSM deemed that changes to Form OSM–76 were essential in order to collect the additional information needed so as to note on the inventory, as required by Section 403(c) of SMCRA, those projects completed under Title IV. Form OSM–76 has been approved by OMB and was distributed to the States and Indian tribes in April 1992 for their use.

One State commenter suggested that Form OSM–76 only be submitted to OSM, pursuant to funding activity, when a project is completed. The information, it believes, submitted at the time of grant application or at any other time prior to project completion is only an estimate and may result in confusing data as well as generating a burdensome amount of paper work with very little value.

The comment is accepted in part. The regulation is revised to clarify that this rulemaking deals only with reporting requirements for approved reclamation projects. However, it must be noted that Section 403(c) of SMCRA requires the Secretary to maintain an inventory of priority 1 and 2 coal problems. In order to place sites on the OSM inventory, States and Indian tribes submit a Form OSM–76 for new problem areas, and for such new problems that occur on problem areas already in the inventory. OSM realizes that the inventory necessarily will contain estimated costs for unfunded problems and not yet competed reclamation projects. However, OSM believes that sufficient guidance and flexibility in factors to consider when making reclamation costs estimates has already been provided to States and Indian tribes through the AML reclamation program final guidelines (45 FR 14810, March 6, 1980), and the instructions for Form OSM–76.

Another commenter stated regarding § 886.23(c) that the language should be modified to exclude interim program and insolvent surety bond forfeiture projects done under § 874.12(d). The commenter believes that these sites are specifically excluded from the AML inventory per the preamble discussion on page 57387.

The comment cannot be accepted. Although interim program and insolvent surety sites need not be inventoried prior to actual funding of a reclamation project, OSM is required to update the inventory so as to reflect all projects completed under Title IV. That requirement includes interim program and insolvent surety bond forfeiture projects. For this reason, States/Indian tribes need to submit a Form OSM–76 whenever activities funded under those programs are completed in order for OSM to update the inventory.

Another commenter stated that the AML inventory has continued to serve an important role in the AML program. In order to keep the inventory current, however, OSM would provide computer print-outs semi-annually which track the status of each State's inventory.

OSM is committed to maintaining the inventory current as required by Section 403(c). While the commenter's suggestion is not directly related to the rule, OSM agrees with its intent and will work on an informal basis with the States and Indian tribes to ensure that information from the inventory is readily available.

IV. Procedural Matters

Federal Paperwork Reduction Act

The collections of information contained in this rule have been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1029–0054, 1029–0061, 1029–0063, 1029–0090, 1029–0103 and 1029–0104.

Author

The principal author of this rule is Norman J. Hess, Division of Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–208–2949.

Executive Order 12866

This final rule has been reviewed under Executive Order 12866.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the final rule will not have a significant economic impact on a substantial number of small entities. The legislation enacted by Congress extends an existing program, and the resulting costs to the regulated industry and to consumers are not expected to vary from current levels. Further, the provisions in the legislation and the regulations changing the threshold for qualifying as a small operator from less than 100,000 tons per year of coal produced to less than 300,000 tons per year is expected to increase the number of coal operators that will qualify as small operators and thereby be eligible for economic assistance under SOAP.

Executive Order 12778 on Civil Justice Reform

This rule has been reviewed under the applicable standards of Section 2(b)(2)

of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of Section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

This rule will have no preemptive effect on State/Indian tribal laws or regulations. However, while States/Indian tribes will have to amend their programs to take advantage of the additional authority provided by these regulations, the decision to do so is at their sole discretion.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified?

This rule modifies the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings would be required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a). Prior to any judicial challenge to the application of the rule to private parties, however, exhaustion of administrative procedures may be required. Applicable administrative procedures may be found at 43 CFR part 4.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items?

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5, 701.5, 795.3 and 870.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the OMB, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement

National Environmental Policy Act

OSM has prepared an environmental assessment (EA), and has made a finding that this rule will not significantly effect the quality of the human environment under Section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C). The EA and finding of no significant impact are on file in the OSM Administrative Record, room 660, 800 N. Capitol St., NW., Washington, DC.

List of Subjects

30 CFR Part 795

Grant programs-natural resources, Reporting and recordkeeping requirements, Small businesses, Surface mining, Technical assistance, Underground mining.

30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 872

Indian-lands, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 873

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 874

Indian-lands, Surface mining, Underground mining.

30 CFR Part 875

Indians-lands, Surface mining, Underground mining.

30 CFR Part 876

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 886

Grant programs-natural resources, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: April 14, 1994.

Bob Armstrong,

Assistant Secretary for Land and Minerals Management.

Accordingly, 30 CFR Parts 795, 870, 872, 873, 874, 875, 876, and 886 are amended as set forth below

PART 795—PERMANENT REGULATORY PROGRAM—SMALL OPERATORS ASSISTANCE PROGRAM

1. The authority citation for part 795 continues to read as follows:

Authority: Secs. 201, 501, 502, and 507, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

2. Section 795.3, the definition of "qualified laboratory", is revised to read as follows:

§ 795.3 Definitions.

* * * * *

Qualified laboratory means a designated public agency, private firm, institution, or analytical laboratory that can provide the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at § 795.9 under the Small Operator Assistance Program and that meets the standards of § 795.10.

3. Section 795.4 is revised to read as follows:

§ 795.4 Information collection.

The collections of information contained in part 795 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0061. The information will be used to determine if the applicants meet the requirements of the Small Operator Assistance Program. Response is required to obtain a benefit in accordance with Public Law 95–87. Public reporting burden for this information is estimated to average 24.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 N.C., 1951 Constitution Avenue NW., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0061), Washington, DC 20503.

4. Section 795.6 is amended by revising the introduction text of

paragraph (a)(2) and paragraphs (a)(2) (i) and (ii) to read as follows:

§ 795.6 Eligibility for assistance.

(a) * * *

(1) * * *

(2) Establishes that his or her probable total attributed annual production from all locations on which the operator is issued the surface coal mining and reclamation permit will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:

(i) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;

(ii) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;

* * * * *

5. Section 795.9 is amended by revising paragraphs (a) and (b) to read as follows:

§ 795.9 Program services and data requirements.

(a) To the extent possible with available funds, the program administrator shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in paragraph (b) of this section for eligible operators who request assistance.

(b) The program administrator shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator shall be sufficient to satisfy the requirements for:

(1) The determination of the probable hydrologic consequences of the surface mining and reclamation operation in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with §§ 780.21(f), 784.14(e), and any other applicable provisions of this chapter;

(2) The drilling and statement of the results of test borings or core samplings for the proposed permit area in accordance with §§ 780.22(b) and 784.22(b) and any other applicable provisions of this chapter;

(3) The development of cross-section maps and plans required by §§ 779.25 and 783.25;

(4) The collection of archaeological and historic information and related plans required by §§ 779.12(b) and 783.12(b) and §§ 780.31 and 784.17 and any other archaeological and historic information required by the regulatory authority;

(5) Pre-blast surveys required by § 780.13; and

(6) The collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by §§ 780.16 and 784.21, and information and plans for any other environmental values required by the regulatory authority under the act.

* * * * *

6. Section 795.12 is amended by revising paragraphs (a) introductory text, (a)(2) and (a)(3) to read as follows:

§ 795.12 Applicant liability.

(a) A coal operator who has received assistance pursuant to § 795.9 shall reimburse the regulatory authority for the cost of the services rendered if:

(1) * * *

(2) The program administrator finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit; or

(3) The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000 ton production limit during the 12 months immediately following the date on which the permit was originally issued. Under this paragraph the applicant and its successor are jointly and severally obligated to reimburse the regulatory authority.

* * * * *

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

7. The authority citation for part 870 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

8. Section 870.5 is amended by revising the definitions for "eligible lands and water" and "left or abandoned in either an unreclaimed or inadequately reclaimed condition," and adding alphabetically new definitions for "mineral owner" and "qualified hydrologic unit" as follows:

§ 870.5 Definitions.

* * * * *

Eligible lands and water means land and water eligible for reclamation or drainage abatement expenditures which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977, and for which there is no continuing reclamation responsibility. Provided, however, that lands and water damaged by coal mining operations after that date and on or before November 5, 1990, may also be eligible for reclamation if they meet the requirements specified in 30 CFR 874.12 (d) and (e). Following certification of the completion of all known coal problems, eligible lands and water for noncoal reclamation purposes are those sites that meet the eligibility requirements specified in 30 CFR 874.14. For additional eligibility requirements for water projects, see 30 CFR 874.14, and for lands affected by remining operations, see Section 404 of the Act.

* * * * *

Left or abandoned in either an unreclaimed or inadequately reclaimed condition means lands and water:

(a) Which were mined or which were affected by such mining, wastebanks, processing or other mining processes prior to August 3, 1977, or between August 3, 1977 and November 5, 1990, as authorized pursuant to Section 402(g)(4) of the Act, and on which all mining has ceased;

(b) Which continue, in their present condition, to degrade substantially the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(c) For which there is no continuing reclamation responsibility under State or Federal Laws, except as provided in Sections 402(g)(4) and 403(b)(2) of the Act.

* * * * *

Mineral owner means any person or entity owning 10 percent or more of the mineral estate for a permit. If no single mineral owner meets the 10 percent rule, then the largest single mineral owner shall be considered to be the mineral owner. If there are several persons who have successively transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal.

* * * * *

Qualified hydrologic unit means a hydrologic unit:

(a) In which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner that adversely impacts biological resources; and

(b) That contains lands and waters which are:

(1) Eligible pursuant to Section 404 and include any of the first three priorities stated in Section 403(a); or

(2) Proposed to be the subject of the expenditures by the State (from amounts available from the forfeiture of a bond required under Section 509 or from other State sources) to mitigate acid mine drainage.

* * * * *

9. Section 870.10 is revised to read as follows:

§ 870.10 Information collection.

The collections of information contained in part 870 and the Form OSM–1 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1029–0090 and 1029–0063 respectively. The information will be used by the Office of Surface Mining Reclamation and Enforcement to determine whether coal mine operators are reporting accurate production figures and paying proper fees. Response is mandatory in accordance with Public Law 95–87. Public reporting burden for this collection of information is estimated to average 2 hours (1029–0090) and 16 minutes (1029–0063) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 N.C., 1951 Constitution Avenue NW., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0063) or (1029–0090), Washington, DC 20503.

10. Section 870.12 is amended by adding paragraph (d) to read as follows:

* * * * *

§ 870.12 Reclamation fee.

* * * * *

(d) The reclamation fee shall be paid after the end of each calendar quarter beginning with the calendar quarter starting October 1, 1977, and ending September 30, 2004.

11. Section 870.15 is amended by revising paragraph (b) and the penultimate sentence of paragraph (c) to read as follows:

§ 870.15 Reclamation fee payment.

* * * * *

(b) Each operator shall use mine report Form OSM–1 (or any approved successor form) to report tonnage of coal sold, used or transferred, as well as the name and address of any person or entity who, in a given quarter, is the owner of 10 percent or more of the mineral estate for a given permit, and any entity or individual who, in a given quarter, purchases ten percent or more of the production from a given permit during the applicable quarter. If no single mineral owner or purchaser meets the 10 percent rule, then the largest single mineral owner and purchaser shall be reported. If several persons have successively transferred the mineral rights, information shall be provided on the last owner(s) in the chain prior to the permittee, i.e. the person or persons who have granted the permittee the right to extract the coal. At the time of reporting, a submitter may designate such information as confidential.

(c) * * * All operators who receive a Coal Sales and Reclamation Fee Report (Form OSM–1), including those with zero sales, uses, or transfers, must submit a completed Form OSM–1, as well as any fee payment due. * * *

* * * * *

12. Section 870.17 is revised to read as follows:

§ 870.17 Compliance authority.

The Secretary or any duly designated officer, employee, or representative of the Secretary may conduct such audits of coal sales, transfers, and use, and the payment of AML fees as may be necessary to ensure compliance with the provisions of the Act, and for such purposes shall, at all reasonable times, upon request, have access to, and may copy, all books, papers, and other documents of any person involved in a coal transaction, including without limitation, permittees, operators, brokers, purchasers, and persons operating preparation plants and tipples, and any recipients of royalty payments for the coal.

PART 872—ABANDONED MINE RECLAMATION FUNDS

13. The authority citation for Part 872 is revised to read as follows:

Authority: 30 U.S.C. 1201, *et seq.*, as amended.

14. Section 872.10 is revised to read as follows:

§ 872.10 Information collection.

The collections of information contained in part 872 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0054. The information will be used by OSM to determine whether delays by States/Indian tribes in use of allocated and granted funds were due to unavoidable delays in program approval. Response is required to obtain a benefit in accordance with Public Law 95–87. Public reporting burden for this information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 N.C., 1951 Constitution Avenue NW., Washington, DC, 20240, and the Office of Management and Budget, Paperwork Reduction Project (1029–0054), Washington, DC, 20503.

15. Section 872.11 is amended by adding new paragraph (a)(6); revising paragraphs (b)(1) through (5); and adding paragraphs (b)(6) through (8) to read as follows:

§ 872.11 Abandoned Mine Reclamation Fund.

(a) * * *

(6) Interest and any other income earned from investment of the Fund. Such interest and other income shall be credited only to the Federal share. In addition, an amount equal to the interest earned after September 30, 1992, shall be available pursuant to Section 402(h) of the Act for possible future transfer to the United Mine Workers of America Combined Benefit Fund.

(b) * * *

(1) An amount equal to 50 percent of the reclamation fees collected from within a State shall be allocated at the end of the fiscal year to the State in which they were collected. Reclamation fees collected from Indian lands shall not be included in the calculation of amounts to be allocated to a State. If a State advises OSM in writing that it does not intend to submit a State reclamation plan, no monies shall be allocated to the State. Amounts granted to a State that have not been expended within three years from the date of grant award shall be available to the Director for other purposes under paragraph (b)(5) of this section. Such funds may be withdrawn from the State if the Director finds in writing that the amounts

involved are not necessary to carry out the approved reclamation activities.

(2) An amount equal to 50 percent of the reclamation fees collected from Indian lands shall be allocated to the Indian tribe or tribes having an interest in those lands. This shall occur at the end of the fiscal year in which the fees were collected. If an Indian tribe advises OSM in writing that it does not intend to submit an Indian reclamation plan, no monies shall be allocated to that Indian tribe. Amounts granted to an Indian tribe that have not been expended within three years from the date of grant award shall be available to the Director for other purposes under paragraph (b)(5) of this section. Such funds may be withdrawn from the Indian tribe if the Director finds in writing that the amounts involved are not necessary to carry out the approved reclamation activities.

(3) An amount equal to the 10 percent of the monies collected and deposited in the Fund annually, as well as 20 percent of the interest and other miscellaneous receipts to the Fund, if such amount is not necessary pursuant to Section 402(h) of the Act for transfer to the United Mine Workers of America Combined Benefit Fund, shall be allocated by the Secretary for transfer to the U.S. Department of Agriculture's Rural Abandoned Mine Program.

(4) An amount equal to 40 percent of the monies deposited in the Fund annually, including interest, if not required to satisfy the provisions of Section 402(h) of the Act, shall be allocated for use by the Secretary to supplement annual grants to States and Indian tribes after making the allocations referred to in paragraphs (b)(1) and (2) of this section. States and Indian tribes eligible for supplemental grants under this provision are those that have not certified the completion of all coal-related reclamation under Section 411(a) of the Act and that have not achieved the priorities stated in paragraphs (1) and (2) of Section 403(a) of the Act. The allocation of these monies by the Secretary to eligible States and Indian tribes shall be through a formula based upon the amount of coal historically produced prior to August 3, 1977, in the State or from the Indian lands concerned. Funds to be granted to specific States or Indian tribes under this paragraph may be reduced or curtailed under the following two conditions:

(i) If State or Indian tribal share funds to be granted in a year are sufficient to address all remaining eligible priority 1 or 2 coal sites in the State or on Indian lands, no additional funds under this paragraph will be provided during that year; or

(ii) If the cost to reclaim all remaining priority 1 or 2 coal sites in a specific State or on a specific Indian tribe's land exceeds the amount of State or Indian tribal share funds to be granted in a year to that State or Indian tribe pursuant to Section 402(g)(1) of the Act, but is less than the total amount of funds to be granted to the State or Indian tribe in that year utilizing State or Indian tribe and Federal funds under paragraphs (b)(1), (2), (3), and (4) of this section, the Federal funds granted under this paragraph will be reduced to that amount needed to fully fund all remaining priority 1 or 2 coal sites after utilizing all available State or Indian tribe share funds.

(5) Amounts available in the Fund that are not allocated pursuant to paragraphs (b) (1), (2), (3), and (4) of this section are authorized to be expended by the Secretary for any of the following:

(i) The Small Operator Assistance Program under Section 507(c) of the Act (not more than $10,000,000 annually).

(ii) Emergency projects under State, Indian tribal, and Federal programs under Section 410 of the Act.

(iii) Nonemergency projects in States and on Indian tribal lands that do not have an approved abandoned mine reclamation program pursuant to Section 405 of the Act.

(iv) Administration of the Abandoned Mine Land Reclamation Program by the Secretary.

(v) Projects authorized under Section 402(g)(4) in States and on Indian lands that do not have an approved abandoned mine reclamation program pursuant to Section 405 of the Act.

(6) If necessary to achieve the priorities stated in paragraphs 403(a) (1) and (2) of the Act, the Secretary, subject to the provision below, shall grant annually not less than $2,000,000 for expenditure in each State and Indian tribe having an approved abandoned mine land program, provided however, that annual State or Indian tribe share funds are utilized first, and that supplemental funds granted under this paragraph and paragraph (b)(4) of this section shall not exceed the costs of reclaiming all remaining priority 1 or 2 coal sites in a State or on Indian tribal land.

(7) Funds allocated or expended annually by the Secretary under Sections 402(g) (2), (3), or (4) of the Act for any State or Indian tribe shall not be deducted from funds allocated or granted annually to a State or Indian tribe under the authority of Sections 402(g) (1), (5), or (8) of the Act.

(8) The Secretary shall expend funds pursuant to the authority in Section 402(g)(3)(C) of the Act only in States or on Indian lands where the State or Indian tribe does not have an abandoned mine reclamation program approved under Section 405 of the Act.

* * * * *

16. Part 873 is added to read as follows:

PART 873—FUTURE RECLAMATION SET-ASIDE PROGRAM

Sec.
873.1 Scope.
873.11 Applicability.
873.12 Future set-aside program criteria.

Authority: Pub. L. 95–87, (30 U.S.C. 1201 *et seq.*); and Pub. L. 101–508.

§ 873.1 Scope.

This part provides requirements for the award of grants to States or Indian tribes for the establishment of special trust accounts that will provide funds for coal reclamation purposes after September 30, 1995.

§ 873.11 Applicability.

The provisions of this part apply to the granting of funds pursuant to Section 402(g)(6) of the Act and their use by the States or Indian tribes for coal reclamation purposes after September 30, 1995.

§ 873.12 Future set-aside program criteria.

(a) Any State or Indian tribe may receive and retain without regard to the three-year limitation referred to in Section 402(g)(1)(D) of the Act, 30 U.S.C. 1232, up to 10 percent of the total of the grant funds made annually to such State or Indian tribe pursuant to the authority in Sections 402(g) (1) and (5) of the Act, if such amounts are deposited into either of the following: (1) A special fund established under State or Indian tribal law pursuant to which such amounts (together with all interest earned on such amounts) are expended by the State or Indian tribe solely to achieve the priorities stated in Section 403(a) of the Act, 30 U.S.C. 1233, after September 30, 1995; or (2) An acid mine drainage abatement and treatment fund pursuant to 30 CFR part 876.

(b) Prior to receiving a grant pursuant to this part, a State or Indian tribe must:

(1) Establish a special fund account providing for the earning of interest on fund balances; and

(2) Specify that monies in the account may only be used after September 30, 1995, by the designated State or Indian tribal agency to achieve the priorities stated in Section 403(a) of the Act, 30 U.S.C. 1233.

(c) After the conditions specified in paragraphs (a) and (b) of this section are met, a grant may be approved and monies deposited into the special fund account. The monies so deposited, together with any interest earned, shall be considered State or Indian tribal monies.

PART 874—GENERAL RECLAMATION REQUIREMENTS

17. The authority citation for part 874 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

18. Section 874.1 is revised to read as follows:

§ 874.1 Scope.

This part establishes land and water eligibility requirements, reclamation objectives and priorities, and reclamation contractor responsibility.

19. Section 874.11 is revised to read as follows:

§ 874.11 Applicability.

The provisions of this part apply to all reclamation projects carried out with monies from the AML Fund.

20. Section 874.12 is amended by adding paragraphs (d), (e), (f), (g) and (h) to read as follows:

§ 874.12 Eligible coal lands and water.

* * * * *

(d) Notwithstanding paragraphs (a), (b), and (c) of this section, coal lands and waters in a State or on Indian lands damaged and abandoned after August 3, 1977, by coal mining processes are also eligible for funding if the Secretary finds in writing that:

(1) They were mined for coal or affected by coal mining processes; and

(2) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977, and:

(i) The date on which the Secretary approved a State regulatory program pursuant to Section 503 of the Act (30 U.S.C. 1253) for a State or September 28, 1994, for an Indian tribe, and that any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site; or

(ii) November 5, 1990, that the surety of the mining operator became insolvent during such period and that, as of November 5, 1990, funds immediately available from proceedings relating to such insolvency or from any financial guarantee or other source are not sufficient to provide for adequate reclamation or abatement at the site; and

(3) The site qualifies as a priority 1 or 2 site pursuant to Section 403(a)(1) and (2) of the Act. Priority will be given to those sites that are in the immediate vicinity of a residential area or that have an adverse economic impact upon a community.

(e) Any State or Indian tribe may expend funds may available under paragraphs 402(g)(1) and (5) of the Act (30 U.S.C. 1232(g)(1) and (5)) for reclamation and abatement of any site eligible under paragraph (d) of this section, if the State or Indian tribe, with the concurrence of the Secretary, makes the findings required in paragraph (d) of this section and the State or Indian tribe determines that the reclamation priority of the site is the same or more urgent than the reclamation priority for the lands and water eligible pursuant to paragraphs (a), (b) or (c) of this section that qualify as a priority 1 or 2 site under Section 403(a) of the Act (30 U.S.C. 1233(a)).

(f) With respect to lands eligible pursuant to paragraph (d) or (e) of this section, monies available from sources outside the Abandoned Mine Reclamation Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Fund if not required for further reclamation activities at the permitted site.

(g) If reclamation of a site covered by an interim or permanent program permit is carried out under the Abandoned Mine Land Program, the permittee of the site shall reimburse the Abandoned Mine Land Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. Neither the Secretary nor a State or Indian tribe performing reclamation under paragraph (d) or (e) of this section shall be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Act nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in Title V of the Act.

(h) Surface coal mining operations on lands eligible for remining pursuant to Section 404 of the Act shall not affect the eligibility of such lands for reclamation activities after the release of the bonds or deposits posted by any such operation as provided by § 800.40 of this chapter. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this title may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the Secretary shall immediately exercise his/her authority under Section 410 of the Act.

21. Section 874.13 is revised to read as follows:

§ 874.13 Reclamation objectives and priorities.

(a) Reclamation projects should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810–14819, March 6, 1980).

(b) Reclamation projects shall reflect the priorities of Section 403(a) of the Act (30 U.S.C. 1233). Generally, projects lower than a priority 2 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process of being reclaimed, or have been approved for funding by the Secretary, except in those instances where such lower priority projects may be undertaken in conjunction with a priority 1 or 2 site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects."

22. Section 874.14 is added to read as follows:

§ 874.14 Utilities and other facilities.

(a) Any state or Indian tribe that has not certified the completion of all coal-related reclamation under Section 411(a) of the Act, 30 U.S.C. 1241(a), may expend up to 30 percent of the funds granted annually to such State or Indian tribe pursuant to the authority in Sections 402(g) (1) and (5) of the Act for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supplies, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices.

(b) If the adverse effect on water supplies referred to in this section occurred both prior to and after August 3, 1977, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse affects are due predominately to effects of mining processes undertaken and abandoned prior to August 3, 1977.

(c) If the adverse effect on water supplies referred to in this section occurred both prior to and after the dates (and under the criteria) set forth under Section 402(g)(4)(B) of the Act, the project shall remain eligible, notwithstanding the criteria specified in 30 CFR 874.12(b), if the State or Indian tribe finds in writing, as part of its eligibility opinion, that such adverse effects are due predominately to the

effects of mining processes undertaken and abandoned prior to those dates.

(d) Enhancement of facilities or utilities under this section shall include upgrading necessary to meet any local, State, or Federal public health or safety requirement. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

23. Section 874.15 is added to read as follows:

§ 874.15 Limited liability.

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of this section, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

24. Section 874.16 is added to read as follows:

§ 874.16 Contractor responsibility.

To receive AML funds, every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by OSM's automated Applicant/Violator System for each contract to be awarded.

PART 875—NONCOAL RECLAMATION

25. The authority citation for part 875 is revised to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

26. Section 875.10 is added to read as follows:

§ 875.10 Information collection.

The collection of information contained in part 875 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0103. The information will be used to determine if noncoal reclamation is being accomplished according to legislative mandate. Response is required to obtain a benefit in accordance with Public Law 95–87. Public reporting burden for this information is estimated to average 32 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 N.C., 1951 Constitution Avenue NW., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0103), Washington, DC 20503.

27. Section 875.12 is revised to read as follows:

§ 875.12 Eligible lands and water prior to certification.

Noncoal lands and water are eligible for reclamation if:

(a) They were mined or affected by mining processes;

(b) They were mined and left or abandoned in either an unreclaimed or inadequately reclaimed condition prior to August 3, 1977;

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government or by the State as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, monies sufficient to complete the reclamation may be sought under parts 886 or 888 of this chapter;

(d) The reclamation has been requested by the Governor of the State or equivalent head of the Indian tribe; and

(e) The reclamation is necessary to protect the public health, safety, general welfare, and property from extreme danger of adverse effects of noncoal mining practices.

28. Section 875.13 is revised to read as follows:

§ 875.13 Certification of completion of coal sites.

(a) The Governor of a State, or the equivalent head of an Indian tribe, may submit to the Secretary a certification of completion expressing the finding that the State or Indian tribe has achieved all existing known coal-related reclamation objectives for eligible lands and waters pursuant to Section 404 of the Act (30 U.S.C. 1234), or has instituted the necessary processes to reclaim any remaining coal related problems. In addition to the above finding, the certification of completion shall contain:

(1) A description of both the rationale and the process utilized to arrive at the above finding for the completion of all coal-related reclamation pursuant to Section 403(a) (1) through (5).

(2) A brief summary and resolution of all relevant public comments concerning coal-related impacts, problems, and reclamation projects received by the State or Indian tribe prior to preparation of the certification of completion.

(3) A State or Indian tribe agreement to acknowledge and give top priority to any coal-related problem(s) that may be found or occur after submission of the certification of completion and during the life of the approved abandoned mine reclamation program.

(b) After review and verification of the information contained in the certification of completion, the Director shall provide notice in the **Federal Register** and opportunity for public comment. After receipt and evaluation of all public comments and a determination by the Director that the certification is correct, the Director shall concur with the certification and provide final notice of such concurrence in the **Federal Register**. This concurrence shall be based upon the State's or Indian tribes commitment to give top priority to any coal problem which may thereafter be found or occur.

(c) Following concurrence by the Director, a State or Indian tribe may implement a noncoal reclamation program pursuant to provisions in Section 411 of SMCRA.

29. Section 875.14 is added to read as follows:

§ 875.14 Eligible lands and water subsequent to certification.

(a) Following certification by the State or Indian tribe of the completion of all known coal projects and the Director's concurrence in such certification, eligible noncoal lands, waters, and facilities shall be those—

(1) Which were mined or processed for minerals or which were affected by such mining or processing, and abandoned or left in an inadequate reclamation status prior to August 3, 1977. In determining the eligibility under this subsection of Federal lands, waters, and facilities under the jurisdiction of the Forest Service or Bureau of Land Management, in lieu of the August 3, 1977, date, the applicable date shall be August 28, 1974, and November 26, 1980, respectively; and

(2) For which there is no continuing reclamation responsibility under State or other Federal laws.

(b) If eligible coal problems are found or occur after certification under § 875.13, a State or Indian tribe must address the coal problem utilizing State or Indian tribe share funds no later than the next grant cycle, subject to the availability of funds distributed to the State or Indian tribe in that cycle. The coal project would be subject to the coal provisions specified in Sections 401 through 410 of SMCRA.

30. Section 875.15 is added to read as follows:

§ 875.15 Reclamation priorities for noncoal program.

(a) This section applies to reclamation projects involving the restoration of lands and water adversely affected by past mineral mining; projects involving the protection, repair, replacement, construction, or enhancement of utilities (such as those relating to water supply, roads, and other such facilities serving the public adversely affected by mineral mining and processing practices); and the construction of public facilities in communities impacted by coal or other mineral mining and processing practices.

(b) Following certification pursuant to § 875.13, the projects and construction of public facilities identified in paragraph (a) of this section shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, general welfare and property from the extreme danger of adverse effects of mineral mining and processing practices;

(2) The protection of public health, safety, and general welfare from the adverse effects of mineral mining and processing practices; and

(3) The restoration of land and water resources and the environment previously degraded by the adverse effects of mineral mining and processing practices.

(c) Enhancement of facilities or utilities shall include upgrading necessary to meet local, State, or Federal public health or safety requirements. Enhancement shall not include, however, any service area expansion of a utility or facility not necessary to address a specific abandoned mine land problem.

(d) Notwithstanding the requirements specified in paragraph (a) of this section, where the Governor of a State or the equivalent head of an Indian tribe, after determining that there is a need for activities or construction of specific public facilities related to the coal or minerals industry in States or on Tribal lands impacted by coal or minerals development, submits a grant application as required by paragraph (d) of this section and the Director concurs in such need, as set forth in paragraph (e) of this section, the Director may grant funds made available under section 402(g)(1) of the Act, 30 U.S.C. 1232, to carry out such activities or construction.

(e) To qualify for funding pursuant to the authority in paragraph (c) of this section, a State or Indian tribe must submit a grant application that specifically sets forth:

(1) The need or urgency for the activity or the construction of the public facility;

(2) The expected impact the project will have on the coal or minerals industry in the State or Indian tribe;

(3) The availability of funding from other sources and, if other funding is provided, its percentage of the total costs involved;

(4) Documentation from other local, State, and Federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by their agency;

(5) The impact on the State or Indian tribe, the public, and the minerals industry if the activity or facility is not funded;

(6) The reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from the damages caused by past mining activities; and

(7) An analysis and review of the procedures used by the State or Indian tribe to notify and involve the public in this funding request and a copy of all comments received and their resolution by the State or Indian tribe.

(f) After review of the information contained in the application, the Director shall prepare a **Federal Register** notice regarding the State's or Indian tribe's submission and provide for public comment. After receipt and evaluation of the comments and a determination that the funding meets the requirements of the regulations in this part and is in the best interests of the State or Indian tribe AML program, the Director shall approve the request for funding the activity or construction at a cost commensurate with its benefits towards achieving the purposes of the Surface Mining Control and Reclamation Act of 1977.

31. Section 875.16 is added to read as follows:

§ 875.16 Exclusion of certain noncoal reclamation sites.

Money from the Fund shall not be used for the reclamation of sites and areas designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or that have been listed for remedial action pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

32. Section 875.17 is added to read as follows:

§ 875.17 Land acquisition authority—noncoal.

The requirements specified in Parts 877 (Rights of Entry) and 879 (Acquisition, Management and Disposition of Lands and Water) shall apply to a State's or Indian tribe's noncoal program except that, for purposes of this section, the references to coal shall not apply. In lieu of the term *coal*, the word *noncoal* should be used.

33. Section 875.18 is added to read as follows:

§ 875.18 Lien requirements.

The lien requirements found in Part 882—Reclamation on Private Land shall apply to a State's or Indian tribe's noncoal reclamation program under Section 411 of the Act, except that for purposes of this section, references made to coal shall not apply. In lieu of the term *coal*, the word *noncoal* should be used.

34. Section 875.19 is added to read as follows:

§ 875.19 Limited liability.

No State or Indian tribe shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out an approved State or Indian tribe abandoned mine reclamation plan. This section shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the State or Indian tribe. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence or intentional misconduct.

35. Section 875.20 is added to read as follows:

§ 875.20 Contractor responsibility.

To receive AML funds for noncoal reclamation, every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by OSM's

automated Applicant/Violator System for each contract to be awarded.

36. Part 876 is added to read as follows:

PART 876—ACID MINE DRAINAGE TREATMENT AND ABATEMENT PROGRAM

Sec.
876.1 Scope.
876.10 Information collection.
876.12 Eligibility.
876.13 Plan content.
876.14 Plan approval.

Authority: 30 U.S.C. 1201 *et seq.*, as amended.

§ 876.1 Scope.

This part establishes the requirements and procedures for the preparation, submission and approval of State or Indian tribe Acid Mine Drainage Treatment and Abatement Programs.

§ 876.10 Information collection.

The collections of information contained in part 876 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029–0104. The information will be used to determine if the State's or Indian tribe's Acid Mine Drainage Abatement and Treatment Programs are being established according to legislative mandate. Response is required to obtain a benefit in accordance with Public Law 95–87. Public reporting burden for this information is estimated to average 1,040 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, room 640 N.C., 1951 Constitution Avenue NW., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1029–0104), Washington, DC 20503

§ 876.12 Eligibility.

(a) Any State or Indian tribe having an approved abandoned mine land program may receive and retain, without regard to the three-year limitation set forth in Section 402(g)(1)(D) of the Act, up to 10 percent of the total of the grants made under Section 402(g) (1) and (5) of the Act to such State or Indian tribe for the purpose of abandoned mine land reclamation if such amounts are deposited into either:

(1) A special fund established under State or Indian tribal law pursuant to which such amounts (together with all interest earned) are expended by the State or Indian tribe solely to achieve the priorities stated in Section 403(a) after September 30, 1995; or

(2) An acid mine drainage abatement and treatment fund established under State or Indian tribal law.

(b) Any State or Indian tribe may establish under State or Indian tribal law an acid mine drainage abatement and treatment fund from which amounts (together with all interest earned on such amounts) are expended by the State or Indian tribe to implement, in consultation with the Soil Conservation Service, acid mine drainage abatement and treatment plans approved by the Director.

§ 876.13 Plan content.

Acid Mine Drainage Abatement Plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices. The plan shall include, but shall not be limited to, each of the following:

(a) An identification of the qualified hydrologic unit;

(b) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit;

(c) An identification of the sources of acid mine drainage within the hydrologic unit;

(d) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit;

(e) The cost of undertaking the proposed abatement and treatment measures;

(f) An identification of existing and proposed sources of funding for such measures; and

(g) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

§ 876.14 Plan approval.

The Director may approve any plan under § 876.13(b) only after determining that such plan meets the requirements of § 876.13. In conducting an analysis of the items referred to in § 876.13(d), (e) and (g), the Director shall obtain the comments of the Director of the U.S. Bureau of Mines. In approving plans under this section, the Director shall give priority to those plans which will be implemented in coordination with measures undertaken by the Secretary of Agriculture under the Rural Abandoned Mine Program.

PART 886—STATE RECLAMATION GRANTS

37. The authority citation for part 886 is revised to read as follows:

Authority: Pub. L. 95–87; 30 U.S.C. 1201 *et seq.*; and Pub. L. 101–508.

§ 886.23 [Amended]

38. Paragraph 886.23(b)(2)(ii) is amended to remove the word "and" at the end of the paragraph.

39. Paragraph 886.23(b)(2)(iii) is amended to revise the period at the end of the sentence to a semicolon followed by the word "and".

40. A new paragraph (c) is added to § 886.23 to read as follows:

§ 886.23 Reports.

* * * * *

(c) A Form OSM–76, "Abandoned Mine Land Problem Area Description," shall be submitted upon project completion to report the accomplishments achieved through the project.

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Tuesday
May 31, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grant Program; Economic Development Guidelines; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R–94–1729; FR–3474–P–01]

RIN 2506–AB53

Community Development Block Grant Program; Economic Development Guidelines

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule and guidelines.

SUMMARY: This rule proposes guidelines to assist Community Development Block Grant (CDBG) recipients in evaluating and selecting economic development activities for assistance with CDBG funds. The proposed guidelines deal with project costs and financial requirements and with the public benefit provided by such activities. This rule also proposes certain other changes to facilitate the use of CDBG funds for economic development objectives.

DATES: *Comments due date:* June 30, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding the proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. Copies of all written comments received will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, at the address listed above.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Communities Division, Office of Block Grant Assistance, room 7282, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–1577; TDD: (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: One of the Department of Housing and Urban Development's (HUD's) expressed goals is to provide an economic lift for distressed cities. Toward this end, HUD has embarked on a course designed to make the Community Development Block Grant (CDBG) program a potentially major contributor to the provision of jobs, especially for low-income persons residing in our poorest areas. To accomplish this goal, the Department recognizes that it will need to change both the perception and the reality concerning the usefulness of CDBG for economic development objectives.

Section 806 of the Housing and Community Development Act of 1992 (the 1992 Act) requires the Secretary to establish, by regulation, guidelines to assist CDBG recipients to evaluate and select economic development activities for assistance with CDBG funds. The 1992 Act also made further changes in the CDBG program affecting the use of funds for economic development activities, particularly those carried out under the national objective of benefiting low- and moderate-income persons through the creation or retention of jobs. These changes necessitate revisions to the CDBG regulations. HUD has also determined that it is appropriate to take this opportunity to propose certain other changes to the regulations to facilitate the use of CDBG funds for economic development objectives. These changes are designed to reduce the administrative burden on grantees while, at the same time, focusing efforts on assisting the residents of low- and moderate-income neighborhoods.

Applicability of This Proposed Rule to the State CDBG Program

Separate regulatory language for the Entitlement and State CDBG programs is contained in this proposed rule. This preamble discusses the proposed changes for the two programs together; differences between the proposals for the two programs are noted. In general, the differences have been kept to a minimum.

The State CDBG program regulations do not contain an explanatory list of eligible activities, and relatively few terms are defined in regulation. The proposed changes to §§ 570.201, 570.203, 570.204, 570.500 and 570.506 (and the accompanying preamble discussions thereof) are thus not applicable to the State CDBG program, as there are no comparable sections in the State regulations. In interpreting the list of eligible activities found in section 105 of the Housing and Community Development act of 1974, as amended, states may use the Entitlement regulations as interpretive guidance.

Applicability of This Proposed Rule to the HUD-Administered Small Cities and Insular Areas CDBG Programs

Portions of the Entitlement CDBG Program regulations are incorporated by reference into the regulations for the HUD-Administered Small Cities program and the Insular Areas CDBG program. The proposed changes to the Entitlement regulations would also apply to the HUD-Administered Small Cities and Insular Areas programs. The Department welcomes comment on whether these proposed changes can be practicably applied as written to the HUD-Administered and Insular Areas programs, or whether separate approaches are needed for those two programs. Further clarification would be provided (such as through annual Notices of Funding Availability or other instructions) for those programs, particularly regarding applications proposing a limited number of activities subject to the public benefit guidelines. Public comment is particularly welcomed on the proposed rule's approach in applying the aggregate public benefit tests to the HUD-Administered Small Cities and Insular Areas Programs.

Applicability of This Proposed Rule to the Indian CDBG Program

It has been determined by the Office of Native American Programs that this proposed regulation will not be applicable to the Indian Community Development Block Grant (ICDBG) program. The nature of the ICDBG program is so separate and distinct from the Entitlement or the State and Small Cities program that it is in the best interest of the ICDBG to address these issues separately. A specific rule will be proposed at a later date to address the needs of the Indian Tribes and Alaskan Native Villages served by the ICDBG program to comply with the requirements of the Housing and Community Development Act of 1992. Comments and suggestions are solicited on the possible modification of this proposed rule or the development of a method of implementing these requirements for the ICDBG program.

Assistance for Microenterprises

Section 807(a)(4) of the Housing and Community Development Act of 1992 added a new section 105(a)(23) to the Housing and Community Development Act of 1974, as amended, regarding the provision of CDBG assistance to facilitate economic development through assistance to microenterprises and persons developing microenterprises. A "microenterprise" is defined by section 807(c)(2) of the 1992 Act as a "commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise." This new eligibility provision became effective upon the enactment of the 1992 Act (October 28, 1992). In policy guidance issued in January 1993, the Department indicated that it intended to

publish rules for public comment in order to show how assistance provided under the new provision should be distinguished from that provided to and for microenterprises under other existing authority in the CDBG program.

The proposed rule implements the new microenterprise eligibility category by adding a new paragraph § 570.201(o) to the CDBG Entitlement regulations. The Department has determined that it is appropriate to add the new provision to § 570.201, basic eligible activities, rather than § 570.203, special economic development activities, to highlight the unique aspects of the new microenterprise eligibility category. The provision of direct assistance to microenterprises has long been, and continues to be, eligible as a special economic development activity under § 570.203(b). Such activities are carried out under the authority of section 105(a)(17) of the Housing and Community Development Act of 1974, as amended; therefore, they are statutorily subject to an "appropriateness" determination and the economic development "guidelines" (included in this proposed rule as a new § 570.209 of the Entitlement regulations and additions to § 570.482 of the State regulations). As noted above, however, this new microenterprise eligibility category was added to the Act as a new section 105(a)(23). This new paragraph of the statute does not contain any requirement that assistance for such activities be determined to be "appropriate." In addition, this new paragraph is not included among those eligibility categories listed as covered by the economic development "guidelines" to be established pursuant to the new section 105(e) of the statute, as added by section 806(a) of the 1992 Act. The new microenterprise eligibility category at section 105(a)(23) also authorizes the provision of "general support * * * to owners of microenterprises and persons developing microenterprises," over and above the technical assistance and business support services authorized by the provision for such persons. The "general support" aspect of the eligibility provision is discussed in further detail later in this preamble. Given the above unique characteristics of the new statutory provision, the Department has determined that it is most fitting to list the eligibility category as a separate activity under § 570.201 instead of adding it as another special economic development activity under § 570.203 of the Entitlement regulations.

While the new eligibility category does provide significant flexibility, here is an important restriction that must be noted. The beneficiaries of CDBG assistance under this new provision are limited to "owners of microenterprises and persons developing microenterprises" by the statute. As noted above, a "microenterprise" is defined by section 807(c)(2) of the 1992 Act as a "commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise." This definition has recently been incorporated into the CDBG Entitlement regulations at § 570.3. Pursuant to this statutory restriction, CDBG assistance to any business that has more than five employees cannot qualify under this provision and must continue to comply with the requirements of § 570.203(b) of the Entitlement regulations. It should also be noted that given that activities assisted under this new provision are to exclusively benefit microenterprises and persons developing microenterprises, a CDBG-assisted economic development loan or grant program that is open to any for-profit business under the provisions of § 570.203(b) (Section 105(a)(17) of the Housing and Community Development Act of 1974, as amended) cannot exempt an individual activity from compliance with the economic development "guidelines" simply because that individual business happens to be a microenterprise. The "guidelines" as currently proposed to be implemented by a new § 570.209 of the Entitlement regulations (and § 570.482 of the State regulations) take into account the special needs and limitations arising from the size of such businesses assisted under § 570.203(b) as required by the new section 105(g)(1) of the statute as added by section 807(c)(1) of the 1992 Act.

The new section 105(a)(23) authorizes the "provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by" providing assistance to microenterprises and persons developing microenterprises. The Department has determined that given the general language contained in the statute, the grantee itself could be considered an entity eligible to carry out microenterprise assistance activities under section 105(a)(23). If the grantee provides CDBG funds to other intermediary organizations to carry out microenterprise assistance activities under the new eligibility category, the Department considers such entities to be subrecipients. (See further discussion on such subrecipients later in this preamble.)

As noted earlier, the new microenterprise eligibility category at section 105(a)(23) authorizes the provision of "general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises." Such "general support" is over and above the technical assistance and business support services authorized by the provision for such persons. This provision represents a potentially significant broadening of CDBG eligibility. The language of the statute indicates that the two specific types of services cited are meant only to serve as examples of what may be considered eligible under this provision and not an exclusive listing. The Department believes that this paragraph may be interpreted very broadly to include a multitude of non-business services for microenterprise owners and persons in varying stages of developing microenterprises. Thus, for illustrative purposes in the proposed rule at § 570.201(o)(3), the Department has added two additional examples of potentially eligible services—child care and transportation. The proposed rule also makes it clear that other similar services that can be shown to help a person become a microenterprise owner can be considered eligible under this paragraph. Examples of other such services that might qualify under this provision, depending on the design of the microenterprise assistance activity, include personal financial counseling, substance abuse counseling, job training, and other education programs. Such an interpretation of this provision may provide significant new flexibility for grant recipients because services qualifying under this paragraph are not considered to be subject to the 15 percent cap on general public service activities qualifying under § 570.201(e) of the CDBG Entitlement regulations (as authorized by section 105(a)(8) of the statute). Comment on the Department's interpretation of this provision is welcome.

A new § 570.482(c) of the State regulations is proposed. This proposed paragraph would specify that recipients of state CDBG grants, as well as subrecipients, may provide microenterprise development assistance; the proposed § 570.482(c) also specifies that provision of support services to owners or developers of microenterprises is not subject to the statutory restrictions on public services.

Modification to the Definition of Subrecipient Related to Microenterprise Assistance Activities

As noted earlier in this preamble, the new Section 105(a)(23) eligibility provision (proposed herein to be implemented by a new § 570.201(o) in the Entitlement regulations) authorizes "the provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by" providing various forms of assistance to owners of microenterprises and persons developing microenterprises. The Department interprets this provision to mean that any such entities beyond the grantee itself are to serve as intermediaries in the grant assistance chain rather than being considered beneficiaries in and of themselves. Thus, the Department considers such organizations to be subrecipients under the CDBG program. The term "subrecipient" is currently defined at § 570.500(c) of the CDBG Entitlement regulations as a "public or private nonprofit agency, authority or organization, or an entity described in § 570.204(c), receiving CDBG funds from the recipient to undertake activities eligible for such assistance under Subpart C." As noted above, however, the new statutory eligibility category specifically includes for-profit entities as organizations that may be provided CDBG assistance to carry out microenterprise assistance activities. Thus, in this proposed rule, the Department is revising § 570.500(c) to add a reference to "an entity described in § 570.201(o)" to include such for-profit entities in the definition of a subrecipient.

There are no regulatory requirements governing how a grant recipient selects a subrecipient under the CDBG program. Thus, a grantee may designate any entity, including a for-profit entity, to act as a subrecipient to carry out a microenterprise assistance activity under the new eligibility category. However, the Entitlement recipient and the subrecipient must then enter into a written agreement that meets all the requirements of § 570.503 of the CDBG Entitlement regulations. These requirements include compliance with the applicable uniform administrative requirements as described at § 570.502 and the program income requirements as set forth in § 570.504(c).

Ensuring that Economic Development Projects Minimize Displacement

The proposed rule implements section 907(a) of the National Affordable Housing Act of 1990 by amending § 570.203(b) of the CDBG Entitlement regulations to delete the words "necessary or" from the previously required "necessary or appropriate determination" and to add the requirement that economic development projects assisted under this provision must minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods. The language being added to the regulation on displacement is identical to that contained in the statute. The Department welcomes comment on whether any further explanatory language should be added and how broadly this provision should be interpreted.

Additional Changes to § 570.203, Special Economic Development Activities

Section 570.203 of the Entitlement regulations is further revised in this proposed rule, as is § 570.204, to reflect that these activities are subject to the guidelines for selecting activities as required by section 806(a) of the Housing and Community Development Act of 1992 ("1992 Act"). The guidelines themselves are set forth in this proposed rule in a proposed new § 570.209 in the Entitlement regulations and additions to § 570.482 in the State regulations. These proposed changes are discussed in further detail later in this preamble.

Additionally, a new paragraph (c) is proposed to be added to § 570.203 of the Entitlement regulations to specifically address items that may be considered activity delivery costs in conjunction with special economic development activities assisted under this section. The Department's principal purpose in proposing the addition of this paragraph is to permit certain job training and placement activities in direct conjunction with otherwise assisted CDBG special economic development activities to be considered part of the "delivery cost" of those special economic development activities. Under current regulations, all job training and placement activities are considered to be public service activities qualifying under § 570.201(e) of the Entitlement regulations and, thus, subject to the 15 percent cap on such activities. The Department recognizes that there are significant differences between general skill-building training programs and those that are directly linked with assisting individuals, especially low- and moderate-income persons, to obtain specific job openings generated by a CDBG-assisted special economic development activity. HUD believes it would be beneficial to permit the latter type of program to be considered part of the "delivery cost" of the associated special economic development activity. Such placement and training costs would then be considered to be eligible under § 570.203 (Sections 105(a) (14) and (17) of the Housing and Community Development Act of 1974, as amended) and, thus, not subject to the limitations imposed on general public service activities. The remaining types of activities delineated in the proposed § 570.203(c) are already considered to be activity delivery costs eligible under § 570.203 under current regulations. The proposed new paragraph only provides a more specific statement of this point.

National Objective Standards for Low- and Moderate-Income Area Benefit Activities

This proposed rule includes a revision to § 570.208(a)(1)(i) of the Entitlement regulations and § 570.483(b)(1)(i) of the State regulations dealing with activities qualifying under the national objective of benefiting low- and moderate-income persons as area benefit activities. The proposed revision relates specifically to special economic development activities that may be carried out under § 570.203 (Sections 105(a) (14) and (17) of the Housing and Community Development Act of 1974, as amended) by a community development financial institution.

Supporting the development and growth of community development financial institutions is a major initiative of this Administration. Such existing institutions have demonstrated their ability to identify and respond to community needs for equity investments, loans, and development services. They can play a critical role in the comprehensive revitalization of distressed neighborhoods by addressing the financing needs of the area that are otherwise unmet. The proposed change to § 570.208(a)(1)(i) and § 570.483(b)(1)(i) would allow that if a community development financial institution's charter limits its overall investment area to a primarily residential area where at least 51 percent of the residents are low- and moderate-income persons, any economic development activity carried out under § 570.203 (Sections 105(a) (14) and (17) of the Housing and Community Development Act of 1974, as amended) by that institution would be presumed to benefit that investment

area generally. Thus, any such activity would qualify as an area benefit activity. This would reduce record keeping burdens for such activities while still ensuring that low- and moderate-income persons are receiving benefits from the activities.

National Objective Compliance by Microenterprise Assistance Activities

Just as there are unique aspects distinguishing the new microenterprise eligibility category at section 105(a)(23) of the statute from CDBG special economic development activities, there is also a key distinction between the two types of activities relating to national objective compliance. Special economic development activities carried out under § 570.203 (a) and (b) of the Entitlement regulations (Sections 105(a) (14) and (17) of the statute, respectively) are subject to the restrictions imposed by section 105(c)(1) of the Act. That section limits the manner in which CDBG special economic development activities may be considered to meet the national objective of benefiting low- and moderate-income persons. Pursuant to section 105(c)(1), special economic development activities carried out under § 570.203 (a) and (b) (Sections 105(a) (14) and (17) of the Housing and Community Development Act of 1974, as amended) can only be considered to benefit low- and moderate-income persons either as an area benefit activity (§ 570.208(a)(1) of the Entitlement regulations and § 570.483(b)(1) of the State regulations) or as a job creation or retention activity (§ 570.208(a)(4) of the Entitlement regulations and § 570.483(b)(4) of the State regulations). As noted above, however, the new microenterprise eligibility category was added to the Act as a new section 105(a)(23), and this new paragraph is not statutorily subject to the restrictions imposed by section 105(c)(1). Thus, the low- and moderate-income limited clientele method of meeting a national objective becomes an option for activities carried out under the new microenterprise eligibility category.

In this proposed rule, a new § 570.208(a)(2)(iii) has been added to the Entitlement regulations, and a new § 570.483(b)(2)(iv) has been added to the State regulations, to specifically provide the limited clientele national objective option for the new microenterprise assistance activities. The Department believes that the limited clientele option provides the greatest flexibility for recipients and their subrecipients actually carrying out microenterprise assistance activities under the new eligibility category to qualify these activities as benefiting low- and moderate-income persons. This national objective provision would allow such activities to serve a broad range of microenterprise owners and persons developing microenterprises without concern as to whether and how many jobs are actually being "created" or "retained" as those terms are used in the CDBG Entitlement regulations at § 570.208(a)(4) [§ 570.483(b)(4) of the State regulations]. This may be particularly significant when CDBG funds are used under the new eligibility category for the "stabilization" of existing microenterprises or to assist persons who subsequently decide against "developing microenterprises." Also, under this proposed national objective provision, only the income status of the assisted microenterprise owners and persons developing microenterprises would need to be assessed; the recipient or subrecipient carrying out the activity would not have to ascertain the income status of any employees who may be hired or retained as a result of the CDBG assistance.

The proposed rule would also permit the aggregating of beneficiaries by program year. Under the limited clientele provision, the recipient and any subrecipient carrying out the activity would need to demonstrate that at least 51 percent of the beneficiaries of the activity during the program year are low- and moderate-income persons. (States would need to demonstrate 51 percent low- and moderate-income benefit for each annual grant. Recipients of grants from HUD under the Insular Areas and HUD-Administered Small Cities programs would need to demonstrate 51 percent low- and moderate-income benefit for each separate grant.) Many activities carried out under the new eligibility category will likely be designed to assist an individual as he/she is attempting to develop a microenterprise and then to continue to assist the individual once that person has actually become an owner of a microenterprise. It is possible that a low- or moderate-income person initially assisted under such an activity may no longer be considered to be of low or moderate income in a later program year after the microenterprise actually becomes operational. The Department believes that some continuity of service for such persons may still be desirable. Thus, the proposed rule states that for purposes of meeting this national objective requirement, any person determined to be of low or moderate income may be presumed to continue to qualify as such for up to a three-year period before that person would have to requalify.

Comment on the proposed manner for permitting a microenterprise assistance activity to demonstrate that it is meeting the national objective of benefiting low- and moderate-income persons is welcome. As discussed above, the Department believes that the proposed limited clientele provision will provide the greatest flexibility to recipients and their subrecipients actually carrying out such activities. Demonstrating compliance as job creation or retention activities would still be an option for activities carried out under the new eligibility category, but the Department is not proposing to make any special provisions in § 570.208(a)(4) of the Entitlement regulations and § 570.483(b)(4) of the State regulations for such activities. While job creation and retention activities can use the new presumptions added by Section 806(e) of the 1992 Act for determining a person's status as a low- or moderate-income person, the Department believes that microenterprise assistance activities carried out under the new eligibility category could still more easily meet national objective requirements under the proposed limited clientele provision.

National Objective Standards for Benefiting Low- and Moderate-Income Persons Through the Creation or Retention of Jobs—Presumptions Added by 1992 Act

The proposed rule implements Section 806(e) of the 1992 Act by amending § 570.208(a)(4) [§ 570.483(b)(4) in the State regulations] regarding the national objective standard for benefiting low- and moderate-income persons through the creation or retention of jobs. Section 806(e) of the 1992 Act amended section 105(c) of the Housing and Community Development Act of 1974 by adding a new paragraph (4) which permits certain presumptions to be made regarding the low- or moderate-income status for employees benefiting under that national objective criterion. The presumption permitted by the new section 105(c)(4)(B) was effective upon enactment of the 1992 Act and is now being codified into the regulations. That section permits a person to be presumed to be of low or moderate income under this national objective standard if he/she resides within a census tract where not less than 70 percent of the residents are low- and moderate-income persons.

The presumption permitted by the new section 105(c)(4)(A) has not yet become effective because it refers to census tracts that meet Federal

enterprise zone criteria and HUD determined that further rulemaking was necessary to identify the specific criteria that must be met. Section 834 of the 1992 Act makes references to and updates certain portions of the enterprise zone designation authorized by section 701 of the Housing and Community Development Act of 1987. However, at the time the 1992 Act was enacted (October 28, 1992), a new enterprise zone bill was also being considered in Congress. The Omnibus Budget Reconciliation Act of 1993 ("1993 Act") was subsequently enacted on August 10, 1993. Title XIII, chapter I, subchapter C, part I of that Act outlines a new program providing for the Federal designation of Empowerment Zones and Enterprise Communities. This program has now replaced the more limited enterprise zone designation authority that was provided in the 1987 Act. Section 1392 of the 1993 Act prescribes the eligibility criteria for Empowerment Zones and Enterprise Communities. While there are various size, population, and distress criteria applicable to the overall area proposed for designation, the only eligibility criterion that is applied to individual census tracts is a poverty level standard. Pursuant to the 1993 Act, each census tract to be included in an Empowerment Zone or an Enterprise Community must have a poverty rate of at least 20 percent.

(Note: HUD interprets all of the above-noted statutory references to "census tracts" as also including "block numbering areas" ("BNAs") in areas where census tracts are not defined. As used hereafter in this preamble, "census tracts" includes BNAs.)

The low- and moderate-income presumption authorized by the new section 105(c)(4)(A), as added by section 806(e) of the 1992 Act, states that under the national objective standard of benefiting low- and moderate-income persons through the creation or retention of jobs, a person may be presumed to be of low or moderate income if either the person resides in a census tract that meets Federal enterprise zone eligibility criteria or the assisted activity is located in such a census tract. The statute does not require actual Federal designation, but only that the census tract meet the eligibility criteria. As noted above, the only eligibility criterion applicable to individual census tracts under the new Empowerment Zone/Enterprise Community program is the poverty level standard. Thus, HUD proposes to further amend § 570.208(a)(4) and § 570.483(b)(4) in this rule to provide that for purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be of low or moderate income if either (1) he/she resides in a census tract where at least 20 percent of the residents are in poverty or (2) the assisted business is located in a census tract where at least 20 percent of the residents are in poverty and the job under consideration is to be located within that census tract. Such a change in the regulations should significantly ease grantees' record keeping burdens for many economic development activities, as was the apparent Congressional intent behind the change in the statute. A conforming change to § 570.506(b) of the Entitlement regulations (the addition of a new paragraph (7) with the subsequent paragraphs renumbered) regarding records that need to be maintained is also included in this proposed rule. Comment on HUD's interpretation of the subject statutory provision is welcome.

The Department particularly seeks comment as to whether further standards should be established for census tracts that comprise or include any part of a community's central business district. In delineating the size requirements for an area to be nominated as an Empowerment Zone or an Enterprise Community, section 1392(a)(3)(D) of the 1993 Act states that the area must exclude any portion of a central business district unless the poverty rate for each census tract in such district is not less than 35 percent in the case of an Empowerment Zone or 30 percent in the case of an Enterprise Community. HUD is interested in obtaining comment regarding whether the presumption of low- and moderate-income status included in the proposed revision to § 570.208(a)(4) and § 570.483(b)(4) should be revised to require a higher than 20 percent poverty percentage for census tracts that are part of a community's central business district and if so, whether such a standard should be set at 30 or 35 percent.

It is noted that the new low- and moderate-income presumption based on a census tract meeting the eligibility criteria for the Empowerment Zone/Enterprise Community program would become effective only when a final rule is published for effect in this regard. It should also be noted that both of the above presumptions of a person's low- or moderate-income status are only applicable to activities qualifying under the low- and moderate-income national objective provisions of § 570.208(a)(4) and § 570.483(b)(4), job creation or retention activities. They cannot be extended to activities that qualify as benefiting low- and moderate-income persons under any of the other criteria delineated in § 570.208(a) (1) through (3) or § 570.483(b) (1) through (3). This is because the new section 105(c)(4) of the Act, as added by section 806(e) of the 1992 Act, specifically states that it is only "for the purposes of subsection (c)(1)(C)." Section 105(c)(1)(C) of the Act is that provision which states that one of the ways in which economic development activities can be considered to principally benefit low- and moderate-income persons is to "involve employment of persons, a majority of whom are persons of low and moderate income."

Other Revisions Regarding Income Documentation

As noted above, a new paragraph (7) is proposed to be added to § 570.506(b) of the Entitlement regulations to specifically address what records should be maintained to document compliance with the above presumptions of a person's low- or moderate-income status as added by the 1992 Act. HUD is also including in this proposed rule additional revisions to the introductory paragraph of § 570.506(b) regarding information HUD will generally accept as documentation of income by family size. The proposed revisions are principally designed to clarify what is already the intent of the current rule. The proposed rule cites specific examples of programs having income qualification criteria at least as restrictive as CDBG and would also permit grantees to use evidence that a person is homeless as a substitute for specific information on income by family size.

Section 570.490(a) of the State regulations states that HUD and the states shall jointly agree on the content of records to be maintained by states. HUD is presently in the midst of negotiations with states on recordkeeping, and will continue the consultation process when final regulations are published.

Job Creation or Retention by Public Infrastructure Improvements

In this proposed rule, the Department is also including another amendment to § 570.208(a)(4) of the CDBG Entitlement regulations and § 570.483(b)(4) of the State CDBG program regulations that is not directly related to any specific statutory change. This change relates to grantee concerns that have been raised regarding the requirements for demonstrating national objective compliance for CDBG-assisted public infrastructure improvements, such as

parking garages, streets, and water and sewer improvements, that are designed to support an economic development project and are claimed under the national objective of benefiting low- and moderate-income persons through the creation or retention of jobs. Inasmuch as such public infrastructure improvements qualify independently for eligibility as public facilities, they are not statutorily subject to the additional eligibility determinations required for "special economic development" activities. However, such infrastructure improvements may often have unique difficulties in demonstrating compliance with the national objective requirements for the creation or retention of jobs. Grantee concerns in this regard have been most notable in the State CDBG program, but Entitlement grantees, particularly urban counties, may also face the same issues.

In the November 9, 1992, State CDBG Program Regulations, HUD included a new criterion by which public improvements undertaken for economic development purposes could demonstrate compliance with the low- and moderate-income benefit national objective. Prior to 1992, both the Entitlement and State CDBG programs had no specific criteria for public improvement projects meeting the national objective through job creation or retention. All recipients were required to track job creation or retention indefinitely for any and all businesses benefiting from the CDBG assistance for the public improvements. Such is still the case for Entitlement grant recipients.

The present State program rule at § 570.483(b)(4)(iv)(C) requires that a unit of general local government develop an assessment which identifies any businesses located or expected to locate in the area to be served by the public improvement. Under that provision, the jobs to be considered for purposes of meeting the national objective are all jobs created or retained as a result of the public improvement, both by businesses identified in the assessment and by any other businesses which locate in the area within three years after the completion of the public improvement. If the cost of the public improvement is less than $3,000 per job, however, the jobs to be considered may be limited to those created or retained by the businesses identified in the assessment.

This criterion has been subject to considerable question and concern from states. Three particular areas of concern have been frequently cited:

(1) The $3,000 per job threshold is too low;

(2) Counting jobs from all businesses that locate in the area within a three-year period is unreasonable, as most projects are undertaken to serve one (or a small number of) specific, identified business(es);

(3) Counting jobs from businesses which were not identified in the initial assessment is problematic, because local governments cannot predict or control the business expansion activities of all businesses in the service area of a public improvement. A project could fail to meet the low- and moderate-income benefit national objective if unanticipated, higher-income jobs created by such previously unidentified businesses reduce the aggregate percentage of low- and moderate-income jobs below 51%.

The Department has considered the issues raised by states and their experiences in implementing this criterion over the past year. As HUD desires to make the CDBG program a more flexible resource for assisting economic development projects, the Department proposes to revise the current State program criterion and also add a comparable provision to the Entitlement program regulations.

In this proposed rule, the $3,000 per job threshold is raised to $10,000. The Department recognizes that a public works project with an economic development purpose is usually undertaken with the primary goal of assisting one (or a small number of) identified business(es). Benefit might accrue from the CDBG-assisted public improvement to other, currently unidentifiable businesses in the service area, particularly if that area is relatively undeveloped; however, the project is not being undertaken for their benefit. Where the $10,000 per job threshold can be met by the identified business(es) for whom the public improvement is being undertaken, job creation or retention by only that (those) specific business(es) must be tracked.

Where the $10,000 per job threshold cannot be met by considering only those specific businesses, recipients will still be required to track all job creation or retention resulting from the CDBG-assisted public improvement. However, the time period for determining the universe of businesses for which job creation must be tracked is changed in this proposed rule. The time period would be changed from 3 years after completion of the improvement to a period starting with the award of the grant by the state and ending one year after the completion of the public improvement. In the case if an Entitlement recipient, the period would start with the identification of the project in the grantee's final statement. For recipients of grants from HUD under the Insular Areas or HUD-Administered Small Cities programs, the period would start with HUD's award of the grant to the recipient. The proposed rule clarifies that the requirement applies to the time period during which businesses move into a service area or expand as a result of the assistance, not to the time period for which jobs must be tracked for any given business.

The present State CDBG regulation requires that "the assistance must be reasonable in relation to the number of jobs"; the Department chose not to define "reasonableness" in the existing regulations. The portion of this proposed rule establishing the required guidelines for evaluating the public benefit of special economic development activities, which is fully discussed later in this preamble, provide a gauge for defining the reasonableness of the CDBG cost per job. Therefore, while a public facilities activity would not normally be subject to the public benefit guidelines, HUD proposes to make such an activity subject to the new public benefit guidelines proposed herein at § 570.209(b) and § 570.482(e) in any case where the activity is undertaken to support an economic development project and it does not meet the $10,000 per job threshold that is proposed to be established in the job creation or retention national objective regulations. The Department will presume that public improvement activities that meet the proposed $10,000 per job threshold provide reasonable benefits relative to the amount of the assistance.

Given the above proposed changes, § 570.208(a)(4) is also being reformatted for clarity in this proposed rule. The only substantive changes in this section of the regulations are those regarding the presumptions added by the 1992 Act and job creation/retention by public infrastructure projects as discussed above. These changes can be found at the proposed new paragraphs § 570.208(a)(4)(iv) and (v)(C), respectively.

Request for Comment on Certain Other Job Creation/Retention Issues Not Contained in the Proposed Rule

In addition to the revisions included in this proposed rule, HUD is also deliberating certain other issues in an attempt to determine whether further changes should be proposed regarding the national objective standards for benefiting low- and moderate-income persons through the creation or retention of jobs.

While the presumptions added by the 1992 Act regarding a person's low- or moderate-income status for job creation or retention activities should significantly ease grantees' record keeping burdens for many economic development activities, HUD is also considering whether any further presumptions could be made in this regard. Specifically, HUD is deliberating whether any reasonable, objective presumption of a person's low- or moderate-income status could be made on the basis of the type of job being assisted. Given the statutory requirements of Section 105(c)(1)(C) of the Act, it is recognized that the type of job being created or retained cannot be the sole determining factor in assessing whether an assisted activity actually benefits low- and moderate-income persons. However, there may be cases where grantee experience clearly demonstrates that in certain types of businesses or industries, the large majority of persons employed are low- and moderate-income persons. HUD is attempting to determine whether there may be any feasible method for providing a grantee with some relief of record keeping burdens in such cases. On the other hand, HUD does not want to provide any encouragement for grantees to assist only those businesses that produce what may be considered "dead-end jobs." Comment on this issue is welcome.

CDBG job retention requirements are also often the subject of debate. There is criticism by certain grantees and other entities that the requirement to document that jobs claimed as being retained would actually be lost without the CDBG assistance may result in assistance that is "too little and too late." Such groups argue that a grantee should be able to provide CDBG assistance to businesses much earlier in the process in order to help the business remain competitive. However, it may often be the case that such efforts would actually result in the "down-sizing" of a business' workforce. Given that a job retention national objective claim is based on providing employment opportunities, principally for low- and moderate-income persons, any such net reduction in a business' workforce is problematic. Relaxation of the current requirement to document that jobs would otherwise be lost may also provide opportunities for abuse of the CDBG program by permitting assistance to any business that threatens to move or to close without any objective evidence that supports such a statement. Comment on these issues, particularly specific proposals as to how they could be dealt with, is welcome.

There is a second aspect of CDBG job retention requirements that is often criticized. That is the fact that, except for some allowance for jobs that may become available through turnover, the low- and moderate-income standards are applied at the time the assistance is provided, which is while the employees still have the income from the jobs that they are subject to lose. There can be cases where the employees do not meet the low- and moderate-income limits at that point, but would likely do so if the jobs are actually lost. The presumptions of a person's low- and moderate-income status added by the 1992 Act should help resolve this concern in many such situations. HUD is also considering whether it may be appropriate to propose some further regulatory change in this regard, particularly for cases where the majority of persons holding the endangered jobs have limited education and no specialized skills and the labor market area does not provide opportunities for other employment at comparable rates of pay. Comment on this issue, particularly specific proposals as to how it could be dealt with, is welcome.

National Objective Standards for Addressing Slums or Blight on an Area Basis

The proposed rule includes a revision to § 570.208(b)(1)(ii) of the Entitlement regulations and § 570.483(c)(1)(ii) of the State regulations to provide for a limited broadening of the requirements an area must meet in order to be designated as a blighted area under the CDBG program. Under current regulations, in addition to meeting a definition of a blighted or deteriorating area under State or local law, there must also either be a substantial number of deteriorated or deteriorating buildings throughout the area or the public improvements must be in a general state of deterioration. The proposed rule would add a third option as a qualifier for areas that are exclusively commercial or industrial in nature. Such an area could qualify as a blighted area under the CDBG program if it met an applicable definition under State or local law and exhibited pervasive economic disinvestment. According to the change included in the proposed rule, such economic disinvestment would be evidenced by a substantial number of vacancies in previously occupied commercial or industrial buildings in the area. This change would permit grantees to use CDBG funds to assist an area experiencing substantial economic disinvestment before a substantial number of buildings in the area actually reached the point of being deteriorating or deteriorated. Comment on this proposed change is welcome. The Department is particularly interested in receiving comment regarding whether there are any alternative objective and easily quantifiable measures of economic disinvestment in a commercial or industrial area.

Request for Comment on an Additional Slum/Blight Issue Not Included in the Proposed Rule

Several communities have described to the Department situations in which the presence of environmentally contaminated sites negatively affects the surrounding community. The Department has, in the past, determined that cleanup of contaminated sites (as a clearance activity) can meet the national objective of eliminating slums or blight on a spot basis. Current regulations do not provide clear means for recipients to demonstrate that an area is blighted because of environmental contamination in and of itself.

The presence of contamination could cause abandonment of buildings or long-term vacancies on or near contaminated sites, which may enable a commercial or industrial area to qualify as blighted under the revision to § 570.208(b)(1)(ii) of the Entitlement regulations or § 570.483(c)(1)(ii) of the State regulations included in the proposed rule. However, there may also be situations in which the link between environmental contamination and economic disinvestment may not be clear-cut.

At question is whether the presence of one or more contaminated sites, in and of itself, should be considered as evidence of blighting conditions in an area otherwise meeting a State or local definition of blight or deterioration. Comments are invited on this issue. In particular, the Department seeks comments addressing the following questions:

—How severe must environmental contamination be to have a blighting influence on an area? Should site(s) be required to appear on a Federal "Superfund" (or similar State) cleanup priority list in order to be considered blighting? If not, how would the serious effect of the contamination on the area be demonstrated?

—How pervasive must the contamination be in order to affect an entire area? Must there be multiple contaminated sites throughout the area, or can one or two contaminated sites be so significant as to cause a

larger overall area to be considered blighted?

—How broad a definition of "contamination" is appropriate? The Department envisions that soil or groundwater pollution would generally be viewed as "contamination." Presence of hazardous building materials (such as asbestos or lead-based paint) could also be viewed as "contamination"; however, such conditions could already permit an area to qualify under the existing regulations by causing "deteriorated or deteriorating buildings." Should more widespread air or water pollution, which may affect not just one area but an entire city or region, also be viewed as a blighting condition?

Guidelines for Evaluating and Selecting Economic Development Activities for CDBG Assistance

The proposed rule implements section 806(a) of the 1992 Act at a proposed new § 570.209 in the Entitlement regulations and additions to § 570.482 in the State regulations. This proposed section of the regulations is intended to provide guidelines for the purpose of enabling the recipient to evaluate certain activities proposed to be assisted with CDBG funds for economic development purposes. Specifically, these guidelines are to be applied to activities that are eligible under § 570.203(a) or (b) and similar activities that may be undertaken by a subrecipient eligible under § 570.204 [Sections 105(a) (14), (17), and (15), respectively of the Housing and Community Development Act of 1974, as amended]. Section 570.209(a) and § 570.482(d) discuss the guidelines and objectives for evaluating project costs and financial requirements, and § 570.209(b) and § 570.482(e) delineate the guidelines for evaluating public benefit.

In defining the applicability of these guidelines, HUD carefully reviewed the language contained in section 806(a) of the 1992 Act. The title of the new subsection added by this provision is cited as "Guidelines for Evaluating and Selecting Economic Development Projects." The text of the provision then states the following:

> The Secretary shall establish, by regulation, guidelines to assist grant recipients under this title to evaluate and select activities described in section 105(a)(14), (15), and (17) for assistance with grant amounts.

The correlation to sections 105(a) (14) and (17) of the Housing and Community Development Act of 1974, as amended, is clear inasmuch as those sections authorize the use of CDBG funds for special economic development activities that are codified in the current Entitlement regulations under § 570.203 (a) and (b), respectively. Section 105(a)(15) of the Act, however, authorizes the provision of CDBG assistance to certain eligible subrecipients to carry out a wide variety of activities as part of a neighborhood revitalization, community economic development, or energy conservation project. This provision is codified in the CDBG Entitlement regulations at § 570.204 (revisions to which are included in this proposed rule). HUD does not believe that Congress intended to extend the applicability of the subject guidelines to all CDBG-assisted activities undertaken by subrecipients eligible under § 570.204, but rather limit the coverage of the guidelines to economic development activities undertaken by such entities. The Department has heretofore not formally defined a "community economic development project" (see definition proposed at § 570.204(a)(2) herein), but the term can be broadly considered to encompass any project that increases economic opportunities for community residents. Establishing reasonable evaluation measures relevant to the entire spectrum of activities potentially eligible under this criterion would be quite complicated, and the implementation of such standards could be unduly burdensome for grantees. Such an outcome does not appear to be consistent with Congressional intent in enacting the subject statutory provision. Thus, in this proposed rule, HUD has, for the Entitlement, HUD-Administered Small Cities, and Insular Areas Programs, limited the extent to which the guidelines are to be applied to activities that are carried out under § 570.204 of the CDBG regulations. Activities implemented by subrecipients eligible under § 570.204 would be subject to the guidelines only to the extent that if the eligible subrecipient were not involved, the activities would otherwise be considered eligible under § 570.203. The State regulations note that the guidelines are applicable to activities eligible under section 105(a)(17) of the Housing and Community Development Act of 1974 (as amended), economic development activities eligible under section 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under section 105(a)(15) of the Act. Comment on this interpretation is welcomed.

As noted above, the new section 105(e)(1) of the Housing and Community Development Act of 1974, as added by section 806(a) of the 1992 Act, requires HUD to "establish" the referenced guidelines "by regulation." However, that section of the Act further specifically states that the Secretary may not base a determination of ineligibility of the use of CDBG funds for economic development activities solely on the basis that the recipient fails to achieve one or more of the objectives of that portion of the guidelines pertaining to project costs and financial requirements. Given this limited ability to enforce the financial guidelines, HUD considered a variety of approaches in drafting the § 570.209(a) and § 570.482(d) portion of the proposed rule. The first issue considered was whether the above referenced statutory provision was intended to make conducting any form of financial underwriting for CDBG-assisted economic development activities totally optional on the part of grant recipients. If some form of underwriting was to be required, the issue would then be whether the regulations should specify the exact system of underwriting that must be followed or whether the regulations should simply set forth a "safe harbor" approach and allow grantees to follow some other process as long as it aims at the same objectives. Also, given the limited enforceability noted above, there is a question as to what level of detail should be included in the regulations themselves.

The proposed rule states that the use of the financial guidelines discussed under § 570.209(a) and § 570.482(d) is not mandatory. To further demonstrate this point, the specific elements of the financial guidelines are not included within the text of the proposed rule itself. Instead, they are proposed to be published in a concurrent but separate **Federal Register** Notice, which is subject to the same standards for public review and comment as those that govern the rulemaking process. It should be noted, however, that the proposed rule further states that grantees electing not to use these guidelines would be expected to conduct basic financial underwriting with respect to any CDBG financial assistance provided to a for-profit business. States would be expected to ensure that the state or units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business. Thus, compliance with the exact financial guidelines delineated in the proposed **Federal Register** Notice, which is also published herein, is optional on the part

of grant recipients. Nonetheless, HUD believes that sound management practices dictate that some form of financial underwriting be performed for any economic development activity proposed for financial assistance under the CDBG program. Therefore, in cases where such an activity receiving CDBG financial assistance fails to meet other applicable program requirements, such as the public benefit standards described in § 570.209(b) and § 570.482(e) of this proposed rule or the national objective requirements, HUD will consider the extent to which the recipient conducted prudent underwriting in HUD's determination of the appropriate sanctions to be imposed on the recipient for such noncompliance. Comment on this approach is welcomed. Comment is also welcomed on the specific elements included in the proposed financial guidelines. HUD believes that the information included in the proposed **Federal Register** Notice provides reasonable guidance for financial underwriting aimed at the objectives set forth in the 1992 Act. The Department is interested in obtaining comment as to whether the guidance provided is seen by local practitioners as being sufficient or, on the other hand, overly prescriptive. Commenters are encouraged to submit any recommended alternatives in this regard.

While the 1992 Act specifically limits HUD's enforcement of the guidelines for project costs and financial requirements in assessing the eligibility of the use of CDBG funds for economic development activities, no such limitation is imposed by the Act on the guidelines required to be established for evaluating the public benefit provided by CDBG-assisted economic development activities. The new section 105(e)(3) of the Housing and Community Development Act of 1974, as added by Section 806(a) of the 1992 Act, states that the guidelines shall provide that the public benefit generated by such an activity is appropriate relative to the amount of CDBG assistance provided for the activity. The proposed rule implements this statutory provision at § 570.209(b) and § 570.482(e) and states that unlike the financial guidelines discussed in § 570.209(a) and § 570.482(d), adherence to the guidelines for public benefit is mandatory.

Assessing the extent of public benefit expected to be derived from an economic development project receiving financial assistance under the CDBG program has long been required to be documented as part of the "appropriate" determination required as a condition of eligibility for some of the activities covered by the guidelines. However, HUD has heretofore provided little specific guidance as to what such an assessment should entail. As discussed above, the changes made by the 1992 Act significantly increase the importance of the public benefit review in determining the eligibility of certain CDBG-assisted economic development activities. Thus, it is important that the guidelines establish reasonable and clear standards for determining whether the level of public benefit provided by an economic development activity is appropriate given the amount of CDBG assistance provided to that activity.

Establishing reasonable public benefit guidelines is a formidable task. There are a myriad of different factors that are commonly ascribed to the overall public benefit generated by an economic development activity. The relative importance of the various factors can vary significantly between communities, making it difficult to establish a single set of standards on a national level. Setting such standards is made even more difficult by the fact that many elements of the public benefit provided by an economic development project are highly qualitative and thus difficult to measure objectively.

In developing this proposed rule, HUD considered whether to attempt to include in the regulatory guidelines a wide array of different elements of public benefit that could be rated for each economic development activity proposed for CDBG assistance. However, as noted above, such an approach would require ratings on each activity for many highly qualitative elements that can be difficult to measure objectively. HUD thus decided against using this approach. One of the common grantee complaints regarding the use of CDBG funds for economic development activities has been that HUD staff have unreasonably "second guessed" the community's underwriting decisions in funding specific businesses. Congress responded to such complaints in the 1992 Act by clearly stating that no "but for" test is to be applied to CDBG-assisted economic development activities and as discussed earlier in this preamble, by specifically prohibiting the Secretary from making determinations of ineligibility solely on the basis that such an activity fails to achieve the objectives of the financial guidelines. Given the increased importance of the public benefit evaluation in determining the eligibility of CDBG-assisted economic development activities pursuant to the 1992 Act, HUD does not believe that it would be beneficial to establish public benefit guidelines that could easily become susceptible to similar "second guessing" debates.

In order to provide grantees with clear standards for assessing what level of CDBG assistance, if any, may be appropriate for proposed economic development activities, HUD believes it is best to delineate standards using elements of public benefit that are easily measured and commonly considered by grant recipients. One of the most widely used and easily calculated measures in various public economic development financing programs is a "cost per job" standard. HUD has determined that such a standard is also appropriate to serve as a principal factor for evaluating the level of public benefit provided by many CDBG-assisted economic development activities, regardless of which national objective may be claimed for the activity. It is also recognized, however, that not all such activities are designed to create or retain jobs. Some economic development activities assisted with CDBG funds are designed to serve a certain geographic area, with no direct change in employment levels. An example of such an activity is the provision of a CDBG working capital loan to a neighborhood grocery store that may be experiencing financial difficulties and thus plans to move to a different location. HUD believes that a "cost per low- and moderate-income person served" calculation is appropriate to serve as a principal factor for measuring the level of public benefit provided by such activities. However, HUD recognizes that using the above two factors as principal measures may unduly limit the scope of the types of public benefit that are to be generally considered in evaluating a proposed economic development project for CDBG assistance. Thus, the proposed rule also includes standards that focus on benefits that address what HUD believes are important national interests.

The proposed rule at § 570.209(b)(1) and § 570.482(e)(2) delineates certain basic tests to be applied to each economic development activity receiving CDBG assistance. The "CDBG cost per job" and the "CDBG cost per low- and moderate-income person served" standards included in these tests are designed to establish absolute upper limits for what HUD would consider to be reasonable on an individual project basis. This portion of the proposed rule also delineates certain types of activities that HUD believes, in the context of the CDBG program, provide insufficient public benefit. Thus, HUD is proposing to deem these activities to be ineligible for assistance as part of activities governed by the

public benefit standards. Comment on this proposed list of activities is welcome. Commenters are encouraged to submit justification for any recommended additions or deletions.

Beyond the above threshold tests for individual activities, the proposed rule establishes criteria for measuring the public benefit of a grantee's CDBG economic development activities on an aggregate portfolio basis. Under the State CDBG program, these standards would be applied to the aggregate amount of all such activities carried out by all units of local government receiving funds from a state's annual grant. A state would aggregate each annual grant separately, for the entire time period that an annual grant remains open. Under the HUD-Administered Small Cities and Insular Areas CDBG Programs, these standards would be applied to the aggregate amount of all such activities carried out by the grantee from a single year's grant. A grantee would aggregate each grant separately, for the entire time period that a grant remains open. Under the Entitlement program, these standards would be applied to the aggregate of all such activities for which the grantee obligated CDBG funds within a single program year without regard to the source year of the funds. Such aggregate tests are similar to those already used by other public economic development financing programs, such as the Small Business Administration's (SBA's) Section 504 program. They provide the grantee with more flexibility in selecting individual economic development activities for CDBG funding.

The proposed rule at § 570.209(b)(2) and § 570.482(e)(3) describes two different criteria that may be used to measure public benefit in the aggregate. Only one of these criteria would have to be met to demonstrate compliance with the standards for activities in the aggregate. Each grantee would have the option of choosing which criterion it would meet. The first option in the proposed rule applies a $35,000 "CDBG cost per job" standard and a $350 "CDBG cost per low- and moderate-income person served" standard to a grantee's aggregate portfolio. Under the second option, a grantee would be considered to meet the public benefit standards if at least 75 percent of the aggregate amount of CDBG funds used by the grantee for economic development activities is used for activities that are principally designed to address at least one of a variety of specified goals that HUD believes represent important national interests.

Public comment on the proposed rule's approach for evaluating the level of public benefit provided by a grantee's CDBG-assisted economic development activities, including the specific numerical standards established, is particularly welcome. In considering whether and how to comment on this section, there are certain factors that should be kept in mind. While it has been noted earlier in this preamble that the aggregate "cost per job" standard is similar to that already used by SBA's Section 504 program, the proposed CDBG standard is different in one significant fashion. While SBA's cost per job calculation is based only on the amount of the debentures guaranteed by SBA, the amount of CDBG funds to be used in the cost per job calculation under the proposed CDBG standard is the total amount of CDBG funds used by the grantee for economic development activities in the specified period. This amount would include all CDBG-funded activity delivery costs for economic development activities and all CDBG funds used for technical assistance to for-profit businesses. Secondly, in devising the proposed CDBG standards, consideration was given to the possibility of differentiating between loans and grants. When CDBG funds are provided to an economic development activity in the form of a loan, it is generally with the expectation that the funds will be repaid over some term. Any repayment of such funds reduces the activity's ultimate "cost" to the CDBG program. However, the face amount of the loan still represents at least an "opportunity cost" to the grantee's CDBG program. Given that the majority of CDBG assistance to for-profit businesses is awarded in the form of loans, HUD has thus determined that adding any calculations to the public benefit standards to differentiate between loans and grants would unnecessarily complicate the process and would be unduly burdensome for grantees.

Section 570.209(c) and § 570.482(f) of the proposed rule address amendments to economic development activities after the "appropriate" review determinations have been completed. As an economic development activity is implemented, there are often changes in the financing structure and other various aspects of the project. The intent of this provision is to indicate that when such changes occur, the grantee should reevaluate the various terms and conditions of the CDBG assistance it has agreed to provide for the project. HUD considers each such reevaluation to be equivalent to a new "appropriate" determination in that it is subject to the same guidelines, particularly those relating to public benefit.

Section 570.209(d) and § 570.482(e)(5) of the proposed rule address the grantee's responsibility to maintain records that demonstrate the actual public benefit results, based on the standards contained in § 570.209(b) and § 570.482(e), achieved upon completion of the CDBG-assisted economic development activities. These records must also indicate how the actual results for each project compare to the level of benefit that was projected to be achieved by the project at the time the CDBG assistance was obligated. If actual results vary substantially from the grantee's initial projections, the grantee is expected to take all actions reasonably within its control to improve the accuracy of its projections in future cases. This paragraph is intended to address possible grantee concerns that it may be put in the position of having to guarantee job creation/retention results under the proposed public benefit standards. HUD generally judges compliance with program requirements on the basis of actual results rather than initial projections. Thus, with the proposed public benefit standards, HUD intends to track the aggregate of economic development activities funded by a grantee each year to assess whether the cost per job standards are actually met. Assessing compliance only on initial job projections would invite abuse through deliberate overstatements. As experience with the national objective standard for benefiting low- and moderate-income persons through the creation or retention of jobs has shown, the number of jobs actually created by a CDBG-assisted activity is often less than that which was originally projected by the grantee. The reasons for the decrease in the number of jobs created may vary from unexpected developments in the economy completely beyond the control of the grantee to the deliberate overstatement of job projections at the time the CDBG assistance was obligated. It is unreasonable to expect that the number of actual jobs created by CDBG-assisted economic development activities will always meet or exceed original projections. However, if actual results vary significantly from initial projections, the grantee is expected to review its systems for making such projections and/or reviewing those supplied by developers and take all actions reasonably within its control to improve the accuracy of the projections. The actions the grantee takes in this regard will be considered by HUD in determining the appropriate sanctions

to be imposed on the recipient for any noncompliance with the public benefit standards.

History of Special Activities by Certain Subrecipients (Section 105(a)(15) of the Act)

This portion of the rule proposes changes to § 570.204 of the Entitlement regulations, which implements section 105(a)(15) of the Act, authorizing the provision of "assistance to neighborhood-based nonprofit organizations, local development corporations, or entities organized under 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project * * *." Activities assisted in accordance with the requirements of § 570.204 are eligible in their own right, and may thus consist of activities that are ineligible to be carried out by the recipient, or by subrecipients which do not qualify under this section. Over the past several years, the Department has been aware of a considerable amount of confusion among grantees concerning various aspects of this provision. The main questions raised repeatedly have been: What kinds of organizations can qualify as special subrecipients; what limitations are there on the involvement of the grantee in establishing or operating the organization; and, what are the essential characteristics of the types of projects to which this provision is limited? It has become increasingly apparent that clarification of the provision would be useful. As noted above, one of the project types that this provision makes eligible is that of community economic development. Because HUD has embarked upon a course aimed at making the CDBG program more readily used for economic development, it has been decided to propose changes to this provision at this time.

In order to minimize the confusion and misunderstanding concerning § 570.204, this rule would provide specific criteria for the entities permitted to carry out such activities and assure that they are not controlled by the recipient (or other entities not qualified under this section) to indirectly carry out activities for which they are ineligible. The rule also establishes the requirement for meaningful involvement of the eligible subrecipient receiving assistance "to carry out a * * * project," in order to preclude the use of the subrecipient as a mere conduit to launder CDBG funds for otherwise ineligible activities. In addition, the rule provides definitions for the three types of projects made eligible by section 105(a)(15), particularly in regard to a neighborhood revitalization project (under which most of the activities are currently carried out for otherwise ineligible housing activities). The purpose of this is to give meaning to the statutory "project" language and to make clear that any single CDBG-assisted activity, such as an otherwise ineligible public service or residential construction, will not of itself necessarily qualify simply because it is carried out by a subrecipient qualified under this section. The changes in this rule would apply to metropolitan city and urban county entitlement recipients.

The only legislative history on the meaning of "local development corporation" in section 105(a)(15) is the reference in the House Report, 95th Congress 1st Session (1977), to "local development corporations organized under either Federal or State laws such as those under title VII of the Community Services Act of 1974." Both title VII and its successor legislation, the Community Economic Development Act of 1981, defined community development corporation as:

> a nonprofit organization responsible to residents of the area it serves and which is receiving assistance under part A and any organization more than 50 percent of which is owned by such an organization, or designated by such an organization for the purpose of this subchapter [Subchapter I]. [emphasis added.]

The purpose of Subchapter I—Community Economic Development was:

> To encourage the development of special programs by which the residents of urban and rural low-income areas may, through self-help and mobilization of the community at large, with appropriate Federal assistance, improve the quality of their economic and social participation in community life in such a way as to contribute to the elimination of poverty and the establishment of permanent economic and social benefits.

The purpose of part A was:

> To establish special programs of assistance to nonprofit private locally initiated community development corporations which (1) are directed to the solution of the critical problems existing in particular communities or neighborhoods (defined without regard to political or other subdivisions or boundaries) within those urban or rural areas having concentrations or substantial numbers of low-income persons; (2) are of sufficient size, scope, and duration to have an appreciable impact in such communities, neighborhoods and rural areas in arresting tendencies toward dependency, chronic unemployment, and community deterioration; (3) hold forth the prospect of continuing to have such impact after the termination of financial assistance under this part; and (4) provide financial and other assistance to start, expand, or locate enterprises in or near the area to be served so as to provide employment and ownership opportunities for residents of such areas * * *

Despite the emphasis on economic development in title VII and the Community Economic Development Act of 1981, the range of activities permitted for CDCs under these Acts included not only community business and commercial development programs, but also community physical development programs, including parks and housing activities that contribute to an improved environment, and a variety of public service programs that complement the community development program.

Special Subrecipient Local Development Corporations

As can be seen, the term local development corporation (LDC) does not have a precise and uniform meaning, but rather encompasses a diverse range of organizations generally sharing certain basic characteristics. The existing regulation at § 570.204 therefore recognizes LDCs qualified under sections 502 and 503 of the Small Business Investment Act, the CDCs under title VII and the Community Economic Development Act of 1981, and "other entities incorporated under State or local law whose membership is representative of the area of operation of the entity (including nonresident owners of businesses in the area) and which are similar in purpose, function, and scope to the above listed organizations." Most LDCs have in common the characteristics of operating in a defined geographic area; being established and controlled by residents and businesses located in the defined area; carrying out community development activities, including economic development and housing assistance; being established for the purpose of meeting critical needs in the area, particularly of lower-income persons, by improving the physical, economic, and social environment of the area; and being not-for-profit associations or corporations created under State or local law. While some LDCs may vary somewhat (e.g., the SBA LDCs provide assistance only for economic development, do not have a focus on lower-income areas or persons, and may be for-profit if earnings are only incidental to their operations), the proposed rule sets forth these more commonly shared characteristics (including a focus on lower-income residents of the area in view of the primary purpose of benefiting such persons under the CDBG program) as

the criteria that must be met for all LDCs qualified in § 570.204. Note that the statutory reference to entities organized under section 301(d) of the Small Business Investment Act of 1958 is reflected in the proposed rule revisions although these for-profit entities make loans to businesses (or to other entities that make loans to businesses), and these activities were made eligible under other provisions of the CDBG program added in 1981 (§ 570.203(b) of the Entitlement regulations). Reference to the SBA 502 and 503 organizations would be continued in this rule, however, to avoid unnecessarily disqualifying currently qualified organizations.

The Department anticipates that a few entities that recipients believe qualify under the current rule would not qualify under this rule, and plans to allow in the final rule for a one-year grace period during which any such organizations may reorganize or find other funding. Because this rule is based on the history of legislation, regulation, and policy currently in place, it should not affect the eligibility of many currently qualified organizations.

Two New Special Subrecipient Policies

Two points on which this proposed rule varies from the current rule for CDBG entitlements deserve mention. First, this rule would reflect the policy in the State CDBG program that when the funded project activities carried out by the subrecipient under this subpart include, as activities integral to the project, otherwise ineligible income payments or other public service activities that are eligible under section 105(a)(8) of the statute, such activities are not subject to the limitations in that section. This change will be particularly important for special subrecipients who wish to provide services, such as day care and job training, as part of a § 570.204 project. Such services would not be subject to the public service cap. Removal of this limit would provide more flexibility for community-based efforts by entitlement communities.

The "maintenance of effort" requirements that apply to public service activities protect an important part of the goals of the CDBG program, and would be included in this proposed rule to cover both otherwise eligible and otherwise ineligible public services. The Department requests comment on inclusion of this clause.

The second point of variation from the current rule is that the distinction between "public" and "private" nonprofits, now used to exclude public nonprofits that might potentially be controlled by the grantee from eligibility under this section, will no longer be made in determining the eligibility of entities under this section. A public nonprofit entity that meets the requirements to be an LDC may now qualify. The Department believes that these requirements are sufficient to ensure the independence of the LDC.

Special Subrecipients in Nonentitlement Areas

Section 807(f) of the 1992 Act expanded the list of organizations eligible to carry out activities in nonentitlement areas under section 105(a)(15) of the Housing and Community Development Act of 1974, as amended. "Nonprofit organizations serving the development needs of the communities of nonentitlement areas" may now qualify as special subrecipients under section 105(a)(15) of the Act. Since the State CDBG program regulations contain no listing of eligible activities, no regulatory language is needed to implement this change. Consistent with the above discussions of proposed changes to § 570.204 of the Entitlement regulations, the Department interprets section 807(f) of the 1992 Act as clearly excluding units of general local government. However, a public nonprofit organization that meets Internal Revenue Service requirements for nonprofit status may qualify.

Description of Regulatory Changes

Projects defined. The changes in the rule begin at § 570.204(a) by clarifying that activities funded under this section may be considered either alone or in concert with other activities being carried out or for which funding has been committed (which other activities need not be funded with CDBG funds or carried out by the subrecipient) for purposes of determining whether an eligible § 570.204 neighborhood revitalization, community economic development, or energy conservation project is being undertaken. The rule continues with definitions of the eligible projects under § 570.204: Neighborhood revitalization, community economic development, and energy conservation projects. The definition of "carry out" is included to clarify how the LDC is to control the project.

Public services. The new policy on application of the funding limitation on public service activities and of the maintenance of effort clause is discussed above. The Department s interpretation of the existing rule is that when ineligible public services, such as income payments, are carried out under § 570.204, the activity is considered to be a public service and the funds used for this purpose are subject to the 15 percent limitation at § 570.201(e). Judging from the questions received by HUD on this matter, recipients do not believe that the existing rule is sufficiently clear on this matter. Thus, this proposed rule clarifies the policy.

Ineligible activities. Paragraph (b) has been replaced with a new paragraph delineating the types of otherwise ineligible activities that are also not authorized under this section.

Eligible subrecipients. Paragraph (c) has been rewritten to define eligible subrecipients. This proposed rule removes any further reference in the rule to neighborhood-based nonprofits (NBNs) since most, if not all, NBNs qualified under the current rule could meet the qualifying criteria for an LDC in the proposed rule. The sole purpose of this change is to simplify the regulation. The Department believes that NBNs can be very effective agents for neighborhood revitalization and community economic development, and has drafted this rule to continue the qualification of such organizations. The proposed rule refers to all qualifying entities as LDCs, regardless of the geographic area they serve.

Community control. In general, the Department's history in implementing section 105(a)(15) reflects a belief that community control, and not mere community participation is crucial to the existence of an LDC. Therefore, at § 570.204(c)(2), this rule would require that 51 percent of the governing body of a qualified LDC be low- and moderate-income persons residents of or business owners in the LDC's area of operation. This reflects current policy for most NBN organizations under § 570.204(c)(1), LDC/CDC organizations under § 570.204(c)(3)(i), and those organized like CDCs pursuant to the "similar to" language at § 570.204(c)(3)(iii). The 51 percent requirement possibly may disqualify some organizations that currently qualify as NBNs because their clients are residents of the neighborhood, even though no residents serve on the governing body of the organization. The Department believes that the definition of NBN in the existing rule at § 570.204(c)(1) has allowed grantees to create "shell" organizations that serve as conduits for grantees to carry out otherwise ineligible activities without benefit of any significant contribution to decision making from persons with a stake in the neighborhood.

The reasons for the changes the rule proposes at § 570.204(c) to the definition of LDC have been discussed above. Comment is specifically

requested on whether these changes will disqualify any truly community-based and controlled organizations, and if so, specifically how the rule will have this effect.

Special Subrecipients and "CHDOs"

The new HOME Investment Partnerships program authorized under Title II of the National Affordable Housing Act of 1990 has a provision defining community housing development organizations, or "CHDOs", which are similar in many ways to LDCs. In developing this proposed rule, some care was taken when drafting the language describing common characteristics of LDCs to define the same characteristics of LDCs as the HOME regulations define for CHDOs. By establishing definitions around the same criteria (e.g. percentage of low- and moderate-income persons on the governing body, percentage of grantee or other entity representation on the governing body, primary purpose of the organization, geographic area served) the Department hopes to minimize confusion among organizations that may qualify both as an LDC for CDBG and as a CHDO under the HOME Program, and may want to receive funds under both. After further consideration of these criteria and the activities undertaken by § 570.204 subrecipients and by CHDOs, the Department has decided to propose that any qualified CHDO that (1) is designated by the participating jurisdiction in accordance with the HOME program rules and (2) has a geographic area of operation that is no greater than one neighborhood, and (3) has or is expected to receive HOME funds for developing housing would qualify as an LDC. Note that two characteristics of CHDOs can vary from the common characteristics of LDCs in general: (1) CHDOs can serve a geographic area as large as a metropolitan area (LDCs may serve no more than one county); and (2) the minimum percentage of low- and moderate-income persons on the governing body of a CHDO is the same as the percentage of grantee or other entity appointments (i.e. 33 percent) (the minimum percentage of low- and moderate-income persons/representatives on the board of an LDC is 51 percent).

While it would be possible under this proposal for one organization to be designated both as an LDC for CDBG and as a CHDO for HOME, the CDBG and HOME program requirements for activities undertaken by the two types of organizations are NOT identical. For example, an LDC using CDBG funds under § 570.204 must carry out a neighborhood revitalization, community economic development, or energy conservation project, and meet a national objective. A CHDO funded under the HOME program must develop, own or sponsor housing that meets income targeting and affordability requirements. To the extent feasible within the above constraints, the Department has developed this proposed rule to avoid an unnecessary burden on any organization that may qualify both as an LDC and as a CHDO. The Department requests comments on this aspect of the proposed rule.

Relationship to Section 3 Economic Opportunity Requirements

Recipients of CDBG funds must also comply with the requirements of section 3 of the Housing and Urban Development Act of 1968 (Section 3), as amended by Section 915 of the 1992 Act. Section 3 requires that, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, employment and other economic opportunities arising in connection with the CDBG assistance to any Section 3 covered project are given to low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the project is located. For the CDBG program, Section 3 covered projects include housing rehabilitation, housing construction, and other public construction. The Section 3 requirements apply to training, employment and contracting opportunities arising in connection with a covered project, as well as job (or other opportunities) which may be retained or created as a result of the project. The Department anticipates that regulations implementing the 1992 amendments to Section 3 will be published this fiscal year.

Other Matters

Justification for 30-day Public Comment Period

The Department has determined that it is contrary to the public interest to have the usual 60-day comment period and, therefore, believes it appropriate to shorten the comment period to 30 days in order to expedite the process for developing a final rule that may be published for effect. Current requirements governing the use of CDBG funds for economic development activities are unclear, and thus they tend to be inconsistently applied. This uncertainty has caused many communities to be apprehensive about undertaking economic development activities with CDBG funds. As a result, potentially valuable opportunities for economic empowerment may be lost. While some of the statutory changes made by the 1992 Act became effective upon enactment, certain provisions will not become effective until a final rule is published.

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 proposed in this proposed rule would not have Federalism implications when implemented and, thus, are not subject to review under the Order. Nothing in the proposed rule implies any preemption of State or local law, nor does any provision of the proposed rule disturb the existing relationship 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, has determined that this proposed rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Environmental Finding

A Finding of No Significant Impact with regard to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

Regulatory Flexibility

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary by his approval of publication of this proposed rule hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The rule does not affect the amount of funds provided in the CDBG program, but rather modifies and updates program administration and procedural requirements to comport with recently enacted legislation.

Semiannual Agenda

This proposed rule was listed as item 1638 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20458)

under Executive Order 12866 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Community Development Block Grant Program is listed in the Catalog of Federal Domestic Assistance under the following numbers: Entitlements—14.218, HUD-administered Small Cities—14.219, Indian—14.223, Insular Areas—14.225, State's Program—14.228.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, 24 CFR part 570, subparts C, I, and J, are proposed to be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart C—Eligible Activities

1. The authority citation for 24 CFR part 570 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

2. In § 570.200, paragraph (e) would be revised to read as follows:

§ 570.200 General policies.

* * * * *

(e) *Recipient determinations required as a condition of eligibility.* In several instances under this subpart, the eligibility of an activity depends on a special local determination. Recipients shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of §§ 570.201(f), 570.202(b)(3), 570.203(b), 570.204, 570.206(f), and 570.209.

* * * * *

3. In § 570.201, paragraph (o) would be added to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(o) (1) The provision of assistance either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients) to facilitate economic development by:

(i) Providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;

(ii) Providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and

(iii) Providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, to owners of microenterprises and persons developing microenterprises.

(2) Services provided under this paragraph (o) shall not be subject to the restrictions on public services contained in § 570.201(e).

4. Section 570.203 would be amended by revising the introductory text and paragraph (b); and by adding a new paragraph (c) to read as follows:

§ 570.203 Special economic development activities

A recipient may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Guidelines for selecting activities to assist under this paragraph are provided at § 570.209. The recipient must ensure that the appropriate level of public benefit will be derived pursuant to those guidelines before obligating funds under this authority. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

* * * * *

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is appropriate to carry out an economic development project, excluding those described as ineligible in § 570.207(a). In selecting businesses to assist under this authority, the recipient shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods.

(c) Economic development services in connection with activities assisted under this section, including, but not limited to, outreach efforts to market available forms of assistance; screening of applicants; reviewing and underwriting applications for assistance; preparation of all necessary agreements; monitoring and management of assisted activities; and the screening, referral, and placement of applicants for employment opportunities generated by CDBG-assisted economic development activities, including the costs of providing necessary training for persons filling those positions.

5. Section 570.204 would be revised to read as follows:

§ 570.204 Special activities by Local Development Corporations (LDCs).

(a) *Eligible activities.* The recipient may provide CDBG funds as grants or loans to any LDC subrecipient qualified under this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. The funded project activities may include those listed as eligible under this subpart, and, except as described in paragraph (b) of this section, activities not otherwise listed as eligible under this subpart. For purposes of qualifying as a project under paragraphs (a)(1), (a)(2), and (a)(3) of this section, the funded activity or activities may be considered either alone or in concert with other project activities either being carried out or for which funding has been committed. For purposes of this section:

(1) Neighborhood revitalization project means an activity or activities of sufficient size and scope to have an impact on the decline of a geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or the entire jurisdiction of a unit of general local government which is under 25,000 population;

(2) Community economic development project means an activity or activities that increase economic opportunity for persons of low- and moderate-income or that stimulate or retain businesses or permanent jobs;

(3) Energy conservation project means an activity or activities that address local energy conservation;

(4) To carry out a project means that the LDC undertakes the funded activities directly or through contract with an entity other than the grantee, or through the provision of financial assistance for activities in which it retains a direct and controlling involvement and responsibilities; and

(5) When the funded project activities carried out by the subrecipient under this subpart include income payments

described as ineligible in § 570.207(b)(4) or other public service activities generally eligible under § 570.201(e), such activities shall not be subject to the limitations in § 570.201(e); however, such an activity must be either a new service or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the unit of general local government (through funds raised by the unit, or received by the unit from the State in which it is located) in the twelve calendar months before the submission of the statement. (An exception to this requirement may be made if HUD determines that any decrease in the level of service was the result of events not within the control of the unit of general local government.);

(b) *Ineligible activities.* Notwithstanding that subrecipients may carry out activities that are not otherwise eligible under this subpart, this section does not authorize:

(1) Carrying out an activity described as ineligible in § 570.207(a);

(2) Providing assistance to activities that would otherwise be eligible under § 570.203 that do not meet the requirements of § 570.209; or

(3) Carrying out an activity that would otherwise be eligible under § 570.205 or § 570.206, but that would result in the recipient's exceeding the spending limitation in § 570.200(g).

(c) *Eligible subrecipients.* (1) An LDC qualifying under this section is an organization which has the following characteristics:

(i) Is an association or corporation organized under State or local law to engage in community development activities (which may include housing and economic development activities) within an identified geographic area of operation not to exceed the jurisdiction of the recipient, or in the case of an urban county, the jurisdiction of the county; and

(ii) Has as its primary purpose the improvement of the physical, economic or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low and moderate income; and

(iii) May be either non-profit or for-profit, provided any monetary profits to its shareholders or members must be only incidental to its operations; and

(iv) Maintains at least 51 percent of its governing body's membership for low- and moderate-income residents of its geographic area of operation, owners of private establishments located in its geographic area of operation, or representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation; and

(v) Is not an agency or instrumentality of the recipient and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees or officials of an ineligible entity (even though such persons may be otherwise qualified under paragraph (c)(1)(iv) of this section); and

(vi) Except as otherwise authorized in paragraph (c)(1)(v) of this section, requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body; and

(vii) Is not subject to requirements under which its assets revert to the recipient upon dissolution except as required for compliance with § 570.503(b)(8); and

(viii) Is free to contract for goods and services from vendors of its own choosing.

(2) An LDC will also qualify as an eligible subrecipient under this section if it meets one of the following requirements:

(i) Is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making, or

(ii) Is an SBA approved Section 501 State Development Company or Section 502 Local Development Company, or and SBA Certified Section 503 Company under the Small Business Investment Act of 1958, as amended; or

(iii) Is a Community Housing Development Organization (CHDO) under 24 CFR 92.2, designated as a CHDO by the HOME Investment Partnerships program participating jurisdiction, with a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e).

6. Section 570.208 would be amended by revising the paragraph heading of paragraph (a) and by revising paragraph (a)(1)(i); by adding a new paragraph (a)(2)(iii); and by revising paragraphs (a)(4) and (b)(1)(ii), to read as follows:

§ 570.208 Criteria for national objectives.

* * * * *

(a) *Activities benefiting low- and moderate-income persons.*

* * * * *

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion. Activities carried out under § 570.203 by a community development financial institution shall be presumed by HUD to meet this criterion if the institution's charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons.

* * * * *

(2) * * *

(iii) A microenterprise assistance activity carried out in accordance with the provisions of § 570.201(o) if at least 51 percent of all persons, including both owners of microenterprises and persons developing microenterprises, who are assisted under the activity during each program year are low- and moderate-income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify as such for up to a three-year period.

* * * * *

(4) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low- and moderate-income persons. To qualify under this paragraph, the activity must meet the following criteria:

(i) For an activity that creates jobs, the recipient must document that at least 51 percent of the jobs will be held by, or will be available to, low- and moderate-income persons.

(ii) For an activity that retains jobs, the recipient must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided:

(A) The job is known to be held by a low- or moderate-income person; or

(B) The job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low- or moderate-income person upon turnover.

(iii) Jobs that are not held or filled by a low- or moderate-income person may be considered to be available to low-

and moderate-income persons for these purposes only if:

(A) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(B) The recipient and the assisted business take actions to ensure that low- and moderate-income persons receive first consideration for filling such jobs.

(iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be a low- or moderate-income person if:

(A) He/she resides within a census tract (or block numbering area) having either:

(1) At least 20 percent of its residents who are in poverty; or

(2) At least 70 percent of its residents who are low- and moderate-income persons; or

(B) The assisted business is located within a census tract (or block numbering area) having at least 20 percent of its residents who are in poverty and the job under consideration is to be located within that census tract.

(v) As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of a subrecipient making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during each program year.

(C) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public facility or improvement, the requirement shall be met as follows:

(1) Prior to the obligation of CDBG assistance for the activity, the recipient shall develop an assessment which identifies the businesses located in or expected to locate in the service area of the public facility or improvement. For each identified business, the recipient shall project the number of jobs anticipated to be created or retained by the business as a result of the public facility or improvement and enter into written agreements with each such business, as applicable, concerning such jobs and identifying the number of such jobs that are to be provided or made available to low- and moderate-income persons;

(2) The recipient shall compare the number of jobs expected to be created or retained as a result of the public facility or improvement with the CDBG cost of the public facility or improvement to be undertaken:

(*i*) If the number of jobs actually created or retained by the combination of the businesses with whom such agreements have been executed is not less than one full-time equivalent job per $10,000 of CDBG funds used for the activity, then only the jobs created or retained by those specific businesses need be considered for purposes of meeting the national objective requirement;

(*ii*) If the number of jobs actually created or retained by the combination of those businesses is less than one full-time equivalent job per $10,000 of CDBG funds used for the activity, then all jobs created or retained as a result of the public facility or improvement shall be considered for purposes of meeting the national objective requirement. This includes jobs created or retained as a result of the assistance by businesses already located in the public facility or improvement's service area, whether identified in the assessment or not. This also includes jobs created or retained as a result of the assistance by businesses which locate in the public facility or improvement's service area during the period starting with the date the recipient identifies the activity in its final statement and ending one year after the physical completion of the public facility or improvement.

(*iii*) If the public facility or improvement is subject to paragraph (a)(4)(v)(C)(*2*)(*ii*) of this section, then the activity must also comply with the guidelines concerning public benefit at § 570.209(b).

Note: * * *

(b) *Activities which aid in the prevention or elimination of slums or blight.*

* * * * *

(1) * * *

(ii) Throughout the area there exists at least one of the following conditions:

(A) A substantial number of deteriorated or deteriorating buildings;

(B) The public improvements are in a general state of deterioration; or

(C) For exclusively commercial or industrial areas only, pervasive economic disinvestment as evidenced by a substantial number of previously occupied buildings experiencing either long term vacancies or an unusually high rate of turnover in occupancy.

* * * * *

7. A new § 570.209 would be added to read as follows:

§ 570.209 Guidelines for evaluating and selecting economic development projects.

The following guidelines are provided to assist the recipient to evaluate and select activities to be carried out for economic development purposes. Specifically, these guidelines are applicable for activities that are eligible for CDBG assistance under § 570.203 and activities carried out under the authority of § 570.204 that would otherwise be eligible under § 570.203. These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating projects costs and financial requirements are not.

(a) *Guidelines and objectives for evaluating project costs and financial requirements.* (1) HUD has developed guidelines that are designed to provide the recipient with a framework for financially underwriting and selecting CDBG assisted economic development projects that are financially viable and that will make the most effective use of the CDBG funds. These guidelines are published separately as a **Federal Register** Notice. The use of the financial underwriting guidelines published by HUD is not mandatory. However, grantees electing not to use these guidelines would be expected to conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business.

(2) Where appropriate, HUD's guidelines for financial underwriting recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account.

(3) The guidelines for financial underwriting are for the purpose of achieving the following objectives:

(i) That project costs are reasonable;

(ii) That all sources of project financing are committed;

(iii) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(iv) That the project is financially feasible;

(v) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(vi) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(b) *Standards for evaluating public benefit.* The grantee is responsible for making sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by these guidelines. The standards set forth in this paragraph (b) identify the types of public benefit that must be used for this purpose and the minimum level of each that must be obtained for the amount of CDBG funds used. Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for public benefit is mandatory.

(1) *Tests for individual activities.* (i) With respect to each individual activity for which CDBG funds are expended under one of the authorities governed by these guidelines, one of the following two tests must be met:

(A) The number of permanent jobs created or retained by an assisted business(es) as a direct result of the CDBG assisted activity shall not be less than one full-time equivalent job per $100,000 of CDBG funds used for the activity; or,

(B) The number of low- and moderate-income persons residing in the area served by an assisted activity which directly results in providing essential goods or services shall not be less than one person per $1,000 used for the activity.

(ii) The following activities provide insufficient public benefit in the context of the CDBG program and are thus deemed to be ineligible as part of activities governed by these guidelines:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele where the benefit to such clientele clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which no specific proposed use has yet been identified; and

(E) Additional assistance to a for-profit business while that business is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

(2) *Tests for activities in the aggregate.* With respect to the aggregate amount of CDBG funds from a single grant year that are expended on activities under the authorities governed by these guidelines, one of the following two criteria, selected at the option of the grantee, must be met:

(i) In order to qualify under the first criterion, the following two tests must be met, as applicable:

(A) For activities that are expected to result directly in the creation or retention of jobs, the number of permanent jobs created or retained by the assisted businesses shall not be less than one job (computed on a full-time equivalent basis) per $35,000 of CDBG funds used for the activities; and,

(B) For activities that are expected to provide essential goods or services to an area as a direct result of the CDBG assistance, the number of low- and moderate-income persons residing in the areas served by the assisted businesses shall not be less than one person per $350 of CDBG funds used for the activities.

Note: With respect to activities that are expected both to create or retain jobs and to provide essential goods or services to an area, the grantee may elect to consider such activities under either the jobs test or the persons-served test, but not both.

(ii) In order to qualify under the second criterion, at least 75 percent of the CDBG funds used by the recipient for activities governed by these guidelines must be used for activities that are principally designed to address at least one of the following:

(A) The provision of jobs for participants in any of the following programs: Jobs Training Partnership Act (JTPA), Jobs Opportunities for Basic Skills (JOBS), or Aid to Families with Dependent Children (AFDC);

(B) The provision of jobs for participants in Unemployment Insurance programs;

(C) The provision of jobs for residents of Public and Indian Housing units;

(D) The provision of jobs for homeless persons;

(E) The provision of jobs that provide clear opportunities for promotion, such as through the provision of training;

(F) The provision of jobs for persons residing within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(G) The establishment, stabilization, or expansion of microenterprises;

(H) The stabilization or revitalization of a neighborhood that is predominantly low and moderate income;

(I) The provision of assistance to a community development financial institution whose service area is predominantly low and moderate income;

(J) The provision of assistance to a neighborhood-based nonprofit organization serving a neighborhood that is predominantly low and moderate income;

(K) The provision of employment opportunities that are an integral component of a community's strategy to promote spatial deconcentration of low- and moderate-income and minority families;

(L) The provision of assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty; or

(M) With prior HUD approval, other innovative approaches that provide substantial benefit to low-income persons.

(3) *Applying the aggregate tests.* With respect to the aggregate tests under paragraph (b)(2) of this section, a metropolitan city or an urban county shall apply the criteria to all applicable activities for which CDBG funds are obligated within each single CDBG program year without regard to the source year of the funds.

(c) *Amendments to economic development projects after review determinations.* Once the recipient has completed its economic development analysis under these guidelines and has agreed to provide CDBG assistance to the for-profit business, any material change in the project that affects the underlying assumptions upon which the recipient relied to conduct its review should be reevaluated under these and the recipient's guidelines. A "material change" is defined for these purposes as a change in the size, scope, location or public benefit of the project or a change in the terms or the amount of the private funds (both lender's funds and equity capital) to be invested in the project or a change in the terms or the amount of the CDBG assistance to be made available to the project. If the recipient determines that a material change has occurred and a reevaluation of the project indicates that the financial elements and public benefit to be derived have also changed, then the recipient should make appropriate

adjustments in the amount, the type of CDBG assistance and/or the terms and conditions under which that assistance has been offered to reflect the impact of the material change. For example, if a material change in the project elements resulted in a reduction of the total project costs, it would be appropriate for the recipient to reduce the amount of total CDBG assistance.

(d) *Documentation.* The grantee must maintain sufficient records to demonstrate the level of public benefit, based on the above standards, that is actually achieved upon completion of the CDBG-assisted economic development activity(ies) and how that compares to the level of such benefit that was projected to be achieved at the time the CDBG assistance was obligated. If actual results vary substantially from the grantee's initial projections, the grantee is expected to take all actions reasonably within its control to improve the accuracy of its projections. If the actual results demonstrate that the recipient has failed the public benefit standards, HUD may require the recipient to meet more stringent standards in future years as appropriate.

Subpart I—State's Program: State Administration of CDBG Nonentitlement Funds

8. Section 570.482 would be amended by adding paragraphs (c), (d), (e), and (f) to read as follows:

§ 570.482 Eligible activities.

* * * * *

(c) *Provision of assistance for microenterprise development*—(1) Eligible providers. Microenterprise development activities eligible under section 105(a)(23) of the Housing and Community Development Act of 1974, as amended, may be carried out either through the recipient directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients).

(2) *Provision of support services.* Support services provided under Section 105(a)(23) of the Housing and Community Development Act of 1974, as amended, shall not be subject to the restrictions on public services under section 105(a)(8) of the Housing and Community Development Act of 1974, as amended.

(d) *Guidelines and objectives for evaluating project costs and financial requirements.*—(1) *Applicability.* The following guidelines are provided to assist the recipient to evaluate and select activities to be carried out for economic development purposes. Specifically, these guidelines are applicable for activities that are eligible for CDBG assistance under § 105(a)(17) of the Act, economic development activities eligible under § 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under § 105(a)(15) of the Act. The use of the financial underwriting guidelines published by HUD is not mandatory. However, states electing not to use these guidelines would be expected to ensure that the state or units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business.

(2) *Objectives.* (i) The guidelines are designed to provide the recipient with a framework for financially underwriting and selecting CDBG assisted economic development projects that are financially viable and that will make the most effective use of the CDBG funds. Where appropriate, HUD's guidelines for financial underwriting recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account.

(ii) These guidelines are published separately as a **Federal Register** Notice. The guidelines for financial underwriting are for the purpose of achieving the following objectives:

(A) That project costs are reasonable;

(B) That all sources of project financing are committed;

(C) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(D) That the project is financially feasible;

(E) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(F) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(e) *Standards for evaluating public benefit*—(1) *Purpose and applicability.* The grantee is responsible for making sure that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds under the categories of eligibility governed by these guidelines. The standards set forth in this paragraph (e) identify the types of public benefit that must be used for this purpose and the minimum level of each that must be obtained for the amount of CDBG funds used. These guidelines are applicable for activities that are eligible for CDBG assistance under § 105(a)(17) of the Act, economic development activities eligible under § 105(a)(14) of the Act, and activities that are part of a community economic development project eligible under § 105(a)(15) of the Act. Certain projects eligible under Section 105(a)(2) of the Act and undertaken for economic development purposes are subject to these guidelines, as specified in § 570.482(d)(4)(iv)(C)(*3*)(*iii*). Unlike the guidelines for project costs and financial requirements covered under paragraph (a) of this section, the use of the standards for public benefit is mandatory.

(2) *Tests for individual activities.* (i) With respect to each individual activity for which CDBG funds are expended under one of the authorities governed by these guidelines, one of the following two tests must be met:

(A) The number of permanent jobs created or retained by an assisted business(es) as a direct result of the CDBG assisted activity shall not be less than one full-time equivalent job per $100,000 of CDBG funds used for the activity; or,

(B) The number of low- and moderate-income persons residing in the area served by an assisted activity which directly results in providing essential goods or services shall not be less than one person per $1,000 used for the activity.

(ii) The following activities provide insufficient public benefit in the context of the CDBG program and are thus deemed to be ineligible as part of activities governed by these guidelines:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele where the benefit to such clientele clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which no specific proposed use has yet been identified; and

(E) Additional assistance to a for-profit business while that business is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

(3) *Tests for activities in the aggregate.* With respect to the aggregate amount of CDBG funds from a single grant year that are expended on activities under the authorities governed by these guidelines, one of the following two criteria, selected at the option of the grantee, must be met:

(i) In order to qualify under the first criterion, the following two tests must be met, as applicable:

(A) For activities that are expected to result directly in the creation or retention of jobs, the number of permanent jobs created or retained by the assisted businesses shall not be less than one job (computed on a full-time equivalent basis) per $35,000 of CDBG funds used for the activities; and,

(B) For activities that are expected to provide essential goods or services to an area as a direct result of the CDBG assistance, the number of low- and moderate-income persons residing in the areas served by the assisted businesses shall not be less than one person per $350 of CDBG funds used for the activities.

(ii) In order to qualify under the second criterion, at least 75 percent of the CDBG funds used by the grantee for activities governed by these guidelines must be used for activities that are principally designed to address at least one of the following:

(A) The provision of jobs for participants in any of the following programs: Jobs Training Partnership Act (JTPA), Jobs Opportunities for Basic Skills (JOBS), or Aid to Families with Dependent Children (AFDC);

(B) The provision of jobs for participants in Unemployment Insurance programs;

(C) The provision of jobs for residents of Public and Indian Housing units;

(D) The provision of jobs for homeless persons;

(E) The provision of jobs that provide clear opportunities for promotion, such as through the provision of training;

(F) The provision of jobs for persons residing within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty;

(G) The establishment, stabilization, or expansion of microenterprises;

(H) The stabilization or revitalization of a neighborhood that is predominantly low and moderate income;

(I) The provision of assistance to a community development financial institution whose service area is predominantly low and moderate income;

(J) The provision of assistance to a neighborhood-based nonprofit organization serving a neighborhood that is predominantly low and moderate income;

(K) The provision of employment opportunities that are an integral component of a community's strategy to promote spatial deconcentration of low- and moderate-income and minority families;

(L) The provision of assistance to business(es) that operate(s) within a census tract (or block numbering area) that has at least 20 percent of its residents who are in poverty; or

(M) With prior HUD approval, other innovative approaches that provide substantial benefit to low-income persons.

(4) *Applying the aggregate tests.* The following shall apply with respect to the aggregate tests under paragraph (e)(3) of this section:

(i) With respect to activities that are expected both to create or retain jobs and to provide essential goods or services to an area, the grantee may elect to consider such activities under either the jobs test or the persons-served test, but not both.

(ii) A state shall apply the criteria to all funds distributed for applicable activities from each annual grant. This includes the amount of the annual grant, any funds reallocated by HUD to the state, any program income distributed by the state and any guaranteed loan funds made under the provisions of subpart M of this part covered in the method of distribution in the final statement for a given annual grant year.

(5) *Documentation.* The grantee must maintain sufficient records to demonstrate the level of public benefit, based on the above standards, that is actually achieved upon completion of the CDBG-assisted economic development activity(ies) and how that compares to the level of such benefit that was projected to be achieved at the time the CDBG assistance was obligated. If actual results vary substantially from the grantee's initial projections, the grantee is expected to take all actions reasonably within its control to improve the accuracy of its projections. If the actual results demonstrate that the grantee has failed the public benefit standards, HUD may require the grantee to meet more stringent standards in future years as appropriate.

(f) *Amendments to economic development projects after review determinations.* Once the recipient has completed its economic development analysis under these guidelines and has agreed to provide CDBG assistance to the for-profit business, any material change in the project that affects the underlying assumptions upon which the recipient relied to conduct its review should be reevaluated under these and the recipient's guidelines. A "material change" is defined for these purposes as a change in the size, scope, location or public benefit of the project or a change in the terms or the amount of the private funds (both lender's funds and equity capital) to be invested in the project or a change in the terms or the amount of the CDBG assistance to be made available to the project. If the recipient determines that a material change has occurred and a reevaluation of the project indicates that the financial elements and public benefit to be derived have also changed, then the recipient should make appropriate adjustments in the amount, the type of CDBG assistance and/or the terms and conditions under which that assistance has been offered to reflect the impact of the material change. For example, if a material change in the project elements resulted in a reduction of the total project costs, it would be appropriate for the recipient to reduce the amount of total CDBG assistance.

9. Section 570.483 would be amended by:

a. Revising the section heading;

b. Revising the paragraph heading of paragraph (b) and by adding a sentence to the end of paragraph (b)(1)(i);

c. Adding a new paragraph (b)(2)(iv);

d. Redesignating paragraph (b)(4)(iv) as (b)(4)(v), and by adding a new paragraph (b)(4)(iv);

e. Revising newly redesignated paragraph (b)(4)(v)(C); and

f. Revising paragraph (c)(1)(ii), to read as follows:

§ 570.483 Criteria for national objectives.

* * * * *

(b) *Activities benefiting low- and moderate-income persons.*

* * * * *

(1) * * * (i) * * * Activities carried out under Sections 105(a)(14) or 105(a)(17) of the Act by a community development financial institution shall be presumed by HUD to meet this criterion if the institution's charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons.

* * * * *

(2) * * *

(iv) A microenterprise assistance activity carried out in accordance with the provisions of Section 105(a)(23) of the Act or § 570.482(c) if at least 51 percent of all persons, including both owners of microenterprises and persons developing microenterprises, who are assisted under the activity from each annual grant are low- and moderate-

income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify as such for up to a three-year period.

* * * * *

(4) * * *

(iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be a low- or moderate-income person if:

(A) He/she resides within a census tract (or block numbering area) having either:

(*1*) At least 20 percent of its residents who are in poverty; or

(*2*) At least 70 percent of its residents who are low- and moderate-income persons; or

(B) The assisted business is located within a census tract (or block numbering area) having at least 20 percent of its residents who are in poverty and the job under consideration is to be located within that census tract.

(v) * * *

(C) Where CDBG funds are used for public improvements (e.g., water, sewer and roads) and the national objective is to be met by job creation or retention as a result of the public improvement, the requirement shall be met as follows:

(*1*) Before CDBG assistance is obligated for such an activity, the unit of general local government shall develop an assessment which identifies the businesses located in or expected to locate in the service area of the public improvements. For each identified business, the unit of general local government shall project the number of jobs anticipated to be created or retained by each identified business as a result of the public improvement;

(*2*) For any business which agrees to retain or create jobs as a result of the CDBG-assisted public improvements, the unit of local government shall have a written agreement with the business spelling out the business' obligation to create or retain jobs. The agreement should specify the total number of jobs to be created or retained, the number of jobs involving the employment of low- and moderate-income persons, and the time period during which the job creation or retention will occur. For purposes of meeting the national objective requirement, the unit of general local government shall count all jobs covered by such agreements until the local government determines that the business has fulfilled its job creation or retention obligation;

(*3*) The unit of local government shall compare the number of jobs created or retained as a result of the pubic improvement with the CDBG cost of the public improvements to be undertaken:

(*i*) If the number of jobs actually created or retained by any combination of businesses served by the public improvements is such that the cost (in CDBG funds) per job is less than $10,000, then the jobs created or retained by those specific businesses shall be considered for purposes of meeting the national objective requirement;

(*ii*) If the number of jobs actually created or retained by any combination of businesses served by the public improvements is such that the cost (in CDBG funds) per job is $10,000 or more, then all jobs created or retained as a result of the public improvements shall be considered for purposes of meeting the national objective requirement. This includes jobs created or retained as a result of the assistance by businesses already located in the public improvements service area, whether identified in the assessment or not. This also includes jobs created or retained as a result of the assistance by businesses which locate in the public improvements service area during the period starting with the date the state awards the CDBG funds to the local government and ending one year after the physical completion of the public improvements.

(*iii*) If the number of jobs actually created or retained by any combination of businesses served by the public improvements is such that the cost (in CDBG funds) per job is $10,000 or more, then the activity shall also be subject to the Guidelines for Evaluating Public Benefit at § 570.482(e).

* * * * *

(c) * * *

(1) * * *

(ii) Throughout the area there exists at least one of the following conditions:

(A) A substantial number of deteriorated or deteriorating buildings;

(B) The public improvements are in a general state of deterioration; or

(C) For exclusively commercial or industrial areas only, pervasive economic disinvestment as evidenced by a substantial number of previously occupied buildings experiencing either long term vacancies or an unusually high rate of turnover in occupancy.

Subpart J—Grant Administration

10. In § 570.500, paragraph (c) would be revised to read as follows:

§ 570.500 Definitions.

* * * * *

(c) *Subrecipient* means a public or private nonprofit agency, authority or organization, or an entity described in § 570.201(o) or § 570.204(c), receiving CDBG funds from the recipient to undertake activities eligible for such assistance under subpart C of this part. The term includes a public agency designated by a metropolitan city or urban county to receive a loan guarantee under subpart M of this part, but does not include contractors providing supplies, equipment, construction or services subject to the procurement requirements in 24 CFR 85.36 or in Attachment O of OMB Circular A–110, as applicable.

11. Section 570.506 would be amended by revising paragraph (b) introductory text; by redesignating paragraphs (b)(7) through (b)(11) as (b)(8) through (b)(12), respectively; by adding a new paragraph (b)(7); and by revising paragraph (c), to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(b) Records demonstrating that each activity undertaken meets one of the criteria set forth in § 570.208. (Where information on income by family size is required, the recipient may substitute evidence establishing that the person assisted qualifies under another program having income qualification criteria at least as restrictive as that used in the definitions of "low and moderate income person" and "low and moderate income household" (as applicable) at § 570.3, such as Job Training Partnership Act (JTPA) and welfare programs; or the recipient may substitute evidence that the assisted person is homeless; or the recipient may substitute a copy of a verifiable certification from the assisted person that his or her family income does not exceed the applicable income limit established in accordance with § 570.3; or the recipient may substitute a notice that the assisted person is a referral from a state, county or local employment agency or other entity that agrees to refer individuals it determines to be low and moderate income persons based on HUD's criteria and agrees to maintain documentation supporting these determinations.) Such records shall include the following information:

* * * * *

(7) For purposes of documenting, pursuant to paragraphs (b)(5)(i)(B), (b)(5)(ii)(C), (b)(6)(iii) or (b)(6)(v) of this section, that the person for whom a job was either filled by or made available to a low- or moderate-income person based upon the census tract where the person resides or in which the business is located, the recipient, in lieu of maintaining records showing the

person's family size and income, may substitute records showing either the person's address at the time the determination of income status was made or the address of the business providing the job, as applicable, the census tract in which that address was located, the percent of persons residing in that tract who either are in poverty or who are low- and moderate-income, as applicable, and the data source used for determining the percentage.

* * * * *

(c) Records which demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(f), 570.201(i), 570.202(b)(3), 570.203(b), 570.204(a), 570.206(f), and 570.209.

* * * * *

Dated: May 20, 1994.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Attachment—The Following Is Proposed To Be the Substance of What Will Be Published as a Separate Federal Register Notice Concurrent With the Final Rule

Guidelines and Objectives for Evaluating Project Costs and Financial Requirements. HUD has developed the following guidelines that are designed to provide the recipient with a framework for financially underwriting and selecting CDBG assisted economic development projects that are financially viable and that will make the most effective use of the CDBG funds. The use of these financial underwriting guidelines as published by HUD is not mandatory. However, grantees electing not to use these guidelines would be expected to conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business. States electing not to use these guidelines would be expected to ensure that the state or units of general local government conduct basic financial underwriting prior to the provision of CDBG financial assistance to a for-profit business.

Where appropriate, HUD's guidelines for financial underwriting recognize that different levels of review are appropriate to take into account differences in the size and scope of a proposed project, and in the case of a microenterprise or other small business take into account the differences in the capacity and level of sophistication among businesses of differing sizes. Recipients are encouraged, when they develop their own programs and underwriting criteria, to also take these factors into account.

The guidelines for financial underwriting are for the purpose of achieving the following objectives:

(1) That project costs are reasonable;

(2) That all sources of project financing are committed;

(3) That to the extent practicable, CDBG funds are not substituted for non-Federal financial support;

(4) That the project is financially feasible;

(5) That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

(6) That to the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

(1) *Project costs are reasonable.* Reviewing costs for reasonableness is important. It will help the recipient avoid providing either too much or too little CDBG assistance for the proposed project. Therefore, it is suggested that the grantee obtain a breakdown of all project costs and that each cost element making up the project be reviewed for reasonableness. The amount of time and resources the recipient expends evaluating the reasonableness of a cost element should be commensurate with its cost. For example, it would be appropriate for an experienced reviewer looking at a cost element of less than $10,000 to judge the reasonableness of that cost based upon his or her knowledge and common sense. For a cost element in excess of $10,000, it would be more appropriate for the reviewer to compare the cost element with a third-party, fair-market price quotation for that cost element. Third-party price quotations may also be used by a reviewer to help determine the reasonableness of cost elements below $10,000 when the reviewer evaluates projects infrequently or if the reviewer is less experienced in cost estimations. If a recipient does not use third-party price quotations to verify cost elements, then the recipient would need to conduct its own cost analysis using appropriate cost estimating manuals or services.

The recipient should pay particular attention to any cost element of the project that will be carried out through a non-arms-length transaction. A non-arms-length transaction occurs when the entity implementing the CDBG assisted activity procures goods or services from itself or from another party with whom there is a financial interest or family relationship. If abused, non-arms-length transactions misrepresent the true cost of the project.

(2) *Commitment of all project sources of financing.* The recipient should review all projected sources of financing necessary to carry out the economic development project. This is to ensure that time and effort is not wasted on assessing a proposal that is not able to proceed. To the extent practicable, prior to the commitment of CDBG funds to the project, the recipient should verify that: sufficient sources of funds have been identified to finance the project; all participating parties providing those funds have affirmed their intention to make the funds available; and the participating parties have the financial capacity to provide the funds.

(3) *Avoid substitution of CDBG funds for non-Federal financial support.* The recipient should review the economic development project to ensure that, to the extent practicable, CDBG funds will not be used to substantially reduce the amount of non-Federal financial support for the activity. This will help the recipient to make the most efficient use of its CDBG funds for economic development. To reach this determination, the recipient's reviewer would conduct a financial underwriting analysis of the project, including reviews of appropriate projections of revenues, expenses, debt service and returns on equity investments in the project. The extent of this review should be appropriate for the size and complexity of the project and should use industry standards for similar projects, taking into account the unique factors of the project such as risk and location.

Because of the high cost of underwriting and processing loans, many private financial lenders do not finance commercial projects that are less than $100,000. A recipient should familiarize itself with the lending practices of the financial institutions in its community. If the project's total cost is one that would normally fall within the range that financial institutions participate, then the recipient should normally determine the following:

(i) *Private debt financing*—whether or not the participating private, for-profit business (or other entity having an equity interest) has applied for private debt financing from a commercial lending institution and whether that institution has completed all of its financial underwriting and loan approval actions resulting in either a firm commitment of its funds or a decision not to participate in the project; and

(ii) *Equity participation*—whether or not the degree of equity participation is reasonable given general industry standards for rates of return on equity

for similar projects with similar risks and given the financial capacity of the entrepreneur(s) to make additional financial investments.

If the recipient is assisting a microenterprise owned by a low- or moderate-income person(s), in conducting its review under this paragraph, the recipient would generally only need to determine that non-Federal sources of financing are not available (at terms appropriate for such financing) in the community to serve the low- or moderate-income entrepreneur.

(4) *Financial feasibility of the project* The public benefit a grantee expects to derive from the CDBG assisted project (the subject of separate regulatory standards) will not materialize if the project is not financially feasible. To determine if there is a reasonable chance for the project's success, the recipient should evaluate the financial viability of the project. A project would be considered financially viable if all of the assumptions about the project's market share, sales levels, growth potential, projections of revenue, project expenses and debt service (including repayment of the CDBG assistance if appropriate) were determined to be realistic and met the project's break-even point (which is generally the point at which all revenues are equal to all expenses). Generally speaking, an economic development project that does not reach this break-even point over time is not financially feasible. The following should be noted in this regard:

(i) Some projects make provisions for a negative cash flow in the early years of the project while space is being leased up or sales volume built up, but the project's projections should take these factors into account and provide sources of financing for such negative cash flow; and

(ii) It is expected that a financially viable project will also project sufficient revenues to provide a reasonable return on equity investment. The recipient should carefully examine any project that is not economically able to provide a reasonable return on equity investment. Under such circumstances, a business may be overstating its real equity investment (actual costs of the project may be overstated as well), or it may be overstating some of the project's operating expenses in the expectation that the difference will be taken out as profits, or the business may be overly pessimistic in its market share and revenue projections and has downplayed its profits.

In addition to the financial underwriting reviews carried out earlier, the recipient should evaluate the experience and capacity of the assisted business owners to manage an assisted business to achieve the projections. Based upon its analysis of these factors, the recipient should identify those elements, if any, that pose the greatest risks contributing to the project's lack of financial feasibility.

(5) *Return on equity investment.* To the extent practicable, the CDBG assisted activity should provide not more than a reasonable return on investment to the owner of the assisted activity. This will help ensure that the grantee is able to maximize the use of its CDBG funds for its economic development objectives. However, care should also be taken to avoid the situation where the owner is likely to receive too small a return on his/her investment, so that his/her motivation remains high to pursue the business with vigor. The amount, type and terms of the CDBG assistance should be adjusted to allow the owner a reasonable return on his/her investment given industry rates of return for that investment, the local conditions and the risk of the project.

(6) *Disbursement of CDBG funds on a pro rata basis.* To the extent practicable, CDBG funds used to finance economic development activities should be disbursed on a pro rata basis with other funding sources. This will help avoid the situation where it is learned that a problem has developed that will block the completion of the project, even though all or most of the CDBG funds going in to the project have already been expended. When this happens, a recipient may be put in a position of having to provide additional financing to complete the project or watch the potential loss of its funds if the project is not able to be completed. When the recipient determines that it is not practicable to disburse CDBG funds on a pro rata basis, the recipient should consider taking other steps to safeguard CDBG funds in the event of a default, such as insisting on securitizing assets of the project.

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BILLING CODE 4210–29–P

federal register

Tuesday
May 31, 1994

Part IV

Department of Commerce

International Trade Administration

Foreign Buyer Program; Support for Domestic Trade Shows; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

Foreign Buyer Program; Support for Domestic Trade Shows

AGENCY: International Trade Administration, Commerce.

ACTION: Notice and Call for Applications for the FY96 Foreign Buyer Program (October 1, 1995, through September 30, 1996).

SUMMARY: This notice sets forth objectives, procedures and application review criteria associated with the U.S. Department of Commerce's Foreign Buyer Program (FBP) to support domestic trade shows: Selection in the Foreign Buyer Program for Fiscal Year 1996.

The Foreign Buyer Program was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The Foreign Buyer Program emphasizes cooperation between the U.S. Department of Commerce (DOC) and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance to U.S. companies interested in exporting such as export counseling and market analysis. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-users, representatives and distributors. The worldwide promotion is executed through the offices of the Commerce Department's U.S. and Foreign Commercial Service (US&FCS) in 69 countries representing America's major trading partners, and also in U.S. Embassies in countries where the US&FCS does not maintain offices. The Department annually selects 22 trade shows from among applicants to the program. Shows selected for the Foreign Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets. Successful applicants will be required to enter into a Memorandum of Understanding (MOU) that sets forth the specific actions to be performed by the show organizer and the DOC. The MOU constitutes an agreement between the DOC and the show organizer specifying services to be rendered by DOC as part of the FBP and responsibilities assumed by the show organizer. Anyone wishing to apply will be sent a copy of the MOU along with the application package. The services to be rendered by DOC will be carried out by the U.S. and Foreign Commercial Service unless otherwise indicated.

DATES: Applications must be received by July 15, 1994. A contribution of $4,000 for shows of 5 days or less in duration is required. For shows over five days in duration a contribution of $6,000 is required. Contributions are for shows selected and promoted during the October 1, 1995, and September 30, 1996, period.

ADDRESSES: Export Promotion Services/ Foreign Buyer Program, U.S. and Foreign Commercial Service (US&FCS), International Trade Administration, U.S. Department of Commerce, room 2116, 14th and Constitution Avenue NW., Washington, DC 20230. Tel.: (202) 482–0481 (facsimile applications will not be accepted).

FOR FURTHER INFORMATION ON WHEN, WHERE, AND HOW TO APPLY: Contact Bill Crawford, Product Manager, Foreign Buyer Program, room 2116, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. Tel: (202) 482–0481 or FAX: (202) 482–0115.

SUPPLEMENTARY INFORMATION: The International Trade Administration (ITA) of the U.S. Department of Commerce is accepting applications for the Foreign Buyer Program (FBP) for events taking place between October 1, 1995, and September 30, 1996.

Under the FBP, the Department seeks to bring international buyers together with U.S. firms by selecting and promoting in international markets domestic trade shows in industries with high export potential. Selection of a trade show is one-time, i.e., a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. If the event occurs more than once in the 12 month period covering this announcement, the trade show organizer must submit a separate application for each event.

The Department will select 22 events to support during this 12 month period. The Department will select those events that, in its judgment, most clearly meet the Department's objectives and selection criteria.

Selection indicates that the Department has found the event to be a leading international trade show appropriate for participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of success of the show or of the undertakings or obligations of the show organizer. Selection is not an endorsement of the show organizer except as to its Foreign Buyer activities. Non-selection should not be viewed as a finding that the event will not be successful in the promotion of U.S. exports.

Exclusions: Trade shows will not be considered that are either first time events or are horizontal, that is, not industry specific. Annual trade shows will not be selected for this program more than twice in any three year period (e.g., shows selected for fiscal years 1994 and 1995 are not eligible for inclusion in this program in fiscal year 1996, but can be considered in subsequent years).

The Office of Management and Budget has approved the information collection requirements of the application to this program under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.) (OMB control no. 0625–0151).

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Reports Clearance Officer, International Trade Administration, room 4001, U.S. Department of Commerce, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0625–0151), Washington, DC 20503.

General Selection Criteria: Subject to Departmental budget and resource constraints, those events will be selected that, in the judgment of the Department, most clearly meet the following criteria:

(a) *Export Potential:* The products and services to be promoted at the trade show are from U.S. industries that have high export potential, as determined by U.S. Department of Commerce sources, i.e., best prospects lists and U.S. export statistics. (Certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides.)

(b) *International Interest:* The trade show meets the needs of a significant number of overseas markets covered by the US&FCS and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (e.g. best prospects lists).

Previous international attendance at the show may be used as an indicator.

(c) *Scope of the Show:* The trade show offers a broad spectrum of U.S. made products and/or services for the subject industry. Trade shows with a majority of U.S. firms will be given preference.

(d) *Stature of the Show:* The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or techniques in that industry.

(e) *Exhibitor Interest:* There is demonstrated interest on the part of U.S. exhibitors in receiving international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand sales into additional international markets.

(f) *Overseas Marketing:* There has been demonstrated effort made to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, explaining how efforts should increase individual and group international attendance.

(g) *Logistics:* The trade show site, facilities, transportation services and availability of accommodations are in the stature of an international-class trade show.

(h) *Cooperation:* The applicant demonstrates willingness to cooperate with the US&FCS to fulfill the program's goals and to adhere to target dates set out in the Memorandum of Understanding and the event timetable, both of which are available from the program office (see "For Further Information on When, Where, and How to Apply").

Past experience in the FBP will be taken into account in evaluating current applications to the program.

Authority: The statutory authority authorizing the Department to provide the type of assistance contemplated under the Foreign Buyer Program is 15 U.S.C. 4724.

Ann H. Watts,

Director, Cooperative Events Division, Office of Export Marketing Programs, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 94–13199 Filed 5–27–94; 8:45 am]

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federal register

Tuesday
May 31, 1994

Part V

The President

Executive Order 12918—Prohibiting Certain Transactions With Respect to Rwanda and Delegating Authority With Respect to Other United Nations Arms Embargoes

Federal Register
Vol. 59, No. 103
Tuesday, May 31, 1994

Presidential Documents

Title 3—

The President

Executive Order 12918 of May 26, 1994

Prohibiting Certain Transactions With Respect to Rwanda and Delegating Authority With Respect to Other United Nations Arms Embargoes

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 918 of May 17, 1994, it is hereby ordered as follows:

Section 1. *Arms Embargo.* The following activities are prohibited, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order, except to the extent provided in regulations, orders, directives, or licenses that may hereafter be issued pursuant to this order: (a) The sale or supply to Rwanda from the territory of the United States by any person, or by any United States person in any foreign country or other location, or using any U.S.-registered vessel or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for the aforementioned, irrespective of origin. This prohibition does not apply to activities related to the United Nations Assistance Mission for Rwanda or the United Nations Observer Mission Uganda-Rwanda or other entities permitted to have such items by the United Nations Security Council; and

(b) Any willful evasion or attempt to violate or evade any of the prohibitions set forth in this order, by any person.

Sec. 2. *Definitions.* For purposes of this order, the term: (a) "Person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities; and

(b) "United States person" means any citizen or national of the United States, any lawful permanent resident of the United States, or any corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities, organized under the laws of the United States (including foreign branches).

Sec. 3. *Responsibilities.* The functions and responsibilities for the enforcement of the foregoing prohibitions are delegated as follows: (a) The Secretary of State is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by section 5 of the United Nations Participation Act and other authorities available to the Secretary of State, as may be necessary to carry out the purpose of this order, relating to arms and related materiel of a type enumerated on the United States Munitions List (22 C.F.R. Part 121). The Secretary of State may redelegate any of these functions to other officers and agencies of the United States Government; and

(b) The Secretary of Commerce, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by section 5 of the United Nations Participation Act and other authorities

available to the Secretary of Commerce, as may be necessary to carry out the purpose of this order, relating to arms and related materiel identified in the Export Administration Regulations (15 C.F.R. Parts 730–799). The Secretary of Commerce may redelegate any of these functions to other officers and agencies of the United States Government.

Sec. 4. *Authorization.* All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 5. *Delegation of Authority.* The Secretary of State and the Secretary of Commerce in consultation with the Secretary of State are hereby authorized to promulgate rules and regulations, and to employ all powers granted to the President by section 5 of the United Nations Participation Act and not otherwise delegated by Executive order, as may be necessary to carry out the purpose of implementing any other arms embargo mandated by resolution of the United Nations Security Council, consistent with the allocation of functions delegated under section 3 of this order. The Secretary of State or the Secretary of Commerce may redelegate any of these functions to other officers and agencies of the United States Government.

Sec. 6. *Judicial Review.* Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. *Effective Date.* This order shall take effect at 11:59 p.m. eastern daylight time on May 26, 1994.

William J. Clinton

THE WHITE HOUSE,
May 26, 1994.

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Filed 5–27–94; 11:06 am]
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Reader Aids

Federal Register

Vol. 59, No. 103

Tuesday, May 31, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, MAY

22491–22722.....2
22723–22950.....3
22951–23118.....4
23119–23610.....5
23611–23788.....6
23789–24028.....9
24029–24340.....10
24341–24630.....11
24631–24884.....12
24885–25286.....13
25287–25554.....16
25555–25774.....17
25775–26096.....18
26097–26406.....19
26407–26582.....20
26583–26732.....23
26733–26926.....24
26927–27212.....25
27213–27428.....26
27429–27962.....27
27963–28206.....31

CFR PARTS AFFECTED DURING MAY

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:
5983 (Superseded by Proc. 6693).....26923
6569 (Revoked by Proc. 6685).....24337
6679.....22955
6680.....22957
6681.....22959
6682.....23611
6683.....24027
6684.....24335
6685.....24337
6686.....24627
6687.....24629
6688.....24883
6689.....25783
6690.....26407
6691.....26583
6692.....26733
6693.....26923
6694.....27693
Administrative Orders:
Memorandums:
April 29, 1994.....22951
April 29, 1994.....22953
Presidential Determinations:
94–23 of May 3, 1994.....24625
94–25 of May 16, 1994.....27431
Executive Orders:
1919½ (Revoked in part by PLO 7046).....24648
3406 (Revoked in part by PLO 7048).....24649
8685 (Revoked in part by PLO 7045).....24947
12582 (Revoked by EO 12913).....23115
12779 (Revoked in part by EO 12917).....26925
12808 (See Notice of May 25).....27429
12810 (See Notice of May 25).....27429
12831 (See Notice of May 25).....27429
12846 (See Notice of May 25).....27429
12853 (Revoked in part by EO 12917).....26925
12866 (See OMB report of May 1).....24276
12878 (Amended by EO 12912).....22949
12912.....22949
12913.....23115
12914.....24339
12914 (See FAA final rule of May 18).....25809
12915.....25775
12916.....25779
12917.....26925
12918.....28205
Notices:
May 25, 1994.....27429

5 CFR

531.....24029
532.....26585, 26847, 27213
831.....27213
890.....24030
1630.....26409
Proposed Rules:
Ch. XIV.....22537
185.....24661
213.....25966
351.....27509
591.....27314
630.....24560
890.....24062, 26847

7 CFR

28.....26409
29.....27214
58.....24318
61.....26410
68.....26585
80.....25785
91.....24318
93.....24318
94.....24318
95.....24318
98.....24318
210.....23613
220.....23613
271.....22723, 27433
272.....22723
273.....22723
278.....27433
301.....22491, 25287, 25786, 25789, 27965
354.....27434
723.....22723, 27215
905.....26927
944.....25791
946.....27221
948.....27223
953.....27222
958.....24631
959.....26735
979.....26735
982.....24632
989.....27225, 27226
993.....25792
998.....24633
1033.....24030
1036.....24030
1049.....24030
1126.....26736
1240.....22492, 24217
1413.....22494, 22495, 25794
1421.....25794, 25795

1427.....22494, 22495
1434.....23789
1464.....22723, 27215
1540.....25796
1767.....27435
1941.....22961, 25794, 25797
1942.....26585
1943.....22961, 25797
1945.....22961, 25797
1948.....24635
1951.....25797
1980.....23614
Proposed Rules:
52.....26762
58.....24318
201.....25706
300.....22538, 24968
319.....22538, 24968
Ch. VII.....22938
457.....28016, 28022, 28027
735.....26146
736.....26146
738.....26146
739.....26146
740.....26146
741.....26146
742.....26146
923.....26148
930.....26603
993.....25841
999.....25841
1040.....26603
1468.....22546
1530.....23017
1823.....23018
1910.....23018
1927.....24362
1941.....23018
1942.....23018
1943.....23018
1944.....22018
1945.....23018
1948.....23018
1951.....22548, 23018
1980.....23018, 23173
2812.....24973
4285.....23804

8 CFR
103.....26587
204.....27228
210a.....24031, 26593
211.....26587
214.....26593
216.....26587
235.....26587
241.....26593
242.....26587, 26593
299.....25555
499.....25555
Proposed Rules:
3.....24976, 24977
245a.....24978

9 CFR
78.....22496
92.....24885, 24886
94.....24637
96.....27966
98.....26595
381.....24220
Proposed Rules:
50.....23810
54.....24979
71.....23810
77.....23810
91.....24979
92.....23810
201.....26763
317.....24220, 26916, 27144
381.....22554, 27144

10 CFR
12.....23119
171.....26097
765.....26714
1102.....27436
Proposed Rules:
2.....24371
26.....24373
50.....23641
51.....23030
71.....26608
73.....23641
170.....24065
171.....24065
451.....24982

12 CFR
5.....22497
27.....26411
207.....23124
210.....22962
220.....23124
221.....23124
224.....23124
225.....22967
230.....24032
265.....22967
563b.....22725
575.....22725
600.....27970
604.....27970
605.....27970
608.....23615
611.....27970
612.....24889
615.....22735, 27970
701.....26101
741.....26101
1402.....24638
1408.....24899
Proposed Rules:
3.....26456, 27116
205.....23031
208.....26456, 27116, 27247
225.....26456, 27116
230.....24376, 24378
325.....27116
335.....22555
563b.....22764
567.....27116
575.....22764
1403.....24988

13 CFR
121.....23131

14 CFR
23.....23095, 25766
29.....22499
39.....23132, 23133, 23135, 25803, 25805, 25806, 25807, 23136, 23138, 23139, 23142, 23143, 23144, 23146, 23148, 23150, 23615, 23792, 24034, 25288, 25290, 25293, 25295, 26103, 26105, 27229, 27231, 27442, 27970, 27972
71.....22502, 22503, 22736, 22737, 22969, 22970, 23617, 23618, 23619, 23620, 23621, 24036, 24037, 24038, 24341, 24343, 24344, 24349, 24906, 24908, 24910, 24911, 24912, 24914, 24915, 25297, 25299, 25300, 25301, 25302, 25561, 26420, 26596, 26597, 26929, 26930, 26931, 27446, 27448, 27449, 27450, 27451
91.....24915, 25282, 25284, 25809
95.....27454
97.....22738, 24916, 24918, 24919, 26932, 27456
121.....26896
Proposed Rules:
Ch. I.....22565, 24092
25.....22218, 22766
39.....22565, 22769, 22771, 23031, 23174, 24382, 24383, 24670, 25843, 25844, 25846, 27249, 27510, 28031
71.....22567, 22568, 22569, 22570, 23033, 23034, 23642, 24093, 24384, 24673, 24990, 26465, 26766, 27512, 27513, 27514
73.....23644

15 CFR
7.....22742
285.....22742
290.....22504
770.....25303
771.....25303
772.....25303
773.....25303
774.....25303
775.....25303
776.....25303
778.....25303, 27312
779.....25303
785.....25303
787.....25303
799.....25303
923.....27974
925.....24586
926.....27974
927.....27974

16 CFR
305.....23623, 25176
Proposed Rules:
300.....23645
301.....23645
303.....23646
309.....24013
455.....23647
1700.....24386

17 CFR
30.....22505, 22971, 27233
200.....23794
211.....26108
231.....26108
239.....25810
241.....26108
275.....27659
279.....27659
Proposed Rules:
1.....25351, 27312
4.....25351, 27312
30.....25351, 27312
150.....25351, 27312
240.....22773

18 CFR
284.....22753, 23624
381.....25562
Proposed Rules:
284.....27251

19 CFR
4.....23794
10.....25563
123.....23794, 25563
145.....25563
178.....25563
Proposed Rules:
4.....25376
12.....26151
101.....23817

20 CFR
416.....27985
626.....26599
1005.....26599

21 CFR
74.....24643, 25322, 26420
101.....24039, 24232
103.....26933
166.....26938
172.....24923
173.....26700
177.....26420
178.....25322
442.....26939
520.....22753, 26942
556.....26942
558.....26423, 26943
573.....26423, 26700
606.....23636
660.....23636
1020.....26402
1306.....26109
Proposed Rules:
Ch. I.....26352
73.....23035
74.....23055
168.....23055
172.....23055
173.....23055
182.....23055
184.....23055
878.....23036

22 CFR
22.....25324
41.....25324
120.....25811

23 CFR
710.....25326
712.....25326
713.....25326
720.....25326
Proposed Rules:
250.....25377
645.....25579

24 CFR
92.....22506
582.....24252
583.....24252
880.....22754, 22916
881.....22754, 22916
882.....24252
883.....22754, 22916
884.....22916
886.....22916

888.....25703, 26944
905.....25811
Proposed Rules:
570.....28176

25 CFR

Proposed Rules:
Ch. I.....23774
35.....24850
200.....24850
280.....24850
291.....24850
510.....24850
511.....24850
570.....24850
577.....24850
578.....24850
579.....24850
882.....24850
885.....24850
886.....24850
887.....24850
890.....24850
900.....26920
905.....24850
941.....24850
961.....24850
965.....24850
968.....24850

26 CFR

1.....24039, 24350, 24924, 24935, 25581, 25584, 27458
25.....23152
301.....26601
602.....23152, 24935, 27235, 27458

Proposed Rules:
1.....22773, 24094, 24095, 24992, 25581, 25584, 25847, 26466, 27515
31.....24096
301.....26608
602.....27515

27 CFR

9.....26112

28 CFR

0.....23637
2.....25813, 25814, 26424
64.....25815
527.....23998

Proposed Rules:
2.....26466

29 CFR

1910.....26114
2619.....24939
2676.....24939

Proposed Rules:
570.....25164, 25167
1609.....24998
1926.....24389, 25848, 26153
2609.....26467

30 CFR

779.....27932
780.....27932
783.....27932
784.....27932
795.....28136
870.....28136
872.....28136
873.....28136
874.....28136
875.....28136
876.....28136
886.....28136
917.....27235, 27238
935.....22507
944.....26737

Proposed Rules:
11.....26892
70.....26892
71.....26892
75.....26356
250.....25377
756.....25852
906.....24998
914.....23176, 27251
915.....23177
917.....23649, 26153, 26471, 26472
918.....27252
925.....28032
935.....27253, 27255
944.....24675, 26767
950.....22571

31 CFR

47.....24047
500.....26601
565.....24643
580.....25817
601.....22972
800.....27178

32 CFR

206.....26116
706.....22755, 27239, 27240

Proposed Rules:
298.....23649

33 CFR

100.....24942, 26119, 26120, 26426, 27460
117.....23158
150.....23095
165.....23158, 24047, 24048, 25328, 26121, 26427, 26428, 27461
166.....23774

Proposed Rules:
100.....22573
117.....26474
165.....23179, 26155, 26156, 26475, 27516
181.....23651
402.....23180

34 CFR

75.....24868
668.....23095
682.....25744
693.....24868

Proposed Rules:
76.....27404
298.....27404
364.....24814
365.....24814
366.....24814
367.....24814
388.....24000
Ch. VI.....22775, 22776

35 CFR

7.....26122
9.....26122
10.....26122
60.....26122
135.....26122

36 CFR

242.....27462
1253.....23637

Proposed Rules:
7.....25001, 25855
222.....25385
705.....27517
1236.....28033
1275.....27257

37 CFR

251.....23964
252.....23964
253.....23964
254.....23964
255.....23964
256.....23964
257.....23964
258.....23964
259.....23964
301.....23964
302.....23964
303.....23964
304.....23964
305.....23964
306.....23964
307.....23964
308.....23964
309.....23964
310.....23964
311.....23964

Proposed Rules:
1.....27519

38 CFR

3.....25328, 25329
20.....25330
21.....24049, 24050

39 CFR

20.....24943
111.....23038, 23158
265.....22756

Proposed Rules
111.....26609

40 CFR

9.....26429
52.....22757, 22973, 23164, 23167, 23796, 24054, 24644, 24647, 25330, 25333, 25572, 26123, 26126, 26129, 27464
55.....24351
60.....22758, 22759
63.....26429
80.....26129
81.....26126
180.....24055, 24057, 24059, 25818, 25819, 25821, 26945, 26946, 26947, 26950, 26951, 26952, 26954
185.....23799, 24059
186.....24059
227.....26566
271.....27472
300.....27989
712.....22519
716.....22519
721.....27474

Proposed Rules:
Ch. I.....25859
52.....22776, 23264, 24096, 24096, 24330, 25002, 25867, 26988, 26993, 26994, 28036, 28038
59.....22776
63.....25004, 25387
65.....22795
70.....26158
80.....22800, 25586
81.....23264, 24330, 25588
90.....25399
165.....2257
180.....24100, 24101, 25431, 25586
227.....26573
230.....26162
261.....24530
271.....24530
281.....25588
300.....23819
302.....24530
721.....23041
745.....23041

41 CFR

101–37.....27486
101–45.....26739
301–3.....27487
301–9.....27487
302–1.....27487
302–6.....27487
302–11.....22519, 27487

Proposed Rules:
101–6.....26768

42 CFR

424.....26739
405.....26955
406.....26955
408.....26955
410.....26955
413.....26955, 26960
418.....26955

Proposed Rules:
84.....26850, 27257
412.....27708
413.....26998, 27708
434.....23820
435.....23820
482.....27708
485.....27708
489.....27708

43 CFR

1820.....25822
7041.....23638

Public Land Orders:
219 (Revoked by PLO 7046).....24648
1094 (Revoked in part by PLO 7050).....25339
1703 (Revoked in part by PLO 7049).....25338
4825 (Revoked in part by PLO 7047).....24648
7042.....24945
7043.....24946
7044.....24946
7045.....24947
7046.....24648
7047.....24648
7048.....24649
7049.....24338
7050.....25339
7051.....25823
7052.....25824
7053.....25824
7054.....25824
7055.....28013

Proposed Rules:
11.....23098

1780.....25385
3720.....24572
3730.....24572
3800.....24572
3810.....24572
3820.....24572
3830.....24572
3850.....24572
4100.....25385

44 CFR

2.....26132
61.....26740
62.....26965
64.....24649, 24652
206.....24355
311.....24947

Proposed Rules:

67.....26167, 26171, 26177

45 CFR

Ch. XXIV.....27490
205.....26141
233.....26141

Proposed Rules:

98.....24510
255.....24510
256.....24510
257.....24510
402.....28038
1340.....26046

46 CFR

67.....24060

Proposed Rules:

381.....24390
540.....23182
552.....27002
586.....26142

47 CFR

Ch. I.....25589
0.....24947, 25825, 26741, 26970
1.....22980, 24947, 25825
15.....25339
24.....26602, 26741
36.....27496
64.....26756
73.....22995, 22996, 25825, 27505, 28014
76.....25339, 25344
95.....24947, 25825
99.....26602

Proposed Rules:

Ch. I.....25873
1.....23042, 23183, 24103, 26615
20.....25432, 28042
22.....28042
73.....22814, 23042, 23043, 26615, 23183, 23184, 25874, 25875, 27525, 28047
76.....23183, 26615, 26616, 26617, 27526
90.....28042

48 CFR

202.....27662
204.....27662
207.....27662
209.....27662
210.....27662
214.....27662
215.....27662
217.....22759, 26343
219.....24958, 27662
222.....27662
223.....27662
225.....23169, 26343, 27662
226.....27662
231.....26143, 27662
232.....27662
233.....27662
235.....27662
237.....27662
242.....27662
243.....27662
245.....27662
247.....27662
248.....27662
249.....27662
250.....27662
251.....27662
252.....24958, 26343, 27662
253.....27662
533.....22520
904.....24357
905.....24357
914.....24357
915.....24357
917.....24357
919.....24357
936.....24357
943.....24357
952.....24357
970.....24357
1804.....23800
1816.....22521
1831.....22521
1842.....23800
1843.....23802
1845.....27312
1852.....22521, 23800

Proposed Rules:

Ch. 99.....26772
32.....23776
52.....23776
245.....26185
1807.....24104
1815.....24104
9904.....26774

49 CFR

229.....24960
383.....26022
384.....26029
390.....26022
391.....26022
393.....25572
526.....25574
571.....22997, 25576, 25826, 26759, 27506

Proposed Rules:

571.....23184, 23662, 25590
580.....23186
1023.....27002
1312.....26777
1314.....26777

50 CFR

17.....24654
36.....24564
100.....27462
217.....23169
227.....23169, 25827
301.....22522, 24359, 24964, 27241
380.....25832
625.....26971
638.....25344
641.....22760
646.....27242
649.....26454
651.....22760, 26972
658.....24660
661.....22999, 23013, 28014
663.....23638, 25832
672.....24965, 26761
675.....22762, 23172, 24360, 24361, 24965, 25346, 26144, 26145, 27246
678.....25350
685.....26979

Proposed Rules:

17.....23824, 24106, 24112, 24117, 24678, 25024, 25875, 26476, 27257
36.....23043, 24567
215.....25024
227.....27527
261.....23095
262.....23095
263.....23095
267.....23095
301.....23664
638.....24670
641.....27258
642.....23681
651.....24118, 25026
671.....23664, 24679, 26780
672.....23044, 23664, 24679, 26780
675.....23044, 23664, 24679, 26780
676.....23664, 24679, 24680, 28048
677.....23664

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 2868/P.L. 103–256

To designate the Federal building located at 600 Camp Street in New Orleans, Louisiana, as the "John Minor Wisdom United States Court of Appeals Building", and for other purposes. (May 25, 1994; 108 Stat. 690; 1 page)

H.J. Res. 303/P.L. 103–257

To designate June 6, 1994, as "D-Day National Remembrance Day". (May 25, 1994; 108 Stat. 691; 1 page)

S.J. Res. 168/P.L. 103–258

Designating May 11, 1994, as "Vietnam Human Rights Day". (May 25, 1994; 108 Stat. 692; 2 pages)

Last List May 25, 1994

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–022–00001–2)	$5.00	Jan. 1, 1994
3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
4	(869–022–00003–9)	5.50	Jan. 1, 1994
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–022–00006–3)	23.00	Jan. 1, 1994
7 Parts:			
*0–26	(869–022–00007–1)	21.00	Jan. 1, 1994
27–45	(869–022–00008–0)	14.00	Jan. 1, 1994
46–51	(869–022–00009–8)	20.00	[7] Jan. 1, 1993
52	(869–022–00010–1)	30.00	Jan. 1, 1994
53–209	(869–022–00011–0)	23.00	Jan. 1, 1994
210–299	(869–022–00012–8)	32.00	Jan. 1, 1994
*300–399	(869–022–00013–6)	16.00	Jan. 1, 1994
400–699	(869–022–00014–4)	18.00	Jan. 1, 1994
700–899	(869–022–00015–2)	22.00	Jan. 1, 1994
900–999	(869–019–00016–0)	33.00	Jan. 1, 1993
1000–1059	(869–019–00017–8)	20.00	Jan. 1, 1993
1060–1119	(869–022–00018–7)	15.00	Jan. 1, 1994
1120–1199	(869–022–00019–5	12.00	Jan. 1, 1994
1200–1499	(869–019–00020–8)	27.00	Jan. 1, 1993
1500–1899	(869–019–00021–6)	17.00	Jan. 1, 1993
1900–1939	(869–019–00022–4)	13.00	Jan. 1, 1993
*1940–1949	(869–022–00023–3)	30.00	Jan. 1, 1994
*1950–1999	(869–022–00024–1)	35.00	Jan. 1, 1994
*2000–End	(869–022–00025–0)	14.00	Jan. 1, 1994
8	(869–019–00026–7)	20.00	Jan. 1, 1993
9 Parts:			
1–199	(869–022–00027–6)	29.00	Jan. 1, 1994
*200–End	(869–022–00028–4)	23.00	Jan. 1, 1994
10 Parts:			
0–50	(869–022–00029–2)	29.00	Jan. 1, 1994
51–199	(869–022–00030–6)	22.00	Jan. 1, 1994
200–399	(869–022–00031–4)	15.00	[7] Jan. 1, 1993
400–499	(869–022–00032–2)	21.00	Jan. 1, 1994
500–End	(869–022–00033–1)	37.00	Jan. 1, 1994
11	(869–022–00034–9)	14.00	Jan. 1, 1994
12 Parts:			
1–199	(869–022–00035–7)	12.00	Jan. 1, 1994
200–219	(869–019–00036–4)	15.00	Jan. 1, 1993
220–299	(869–019–00037–2)	26.00	Jan. 1, 1993
300–499	(869–022–00038–1)	22.00	Jan. 1, 1994
500–599	(869–022–00039–0)	20.00	Jan. 1, 1994
*600–End	(869–022–00040–3)	32.00	Jan. 1, 1994
13	(869–022–00041–1)	30.00	Jan. 1, 1994
14 Parts:			
1–59	(869–019–00042–9)	29.00	Jan. 1, 1993
60–139	(869–019–00043–7)	26.00	Jan. 1, 1993
140–199	(869–022–00044–6)	13.00	Jan. 1, 1994
*200–1199	(869–022–00045–4)	23.00	Jan. 1, 1994
1200–End	(869–022–00046–2)	16.00	Jan. 1, 1994
15 Parts:			
0–299	(869–022–00047–1)	15.00	Jan. 1, 1994
300–799	(869–022–00048–4)	26.00	Jan. 1, 1994
800–End	(869–022–00049–7)	23.00	Jan. 1, 1994
16 Parts:			
0–149	(869–022–00050–1)	6.50	Jan. 1, 1994
150–999	(869–022–00051–9)	18.00	Jan. 1, 1994
1000–End	(869–022–00052–7)	25.00	Jan. 1, 1994
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–019–00055–1)	23.00	June 1, 1993
240–End	(869–019–00056–9)	30.00	June 1, 1993
18 Parts:			
1–149	(869–019–00057–7)	16.00	Apr. 1, 1993
150–279	(869–019–00058–5)	19.00	Apr. 1, 1993
280–399	(869–019–00059–3)	15.00	Apr. 1, 1993
400–End	(869–019–00060–7)	10.00	Apr. 1, 1993
19 Parts:			
1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–019–00062–3)	11.00	Apr. 1, 1993
20 Parts:			
1–399	(869–019–00063–1)	19.00	Apr. 1, 1993
400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
500–End	(869–019–00065–8)	30.00	Apr. 1, 1993
21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
100–169	(869–019–00067–4)	21.00	Apr. 1, 1993
170–199	(869–019–00068–2)	20.00	Apr. 1, 1993
200–299	(869–019–00069–1)	6.00	Apr. 1, 1993
300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
500–599	(869–019–00071–2)	21.00	Apr. 1, 1993
600–799	(869–019–00072–1)	8.00	Apr. 1, 1993
800–1299	(869–019–00073–9)	22.00	Apr. 1, 1993
1300–End	(869–019–00074–7)	12.00	Apr. 1, 1993
22 Parts:			
1–299	(869–019–00075–5)	30.00	Apr. 1, 1993
300–End	(869–019–00076–3)	22.00	Apr. 1, 1993
23	(869–019–00077–1)	21.00	Apr. 1, 1993
24 Parts:			
0–199	(869–019–00078–0)	38.00	Apr. 1, 1993
200–499	(869–019–00079–8)	36.00	Apr. 1, 1993
500–699	(869–019–00080–1)	17.00	Apr. 1, 1993
700–1699	(869–019–00081–0)	39.00	Apr. 1, 1993
1700–End	(869–019–00082–8)	15.00	Apr. 1, 1993
25	(869–019–00083–6)	31.00	Apr. 1, 1993
26 Parts:			
§§ 1.0–1–1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61–1.169	(869–019–00085–2)	37.00	Apr. 1, 1993
§§ 1.170–1.300	(869–019–00086–1)	23.00	Apr. 1, 1993
§§ 1.301–1.400	(869–019–00087–9)	21.00	Apr. 1, 1993
§§ 1.401–1.440	(869–019–00088–7)	31.00	Apr. 1, 1993
§§ 1.441–1.500	(869–019–00089–5)	23.00	Apr. 1, 1993
§§ 1.501–1.640	(869–019–00090–9)	20.00	Apr. 1, 1993
§§ 1.641–1.850	(869–019–00091–7)	24.00	Apr. 1, 1993
§§ 1.851–1.907	(869–019–00092–5)	27.00	Apr. 1, 1993
§§ 1.908–1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
§§ 1.1001–1.1400	(869–019–00094–1)	22.00	Apr. 1, 1993
§§ 1.1401–End	(869–019–00095–0)	31.00	Apr. 1, 1993
2–29	(869–019–00096–8)	23.00	Apr. 1, 1993
30–39	(869–019–00097–6)	18.00	Apr. 1, 1993
40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–019–00099–2)	13.00	Apr. 1, 1993
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–022–00101–9)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–019–00102–6)	8.00	Apr. 1, 1993
27 Parts:			
1–199	(869–019–00103–4)	37.00	Apr. 1, 1993
200–End	(869–019–00104–2)	11.00	[5] Apr. 1, 1991
28 Parts:			
1-42	(869–019–00105–1)	27.00	July 1, 1993
43-end	(869-019-00106-9)	21.00	July 1, 1993
29 Parts:			
0–99	(869–019–00107–7)	21.00	July 1, 1993
100–499	(869–019–00108–5)	9.50	July 1, 1993
500–899	(869–019–00109–3)	36.00	July 1, 1993
900–1899	(869–019–00110–7)	17.00	July 1, 1993
1900–1910 (§§ 1901.1 to 1910.999)	(869–019–00111–5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869–019–00112–3)	21.00	July 1, 1993
1911–1925	(869–019–00113–1)	22.00	July 1, 1993
1926	(869–019–00114–0)	33.00	July 1, 1993
1927–End	(869–019–00115–8)	36.00	July 1, 1993
30 Parts:			
1–199	(869–019–00116–6)	27.00	July 1, 1993
200–699	(869–019–00117–4)	20.00	July 1, 1993
700–End	(869–019–00118–2)	27.00	July 1, 1993
31 Parts:			
0–199	(869–019–00119–1)	18.00	July 1, 1993
200–End	(869–019–00120–4)	29.00	July 1, 1993
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1–39, Vol. I		15.00	[2] July 1, 1984
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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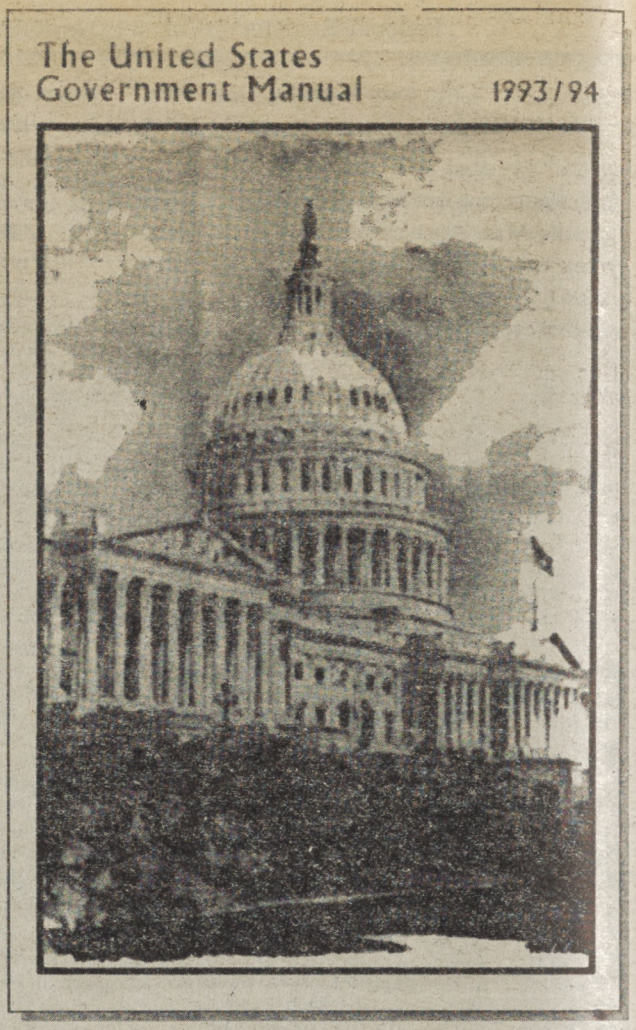
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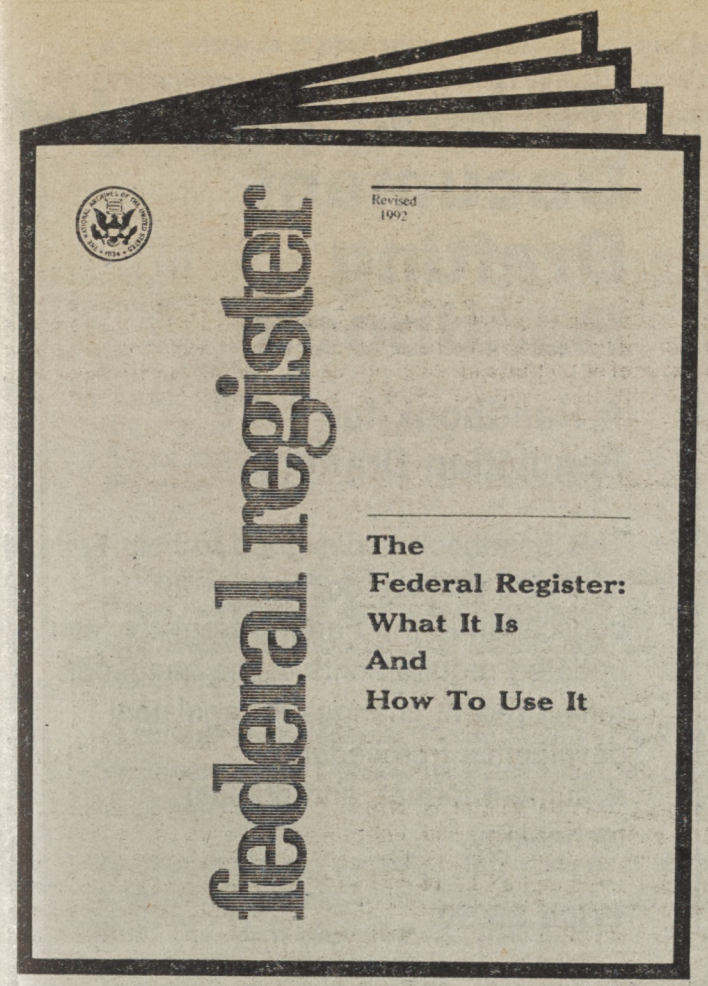
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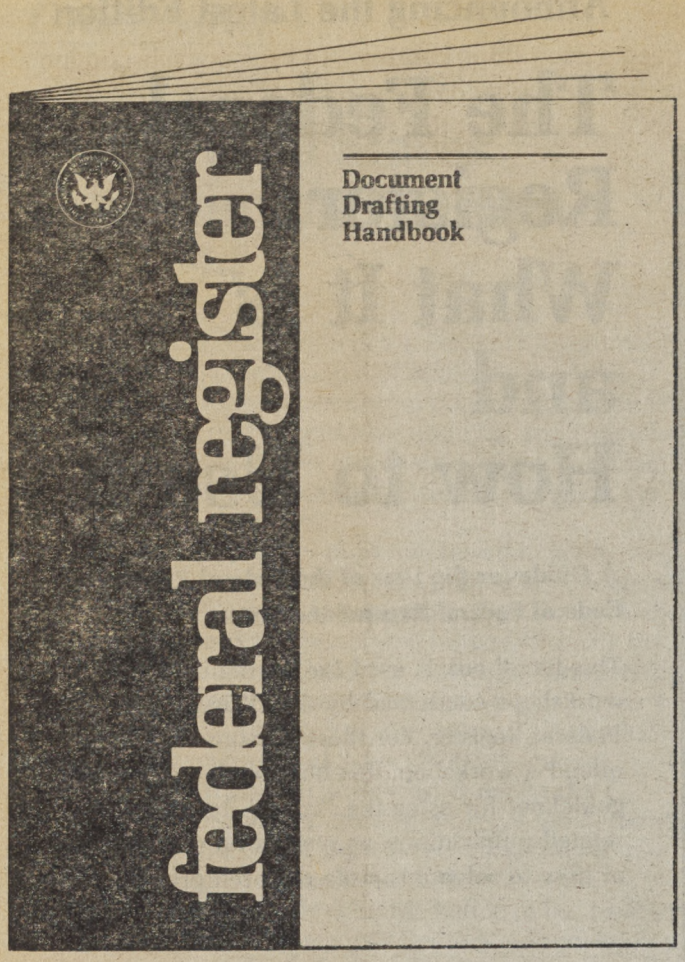
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