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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.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Cotton Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure cotton. These provisions will supplement the Common Crop Insurance Policy (§ 457.8) which contains standard terms and conditions common to most crops. The intended effect of this rule is to move specific crop provisions for insuring cotton from the General Crop Insurance Policy (§ 401.8) to the Common Crop Insurance Policy (§ 457.8) for ease of use by the public and conformance among policy terms.

EFFECTIVE DATE: October 27, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, 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 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 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 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 entities. The amount of work required of the insurance companies delivering these policies will not increase from the amount required to deliver previous policies. 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 12788. 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, 7 CFR 401.119 will be amended to restrict the crop years of application to those prior to the crop year for which this rule will be effective. FCIC will terminate the provisions of the present policy at the end of the crop year and remove and reserve the cotton endorsement contained in 7 CFR 401.119.

On Tuesday, May 31, 1994, FCIC published a notice of proposed rulemaking in the **Federal Register** at 59 FR 28022 proposing to revise the Common Crop Insurance Regulations by adding new provisions for cotton crop insurance.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. The comments received and FCIC responses are as follows:

Comment: Two comments suggested that the crop provisions should not be implemented for the 1995 crop year because:

(1) Crop insurance reform will require many policy changes. Implementation of these crop provisions should be tabled until reform decisions are reached because impacts on policy terms are not yet clear. Delaying common policy implementation until it can be implemented in an orderly fashion should be beneficial to everyone concerned; and

(2) The Common Crop Insurance Policy should be thoroughly reviewed and revised as needed before any additional crop provisions are implemented under it.

Response: Program changes necessary to comply with crop insurance reform will have the same effects on either the existing cotton policy or these Cotton Crop Provisions. Any necessary changes can be made to the Cotton Crop Provisions as easily as they can be made to the existing policy. FCIC has recently completed a review of the Common Crop Insurance Policy Basic Provisions (§ 457.8). Any necessary changes required to be made to the Basic Provisions as a result of reform will be required whether or not the Cotton Crop Provisions have been implemented. Therefore, FCIC does not find it necessary to delay implementation for either of the reasons stated in the comments.

Comment: One comment questioned requirements contained in the definition of "Practical to replant." This definition indicated that the replanted acreage must have the potential to produce at least ninety percent (90%) of the production guarantee. The late planting

provisions provide production guarantees much lower than the ninety percent (90%) potential requirement contained in the definition even though the late planted and replanted crop may be planted at the same time. The comment recommended removing the production potential requirement from the definition of "practical to replant."

Response: FCIC agrees that the production potential required by the definition of "practical to replant" and the production guarantee for late planted acreage may be inconsistent depending on the time of planting. Acreage initially planted twenty-five (25) days after the final planting date would have a production guarantee equal to sixty percent (60%) of the guarantee for timely planted acreage, while the definition of "practical to replant" would require acreage replanted at the same time to have a production potential equal to ninety percent (90%) of the production guarantee. However, expected yield does have an effect on whether it is practical to replant. The ninety percent (90%) production potential requirement has been removed from the definition of "practical to replant." However, the expected yield must be sufficient to cover production costs and must be at a level that growers in the area would normally care for and harvest.

Comment: One comment recommended changing the term "approved yield" to "approved APH yield" in the definition of "Production guarantee" to correspond with terminology in underwriting procedure.

Response: Underwriting procedure contains several methods which may be used to determine approved yields. These include the use of yields which may not represent actual production history (APH). Using the term "APH" could be misleading to readers not familiar with administrative procedures, and, therefore, will not be used in the crop insurance policy.

Comment: Three comments disagreed with the definition of "Written agreement". This definition required written agreements to be requested at least 15 days prior to the sales closing date.

(1) One comment recommended keeping the current deadlines for written agreements as specified in procedures. These procedures require that requests be made not later than 15 days after the acreage reporting date for most types of written agreements. Setting a deadline 15 days prior to the sales closing date will either force insureds to submit requests for written agreements they may not need, or result in uninsurable acreage if requests are not made for all possible situations. Unnecessary requests will increase paperwork for the insured, agent, FCIC Regional Service Office and company. The comment also recommended deleting the last sentence of the definition, which required written agreements to contain all variable terms including, but not limited to, crop variety, guarantee, premium and price election. The comment indicated it was not necessary to include this information on every written agreement because many written agreements do not alter these items.

(2) One comment recommended keeping the deadline of 15 days after the acreage reporting date because there are many instances when it is not known that a written agreement is necessary until the acreage is reported. The comment stated that the change would be an unreasonable requirement and would create difficulties since the sales closing dates will be 30 days earlier than in prior years.

(3) One comment stated that it is hard to understand why the written agreement deadline is 15 days prior to the time a producer has to purchase coverage, and that a more appropriate date should be established. The comment also stated that the sales closing dates are not listed in the proposed crop provisions. If these are the same date as the cancellation and termination date, the policy should so indicate.

Response: The proposed definition was intended to require that requests for written agreements be made far enough ahead of the sales closing date to allow the insurer to make the offer, and for the insured to accept the offer, by the sales closing date. Since the insurance policy is a written contract, both parties must have a meeting of the minds before the contract is valid. The terms and conditions of the policy must be known by the final date for establishing the insurance contract. In this program, the final date is the sales closing date. FCIC has determined that some situations may allow written agreements at other times. FCIC is preparing proposed written agreement regulations which will specify when written agreements must be completed. Until these regulations have been published, the written agreement must be completed by the sales closing date, or, in specific instances, a written agreement may be requested or approved after the sales closing date if the crop is physically inspected and a determination made that the crop has an expectancy of making the guaranteed yield. No prevented planting liability will be established as a result of any request submitted after the sales closing date FCIC does not agree that the final sentence should be deleted. Specifying all variable terms in the written agreement is necessary to assure a clear understanding of the terms in effect.

Although the sales closing dates normally will be the same as the cancellation and termination dates this is not always the case. Therefore, the sales closing dates will not be included in the crop provisions. Federal regulations authorize the Manager of FCIC to extend the sales closing date in any county upon the Manager's determination that no adverse selection will result during the extended period. The extended date is placed on file in the applicable service offices and a notice is placed in the **Federal Register.** If the sales closing dates were contained in the crop provisions, the crop provisions would need to be amended each time a sales closing date is extended.

Comment: One comment stated that unit division language contained in subsection 2.(b) should allow for situations in which the insured creates a discernible break via some tillage operation. The proposed provision states that the insured must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit. There is no required method of creating a boundary as long as a discernible break is provided.

Response: The intent of the policy language is to allow separate optional units if acreage is farmed separately. Farming separately includes planting separately and keeping separate records of inputs, production, etc. Creating a boundary after the crop is planted by means of a tillage operation along a section line may or may not meet the policy requirement of planting the crop in a manner that results in a clear and discernible break at the units boundary. FCIC believes the present language clearly sets out the requirements for unit division.

Comment: Two comments were received regarding the changes in the cancellation and termination dates.

(1) One comment stated the assumption that since cancellation and termination dates were changed, that the sales closing dates will be changed to align with the new cancellation and termination dates.

(2) One comment expressed the concern that an earlier cancellation date would decrease the amount of time available for producers to make decisions regarding their insurance coverage.

Response: The sales closing dates, as contained in the Special Provisions, will be changed generally to be the same as, but no later than, the new cancellation and termination dates. Earlier cancellation and sales closing dates are intended to reduce the possibility that a producer's decision to cancel or purchase insurance is based on favorable or unfavorable growing conditions. FCIC expects this change to have favorable impact on insurance experience. Favorable results will be considered when calculating future premium rates.

Comment: One comment stated that section 6 (Insured Crop) indicates that colored cotton will be insurable under the cotton crop provisions. However, the introductory information in the **Federal Register** indicates the FCIC Regional Service Offices will issue production guarantees for colored cotton via written agreement until adequate actual production history is available for individual policyholders. The comment recommended that language to this effect be added to the policy, either in section 3 of the crop provisions or in the special provisions. The comment asked if the Crop Insurance Handbook will be revised to state that insureds must keep production history separate for colored cotton, what constitutes "adequate production history," and what information must be sent in with the request for a written agreement.

Response: FCIC's research indicates that the production potential for some colored cottons is significantly less than white upland cotton and that the value may be significantly higher. Insufficient data are currently available to establish production guarantees, prices, quality adjustment methods, etc. for colored cottons. Because data are insufficient, FCIC believes that colored cotton should be insurable only with a written agreement. Therefore, the provisions in section 6 (Insured Crop) have been changed accordingly. When requesting a written agreement, the insured should submit any available production history, the number of acres intended for planting in the current crop year, and other information normally required when requesting insurance for an uninsurable crop type. The Crop Insurance Handbook will be revised to indicate specific requirements as soon as it is practical to do so.

Comment: Two comments were received regarding the elimination of provisions that provided coverage while cotton stored in modules remains in the field.

(1) One comment stated that changing the end of the insurance period from "removal from the field" to "harvest" creates some concerns which need to be addressed. Specifically, the comment asks how quality will be accurately determined for cotton stored in modules when the modules may be stored in the field for a significant period of time?

(2) One comment opposed the removal of coverage for modules stored in the field. The comment stated that: (a) Large amounts of cotton are stored in modules and that the practice allows for timely and efficient harvest of the crop; (b) losses do not occur frequently once cotton is moduled, but there is some risk of weather-related loss until the modules are removed from the field; and (c) continuing the practice of insurance coverage until removal from the field would be consistent with recent ad hoc disaster rulings that deemed weather-damaged, field stored modules eligible for assistance.

Response: Upon further review, FCIC has determined that coverage for modules stored in the field should be provided. Approximately seventy percent (70%) of the U.S. crop is stored in modules until ginning can take place, and cotton stored in modules is not as susceptible to loss as cotton remaining on the stalk. The provisions in section 8 (Insurance Period) have been revised accordingly.

Comment: One comment recommended either revising or deleting provisions that allow the insured to leave representative samples if they disagree with the insurer's appraisal. In the event the provision cannot be deleted, the comment recommended changing the provision so that the insurer can decide when using representative samples is appropriate. In many situations, samples are more susceptible to loss and do not accurately represent what the entire unit would have produced.

Response: FCIC agrees that there are situations in which it may not be reasonable to leave representative strips from which production to count would ultimately be determined. The samples could be more vulnerable to damage than an entire field, or the insurer may be confident that the appraisal made accurately reflects production potential. However, the entire provision should not be removed. The provision has been changed to allow the insurer to determine those situations in which it is reasonable to leave representative samples to determine the amount of production to be counted. In cases where it is necessary to defer determinations the insured must be advised how production to count will ultimately be determined and the consequences of failure to leave or care for the samples.

Comment: One comment recommended that language in subsection 12.(b) be changed to require only one notice for prevented planting acreage rather than requiring notice three days after the final planting date and three days after the date the insured stops planting within the late planting period.

Response: The crop provisions provide two distinct periods during which the insured may be prevented from planting (i.e., by the final planting date and during the late planting period). The notice requirement allows the insurer the opportunity to verify that the acreage could not have been planted during such periods. FCIC agrees that an insured should only be required to give one notice if it is sufficient to cover all acreage for prevented planting purposes. Subsection 12.(b) has been modified to clarify that written notice must be given not later than three days after the final planting date for acreage the insured was prevented from planting by the final planting date, and not later than three days after the date the insured discovers that planting will not be possible if the insured was not prevented from planting such acreage by the final planting date but was prevented from planting such acreage during the late planting period.

Comment: One comment indicated that the proposed provisions in paragraph 12.(d)(3) will allow an insured to request a written agreement for prevented planting coverage for acreage exceeding the policy limitations, and to subsequently enroll in a USDA program that allows less acreage to be planted. The comment recommended revising the paragraph to limit eligible acreage to the amount allowed by any applicable USDA program, regardless of when the insured enrolls in such program or any previously approved written agreement.

Response: FCIC agrees that, if the farm is enrolled in an USDA program that limits the number of acres planted, acreage in excess of the amount allowed under an USDA program should not be eligible for prevented planting coverage. Paragraph 12.(d)(3) has been amended accordingly.

Comment: One comment recommended that language be added to paragraph 12.(d)(3) to allow prevented planting coverage by written agreement for acreage added to the insured's farming operation after the sales closing date.

Response: The insurance period for prevented planting coverage begins on the sales closing date. Allowing

additional coverage to attach after the beginning of this period would likely result in coverage being requested primarily when conditions are favorable for a prevented planting indemnity. This adverse selection should be avoided to help maintain an actuarially sound program and to keep premium rates from rising to cover such losses. The definition of "written agreement" has been amended to specifically disallow any prevented planting liability as a result of any request submitted after the sales closing date.

In addition to the changes indicated in the responses to comments, FCIC has determined that:

1. The definition of *skip-row* should reference United States Department of Agriculture qualification requirements for *skip-row* patterns. These requirements are used to determine the land area that is considered to be planted to cotton.

2. Provisions in section 6 (Insured Crop) are modified to allow coverage on crops planted into an established grass or legume in certain instances. The increased emphasis on Highly Erodible Land Conservation had made conservation tillage and no-till more acceptable.

3. New small grain and cotton varieties that mature earlier than previously available varieties make "double cropping" more practical. However, in areas where soil moisture may be depleted by the first crop planted, this practice may not be feasible or may result in significantly more risk to the insurer. To allow insurance for this practice, yet limit the insurer's vulnerability in areas where "double cropping" may not be practical, section 6 of the crop provisions have been modified to allow insurance for "double cropped" cotton only if allowed by a written agreement or the Special Provisions.

Accordingly, the rule, "Common Crop Insurance Regulations; Cotton Crop Insurance Provisions" published at 59 FR 28022 as revised as set out below is hereby adopted as final rule.

List of Subjects in 7 CFR Part 457

Crop Insurance; Cotton.

Final Rule

Accordingly, 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 amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1995 and succeeding crop years, in the following instances:

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 revising the heading as set forth above and by adding § 457.104 Cotton Crop Provisions to read as follows:

§ 457.104 Cotton Crop Insurance Provisions.

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 among the Common Crop Insurance Policy (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the common policy and these crop provisions will control the common policy.

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 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*—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 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 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:

(1) Consists of alternating rows of cotton and fallow land or land planted to another crop the previous fall; and

(2) Qualifies as a skip-row planting pattern as defined by the ASCS or successor agency.

(r) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

(s) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the

sales closing date and is valid for one year only. 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 rate and price election must be set out in the written agreement. In specific instances a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the acreage, there is a determination that the crop has the expectancy of making at least the guaranteed yield. However, no prevented planting liability will be established as a result of any request submitted after the sales closing date. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

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 plan 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 an 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 or 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 above. 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 of 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 of 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 lint, in the county for which premium rates are provided by the actuarial table:

(a) In which you have a share; and

(b) That is not (unless allowed by the Special Provisions or by written agreement):

(1) Colored cotton lint;

(2) Planted into an established grass or legume;

(3) Interplanted with another spring planted crop;

(4) Grown on acreage from which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(5) 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 of 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

(a) In lieu of subsection 11.(b) of the Common Crop Insurance Policy (§ 457.8) (Harvest of the unit), insurance will end upon the removal of the cotton from the field.

(b) 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:

(1) September 30 in Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad,

Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof;

(2) January 31 in Arizona, California, New Mexico, Oklahoma, and all other Texas counties; and

(3) 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 meaures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

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 our 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 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 and written notice of probable loss given to us.

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 on any unit 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, in violation of section 10;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production of white cotton may be adjusted for quality deficiencies in accordance with subsection 11.(d)); and

(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 may 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 of 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, 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 cotton lint 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 for acreage you were prevented from planting by the final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you discover that planting will not be possible within the late planting period for acreage that may be eligible for prevented planting coverage if you were not prevented from planting such acreage by the final planting date, but were prevented from planting such acreage during the late planting period.

(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 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 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 insurance period for prevented planting coverage begins on the sales closing date contained in the Special Provisions for the insured crop in the county.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) If you participate in any program administered by the United States Department of Agriculture for the crop year which limits the number of acres that may be planted, prevented planting acreage will not exceed the ASCS base acreage for the insured crop, reduced by any acreage reduction applicable to the farm under such program.

(ii) If you do not participate in any program administered by the United States Department of Agriculture which limits the number of acres that may be planted, unless a written agreement exists to the contrary, eligible acreage will not exceed the greater of:

(A) The ASCS base acreage for the insured crop, if applicable;

(B) 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); 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.

(iii) 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.

(iv) 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 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.

(v) 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 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 your 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 be 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 September 1? 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

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7 CFR Part 457

Common Crop Insurance Regulations; Coarse Grains Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure coarse grains (corn, grain sorghum, and soybeans). These provisions will supplement the Common Crop Insurance Policy which contains standard terms and conditions common to most crops. This rule consolidates the provisions for insuring coarse grains into one policy and provides insurance for corn intended to be harvested as silage and corn intended to be harvested as grain without the previously required corn silage option. The intended effect of this rule is to move specific crop provisions for insuring coarse grains from the General Crop Insurance Policy (§ 401.8) to the Common Crop Insurance Policy for ease of use by the public and conformance among policy terms.

EFFECTIVE DATE: October 27, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, 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 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 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 of their political subdivisions, or on the distribution of power and responsibilities among various levels of government.

This action will not have a significant impact on a substantial number of small entities. The amount of work required of the insurance companies delivering these policies will not increase from the amount of work required to deliver previous policies. The combination of a number of previously independent policies into one policy should ease program administration 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 12788. 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.

This rule will provide one policy form for insuring corn, grain sorghum, and soybeans and provide insurance for corn intended to be harvested as silage and corn intended to be harvested as grain without the previously required corn silage option. Using one policy for these three crops will: (1) Substantially reduce paperwork by issuing one policy form rather than the three separate policies previously used; (2) reduce the time involved to amend or revise the provisions by eliminating repetitious review processes; and (3) continue to allow insured the flexibility to elect any of the three coarse grain crops they wish to insure.

By separate rule, FCIC will revise and later remove the corn, grain sorghum and soybean endorsements contained in 7 CFR 401.111, 7 CFR 401.113 and 7 CFR 401.117 and the Corn Silage Option contained in 7 CFR 401.112. These regulations will be amended to restrict the crop years of application to those prior to the crop year for which this rule will be effective.

On Tuesday, May 31, 1994, FCIC published a notice of proposed rulemaking in the **Federal Register** at 59 FR 28016 proposing to revise the Common Crop Insurance Regulations by adding new provisions for corn, grain sorghum, and soybean crop insurance.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. Comments were received from the crop insurance industry. The comments received and FCIC responses are as follows:

Comment: Two comments suggested that the crop provisions should not be implemented for the 1995 crop year because:

(1) Crop insurance reform will require many policy changes. Implementation of these crop provisions should be tabled until reform decisions are reached because impacts on policy terms are not yet clear. Delaying common policy implementation until it can be implemented in an orderly fashion should be beneficial to everyone concerned; and

(2) The Common Crop Insurance Policy should be thoroughly reviewed and revised as needed before any additional crop provisions are implemented under it.

Response: Program changes necessary to comply with crop insurance reform will have the same effects on either the existing policies or these Coarse Grains Crop Provisions. Any necessary changes can more easily be made to the Coarse Grains Crop Provisions as to the existing policies since only one policy will need to be amended. FCIC has recently completed a review of the Common Crop Insurance Policy Basic Provisions (§ 457.8). Any necessary changes required to be made to the Basic Provisions as a result of this review or as a result of reform will be required whether or not the Coarse Grains Crop Provisions have been implemented. Therefore, FCIC does not find it necessary to delay implementation for either of the reasons stated in the comments.

Comment: Two comments were received regarding the proposed definition of "Planted acreage." This definition requires the crop to be planted in rows far enough apart to permit mechanical cultivation unless otherwise provided by the Special Provisions, or allowed by written agreement.

(1) One comment stated that drilling soybeans is a widespread practice and that the definition should include drilling as an insurable planting practice for soybeans. The comment also suggested that the Special Provisions could contain restrictions for any counties where drilled soybeans are uninsurable unless a written agreement is requested.

(2) One comment assumed that the Special Provisions will continue to allow for drilling the crops in the same areas as in the past.

Response: FCIC acknowledges that planting of soybeans and grain sorghum with a grain drill rather than a row planter is a common practice in some areas. The definition has been modified by removing the requirement to plant soybeans and grain sorghum in rows far enough apart to permit mechanical cultivation. Since the crop provisions allow insurance for drilled soybeans and grain sorghum, it will not be necessary for the Special Provisions to specifically allow such practice. If necessary, the Special Provisions which are provided to the insured could restrict the insurability of this planting method in a particular area.

Comment: One comment questioned requirements contained in the definition of "Practical to replant." This definition indicated that the replanted acreage must have the potential to produce at least ninety percent (90%) of the production guarantee. Late planting provisions provide production guarantees much lower than the ninety percent (90%) potential requirement contained in the definition even though the late planted and replanted crop may be planted at the same time. The comment recommended removing the production potential requirement from the definition of "Practical to replant."

Response: FCIC agrees that the production potential required by the definition of "Practical to replant" and the production guarantee for late planted acreage may be inconsistent depending on the time of planting. Acreage initially planted twenty-five (25) days after the final planting date

would have a production guarantee equal to sixty (60%) of the guarantee for timely planted acreage, while the definition of "Practical to replant" would require acreage replanted at the same time to have a production potential equal to ninety percent (90%) of the production guarantee. However, expected yield does have an effect on whether it is practical to replant. The ninety percent (90%) production potential requirement has been removed from the definition of "Practical to replant". However, the expected yield must be sufficient to cover production costs and must be at a level that growers in the area would normally care for and harvest.

Comment: One comment recommended changing the term "approved yield" to "approved APH yield" in the definition of "Production guarantee" to correspond with terminology in underwriting procedure.

Response: Underwriting procedure contains several methods which may be used to determine approved yields. These include the use of yields which may not represent actual production history (APH). Using the term "APH" could be misleading to readers not familiar with administrative procedures, and, therefore will not be used in the crop insurance policy.

Comment: Three comments disagreed with the definition of "Written agreement." This definition required written agreements to be requested at least 15 days prior to the sales closing date.

(1) One comment recommended keeping the current deadlines for written agreements as specified in procedures. These procedures require that requests be made not later than 15 days after the acreage reporting date for most types of written agreements. Setting a deadline 15 days prior to the sales closing date will either force insureds to submit requests for written agreements they may not need, or result in uninsurable acreage if requests are not made for all possible situations. Unnecessary requests will increase paperwork for the insured, agent, FCIC Regional Service Office and company. The comment also recommended deleting the last sentence of the definition, which required written agreements to contain all variable terms including, but not limited to, crop variety, guarantee, premium and price election. The comment did not believe it was necessary to include this information on every written agreement because many written agreements do not alter these items.

(2) One comment recommended keeping the deadline of 15 days after the acreage reporting date because there are many instances when it is not known that a written agreement is necessary until the acreage is reported. The comment stated that the change would be an unreasonable requirement and would create difficulties since the sales closing dates will be 30 days earlier than in prior years.

(3) One comment stated that it is hard to understand why the written agreement deadline is 15 days prior to the time a producer has to purchase coverage and that a more appropriate date should be established. The comment also stated that the sales closing dates are not listed in the proposed crop provisions. If these are to be the same dates as the cancellation and termination dates, the policy should so indicate.

Response: The proposed definition was intended to require that requests for written agreements be made far enough ahead of the sales closing date to allow the insurer to make the offer, and the insured to accept the offer, by the sales closing date. Since the insurance policy is a written contract, both parties must have a meeting of the minds before the contract is valid. The terms and conditions of the policy must be known by the final date for establishing the insurance contract. In this program, the final date is the sales closing date. FCIC has determined that some situations may allow written agreements at other times. FCIC is preparing proposed written agreement regulations which will specify when written agreements must be completed. Until these regulations have been published, the written agreement must be completed by the sale closing date, or, in specific instances, a written agreement may be requested or approved after the sales closing date if the crop is physically inspected and a determination made that the crop has an expectancy of making the guaranteed yield. No prevented planting liability will be established as a result of any request submitted after the sales closing date. FCIC does not agree that the final sentence should be deleted. Specifying all variable terms in the written agreement is necessary to assure a clear understanding of the terms in effect.

Although the sales closing dates normally will be the same as the cancellation and termination dates, this is not always the case. Therefore, the sales closing dates will not be included in the crop provisions. Federal regulations authorize the Manager of FCIC to extend the sales closing date in any county upon the Manager's determination that no adverse selection will result during the extended period. The extended date is placed on file in the applicable service offices and a notice is placed in the **Federal Register**. If the sales closing dates were contained in the crop provisions, the crop provisions would need to be amended each time a sales closing date is extended.

Comment: One comment stated that unit division language contained in subsection 2.(b) should allow for situations where the insured creates a discernible break by some tillage operation. The proposed provision states that the insured must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit. There is no required method of creating a boundary as long as a discernible break is provided.

Response: The intent of the policy language is to allow separate optional units if acreage is farmed separately. Farming separately includes planting separately and keeping separate records of inputs, production, etc. Creating a boundary after the crop is planted by means of a tillage operation along a section line may or may not meet the policy requirement of planting the crop in a manner that results in a clear and discernable break at the units boundary. FCIC believes the present language clearly sets out the requirements for unit division.

Comment: One comment stated that subsection 3.(b) requires the application to be revised when corn is harvested in a manner other than reported, and that procedure should indicate how this revision is to be made.

Response: Language in subsection 3.(b) does not require the application to be revised to elect a price election for the method of harvest (grain/silage) when the insured did not select an appropriate price election. The price specified in this provision will only be used to establish "the dollar amount of production to count for indemnity purposes." If an insured only selected a grain price election and reported the acreage as intended for harvest as grain, but harvested the acreage for silage, the amount of insurance is determined by multiplying the production guarantee for grain by the price election selected by the insured for grain. The value of any silage production is determined by multiplying the number of tons of silage to count by a price that bears the same relationship to the maximum silage price election as the selected price for grain does to the maximum grain price. FCIC has amended this subsection to clarify that this price is assigned by us only for the purpose of determining the dollar value of production to count for

indemnity purposes and will not affect the premium or amount of insurance.

Comment: One comment assumed that since cancellation and termination dates were changed, that the sales closing dates will be changed to align with the new cancellation and termination dates.

Response: The sales closing dates as contained in the Special Provisions will be changed generally to be the same as, but no later than, the new cancellation and termination dates.

Comment: One comment expressed concerns regarding changes that will be required in underwriting and loss procedure since the new policy allows both grain and silage to be insured. The comment stated that procedure should be developed concurrently with policy language to avoid major confusion. Specifically, underwriting procedure should clearly address how grain and silage types are to be reported and insured, how production can or cannot be converted for APH purposes and whether appraisals are required if there is no loss, but the crop is harvested in a manner other than as reported. The comment also requested that FCIC consider previously submitted information when developing the procedure.

Response: FCIC agrees with the comment and has begun drafting procedure to address underwriting and loss issues. Previously submitted correspondence will be considered in procedural development.

Comment: One comment stated that a definition of "silage variety" is necessary. The comment stated that subparagraph 6.(b)(2)(ii) refers to "a variety of corn adapted for silage use only," but that their understanding is that there are no varieties adapted strictly for use as silage. The comment asked if FCIC intends to designate silage varieties on the Special Provisions.

Response: There is no uniform agreement regarding the existence or definition of a "silage variety." However, due to ongoing attempts to develop new "silage varieties," FCIC believes that language should remain in these crop provisions to prevent insuring corn on a grain basis for a variety of corn adapted for silage use only. Since there is no uniform agreement regarding the existence of silage varieties, a definition will not be added. FCIC has modified subparagraph 6.(b)(2)(ii) to delete the term "silage variety." If research succeeds in developing silage varieties, FCIC will evaluate placing specific silage variety restrictions in the Special Provisions.

Comment: One comment suggested subsection 1.(m) conflicts with subsection 10.(a), stating that: (1) Subsection 1.(m) specifies that it may be considered practical to replant after the end of the late planting period if replanting is generally occurring in the area; and (2) subection 10.(a) specifies that a replant payment may be made if replanting occurs no later than 25 days after the final planting date. The comment further stated that if it is determined to be practical to replant after the late planting period, a replanting payment must be made and subsection 10.(a) should indicate the same.

Response: FCIC agrees with the comment and has removed the provision in subsection 10.(a) that requires replanting within 25 days after the final planting date.

Comment: One comment stated that subsections 10.(b) and 10.(c) are confusing because: (1) Subsection 10.(c) allows a replant payment, based on the total insured shares, to be made to one party if an agreement exists to that effect between the insured persons; and (2) subsection 10.(b) uses "your share" in calculating the maximum replant payment. The comment suggested that a qualifier should be added to subsection 10.(b) to reflect paying a replant payment based on the total insured share if 10.(c) applies. The comment also asked which company pays the entire replant payment when persons sharing in the crop are insured with different companies.

Response: FCIC agreed that a replant payment should be calculated using the insured share or the share determined in subsection 10.(c), if applicable and has modified subsection 10.(b) accordingly. The proposed language contained in subsection 10.(c) would have required the company insuring the person given the right to the replant payment to pay the entire amount due. Upon further review, FCIC has determined it is not appropriate to require an insurer to pay replant payments based on a share in excess of the share they actually insure. Therefore, subsection 10.(c) has been revised to allow replant payments based on the total shares insured with the insurer.

Comment: One comment questioned whether FCIC intends to incorporate language contained in subsection 10.(d) into every crop provision that provides for a replant payment. This language requires that when the 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 the insured's share and that the premium amount will not be reduced.

Response: As policies are revised, this provision will be added if appropriate for the specific crop.

Comment: One comment questioned whether a person who insured grain and silage within one unit, but did not discover damage until after the beginning of grain harvest, could give timely notice of damage more than 15 days after the end of the insurance period for silage but within the period timely notice could be given for grain.

Response: Notice would be considered timely as long as the silage acreage within the unit was not damaged. If the silage acreage within the unit was damaged, notice would be required within 72 hours of the insured's initial discovery of damage to the silage acreage (but not later than 15 days after the end of the insurance period for silage). FCIC has clarified paragraph 11.(b)(1).

Comment: One comment recommended that subparagraph 12.(b)(2)(ii) be revised to read "Multiplying each result by the price election for that type;" because the phrase "price election for each type" indicates multiplying by both grain and silage price elections.

Response: FCIC agrees with the comment and has modified the provision.

Comment: One comment recommended either revising or deleting provisions that allow the inured to leave representative samples if they disagree with the insurer's appraisal. In the event the provision cannot be deleted the comment recommended changing the provision so that the insurer can decide when using representative samples is appropriate. In many situations, samples are more susceptible to loss and do not accurately represent what the entire unit would have produced.

Response: FCIC agrees that there are situations in which it may not be reasonable to leave representative strips from which production to count would ultimately be determined. The samples could be more vulnerable to damage than an entire field, or the insurer may be confident that the appraisal made accurately reflects production potential. However, the entire provision should not be removed. The provision has been changed to allow the insurer to determine those situations in which it is reasonable to leave representative samples to determine the amount of production to be counted. In cases where it is necessary to defer determinations, the insured must be advised how production to count will ultimately be determined and the consequences of failure to leave or care for the samples.

Comment: One comment recommended amending subsection 12.(e) by specifically stating that moisture adjustment, if applicable, will be made prior to any adjustment for quality.

Response: FCIC agrees with the comment and has modified subsection 12.(e) accordingly.

Comment: One comment recommended amending subsection 12.(f) to require that moisture adjustments for silage, if applicable, will be made prior to any adjustment for quality for grain-deficient silage.

Response: Subsection 12.(f) contains the requirements that must be met for silage production to be adjusted for moisture and for grain-deficiency. Current FCIC procedure specifies that when both adjustments apply, the silage moisture adjustment factor is to be multiplied by the silage grain-deficient factor and the result multiplied by the number of tons of silage that qualify for both adjustments. This method of adjustment results in a proportionate adjustment of the silage production based on both factors. FCIC does not agree with the comment because adjusting for moisture first may result in a disproportionate adjustment of the silage production. FCIC has not amended subsection 12.(f).

Comment: One comment assumed that moving to a factor-based quality adjustment process as specified in paragraph 12.(e)(4) removes any reliance on local market price, except for quality, such as aflatoxin, not addressed by the factor table in the Special Provisions. The comment also stated that if language in subparagraph 12.(e)(3)(ii) remains in the policy, an insured would have strong justification for requesting adjustment of production that meets the grade requirements in the policy, but which has a value less than the local market price. The comment recommends deletion of subparagraph 12.(e)(3)(ii).

Response: FCIC agrees that quality adjustment should not apply if grain meets minimum grade requirements and other substances or conditions are not present causing a value less than the local market price. The Special Provisions will specify how the quality factor will be determined for quality deficiencies, substances and conditions. Subparagraph 12.(e)(3)(ii) has been deleted.

Comment: One comment recommended that language in subsection 13.(b) be changed to require only one notice for prevented planting acreage rather than requiring notice three days after the final planting date and three days after the date the insured stops planting within the late planting period.

Response: The crop provisions provide two distinct periods during which the insured may be prevented from planting (i.e., by the final planting date and during the late planting period). The notice requirement allows the insurer the opportunity to verify that the acreage could not have been planted during such periods. FCIC agrees that an insured should only be required to give one notice if it is sufficient to cover all acreage for prevented planting purposes. Subsection 13.(b) has been modified to clarify that written notice must be given not later than three days after the final planting date for acreage the insured was prevented from planting by the final planting date, and not later than three days after the date the insured discovers that planting will not be possible if the insured was not prevented from planting such acreage by the final planting date but was prevented from planting such acreage during the late planting period.

Comment: One comment indicated that the proposed provisions in paragraph 13.(d)(3) will allow an insured to request a written agreement for prevented planting coverage for acreage exceeding the policy limitations, and to subsequently enroll in a USDA program that allows less acreage to be planted. The comment recommended revising the paragraph to limit eligible acreage to the amount allowed by any applicable USDA program, regardless of when the insured enrolls in such program or any previously approved written agreement.

Response: FCIC agrees that if the farm is enrolled in a USDA program that limits the number of acres planted, acreage in excess of the amount allowed under a USDA program should not be eligible for prevented planting coverage. Paragraph 13.(d)(3) has been amended accordingly.

Comment: One comment recommended that language be added to paragraph 13.(d)(3) to allow prevented planting coverage by written agreement for acreage added to the insured's farming operation after the sales closing date.

Response: The insurance period for prevented planting coverage begins on the sales closing date. Allowing additional coverage to attach after the beginning of this period would likely result in coverage being requested primarily when conditions are favorable for a prevented planting indemnity. This adverse selection should be avoided to help maintain an actuarially sound program and to keep premium rates from rising to cover such losses. The definition of "Written agreement" has been amended to specifically disallow any prevented planting liability as a result of any request submitted after the sales closing date.

In addition to the changes indicated in the responses to comments, FCIC has made the following changes:

1. FCIC has modified paragraph 3.(a)(2) to require that the price elections for grain and silage have the same percentage relationship to the maximum price election offered for grain and silage.

2 FCIC has modified subsection 5.(b) to simplify the cancellation and termination dates in Texas.

3. The provisions in section 6 have been modified to allow insurance for coarse grains planted into an established grass or legume if allowed by the Special Provisions or by written agreement.

4. FCIC has modified paragraph 12.(b)(2) to specify that the production guarantee for a unit will be computed by multiplying the insured acreage of each type (grain/silage) by the production guarantee for the applicable type. The proposed language contained in subparagraph 12.(b)(1)(i) has been modified in a similar manner.

Accordingly, the rule, "Common Crop Insurance Regulations; Coarse Grains Crop Insurance Provisions" published at 59 FR 28016, revised as set out below, is hereby adopted as final rule.

List of Subjects in 7 CFR Part 457

Crop Insurance; corn, grain sorghum, soybean.

Final Rule

Accordingly, 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 amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1995 and succeeding crop years, in the following instances:

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 § 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 year are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Coarse Grains Crop Provisions

If a conflict exists among the Common Crop Insurance Policy (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the common policy and these crop provisions will control the common policy.

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 Extensive 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 for soybeans. Factors not associated with grading under the Official United 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 as been properly prepared for the planting method and production practice. Coarse grains must initially be planted in rows to be considered planted. Corn must be planted in rows far enough apart to permit mechanical cultivation. 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 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 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 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*—A product that results from 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. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. 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 rate and price election must be set out in the written agreement. In specific instances, a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the acreage, there is a determination that the crop has the expectance of making at least the guaranteed yield. However, no prevented planting liability will be established as a result of any request submitted after the closing date. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

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 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 all 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 of 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. The price elections you choose for grain and silage must have the same percentage relationship to the maximum price election offered by us for grain and silage. For example, if you choose one hundred percent (100%) of the maximum grain price election and you also insure corn on a silage basis, you must choose one hundred percent (100%) of the maximum silage price election.

(b) For corn only, 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 eighty percent (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 eighty percent (80%) of the maximum price election for silage specified in the Special Provisions if you harvest for silage). This assigned price election will be used only to determine the dollar value of production to count for indemnity purposes and will not be used to determine the amount of insurance or premium.

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions of 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, Goliad, 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 and 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 Counties, Texas and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina; and 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 Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	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 allowed by the Special Provisions or by written agreement):

(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 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 forage-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 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 a 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 of 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.
(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.
(2) All other Texas counties and all other states	December 10.
(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 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, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

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 it is practical to replant (see subsection 1.(m)).

(b) The maximum amount of the replanting 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) set out herein, multiplied by your price election multiplied by your insured share or the share determined under 10.(c), if applicable. The number of bushels or tons are 8 bushels for corn grain; 1 ton for corn silage; 7 bushels for grain sorghum; and 3 bushels for soybeans.

(c) When more than one person insures the same crop on a share basis, a replanting payment based on the total shares insured by us 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:

(i) Before the earliest end of insurance period date (grain or silage), you must give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after that earliest end of insurance period date); or

(ii) If damage does not occur before the earliest end of insurance period date (grain or silage), but occurs before the latest end of insurance period date (grain or silage), you must give notice within 72 hours of your initial discovery of damage (but not later than 15 days after that latest end of insurance period date).

(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 on any unit:

(1) For grain sorghum and soybeans by:

(i) Multiplying the insured 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 insured acreage of each type (grain/silage) by the production guarantee for the applicable type;

(ii) Multiplying each result by the price election for the applicable 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 result of step (v) from the result 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)); and

(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 may 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. If moisture adjustment is applicable it will be made prior to any adjustment for quality. 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 (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 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) 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

(iii) 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, in accordance with the policy 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 Preventing 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 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 for acreage you were prevented from planting by the final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you discover that planting will not be possible within the late planting period for acreage that may be eligible for prevented planting coverage if you were not prevented from planting such acreage by the final planting date, but were prevented from planting such acreage during the late planting period.

(c) Life 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 data, 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 insurance period for prevented planting coverage begins on the sales closing date contained in the Special Provisions for the insured crop in the county.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) If you participate in any program administered by the United States Department of Agriculture for the crop year which limits the number of acres that may be planted, prevented planting acreage will not exceed the ASCS base acreage for the insured crop, reduced by any acreage reduction applicable to the farm under such program.

(ii) If you do not participate in any program administered by the United States Department of Agriculture which limits the number of acres that may be planted, unless a written agreement exists to the contrary, eligible acreage will not exceed the greater of:

(A) The ASCS base acreage for the insured crop, if applicable;

(B) 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); 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.

(iii) 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.

(iv) A prevented planting production guarantee will no 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.

(v) 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 September 13, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–23834 Filed 9–26–94; 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 Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts regulations for specific crop provisions to insure extra long staple (ELS) cotton. These provisions will supplement the Common Crop Insurance Policy (§ 457.8) which contains standard terms and conditions common to most crops. The intended effect of this rule is to move specific crop provisions for insuring ELS cotton to the Common Crop Insurance Policy (§ 457.8) for ease of use by the public and conformance among policy terms.

EFFECTIVE DATE: October 27, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 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 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 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 entities. The amount of work required of the insurance companies delivering these policies will not increase from the amount required to deliver previous policies. 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 12788. 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, 7 CFR 401.121 will be amended to restrict the crop years of application to those prior to the crop year for which this rule will be effective. FCIC will remove and reserve the ELS cotton endorsement contained in 7 CFR 401.121.

On Tuesday, May 31, 1994, FCIC published a notice of proposed rulemaking in the **Federal Register** at 59 FR 28027 proposing to revise the Common Crop Insurance Regulations by adding new provisions for ELS cotton crop insurance.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. The comments received and FCIC responses are as follows:

Comment: Two comments suggested that the crop provisions should not be implemented for the 1995 crop year because:

(1) Crop insurance reform will require many policy changes. Implementation of these crop provisions should be tabled until reform decisions are reached because impacts on policy terms are not yet clear. Delaying common policy implementation until it can be implemented in an orderly fashion should be beneficial to everyone concerned; and

(2) The Common Crop Insurance Policy should be thoroughly reviewed and revised as needed before any additional crop provisions are implemented under it.

Response: Program changes necessary to comply with crop insurance reform will have the same effects on either the existing ELS cotton policy or these ELS Cotton Crop Provisions. Any necessary changes can be made to the ELS Cotton Crop Provisions as easily as they can be made to the existing policy. FCIC has recently completed a review of the Common Crop Insurance Policy Basic Provisions (§ 457.8). Any necessary changes required to be made to the Basic Provisions as a result of reform will be required whether or not the ELS Cotton Crop Provisions have been implemented. Therefore, FCIC does not find it necessary to delay implementation for either of the reasons stated in the comments.

Comment: One comment questioned requirements contained in the definition of "practical to replant." This definition indicated that the replanted acreage must have the potential to produce at least ninety percent (90%) of the production guarantee. The late planting provisions provide production guarantees much lower than the ninety percent (90%) potential requirement contained in the definition even though the late planted and replanted crop may be planted at the same time. The comment recommended removing the production potential requirement from the definition of "practical to replant."

Response: The ELS Cotton Crop Provisions do not provide for a late planting period or late planting production guarantees. However, acreage initially planted to ELS cotton may be replanted to American Upland cotton. FCIC agrees that the production potential required by the definition of "practical to replant" and the production guarantee for late planted American Upland cotton acreage may be inconsistent depending on the time of planting. American Upland cotton acreage initially planted twenty-five (25) days after the final planting date would have a production guarantee equal to sixty percent (60%) of the guarantee for timely planted acreage, while the definition of "practical to replant" would require acreage replanted at the same time to have a production potential equal to ninety percent (90%) of the production guarantee. However, expected yield does have an effect on whether it is practical to replant. The ninety percent (90%) production potential requirement has been removed from the definition of "practical to replant." However, the expected yield must be sufficient to cover production costs and must be at a level that growers in the area would normally care for and harvest.

Comment: One comment recommended changing the term "approved yield" to "approved APH yield" in the definition of "Production guarantee" to correspond with terminology in underwriting procedure.

Response: Underwriting procedure contains several methods which may be used to determine approved yields. These include the use of yields which may not represent actual production history (APH). Using the term "APH" could be misleading to readers not familiar with administrative procedures, and, therefore, will not be used in the crop insurance policy.

Comment: Three comments disagreed with the definition of "written agreement". This definition requires written agreements to be requested at least 15 days prior to the sales closing date.

(1) One comment recommended keeping the current deadlines for written agreements as specified in procedures. These procedures require that requests be made not later than 15 days after the acreage reporting date for most types of written agreements. Setting a deadline 15 days prior to the sales closing date will either force insureds to submit requests for written agreements they may not need, or result in uninsurable acreage if requests are not made for all possible situations. Unnecessary requests will increase paperwork for the insured, agent, FCIC Regional Service Office and company. The comment also recommended deleting the last sentence of the definition, which required written agreements to contain all variable terms including, but not limited to, crop variety, guarantee, premium and price election. The comment indicated it was not necessary to include this information on every written agreement because many written agreements do not alter these items.

(2) One comment recommended keeping the deadline of 15 days after the acreage reporting date because there are many instances when it is not known that a written agreement is necessary until the acreage is reported. The

comment stated that the change would be an unreasonable requirement and would create difficulties since the sales closing dates will be 30 days earlier than in prior years.

(3) One comment stated that it is hard to understand why the written agreement deadline is 15 days prior to the time a producer has to purchase coverage, and that a more appropriate date should be established. The comment also stated that the sales closing dates are not listed in the proposed crop provisions. If these are the same date as the cancellation and termination date, the policy should so indicate.

Response: The proposed definition was intended to require that requests for written agreements be made far enough ahead of the sales closing date to allow the insurer to make the offer, and for the insured to accept the offer, by the sales closing date. Since the insurance policy is a written contract, both parties must have a meeting of the minds before the contract is valid. The terms and conditions of the policy must be known by the final date for establishing the insurance contract. In this program, the final date is the sales closing date. FCIC has determined that some situations may allow written agreements at other times. FCIC is preparing proposed written agreement regulations which will specify when written agreements must be completed. Until these regulations have been published, the written agreement must be completed by the sales closing date, or, in specific instances, a written agreement may be requested or approved after the sales closing date if the crop is physically inspected and a determination made that the crop has an expectancy of making the guaranteed yield. No prevented planting liability will be established as a result of any request submitted after the sales closing date. FCIC does not agree that the final sentence should be deleted. Specifying all variable terms in the written agreement is necessary to assure a clear understanding of the terms in effect.

Although the sales closing dates normally will be the same as the cancellation and termination dates this is not always the case. Therefore, the sales closing dates will not be included in the crop provisions. Federal regulations authorize the Manager of FCIC to extend the sales closing date in any county upon the Manager's determination that no adverse selection will result during the extended period. The extended date is placed on file in the applicable service offices and a notice is placed in the **Federal Register**. If the sales closing dates were contained in the crop provisions, the crop provisions would need to be amended each time a sales closing date is extended.

Comment: One comment stated that unit division language contained in subsection 2.(b) should allow for situations in which the insured creates a discernible break via some tillage operation. The proposed provision states that the insured must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit. There is no required method of creating a boundary as long as a discernible break is provided.

Response: The intent of the policy language is to allow separate optional units if acreage is farmed separately. Farming separately includes planting separately, keeping separate records of inputs, production, etc. Creating a boundary after the crop is planted by means of a tillage operation along a section line may or may not meet the policy requirement of planting the crop in a manner that results in a clear and discernable break at the units boundary. FCIC believes the present language clearly sets out the requirements for unit division.

Comment: Two comments were received regarding the changes in the cancellation and termination dates.

(1) One comment stated the assumption that since cancellation and termination dates were changed, that the sales closing dates will be changed to align with the new cancellation and termination dates.

(2) One comment expressed the concern that an earlier cancellation date would decrease the amount of time available for producers to make decisions regarding their insurance coverage.

Response: The sales closing dates, as contained in the Special Provisions, will be changed generally to be the same as, but no later than, the new cancellation and termination dates. Earlier cancellation and sales closing dates are intended to reduce the possibility that a producer's decision to cancel or purchase insurance is based on favorable or unfavorable growing conditions. FCIC expects this change to have favorable impact on insurance experience. Favorable results will be considered when calculating future premium rates.

Comment: Two comments were received regarding the elimination of provisions that provided coverage while cotton stored in modules remains in the field.

(1) One comment stated that changing the end of the insurance period from "removal from the field" to "harvest" creates some concerns which need to be addressed. Specifically, the comment asks how quality will be accurately determined for cotton stored in modules when the modules may be stored in the field for a significant period of time?

(2) One comment opposed the removal of coverage for modules stored in the field. The comment stated that: (a) Large amounts of cotton are stored in modules and that the practice allows for timely and efficient harvest of the crop; (b) losses do not occur frequently once cotton is moduled, but there is some risk of weather-related loss until the modules are removed from the field; and (c) continuing the practice of insurance coverage until removal from the field would be consistent with recent ad hoc disaster rulings that deemed weather-damaged, field stored modules eligible for assistance.

Response: Upon further review, FCIC has determined that coverage for modules stored in the field should be provided. The provisions in section 8 (Insurance Period) have been revised accordingly.

Comment: One comment recommended either revising or deleting provisions that allow the insured to leave representative samples if they disagree with the insurer's appraisal. In the event the provision cannot be deleted, the comment recommended changing the provision so that the insurer can decide when using representative samples is appropriate. In many situations, samples are more susceptible to loss and do not accurately represent what the entire unit would have produced.

Response: FCIC agrees that there are situations in which it may not be reasonable to leave representative strips from which production to count would ultimately be determined. The samples could be more vulnerable to damage than an entire field, or the insurer may be confident that the appraisal made accurately reflects production potential. However, the entire provision should not be removed. The provision has been changed to allow the insurer to determine those situations in which it is reasonable to leave representative samples to determine the amount of production to be counted. In cases where it is necessary to defer determinations the insured must be advised how production to count will ultimately be determined and the consequences of failure to leave or care for the samples.

Comment: One comment indicated that the proposed provisions in subsection 12.(e) will allow an insured to request a written agreement for

prevented planting coverage for acreage exceeding the policy limitations, and to subsequently enroll in a USDA program that allows less acreage to be planted. The comment recommended revising the paragraph to limit eligible acreage to the amount allowed by any applicable USDA program, regardless of when the insured enrolls in such program or any previously approved written agreement.

Response: FCIC agrees that if the farm is enrolled in an USDA program that limits the number of acres planted, acreage in excess of the amount allowed under an USDA program should not be eligible for prevented planting coverage. Subsection 12.(e) has been amended accordingly.

Comment: One comment recommended that language be added to subsection 12.(e) to allow prevented planting coverage by written agreement for acreage added to the insured's farming operation after the sales closing date.

Response: The insurance period for prevented planting coverage begins on the sales closing date. Allowing additional coverage to attach after the beginning of this period would likely result in coverage being requested primarily when conditions are favorable for a prevented planting indemnity. This adverse selection should be avoided to help maintain an actuarially sound program and to keep premium rates from rising to cover such losses. The definition of "written agreement" has been amended to specifically disallow any prevented planting liability as a result of any request submitted after the sales closing date.

In addition to the changes indicated in the responses to comments, FCIC has determined that:

1. The definition of *skip-row* should reference United States Department of Agriculture qualification requirements for *skip-row* patterns. These requirements are used to determine the land area that is considered to be planted to cotton.

2. Provisions in section 6 (Insured Crop) are modified to allow coverage on crops planted into an established grass or legume in certain instances. The increased emphasis on Highly Erodible Land Conservation has made conservation tillage and no-till more acceptable.

Accordingly, the rule, "Common Crop Insurance Regulations; ELS Cotton Crop Insurance Provisions" published at 59 FR 28028 as revised as set out below is hereby adopted as final rule.

List of Subjects in 7 CFR Part 457

Crop Insurance; ELS Cotton.

Final Rule

Accordingly, 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 amends the Common Crop Insurance Regulations (7 CFR Part 457), effective for the 1995 and succeeding crop years, in the following instances:

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 § 457.105 ELS Cotton Crop 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 for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

(e) *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 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 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) *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 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 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 county. 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.

(m) *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.

(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:

(1) Consists of alternating rows of cotton and fallow land or land planted to another crop the previous fall; and

(2) Qualifies as a skip-row planting pattern as defined by the Agricultural Stabilization and Conservation Service or successor agency.

(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. Each agreement must be applied for by the insured in writing prior to the sales closing date and is valid for one year only. 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 rate and price election must be set out in the written agreement. In specific instances a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the acreage, there is a determination that the crop has the expectancy of making at least the guaranteed yield. However, no prevented planting liability will be established as a result of any request submitted after the sales closing date. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

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 (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 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 of 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 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 of 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 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 lint in the county for which premium rates are provided by the actuarial table:

(a) In which you have a share; and

(b) That is not (unless allowed by the Special Provisions or by a written agreement):

(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 of 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

(a) In lieu of subsection 11.(b) of the Common Crop Insurance Policy (§ 457.8) (Harvest of the unit), insurance will end upon the removal of the cotton from the field.

(b) In accordance with the provisions of 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, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

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 and written notice of probable loss is given to us.

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 on any unit 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 in violation of section 10;

(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) if it is AUP cotton insured under these crop provisions); and

(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 may 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 provided 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, 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 producers 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 timely 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 timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted; and

(2) 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 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 prevented 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 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). 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 insurance period for prevented planting coverage

beginning on the sales closing date contained 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 1.(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) The acreage to which prevented planting coverage applies will be limited as follows:

(1) If you participate in any program administered by the United States Department of Agriculture for the crop year which limits the number of acres that may be planted, prevented planting acreage will not exceed the ASCS base acreage for the insured crop, reduced by any acreage reduction applicable to the farm under such program

(2) If you do not participate in any program administered by the United States Department of Agriculture which limits the number of acres that may be planted, unless a written agreement exists to the contrary, eligible acreage will not exceed the greater of:

(i) The ASCS base acreage for the insured crop, if applicable;

(ii) 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); 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 acres eligible for prevented planting coverage minus 100 acres planted equals zero). 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 report as eligible for prevented planting coverage which is not eligible will be deleted from prevented planting coverage.

(h) Late planting provisions are not available under these crop provisions.

Done in Washington, DC, on September 13, 1994

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–23835 Filed 9–26–94; 8:45 am]

BILLING CODE 3410–08–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) amends its regulations governing waivers to its nonmanufacturer rule. In essence, this rule reflects more accurately the statutory language set forth in section 8(a)(17)(B)(iv) of the Small Business Act to ensure that SBA's size regulations are consistent with the statute.

EFFECTIVE DATE: This rule is effective September 27, 1994.

ADDRESSES: Written comments should be addressed to David R. Kohler, Associate General Counsel for General Law, U.S. Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, (202) 205–6645.

SUPPLEMENTARY INFORMATION: Section 210 of the Small Business Administration Reauthorization and Amendments Act of 1990, Public Law 101–574, 104 Stat. 2814, 2821, revised section 8(a)(17)(B)(iv) of the Small Business Act (the Act), 15 U.S.C. 637(a)(17)(B)(iv), by providing for the possibility of a contract-specific waiver to SBA's nonmanufacturer rule (the requirement that, for a supply contract, a small business concern that is not itself the manufacturer must provide the product of a domestic small business manufacturer in order to be considered a small business). An earlier statute, the Business Opportunity Development Reform Act of 1988 (Pub. L. 100–656, 102 Stat 3853) provided for the possibility of waivers to the nonmanufacturer rule for classes of products for which there were no small business manufacturers in the federal market.

In a final rule (the "Rule") published in the **Federal Register** on September 21, 1993, 58 FR 48956, SBA defined the nonmanufacturer rule as "*the requirement* set forth in 13 CFR 121.906 and 121.1106 that a contractor * * * provide its own product or that of another *domestic small business* * * *" (Emphasis added). 13 CFR 121.2102(e). The final rule defined the term "Federal market" as acquisitions by the Federal government from "offerors located in the entire geographic United States" or a more restricted market area. 13 CFR 121.2102(d). The final rule also set forth procedures for waiver of the nonmanufacturer rule as to classes of products. On March 18, 1994, SBA published a final rule amending 13 CFR 121.906 and 121.1106 to provide for a contract-specific waiver. 59 FR 12811. These regulations permit waivers of the nonmanufacturer rule for either classes of products or specific procurements after a determination "that no small business manufacturer or processor is available to participate in the Federal procurement market." 13 CFR 121.906(b)(3) and 121.1106(b)(3). As further background, the prior wording of 13 CFR 121.906(b)(3) and 121.1106(b)(3) also referred to waivers for classes of products for which there were no small business manufacturers or processors "in the Federal market". Thus, SBA has consistently regarded the nonmanufacturer rule and its waivers of that rule as involving a single, non-severable requirement for domestic small business suppliers.

On August 30, 1994, the SBA published a proposed rule that would make various revisions to its section 8(a) program. 59 FR 44652. Included within this rule was a proposal to clarify the nonmanufacturer rule by specifically authorizing a small business

nonmanufacturer to supply other than a product made in the United States for a small business set aside or section 8(a) contract where the procuring agency makes a non-availability determination under the Buy American Act and section 25.102(a)(4) of the Federal Acquisition Regulation (FAR), Title 48 of the Code of Federal Regulations. *Id.* at 44653–54, 44659–60. This reference was designed to take note expressly of the separate domestic business requirement imposed by the Buy American Act. The proposed rule allowed a thirty-day comment period, or until September 29, 1994

After a careful legal review of Section 210 of Pub. L. 101–574 (the statutory provision authorizing a waiver to SBA's nonmanufacturer rule), its accompanying legislative history, and a written comment received prior to the publication of the August 30, 1994 proposed rule that pertains to the "domestic" portion of the nonmanufacturing rule, SBA has concluded that the correct interpretation of the Act is that a waiver of the nonmanufacturer rule under section 8(a)(17)(B)(iv) is a waiver of the entire requirement that a nonmanufacturer must supply the product of a domestic small business. In this regard, section 8(a)(17)(B)(iv) of the Act states that a nonmanufacturer must "supply the product of a domestic small business manufacturer or processor, unless [the Administrator grants] a waiver of *such requirement*." SBA believes that the statutory reference to "such requirement" relates to the entire requirement that, absent a waiver, a nonmanufacturer must supply the product of a domestic small business. A waiver issued pursuant to this statutory authority therefore serves to authorize a nonmanufacturer to supply other than the product of a domestic small business while still qualifying as a small business under the Act. It should be noted, however, that SBA's waiver of its nonmanufacturer rule does not waive other government-wide requirements applicable to government procurement, such as the Buy American Act, and any statements of SBA to the effect that the domestic requirement could not be waived by SBA were intended only to make this point.

SBA recognizes that its current regulations may still cause some confusion on this point. Currently, 13 CFR 121.906(b)(1), for small business set asides, and 13 CFR 121.1106(b)(1), for 8(a) procurement, each contain a separate paragraph (iv) ostensibly suggesting that a nonmanufacturer must supply a product that was manufactured or produced in the United States regardless of whether a waiver has been granted. As indicated above, SBA believes that the waiver of any domestic manufacture requirement is statutorily contained within any waiver of the nonmanufacturer rule granted. These paragraphs are also inconsistent with the other regulatory provisions described above which have dealt with definitions relevant to the nonmanufacturer rule and its waiver

SBA believes clarification to its regulations is advisable to eliminate any such inconsistency or confusion This final rule incorporates, without substantive change, the statutory language of section 8(a)(17)(B)(iv) of the Act into SBA's size regulations at 13 CFR 121.906(b)(1)(iii) for small business set aside procurements and at 13 CFR 121.1106(b)(1)(iii) for section 8(a) procurements, and eliminates any inconsistency in the regulations. It also adds clarifying language by adding new paragraphs 121.906(b)(4) and 121.1106(b)(4) to explain that an SBA waiver of the nonmanufacturer rule has no effect on other laws and regulations dealing with domestic or foreign sources for government acquisitions which may exist outside the Act.

Because the statutory requirement regarding waivers to the nonmanufacturer rule of section 8(a)(17)(B)(iv) of the Act is being implemented in this final rule, SBA believes that the portion of the August 30, 1994 proposed rule regarding such waivers has been superseded. The remainder of that proposed rule has not been affected by this final rule, and will be completed upon publication of a further final rule on revisions to the section 8(a) program.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This rule was not reviewed under Executive Order 12866.

SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This rule is necessary to resolve a possible discrepancy between the Small Business Act and SBA's size regulations concerning the size eligibility of certain nonmanufacturers for small business set aside and section 8(a) contracts. It will have no significant effect, however, on the amount or dollar value of any contract requirement or the number of requirements set aside for small business or the 8(a) program. As such, it is not likely to have an annual economic effect of $100 million or more result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this final rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order

List of Subjects in 13 CFR Part 121

Government procurement; Government property; Grant programs—business; Loan programs—business; Small businesses.

For the reasons set forth above, part 121 of Title 13, Code of Federal Regulations, is amended as follows:

PART 121—[AMENDED]

1. The authority citation for 13 CFR Part 121 continues to read as follows:

Authority: 15 U.S.C. §§ 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Section 121.906(b)(1) is revised and (b)(4) is added to read as follows:

§ 121.906 Manufactured products under small business set-aside procurements.

* * * * *

(b) * * * (1) In order to qualify as a small business, a concern need not be the manufacturer of the item(s) being acquired under a manufacturing contract, provided that the concern:

(i) Is a small business concern under this part under a 500 employee size standard;

(ii) Is primarily engaged in the wholesale or retail trade; and

(iii) Represents that it will supply the end product (as defined in paragraph (b)(2) of this section) of a domestic small business manufacturer or processor, or obtains a waiver of such requirement pursuant to paragraph (b)(3) of this section.

* * * * *

(4) Any waiver of the nonmanufacturer rule granted by the Administrator pursuant to paragraph (b)(3) of this section has no effect on requirements external to the Small Business Act which involve domestic

sources of supply, such as the Buy American Act.

* * * * *

3. Section 121.906(b)(3) is amended by adding the word "domestic" after the words "manufactured by a" and before the phrase "small business manufacturer."

4. and 5. Section 121.1106(b)(1) is revised and (b)(4) is added to read as follows:

§ 121.1106 Manufactured products under section 8(a) contracts.

* * * * *

(b) * * * (1) In order to qualify as a small business, a concern need not be the manufacturer of the item(s) being acquired under a manufacturing contract, provided that the concern:

(i) Is a small business concern under this part under a 500 employee size standard;

(ii) Is primarily engaged in the wholesale or retail trade; and

(iii) Represents that it will supply the end product (as defined in paragraph (b)(2) of this section) of a domestic small business manufacturer or processor, or obtains a waiver of such requirement pursuant to paragraph (b)(3) of this section.

* * * * *

(4) Any waiver of the nonmanufacturer rule granted by the Administrator pursuant to paragraph (b)(3) of this section has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act.

* * * * *

6. Section 121.1106(b)(3) is amended by adding the word "domestic" after the words "manufactured by a" and before the phrase "small business manufacturer."

Dated: September 20, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–23831 Filed 9–26–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–191–AD; Amendment 39–8748; AD 93–23–12]

Airworthiness Directives; Learjet Model 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD), applicable to certain Learjet Model 60 airplanes, that currently requires deactivation of the auxiliary cabin and cockpit heating systems and installation of placards. This action corrects the applicability of the rule. This action is necessary to ensure that only airplanes subject to the addressed unsafe condition are subject to the requirements of the rule.

DATES: Effective December 15, 1993.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of December 15, 1993 (58 FR 63060, November 30, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Learjet, Inc., P.O. Box 7707, Wichita, Kansas 67277–7707. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: On November 22, 1993, the FAA issued AD 93–23–12, amendment 39–8748 (58 FR 63060, November 30, 1993), to require deactivation of the auxiliary cabin and cockpit heating systems on all Learjet Model 60 airplanes, and the installation of a placard stating, "Cabin and Cockpit Heat Inop." That action was prompted by a report of a fire in the aft fuselage of one airplane, which had resulted from miswiring that was installed in an auxiliary cabin heater during manufacture. The actions required by that AD are intended to prevent overheating of the auxiliary cabin and cockpit heaters, which potentially could result in a fire.

Recently, the FAA has become aware of the fact that the applicability of the AD is unnecessarily broad. In developing the AD, the FAA intended that its applicability be coextensive with the effectivity listing of Learjet Alert Service Bulletin SB A60–21–1, dated November 1, 1993. (That service bulletin was referenced in the rule as the appropriate source of service information.) That service bulletin indicates that only airplanes having serial numbers 60–002 through 60–021, inclusive, are subject to the addressed unsafe condition; all other airplanes of this model were modified during production in such a way so as to preclude the unsafe condition. However, the applicability of the AD, as published, inadvertently indicated that all airplanes of this model were applicable to the requirements of the AD, rather than just those having serial numbers 60–002 through 60–021. That inadvertent action incorrectly made the requirements of the AD redundant for airplanes other than those with the specified serial numbers.

The FAA has determined that it is appropriate to take action to correct the applicability of AD 93–23–12 to specify only airplanes that are subject to the addressed unsafe condition. Therefore, action must be taken to correctly limit the AD's applicability to only Learjet Model 60 airplanes having serial numbers 60–002 through 60–021, inclusive.

Action is taken herein to correct the error and to correctly add the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13). The effective date of the rule remains December 15, 1993.

The final rule is being reprinted in its entirety for the convenience of affected operators.

Since this action only corrects an inadvertent error in the applicability of the rule, so as to eliminate airplanes not subject to the identified unsafe condition, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

93-23-12 Learjet, Inc.: Amendment 39-8748. Docket 93-NM-191-AD.

Applicability: Model 60 airplanes having serial numbers 60-002 through 60-021, inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the auxiliary cabin and cockpit heaters, which could potentially result in a fire, accomplish the following:

(a) Within 10 flight hours after the effective date of this AD, deactivate the auxiliary cabin and cockpit heating systems; and install a placard stating, "Cabin and Cockpit Heat Inop" adjacent to the AUX HT Switch (S44) on the co-pilot's switch panel; in accordance with Learjet Alert Service Bulletin SB A60-21-1, dated November 1, 1993.

(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, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

(c) Special flight permits may be issued in accordance with section 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 deactivation and placard installation shall be done in accordance with Learjet Alert Service Bulletin SB A60-21-1, dated November 1, 1993. 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, as of December 15, 1993 (58 FR 63060, November 30, 1993). Copies may be obtained from Learjet, Inc., P.O. Box 7707, Wichita, Kansas 67277-7707. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 15, 1993.

Issued in Renton, Washington, on September 20, 1994.

S.R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-23718 Filed 9-26-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 92-ANE-44; Amendment 39-9029; AD 94-20-01]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, that requires a determination of the utilization rate and coating type of the 7th, 8th, 9th, 10th, 11th, and 12th high pressure compressor (HPC) disks, and removal, inspection for corrosion, and recoating of those HPC disks based on utilization rate. This amendment is prompted by an investigation into an uncontained PW JT8D engine failure caused by severe corrosion on the 9th stage HPC disk. The actions specified by this AD are intended to prevent fracture of the HPC disks, which can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

DATES: Effective November 28, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 28, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, 400 Main Street, East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone no. (617) 238-7137, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D series turbofan engines was published in the **Federal Register** on July 27, 1993 (58 FR 40079). That action proposed to require a record search, initial and repetitive on-wing and shop inspections to detect corrosion on high pressure compressor (HPC) disks, and removal from service of engines with HPC disks corroded beyond serviceable limits. The inspections, and replacement, if necessary, would be accomplished in accordance with PW Alert Service Bulletin (ASB) No. 6038, Revision 3, dated May 8, 1992.

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

One commenter states that disks that are recoated when complying with the inspection requirement of the AD should be zero-timed with regard to the next inspection interval. The Federal Aviation Administration (FAA) concurs. A paragraph has been added to the compliance section that addresses recoated disks.

One commenter states that there have not been enough disk failures to warrant issuance of an AD. The FAA does not concur. The need for an AD is based on a determination that an unsafe condition exists that is likely to exist in a product of the same type design. That determination rests on many factors, including the risk and hazard level of the failure mode, which in turn are based on several factors, one of which is the number of failures that have occurred. Other data, such as inspection data, analytical models, and potential consequences are also considered when determining risk and hazard level. The FAA has determined in these instances that an unsafe condition exists that is likely to exist in engines of the same type design, and, therefore, an AD is warranted.

The FAA received several comments that state that the borescope inspection for corrosion assessment of Nickel-Cadmium (NiCad) disks is unreliable and can cause unnecessary engine removals. The FAA concurs. The borescope inspection for corrosion assessment of NiCad disks has been eliminated and only in-shop inspections are now required. In addition, high utilization disks require this inspection only at next part access.

The FAA received two comments that state that the four month grace period for the records search should be extended. The FAA concurs in part. The records search is no longer specifically required, and can be replaced by a simple utilization determination and an eddy current probe inspection for coating type identification. In addition, the utilization determination is based on a fleet or sub-fleet average. The AD, however, requires that a utilization determination must be conducted for each HPC disk within four months of the effective date of this AD for low

utilization operations. But, the FAA believes that it is now a much simpler task.

The FAA received several comments that state that the AD does not adequately address disks that have been used in both high and low utilization operations. The FAA concurs. The utilization rate determination now includes an adjustment for disks that have experienced mixed utilization rates, and both an initial and a yearly recalculation that will account for changes in utilization rate.

One commenter states that the AD should contain a provision to allow for incorporation of the inspection requirements into the operator's FAA-approved maintenance program. The FAA does not concur. The criticality of the inspections required by the AD require that they be separate and distinct from the operator's routine maintenance tasks.

The FAA received several comments that state that the records search and inspection requirements of this AD pose an undue burden on operators of PW JT8D engines. The FAA concurs in part. The records search is no longer specifically required, and has been replaced by a simpler utilization determination together with an eddy current probe inspection for coating type identification. In addition, the utilization determination is based on a fleet or sub-fleet average. The borescope inspection has been eliminated, the disk removal (for inspection) requirements have been relaxed based on additional analysis and disk inspections, and high utilization disks, fleets, and sub-fleets will not require a forced engine removal to comply with the AD.

The FAA received two comments that state that the compliance schedule for disk inspections is complex and requires extensive recordkeeping. The FAA concurs. The compliance schedule has now been simplified by eliminating the borescope inspection and by requiring high utilization operators to inspect the disks at the next access regardless of coating type.

The FAA received two comments that state that the issuance of the Final Rule should be delayed until additional analytical and statistical analyses can be performed to further refine disk fracture predictions and required inspection intervals. The FAA does not concur. The FAA performed extensive additional analysis since the issuance of the proposed rule which has resulted in the revised compliance requirements discussed in the FAA's responses to several comments. Based on this additional analysis, the FAA believes that the Final Rule should not be delayed.

One commenter states that the cost to drill the borescope hole would place an undue burden on the operator. The FAA concurs in part. The borescope inspection has been eliminated from the AD and borescope access is not specifically required. However, borescope access is required if an operator elects to forgo a records search and elects to use the eddy current probe to determine coating type.

One commenter states that the disk records do not always allow for identification of the coating. The FAA concurs. The identification of disk coating can now be accomplished by use of an eddy current probe.

One commenter states that the AD should allow for incorporation of an engine heater/de-humidifier to be installed on low utilization engines when not in operation. This type of device would reduce the accumulation of moisture in the engine, which can cause disk corrosion. The FAA concurs in part and does not dispute that an engine heater/de-humidifier would probably reduce the moisture content in low utilization engines. This type of device, however, would need to be tested to produce data to quantify its effect on moisture and associated disk corrosion. Since this data has not been submitted to the FAA, it cannot be included in the AD.

One commenter agreed with the rule as proposed.

Since publication of the NPRM, the FAA has reviewed and approved the technical contents of PW ASB No. 6038, Revision 5, dated August 17, 1994. This final rule AD references the latest revision of the ASB.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes that include elimination of the borescope inspection and associated tables, changes to the compliance intervals, elimination of the records search, addition of the optional eddy current probe inspection, addition of the adjustment for mixed utilization, and simplification of the utilization determination, are introduced in response to comments received to the NPRM. The format of the compliance section is revised to incorporate the above changes and to simplify the readability by eliminating duplication of compliance instructions that are now included in PW ASB 6038, Revision 5, dated August 17, 1994. The FAA has determined that these changes do not increase the economic burden on any operator, however, the economic analysis has been recalculated to reflect the total scope of the compliance program. The FAA has also determined that the above changes do not compromise the safety impact of the compliance program and do not increase the scope of the AD.

There are approximately 11,119 PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines of the affected design in the worldwide fleet. The FAA estimates that approximately 6,815 engines installed on aircraft of U.S. registry will be affected by this AD, and 2 work hours will be necessary to determine the utilization rate and type of surface treatment. Based on domestic fleet-wide data, the FAA estimates that approximately 8.7% or 593 engines are considered to have low utilization rates. Approximately 8.6 work hours will be required to remove these engines from the aircraft, 500 work hours to tear down, deblade, and to reassemble the engine, and 8.6 work hours to reinstall the reassembled engines. The FAA estimates 69% of the removed engines will require scrapping the disks. The FAA assumes that three disks per engine may require replacement, and the cost of a new disk is approximately $7,000. The average labor rate is $55 per work hour. Based on these figures, and a forecast 20-year compliance program, the annual cost impact of the AD on U.S. operators is estimated to be $1,308,958.

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

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

Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [AMENDED]

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

94–20–01 Pratt & Whitney: Amendment 39–9029. Docket 92–ANE–44.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines installed on but not limited to Boeing 737 and 727 series, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the high pressure compressor (HPC) disks, that can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage, accomplish the following:

(a) Within four months after the effective date of this airworthiness directive (AD), determine the fleet and sub-fleet average engine utilization rate for the 12 months of operations prior to August 17, 1994, the issue date of PW Alert Service Bulletin (ASB) No. 6038, Revision 5, in accordance with paragraph 2.A of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(1) For fleet or sub-fleet average utilization rates that are equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, perform the following:

(i) For engines or disks that are added to a fleet or subfleet after the effective date of this AD, and that were previously designated as low utilization disks in accordance with this AD, comply with the requirements of paragraph (d) of this AD.

(ii) Designate all other stage 7 through 12 HPC disks as high utilization disks and comply with the requirements of paragraph (b) of this AD.

(2) For fleet or sub-fleet average utilization rates that are less than 1,300 hours per year or less than 900 cycles per year, within four months after the effective date of this AD, determine the initial utilization rate for each stage 7 through 12 HPC disk in accordance with paragraph 2.B.(1) of PW ASB No. 6038, Revision 5, dated August 17, 1994. Determination of disk utilization in accordance with PW ASB No. 6038, Revision 3, dated May 8, 1992, constitutes an acceptable alternate method of compliance to paragraph (a)(2) of this AD.

(i) For each HPC stage 7 through 12 disk with an initial utilization rate equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, designate this disk as a high utilization disk and inspect in accordance with paragraph (c) of this AD.

(ii) For each HPC stage 7 through 12 disk with an initial utilization rate less than 1,300 hours per year or less than 900 cycles per year, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

(iii) For each HPC stage 7 through 12 disk with an unknown initial utilization rate, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

Note: Once a disk is designated as low utilization, then it must retain this designation for the life of the disk or until recoated.

(iv) For recoated or new disks, designate this disk as a high utilization disk and inspect in accordance with paragraph (c) of this AD.

(b) For high average utilization fleets and sub-fleets, excluding those disks identified in paragraph (a)(1)(i) of this AD, perform the following for each HPC stage 7 through 12 disk in that fleet or sub-fleet:

(1) Inspect, and recoat or replace if necessary, at the next part accessibility of the disk, in accordance with paragraph 2.D.(1)(b) and Chart A of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(2) Recalculate the fleet or sub-fleet average utilization rate at 12 month intervals after the previous date of utilization determination in accordance with paragraph 2.B of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(i) For fleet or sub-fleet average utilization rates that are equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, continue to designate all stage 7 through 12 HPC disks as high utilization disks and comply with the requirements of paragraph (b) of this AD.

(ii) For fleet or sub-fleet average utilization rates that are less than 1,300 hours per year or less than 900 cycles per year, within four months of compliance with paragraph (b)(2) of this AD, determine the utilization rate for each stage 7 through 12 HPC disk in accordance with paragraph 2.B.(1) of PW ASB No. 6038, Revision 5, dated August 17, 1994, as follows:

(A) For each HPC stage 7 through 12 disk with a utilization rate equal to or greater than 1,300 hours per year, and equal to or greater than 900 cycles per year, designate this disk as a high utilization disk and inspect in accordance with paragraph (c) of this AD.

(B) For each HPC stage 7 through 12 disk with a utilization rate less than 1,300 hours per year or less than 900 cycles per year, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

(C) For each HPC stage 7 through 12 disk with an unknown utilization rate, designate this disk as a low utilization disk and inspect in accordance with paragraph (d) of this AD.

Note: Once a disk is designated as low utilization, then it must retain this designation for the life of the disk or until recoated.

(c) For high utilization HPC stage 7 through 12 disks, perform the following:

(1) Inspect, and recoat or replace if necessary, at the next part accessibility of the disk, in accordance with paragraph 2.D.(1)(b) and Chart A of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(2) Calculate the disk utilization rate at 12 month intervals after the previous date of utilization determination, or after installation of new or recoated disks, in accordance with paragraph 2.B.(3) of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(i) For HPC stage 7 through 12 disks designated as high utilization in accordance with (c)(2), comply with the requirements of paragraph (c)(1) of this AD.

(ii) For HPC stage 7 through 12 disks designated as low utilization in accordance with (c)(2), comply with the requirements of paragraph (d) of this AD.

(d) For low utilization HPC stage 7 through 12 disks, perform the following:

(1) Determine the type of disk surface treatment for each HPC stage 7 through 12 disk in accordance with paragraph 2.E. of PW ASB No. 6038, Revision 5, dated August 17, 1994. Determination of type of disk coating in accordance with PW ASB No. 6038, Revision 3, dated May 8, 1992, constitutes an acceptable alternate method of compliance to paragraph (d)(1) of this AD.

(2) Inspect, and recoat or remove from service, in accordance with paragraph 2.D.(1)(c) and Chart A of PW ASB No. 6038, Revision 5, dated August 17, 1994.

(e) For HPC stage 7 through 12 disks that have been recoated in accordance with paragraphs (b)(1), (c)(1), or (d)(2) of this AD, designate these disks as high utilization and perform the following:

(1) For disks installed in an engine that is part of a high utilization fleet, comply with the requirements of paragraph (b) of this AD.

(2) For disks installed in an engine that is part of a low utilization fleet, comply with the requirements of paragraph (c) of this AD.

(f) For the purpose of this AD, recoat of an HPC disk is defined as removal and application of new plating or coating in accordance with Sections 72–36–41, Repair 02, 72–36–42, Repair 02, 72–36–43, Repair 03, 72–36–44, Repair 03, 72–36–45, Repair 03, 72–36–46, Repair 03, as applicable, of PW JT8D Engine Manual P/N 481672.

(g) For the purpose of this AD, part accessibility is defined as the removal of the disk from the engine and deblading of that disk.

(h) For the purpose of this AD, a sub-fleet is defined as any individual aircraft or any portion of an operators fleet that operates in a separate and unique route structure, characterized by different flight lengths, frequencies, or geographic location.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(k) The inspections, and replacement or recoating if necessary, shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
PW ASB No. 6038	1	5	August 17, 1994.
	2	Original	August 5, 1991.
	3	5	August 17, 1994.
	4–6	4	July 13, 1994.
	7–26	5	August 17, 1994.
Appendix A	27–41	5	August 17, 1994.
Appendix B NDIP–803	1–33	4	July 13, 1994.
Appendix to NDIP–803	1–2	4	July 13, 1994.
Total Pages: 76.			

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 Pratt & Whitney, Publications Department, 400 Main Street, East Hartford, Connecticut 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(l) This amendment becomes effective on November 28, 1994.

Issued in Burlington Massachusetts, on September 15, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–23326 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 756

Navajo Nation Abandoned Mine Land Reclamation (AMLR) Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment and concurrence with certification of completion of coal reclamation.

SUMMARY: Under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), OSM is approving a proposed amendment to the Navajo Nation's AMLR plan (hereinafter referred to as the "Navajo Nation plan") and, on behalf of the Secretary of the Interior, in concurring with the Navajo Nation's certification that the Navajo Nation has abated or reclaimed all coal-related AML problems on its lands under the Navajo Nation plan. The amendment, which the Navajo Nation proposed in order for its plan to meet the requirements of the Federal regulations and SMCRA, to clarify ambiguities, and to improve operational efficiency, consists of statute and rule revisions pertaining to reclamation of interim program abandoned coal mines, coal priorities, certification of completion of coal reclamation, establishment of a noncoal reclamation program subsequent to certification including the authority to undertake community impact assistance and public facilities projects, and creation of a future reclamation set-aside fund. OSM's concurrence with the Navajo Nation's certification of the completion of all coal-related problems, which was requested by the President of the Navajo Nation, means that the Navajo Nation is now authorized to use monies from the Navajo Abandoned Mine Reclamation (AMR) fund for noncoal reclamation purposes, including the construction of public facilities.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of SMCRA establishes an AMLR program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. It also provides for Tribal or State submittal to OSM of an AMLR plan. The Secretary of the Interior adopted regulations in 30 CFR 870 through 888 that implement Title IV of SMCRA. Under these regulations, the Secretary reviewed the Tribe's or State's AMLR plan and solicited and considered comments of State and Federal agencies and the public. Based upon the comments received, the Secretary determined whether a Tribe or State had the ability and necessary legislation to implement the provisions of Title IV. After making such a determination, the Secretary decided whether to approve the Tribe or State AMLR plan. Approval granted the Tribe or State exclusive authority to administer its approved plan.

Following approval of a Tribe's or State's AMLR plan by the Secretary, an application may be submitted to OSM by a Tribe or State on an annual basis for funds to be expended by that Tribe or State on specific projects necessary to implement the approved plan. Such annual grant applications are reviewed and approved by OSM in accordance with the requirements of 30 CFR 886.

The Federal Abandoned Mine Reclamation Fund (Federal Fund), which is administered by the Secretary through OSM, is financed by a reclamation fee assessed on every ton of mined coal. Expenditures from the Federal Fund are subject to appropriation by Congress. The Federal Fund is divided into Tribal or State and Federal shares with each Indian tribe or State under a federally approved reclamation program entitled to 50 percent of the reclamation fees collected from coal operations on Indian lands or within the State. Annually, the Indian tribes or States receive reclamation project construction grants and administrative grants from their share of the Federal Fund. Subject to OSM approval, Tribes and States are also authorized to create special interest-bearing Tribe or State trust accounts into which up to 10 percent of their

annual grants can be deposited. These "set-aside" accounts may be used to achieve the priorities of section 403(a) of SMCRA after September 30, 1995, or be deposited into an acid mine drainage abatement and treatment fund.

Noncoal AMLR projects can be undertaken by a Tribe or State under two scenarios, both of which are subject to OSM approval in the grants process. Prior to a Tribe or State certifying in accordance with section 411(a) of SMCRA that it has completed the reclamation of all eligible abandoned coal projects, it can expend Tribal or State share monies for those noncoal projects that are a hazard to public health and safety. After a Tribe or State has certified that it has completed reclamation of all eligible abandoned coal projects, it can then use the full amount of its Tribal or State share for abandoned noncoal mine land reclamation projects. Such noncoal projects include the construction of public facilities related to the coal or minerals industry.

II. Background on the Navajo Nation Plan

On May 16, 1988, the Secretary of the Interior approved, with one exception, the Navajo Nation plan as originally submitted in June 1983, resubmitted on September 6, 1983, and amended in February 1988. General background information on the Navajo Nation plan, including the Secretary's findings, the disposition of comments, the decision deferring any action on the Navajo Nation's proposal to assume the emergency response authority, and the approval of the Navajo Nation plan can be found in the May 16, 1988, **Federal Register** (53 FR 17186). Approval of the Navajo Nation plan is codified at 30 CFR 756.13.

III. Proposed Amendment and Request for Concurrence With Certification of Completion of Coal Reclamation

By letters dated April 7 and 22, 1994, the Navajo Nation submitted a proposed amendment to its AMLR plan pursuant to SMCRA (administrative record Nos. NA–207, NA–208, and NA–212). The Navajo Nation submitted the proposed amendment at its own initiative with the intent of revising its AMLR plan so it could use AMR funds to reclaim remaining interim program coal sites and for noncoal reclamation purposes, including the construction of public facilities. Interim program coal sites are eligible lands and water mined after August 3, 1977, but prior to September 28, 1984 (the date the permanent Federal regulatory program took effect on Navajo Nation lands), for which available funds for reclamation or abatement pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate abatement or reclamation at a site.

The Navajo Nation proposed revisions to its AMLR Code of 1987 at (1) the introduction to the Navajo AMLR Code; (2) Title I, section 101, findings, and section 102, purposes; (3) Title II, sections 201(a), (b), (c) and (d), duties of the Navajo Abandoned Mine Lands Reclamation Department (NAMLRD); and (4) Title IV, sections 401(a), (b)(5), (b)(6), (c)(5) and (c)(8), Navajo AMR fund and purposes; section 402, reclamation fee; sections 403(a) and (b), objectives of the fund; section 404, eligible lands and water; sections 405(a), (b), (c), and (f), Tribal reclamation program; section 407, acquisition and reclamation of lands within the Navajo Nation adversely affected by past mining practices; section 408, liens; section 409, filling voids and sealing tunnels; section 410, emergency powers; section 411, certification of completion of coal reclamation; section 412, fund report; section 413, miscellaneous powers; and section 414, interagency cooperation.

The Navajo Nation also proposed revisions to the Navajo Nation Rules implementing the AMLR Code of 1987 at (1) section II, Part D, subsections 1 and 2, reclamation priorities; Part L, subsections 1 and 2, general reclamation requirements; Part M, subsections 1 and 2, certification of completion of coal reclamation; Part N, subsection 1, eligible lands and water subsequent to certification; Part O, subsection 1, exclusion of noncoal reclamation sites; Part P, subsections 1, 2, and 3, utilities and other facilities, and (2) section III, Part E, subsection 1, future reclamation set-aside program.

In addition, by letter dated May 4, 1994, the President of the Navajo Nation notified the Secretary of the Interior that the Navajo Nation was certifying that it had completed all of its coal reclamation projects (administrative record No. NA–213) and stated that NAMLRD intends to complete all remaining priority 1 and 2 coal reclamation projects, including interim coal reclamation projects, as required by section 403(a) of SMCRA. Reclamation projects are funded under a priority schedule, such that "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 while "priority 2" projects concern those that involve protection of public health, safety, and general welfare from adverse effects of coal mining practices. The Navajo Nation submitted the request for the Secretary's concurrence with certification of completion of all known coal-related problems with the intent that, if the Secretary concurred with the certification, the Nation would request AMR funds to pursue projects under the provisions of section 411 of SMCRA.

OSM announced receipt of the proposed amendment and the Navajo Nation's request for the Secretary's concurrence with its certification of completion of coal reclamation in the May 18, 1994, **Federal Register** (59 FR 25852, administrative record No. NA–214), provided an opportunity for a public hearing or meeting and public comment on the substantive adequacy of the Navajo Nation's proposed amendment and certification, and requested information concerning any known or suspected unreclaimed lands and water resources on Navajo Nation lands that would be eligible for expenditures from the AMR fund under the provisions of the Navajo Nation's reclamation program. Because no one requested a public hearing or meeting, none was held. The public comment period ended on June 17, 1994.

IV. Director's Findings

1. The Navajo Nation Plan

As discussed below, the Director of OSM, in accordance with SMCRA and 30 CFR 756.1, 884.15, and 884.14, finds that the proposed AMLR plan amendment submitted by the Navajo Nation on April 7 and 22, 1994, meets the requirements of SMCRA and the Federal regulations at 30 CFR 884.14. Accordingly, the Director approves the proposed amendment.

a. Nonsubstantive Revisions to the Navajo Nation AMLR Code of 1987

The Navajo Nation proposed revisions to the following previously-approved provisions of its code that are nonsubstantive in nature and consist of (1) minor editorial, grammatical, and punctuation changes, (2) recodification, (3) using the term "Nation" rather than "Tribal" or "Tribe of Indians" when referring to the Navajo Nation and the terms "Navajo Abandoned Mine Reclamation Program" and "Navajo Abandoned Mine Reclamation Plan" for the Navajo Nation's reclamation program and plan, and (4) clarifying the duties and responsibilities of NAMLRD, Division of Natural Resources, and Office of Navajo Land Administration in administering the AMLR plan for the Navajo Nation (corresponding SMCRA provisions are listed in parentheses):

Introduction (introduction of SMCRA),

Title I, section 101, Findings (Title I, section 101 of SMCRA),

Title I, section 102, Purposes (Title I, section 102 of SMCRA),

Title II, sections 201(a), (c) and (d), Duties of NAMLRD (Title II, section 201 and Title IV, section 405(1) of SMCRA),

Title IV, sections 401(a) and (b)(6), Navajo Abandoned Mine Reclamation Fund and Purposes (Title IV, sections 401(a) and (b) of SMCRA),

Title IV, section 402, Reclamation Fee (Title IV, section 402 of SMCRA),

Title IV, sections 403(a)(4), (5) and (6), Objectives of Fund (Title IV, section 403(a) of SMCRA),

Title IV, sections 405(a), (b), (c), and (f), Tribal Reclamation Program (Title IV, sections 405(b), (e), and (i) of SMCRA),

Title IV, sections 407(a), (c), (c)(3), and (d) through (h), Acquisition and Reclamation of Lands Within the Navajo Nation Adversely Affected by Past Mining Practices (Title IV, section 407 of SMCRA),

Title IV, section 408(a), Liens (Title IV, section 408 of SMCRA),

Title IV, sections 409(a) and (d), Filling Voids and Sealing Tunnels (Title IV, sections 409(a) and (e) of SMCRA),

Title IV, section 412, Fund Report (Title IV, section 412 of SMCRA), and

Title IV, sections 413(b) through (e), Miscellaneous Powers (Title IV, section 413 of SMCRA).

Because the proposed revisions to these previously-approved provisions of the code are nonsubstantive in nature, the Director finds that the proposed revisions meet the requirements of SMCRA. Accordingly, the Director approves the proposed revisions to these provisions of the Navajo Nation AMLR Code of 1987.

b. Substantive Revisions to the Navajo Nation AMLR Code of 1987 and Navajo Nation Rules Implementing the Code That Are Substantively Identical to the Corresponding Provisions of SMCRA and the Federal Regulations

The Navajo Nation proposed revisions to the following sections of its code and rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding SMCRA and Federal regulation provisions (listed in parentheses).

Navajo Nation AMLR Code of 1987:

Title II, section 201(b), Duties of NAMLRD (Title II, section 201 of SMCRA),

Title IV, sections 401(c)(5) and (8), Navajo Abandoned Mine Reclamation Fund and Purposes (Title IV, section 401(c) of SMCRA),

Title IV, sections 403(a) and (b) and deletion of (a)(4), Objectives of Fund (Title, sections 403(a) and (c) of SMCRA),

Title IV, section 404, Eligible Lands and Water (Title IV, section 404 of SMCRA,

Title IV, section 409(b), Filling Voids and Sealing Tunnels (Title IV section 409(c) of SMCRA) and

Title IV, section 411, Certification [of Completion of Coal Reclamation] (Title IV, section 411 of SMCRA).

Navajo Nation Rules:

II(D)(1) and (2), Reclamation Priorities (Title IV, sections 403(a) and 411(c) of SMCRA and 30 CFR 874.13 and 875.15),

II(L)(1)(a) through (c) and (e) through (g) and (2), General Reclamation Requirements (Title IV, sections 404 and 411(b) of SMCRA and 30 CFR 874.12 and 875.12),

II(M)(1) and (2), Certification of Completion of Coal Reclamation (Title IV, Sections 411(a) and (f) of SMCRA and 30 CFR 875.13 and 875.15),

II(N)(1), Eligible Lands and Water Subsequent to Certification (Title IV, section 411(b) of SMCRA and 30 CFR 875.14),

II(O)(1), Exclusion of Noncoal Reclamation Sites (Title IV, section 411(d) of SMCRA and 30 CFR 875.16),

II(P)(1), (2), and (3), Utilities and Other Facilities (Title IV, section 411(e) of SMCRA and 30 CFR 875.15), and

III(E)(1), Future Reclamation Set-Aside Program (Title IV, section 402(g)(6) of SMCRA and 30 CFR 873.12).

Because the proposed revisions to these sections of the code and rules are substantively identical to the corresponding provisions of SMCRA and the Federal regulations, the Director finds that the proposed revisions meet the requirements of SMCRA and the implementing Federal regulations. Accordingly, the Director approves the proposed revisions to these sections of the Navajo Nation AMLR Code of 1987 and the implementing Navajo Nation Rules.

c. Title IV. Section 401(b)(5), Interest Credited to the AMR Fund

The Navajo Nation proposed new language in its AMLR Code of 1987 at Title IV, section 401(b)(5) to provide that the Navajo AMR Fund shall consist, in part, of amounts derived from "interest credited to the fund under subsection (e) of section 401 of SMCRA."

Section 401(e) of SMCRA provides that interest can be earned on that portion of the Federal AMR Fund (administered by the Secretary) not required to meet current withdrawals. Interest earned on the invested portion of the Federal Fund is distributed only to the Secretarial share of the Federal Fund. Therefore, none of the interest earned on the invested portion of the Federal Fund is distributed to any portion of the Tribal or State share of the Federal Fund which each Tribe or State receives in annual grants as provided at 30 CFR 886. Section 401(e) of SMCRA does not restrict a Tribe or State from earning interest on the AMR fund created by a Tribe or State as part of its AMLR program.

Title IV, section 401(b)(5) of the Navajo Nation AMLR Code of 1987 is interpreted to mean that the interest credited to the Navajo AMR fund is not the interest earned on the Federal Fund but is limited to interest credited from the deposit of other monies as provided in the Navajo Nation AMLR Code of 1987 by sections 401(b)(2), (3), (4), and (6) which include reclamation fees, user charges, donations, recovered monies, and other reclamation fees lawfully imposed by the Navajo Nation. The Director approves proposed section 401(b)(5) of the Navajo Nation AMLR Code of 1987 with the understanding that the interest earned is limited to the aforementioned monies deposited to the Navajo AMR fund.

d. Title IV, Section 410, Emergency Powers

The Navajo Nation proposed deletion of its emergency powers provisions at Title IV, section 410 of its AMLR Code of 1987. Deletion of these provisions is consistent with the approval of the Navajo Nation's AMLR plan (53 FR 17186, 17190; May 16, 1988) where the Secretary deferred decision on the emergency response program pending additional documentation addressing the specific criteria concerning assumption of emergency response authority. Because the Navajo Nation did not submit such additional documentation, the emergency powers program was never approved. The Director, therefore, approves deletion of the provisions for emergency powers at section 410 of the Navajo Nation AMLR Code of 1987 and notes that it is the Navajo Nation's intent to delete all references to emergency powers within its AMLR Code of 1987.

e. Title IV, Section 414, Interagency Cooperation

The Navajo Nation proposed new language in its AMLR Code of 1987 at Title IV, section 414 to provide for interagency cooperation in implementing and administering the provisions of the Navajo Nation plan "where such cooperation does not conflict with existing Navajo Nation and/or applicable federal laws." Section 413(a) of SMCRA provides, in part, that a Tribe has the authority to engage in any work and to do all things necessary or expedient to implement and administer the provisions of Title IV. Therefore, the limitation of interagency cooperation to instances where no conflict with existing Navajo Nation or applicable Federal laws occur meets the requirements of section 413 of SMCRA Accordingly, the Director approves

section 414 of the Navajo Nation AMLR Code of 1987.

OSM notes that the Navajo Nation plan provides the authority for the Tribe to conduct a reclamation program on Navajo (Indian) lands as that term is defined in section 701(9) of SMCRA. Indian lands occur within and outside traditional reservation boundaries. Although there may be jurisdictional limitations to the Navajo Nation's authority to undertake certain reclamation actions outside the reservation, the Navajo Nation plan presents a variety of reclamation procedures and activities which would allow the Tribe to undertake its reclamation program without violating the jurisdictional rights of other parties. Because certain lands within the boundaries of the Navajo Nation Reservation are "disputed lands" and other lands are under the control of the Office of the Navajo and Hopi Indian Relocation, it is understood by OSM that any reclamation or abatement action proposed by the Navajo Nation will be coordinated with and due consideration given to concerns raised by all parties asserting ownership of these lands.

f. Navajo Nation II(L)(1)(d), Interim Program Coal Sites

The Navajo Nation proposed the addition of provisions in its Navajo Nation Rules at II(L)(1)(d) that address interim program coal sites.

Section 402(g)(4) of SMCRA provides for the reclamation of interim coal program sites and further provides that sections 403(a) (1) and (2) of SMCRA determine which sites to reclaim.

The Navajo Nation does not have a statutory requirement that addresses reclamation of interim program coal sites. OSM acknowledges that the Navajo Nation has submitted a grant application in accordance with the provisions of 30 CFR 886 to fund reclamation of all remaining priority 1 and 2 abandoned coal mine sites, including interim program coal reclamation projects, as required by section 403(a) of SMCRA. The Navajo Nation has also demonstrated to OSM's satisfaction that the Navajo Nation AMR fund contains enough monies in reserve to address reclamation of the remaining sites. On this basis and upon approval of the proposed plan amendment that is the subject of this notice, OSM will begin reviewing the pending grant application. OSM also understands that the Navajo Nation is in the process of revising its AMLR Code of 1987 to provide for the reclamation of interim program coal sites. The Director, therefore, approves the Navajo Nation's proposed rule at section II, Part L, subsection 1(d) addressing interim program coal reclamation.

2. Request for Concurrence With Certification of Completion of Coal Reclamation

The President of the Navajo Nation notified the Secretary of the Interior that the Navajo Nation certifies to the completion of all its coal reclamation projects. Section 411(a) of SMCRA provides that the head of an Indian tribe may certify to the Secretary that all of the priorities stated in section 403(a) of SMCRA for eligible lands and water have been achieved and that the Secretary, after notice in the **Federal Register** and opportunity for public comment, shall concur with such certification if the Secretary determines that such certification is correct.

Since the Secretary's approval of the Navajo Nation plan, the Navajo Nation has conducted reclamation to correct or mitigate problems caused by past coal mining. The Navajo Nation has completed this reclamation in the order of priority set forth in section 403(a) of SMCRA. OSM acknowledges that there are remaining priority 1 and 2 abandoned coal mine sites yet to be reclaimed by the Navajo Nation, but upon approval of the grant application submitted by the Navajo Nation in accordance with 30 CFR 886 and as discussed in finding No. 1.e. above, the Navajo Nation will have addressed all known remaining pre-SMCRA and interim program abandoned coal mine lands.

Based upon the Navajo Nation's May 4, 1994, certification, and the absence of any known unreclaimed coal-related impacts, the Director of OSM, on behalf of the Secretary, concurs with the Navajo Nation's certification that all coal-related abandoned mine land problems have been abated or reclaimed, and finds that the Navajo Nation has satisfied the requirements of section 403 of SMCRA. If a coal problem occurs or is identified in the future, the Navajo Nation would have to seek immediate funding to reclaim the coal-related problem. Concurrence with the Navajo Nation's certification of completion of coal reclamation means that the Navajo Nation may now use annual grants made available under section 402(g)(1) of SMCRA to carry out activities or construction of specific public facilities related to the coal or minerals industry in accordance with section 411(f) of SMCRA.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

Pursuant to section 411 of SMCRA and 30 CFR 884.15(a) and 884.14(a)(1), OSM invited public comment and provided an opportunity for a public hearing on the Navajo Nation's proposed amendment and certification of completion of coal reclamation (administrative record No. NA–214). No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), OSM solicited comments on the proposed amendment and request for concurrence with the Navajo Nation's certification of completion of coal reclamation from Federal, State, and Tribal agencies with an actual or potential interest in the Navajo Nation plan (administrative record Nos. NA–209 and NA–215).

Navajo Environmental Protection Administration (Navajo EPA)

Navajo EPA stated that the proposed amendment of the Navajo Nation plan differed from SMCRA and provided comments in a letter dated May 27, 1994 (administrative record No. NA–219), including editorial comments pertaining to the specific language proposed in the plan amendment and suggestions on how to improve such language. These editorial comments are available in the administrative record for this amendment, and a copy has been provided to the Navajo Nation. However, because these comments are nonsubstantive in nature, OSM has not addressed them below.

(1) Navajo EPA stated that the title of the Navajo Nation plan should be changed to the "Navajo Abandoned Mine Lands Reclamation Plan" to clarify that the plan refers only to abandoned mine land reclamation, and not to any active mines, over which NAMLRD has no jurisdiction. OSM responds that the Navajo Nation's Reclamation Plan is approved under Title IV, Abandoned Mine Reclamation, of SMCRA and not under Title V, Control of the Environmental Impacts of Surface Coal Mining, which provides the authority for States to administer coal mining regulatory programs. No legislation exists granting Indian tribes

the authority to regulate coal mining on Indian lands.

(2) Navajo EPA indicated that the plan amendment did not incorporate standards to be used by NAMLRD for air, water, soil, radioactivity, and other topics, when deciding whether a site has been completely reclaimed. Title IV of SMCRA and the implementing Federal regulations do not require specific reclamation standards. OSM, during field reviews, provides the necessary oversight to ensure that projects funded using AMR funds meet the goals established when funding was approved.

(3) Navajo EPA suggested that section II(D)(1)(a–e) of the Navajo Nation Rules concerning reclamation priorities may need a clarifying statement to indicate that "Priority A" is the same as "priority 1," and so forth, as used in SMCRA and by NAMLRD (to designate priorities of eligible lands and water for expenditures from the Navajo AMR fund). OSM agrees that a clarifying statement would be helpful, but the dual designations are not so confusing as to affect their implementation.

(4) Navajo EPA expressed concern that section II(L)(1) of the Navajo Nation Rules pertaining to general reclamation requirements does not state that the eligibility requirements are set under SMCRA and were not devised by the Navajo Nation. OSM responds that, while the Navajo Nation Rules do not specifically reference SMCRA in this section, these rules implement the Navajo Nation AMLR Code of 1987 which is the Navajo Nation's counterpart to SMCRA. The eligibility requirements established by these rules are consistent with section 404 of SMCRA. Therefore, a specific reference to this SMCRA citation is not necessary.

(5) Navajo EPA stated that because it had found no indication that any "State" has held a reclamation bond for mining activities conducted within the Navajo Nation, the word "State" in the Navajo Nation Rules at section II(L)(2)(b)(3) concerning reclamation bonds should be deleted. This is an editorial comment, and the implication that the State may hold a bond for reclamation activities on Navajo Nation lands is immaterial.

(6) Navajo EPA commented that section II(M)(2) of the Navajo Nation Rules, which states that "[f]ollowing the concurrence by the Director [with the Navajo Nation's certification of completion of coal reclamation], the Nation may implement a noncoal reclamation program pursuant to the provisions of section 411 of SMCRA," should be revised to clarify that the "Director" is the Director of OSM. While Navajo EPA's comment is consistent with section 411 of SMCRA, which indicates that the Secretary (in this case, the Director of OSM for the Secretary) has the authority to concur with a Tribe's or State's certification, OSM does not find it necessary to require the Navajo Nation to revise this rule. In requesting the Secretary's concurrence on the Director of NAMLRD's certification of completion of coal reclamation, the Navajo Nation has complied with section 411 of SMCRA.

(7) Navajo EPA stated that the reference to "the Act" in section II(P)(1)(c) of the Navajo Nation Rules concerning utilities and other facilities is unclear. OSM interprets the term "the Act" as used in this rule to be the Navajo Nation AMLR Code of 1987 and does not agree with the statement by Navajo EPA that such term is unclear.

(8) Navajo EPA felt that section III(E) of the Navajo Nation Rules pertaining to creation of a future reclamation set-aside program did not clearly indicate what happens to Navajo AMR funds after all known coal reclamation has been completed. Navajo EPA asked whether the monies will become general funds, subject then to reappropriation by the Navajo Nation Council and whether the funds can be used for purposes other than coal reclamation. As discussed in finding No. 2 above, upon concurrence by the Director of OSM with the Navajo Nation's certification of completion of coal reclamation, the Navajo Nation may, in accordance with section 411(f) of SMCRA, request AMR grant monies from OSM to pursue public facilities projects related to coal or mineral development. The Navajo Nation cannot reappropriate these monies for uses other than what has been approved by OSM.

(9) Navajo EPA stated that because NAMLRD had already received Council approval for the revised code, its review seems after the fact unless suggested revisions are also put through the SAS (signature approval sheet) process and presented to the Council. As required by 30 CFR 884.15 and 884.14, OSM must approve the Navajo Nation plan amendment, of which the Navajo Nation AMLR Code of 1987 is a part, before it is effective. If Navajo EPA identified inconsistencies between the code and SMCRA and the implementing Federal regulations, OSM would require the Navajo Nation to revise its AMLR Code of 1987.

(10) Navajo EPA expressed concern that although NAMLRD prepares all environmental documents required under Federal law, the documents are only reviewed by OSM, but none of the documents are reviewed by Navajo EPA, as required. This comment concerns Tribal policy and procedures, which are not inconsistent with the requirements of SMCRA and the Federal regulations.

(11) Navajo EPA noted that Title II, section 201(d) of the Navajo Nation AMLR Code of 1987 provides that NAMLRD shall be protected from suite by sovereign immunity, and that no employee can waive this immunity. However, Navajo EPA suggested that this right may be abrogated by the Federal government as provided in section 405(1) of SMCRA. Section 405(1) of SMCRA provides for Tribe or State immunity from lawsuits except those resulting from gross negligence or intentional misconduct by the Tribe or State, so to the extent that the Tribe or State is liable under Federal law, it is held liable. Therefore, OSM responds that the sovereign immunity claimed by the Navajo Nation extends to all liability situations except those involving gross negligence or intentional misconduct by the Navajo Nation.

(12) Title IV, section 401(b)(2) of the Navajo Nation AMLR Code of 1987 indicates that the Navajo AMR fund shall consist of monies deposited in the fund from sources including any user charges imposed by the Navajo Nation on or for land reclaimed pursuant to the code, after expenditures for maintenance have been deducted. Navajo EPA asked that the type of user charges be clarified, because the code does not specify if these charges refer to grazing or other non-mining activities, whether fees are already appropriated to other departments, what maintenance expenditures are being referred to, and who will conduct said maintenance. Navajo EPA stated that this section was copied directly from SMCRA and may have limited relevance as applied to the Navajo Nation. Specific criteria pertaining to the type of user charges, appropriation of fees, and maintenance are not addressed in Title IV of SMCRA or the implementing Federal regulations. Therefore, decisions made by the Navajo Nation regarding user charges it imposes under its AMLR program are limited only to the extent that they are not inconsistent with SMCRA. Because this provision of the Navajo Nation AMLR Code of 1987 is substantively identical to section 401(b)(2) of SMCRA, it meets the requirements of SMCRA.

(13) Title IV, section 401(b)(6) of the Navajo Nation AMLR Code of 1987 indicates that the AMR fund shall consist of monies deposited in the fund from sources including "all other reclamation fees lawfully imposed by

the Navajo Nation." Navajo EPA expressed concern that the statement "all other reclamation fees" is extremely broad, and wondered if it is meant to include reclamation fees for active coal and non-coal mines, for sand and gravel, or oil and gas activities; whether it applies only to reclamation bonds held by the Nation, or by Federal agencies; and suggested that it is in direct conflict with regulations outlining how those fees are held and allocated. Section 402 of SMCRA provides for payment of a reclamation fee on mined coal to be deposited in the Federal AMR Fund. SMCRA and the implementing Federal regulations do not require the payment of any additional fees and do not restrict a Tribe or State from collecting other kinds of reclamation fees. Therefore, for these reasons and for the same reasons discussed in comment No. 12 above, OSM finds this provision of the Navajo Nation AMLR Code of 1987 to be consistent with section 401(b) of SMCRA.

(14) Navajo EPA pointed out a typographical error in Title IV, section (401)(c)(1) of the Navajo Nation AMLR Code of 1987. The phrase "prevent abatement" should be "prevention, abatement * * *" as in the counterpart section 401(c)(1) of SMCRA. OSM agrees with Navajo EPA in its comment and recommends that the Navajo Nation review its plan amendment to correct grammatical, punctuation, and typographical errors and inconsistencies.

(15) Navajo EPA stated that it would be in the Navajo Nation's best interests if NAMLRD inventoried and listed their priority 3, 4, 5, and 6 projects, since that would include all public facilities projects. This comment was not made in reference to a specific provision of the Navajo Nation AMLR Code of 1987 or the Navajo Nation Rules; however, the comment appears to be directed at noncoal reclamation and having NAMLRD complete an inventory and list of public facilities projects. A Tribe or State is required only to inventory priority 1 and 2 coal sites in accordance with section 403(a) of SMCRA. NAMLRD, in accordance with section 403(c) of SMCRA, has already inventoried priority 1 and 2 coal sites. Navajo EPA also stated that it is interested in receiving a copy of the inventory of priority 1 and 2 sites to assist it in ongoing abandoned uranium mine joint reclamation projects. OSM suggests that Navajo EPA request the information from NAMLRD or contact OSM's Albuquerque Field Office.

(16) Navajo EPA suggested that since section 405(f)(7) of SMCRA requires NAMLRD to report to OSM annually on projects funded under the previous year's grant, Title IV, section 405(f) of the Navajo Nation AMLR Code of 1987 should be revised to require that the same kind of information be provided to the Division of Natural Resources and the Navajo Nation Council at the same time such information is reported as required under SMCRA. OSM responds that the Navajo Nation is complying with SMCRA reporting requirements, and if Navajo EPA requires information contained in the documentation provided by NAMLRD to OSM on an annual basis, then Navajo EPA should request this information directly from NAMLRD.

(17) Navajo EPA expressed concern that Title IV, section 407 of the Navajo Nation AMLR Code of 1987 pertaining to acquisition and reclamation of lands adversely affected by past mining practices does not clearly state whether its provisions apply only to private lands within the Navajo Nation boundaries, or to lands such as homesite leases, and individual allotments. Section 407 of SMCRA does not specify the applicability of its provisions as they relate to Indian lands. However, the Navajo Nation's jurisdiction over Navajo Nation lands was clearly defined in the approval of the Navajo Nation plan (53 FR 17186, 17187; May 16, 1988) and is addressed in finding No. 1.e.

(18) Navajo EPA stated that Title IV, section 411(a) of the Navajo Nation AMLR Code of 1987 should be changed to be consistent with the Navajo Nation Rules and provide that the Navajo Nation President will certify completion of coal reclamation rather than the Director of NAMLRD. Section 411(a) of SMCRA provides that the head of an Indian tribe will certify to the completion of coal reclamation. The request from the Navajo Nation for the Secretary's concurrence with its certification of completion of coal reclamation was made by the President of the Navajo Nation, which meets the requirements of section 411(a) of SMCRA and which is the tribal authority Navajo EPA asserted should make the certification. Therefore, although consistency between the Navajo Nation AMLR Code of 1987 and Navajo Nation Rules is desirable, it is not an issue in this instance.

(19) Navajo EPA stated that agreements for cooperative projects by the Navajo Nation with any Federal or State agency should be entered into with the advice of the Navajo Nation Department of Justice and the Division of Natural Resources, in addition to the Intergovernmental Relations Committee and Resources Committee of the Navajo Nation Council already indicated in Title IV, section 413(b) of the Navajo Nation AMLR Code of 1987. SMCRA does not require Tribes or States to conform to a specific administrative process but does provide the power and authority to engage in cooperative projects. (See finding No. 1.e.) OSM reviews any cooperative projects during its annual oversight of the Navajo Nation plan and AMLR grant program and determines at that time whether such projects are conducted in a manner that meets the requirements of SMCRA and the implementing Federal regulations.

(20) Navajo EPA stated that Title IV, section 413(d) of the Navajo Nation AMLR Code of 1987 should require that NAMLRD will turn over management and operation of water treatment facilities to the appropriate Tribal department, which will have the continuing staffing and expertise to run said facilities in perpetuity. This provision of the code is substantively identical to section 413(d) of SMCRA. SMCRA does not require that the management and operation of such a treatment plant be turned over to another agency for continued management and operation. The administration of the Navajo Nation's AMLR program is addressed during OSM's annual oversight and any deficiencies in the program are handled through the oversight process. If, during oversight, OSM determines that a problem exists with effective management of any part of the program, OSM would require resolution of the problem.

U.S. Environmental Protection Agency (EPA)

EPA responded on June 13, 1994, with the following comments (administrative record No. NA–220).

(1) EPA commented that the Navajo Nation plan does not address or reference environmental requirements that may be applicable under the National Environmental Policy Act (NEPA) and that sites found to pose an environmental problem should be coordinated through NEPA to identify the appropriate clean up remedies and standards. OSM responds, as it did at comment No. 2 of the Navajo EPA comments, that Title IV of SMCRA and the implementing Federal regulations do not require specific reclamation standards. Prior to the Navajo Nation initiating AMLR construction projects, OSM complies with the requirements of NEPA to identify environmental impacts and mitigation measures.

(2) EPA commented that the authority for certifying the completion of coal

reclamation resides with the President of the Navajo Nation but that section 411(a) of the Navajo Nation AMLR Code of 1987 assigned the authority for the certification to the Director of NAMLRD. As stated in response to the same comment by Navajo EPA (comment No. 18), OSM responds that the request for concurrence with the Navajo Nation's certification was actually submitted by the President of the Navajo Nation in compliance with section 411(a) of SMCRA and in conformance with EPA's comment on which tribal authority should make the certification.

(3) EPA expressed concern that the Navajo Nation AMLR Code of 1987 does not provide for the Secretary's concurrence with the certification of completion of coal reclamation. SMCRA provides that the Secretary shall concur with a Tribe's or State's certification of completion of coal reclamation. Therefore, OSM responds that the Navajo Nation plan does not require revision for an action taken by the Secretary.

(4) EPA stated that it had understood that NAMLRD's Reclamation Plan would be revised to include work at priority 3 abandoned uranium mine sites, meaning NAMLRD would conduct work on abandoned uranium mine sites that exhibited environmental hazards and degradation. EPA stated further that it appeared no priority had been assigned to uranium sites in the Navajo Nation Rules at II(D)(2), pertaining to noncoal reclamation priorities prior to certification.

Section 403(a) of SMCRA provides, prior to certification of completion of coal reclamation, that "priority 3" is the restoration of lands and water and the environment previously degraded by adverse effects of coal mining practices. After certification, section 411(c) of SMCRA provides that priority 3 is the restoration of lands and water and the environment previously degraded by the adverse effects of mineral mining and processing practices. Title IV of SMCRA does not prioritize noncoal commodities, and sections 411 (e) and (f) of SMCRA provide that community impact assistance and public facilities projects may be undertaken as they relate to the priorities for noncoal reclamation. In this notice, OSM found that the Navajo Nation plan has been revised to meet the requirements of SMCRA and the implementing Federal regulations for noncoal reclamation subsequent to certification. OSM is aware that EPA, among others, continues to work with the Navajo Nation to develop a plan to address abandoned uranium mine sites.

(5) EPA asked that the Navajo Nation clarify provisions of its AMLR Code of 1987 and the Navajo Nation Rules to provide that the Nation's President has the authority to undertake action at a noncoal site before certification of completion of coal reclamation. The rules provide that this authority resides with the President of the Navajo Nation, but the code allows the Director of NAMLRD to conduct reclamation activities and take other remedial actions on noncoal sites. This comment is immaterial in light of the Secretary's concurrence in this notice with the Navajo Nation's certification of completion of coal reclamation on Navajo Nation lands.

(6) In a related manner, EPA suggested that the community participation process for reclamation at noncoal sites is not consistent between provisions of the Navajo Nation AMLR Code of 1987 and the Navajo Nation Rules. Specifically, EPA asked what mechanism ensures that a request for noncoal reclamation to the Director of NAMLRD will reach the President who has authority to request reclamation at noncoal sites and what feedback mechanism existed to inform the community of what actions will be taken. OSM, in approving the proposed Navajo Nation plan amendment that is the subject of this notice, has determined that the Tribe's public participation process for determining the priority of community assistance projects meets the requirements of SMCRA and the implementing Federal regulations.

(7) Finally, EPA stated that there appear to be no check-and-balance systems between NAMLRD and Navajo EPA, NAMLRD and the Division of Natural Resources, and NAMLRD and OSM. EPA feels systems are needed to ensure inter- and intra-governmental consistency and harmony within the Navajo Nation's various programs. SMCRA does not require coordination between Tribal agencies but does provide for interagency cooperation at section 414. The Navajo Nation AMLR Code of 1987 provides a similar provision at section 414. Therefore, OSM responds that it is up to the Navajo Nation itself to determine how its various departments will interact, coordinate, and establish and maintain relationships that are conducive to meeting the requirements of the Navajo Nation plan. Coordination between the Tribe and OSM already occurs as required by SMCRA and the Federal regulations. OSM also responds that it provides input into these relationships through oversight of the Navajo Nation's AMLR program.

Other Agencies

By letter dated May 5, 1994, the Utah State Historical Society provided the concurrence of the Utah Preservation Office with the determination that no part of the amendment pertains to cultural resources (administrative record No. NA–216).

The Arizona State Historic Preservation Office (SHPO) responded on June 1, 1994, that it assumed OSM had the concurrence of the Navajo Nation Historic Preservation Department (NNHPD) as to a determination of no effect on cultural resources under the National Historic Preservation Act of 1966 with respect to the consultation requirements of 36 CFR Part 800. Therefore, it would defer the determination of no effect on the NNHPD (administrative record No. NA–218).

Based upon the Arizona SHPO response, OSM contacted NNHPD on June 28, 1994. NNHPD stated it had elected not to respond and presumed that OSM would proceed as if a determination of no effect was in place (administrative record No. NA–221). OSM is not aware of any adverse effects on cultural resources that would result from the proposed amendment and certification of completion of coal reclamation, and on this basis, OSM is proceeding with its decision on the Navajo Nation submission.

V. Director's Decision

Based on the above findings, the Director approves the Navajo Nation's proposed amendment as submitted on April 7 and 22, 1994.

As discussed in finding No. 1.a., the Director approves nonsubstantive revisions to the Navajo Nation AMLR Code of 1987 at sections 101, 102, 401, 402, 403, 405, 407, 408, 409, 412, and 413.

As discussed in finding Nos. 1.b., c., d., and e., the Director approves substantive revisions to the Navajo Nation AMLR Code of 1987 at sections 201, 401, 403, 404, 409, 410, 411, and 414.

As discussed in finding Nos. 1.b and f., the Director approves substantive revisions to the Navajo Nation Rules at Section II, Parts D, L, M, N, O, and P, and Section III, Part E.

The Director approves the proposed revisions of the Navajo Nation AMLR Code of 1987 and Navajo Nation Rules implementing the code with the provision that they be fully promulgated in identical form to the code and rules submitted to and reviewed by OSM and the public.

The Director of OSM, on behalf of the Secretary, also concurs with the Navajo

Nation's certification, as submitted by the Nation on May 4, 1994, that all abandoned coal mine related problems have been abated or reclaimed under its AMLR plan in accordance with Title IV of SMCRA.

The effect of the Director's concurrence with the Tribe's certification is to allow the Navajo Nation to use its AMR funds for community impact assistance and construction of public facilities in areas of the Navajo Nation lands impacted by coal or minerals development, mining, or processing as provided in section 411 of SMCRA.

The Director is codifying this AMLR plan decision and concurrence with the Navajo Nation's certification of completion of coal reclamation at 30 CFR Part 756.14. The Director is also taking this opportunity to revise the addresses at 30 CFR 756.13 for OSM and the Navajo Nation.

VII. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of Tribal AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific Tribe, not by OSM. Decisions on proposed Tribal AMLR plans and revisions thereof submitted by a Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed Tribal AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Tribal submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the Tribe. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

VIII. List of Subjects in 30 CFR Part 756

Abandoned mine land reclamation program, Indian lands.

Dated: September 15, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter E of the Code of Federal Regulations is amended as set forth below:

PART 756—NAVAJO NATION

1. The authority citation for Part 756 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and Pub. L. 100–71.

2. With the exception of the first sentence, § 756.13 is revised to read as follows:

§ 756.13 Approval of the Navajo Nation's Abandoned Mine Land Plan.

* * * * *

Copies of the approved plan are available at:

Albuquerque Field Office, Office of Surface Mining, Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486.

The Navajo Nation, Navajo Abandoned Mine Land Reclamation Department, P.O. Box 308, Window Rock, Arizona 86515, Telephone: (602) 871–4941.

3. Section 756.14 is added to read as follows:

§ 756.14 Approval of amendments to the Navajo Nation's Abandoned Mine Land Plan.

(a) Revisions to the following provisions of the Navajo Nation AMLR plan, as submitted to OSM on April 7 and 22, 1994, are approved effective September 27, 1994:

Navajo Nation Abandoned Mine Land Reclamation Code of 1987: Introduction

Section 101—Findings
Section 102—Purposes
Section 201—Duties of Navajo Abandoned Mine Lands Reclamation Department
Section 401—Navajo Abandoned Mine Reclamation Fund and Purposes
Section 402—Reclamation Fees
Section 403—Objectives of Fund
Section 404—Eligible Lands and Water
Section 405—Reclamation Program
Section 407—Acquisition and Reclamation of Lands Within the Navajo Nation Adversely Affected by Past Mining Practices
Section 408—Liens
Section 409—Filling Voids and Sealing Tunnels
Section 410—Deletion of Emergency Powers
Section 411—Certification of Completion of Coal Reclamation
Section 412—Navajo Abandoned Mine Reclamation Fund Report
Section 413—Miscellaneous Powers, and
Section 414—Interagency Cooperation

Navajo Nation Rules

II(D) (1) and (2)—Reclamation Priorities
II(L) (1) and (2)—General Reclamation Requirements
II(M) (1) and (2)—Certification of Completion of Coal Reclamation
II(N) (1)—Eligible Lands and Water Subsequent to Certification
II(O) (1)—Exclusion of Noncoal Reclamation Sites
II(P) (1), (2), and (3)—Utilities and Other Facilities, and
III(E) (1)—Future Reclamation Set-Aside Program

(b) The Director concurs with the Navajo Nation's May 4, 1994, certification of completion of coal reclamation effective September 27, 1994.

[FR Doc. 94–23829 Filed 9–26–94; 8:45 am]
BILLING CODE 4310–05–M

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30 CFR Part 944

Utah Regulatory Program and Abandoned Mine Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions and additional requirements, a proposed amendment to the Utah regulatory program and abandoned mine plan (hereinafter, the "Utah program" and Utah plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to the Utah Coal Mining and Reclamation Act pertaining to hearings and appeals, civil and criminal penalties, recovery of costs for reclaimed abandoned mine land, liens against reclaimed abandoned mine lands, and certification of completion of abandoned coal mine reclamation. The amendment is intended to incorporate the additional flexibility afforded by SMCRA, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program, and on June 3, 1983, the Secretary approved the Utah plan. General background information on the Utah program and Utah plan, including the Secretary's findings, disposition of comments, conditions of approval of the Utah program, and approval of the Utah plan can be found in the January 21, 1981, and June 3, 1983, **Federal Register's** (46 FR 5899 and 48 FR 24876). Subsequent actions concerning Utah's program, Utah's plan, and program and plan amendments can be found at 30 CFR 944.15, 944.16, 944.20, 944.25, and 944.30.

II. Proposed Amendment

By letter dated March 7, 1994, Utah submitted a proposed amendment to its program and plan pursuant to SMCRA (administrative record No. UT–900). Utah submitted the proposed amendment at its own initiative. The program provisions of the Utah Coal Mining and Reclamation Act that Utah proposed to revise were Utah Code Annotated (UCA) 40–10–14, appeals to district court of decisions by the Board of Oil, Gas and Mining (Board) and further review, and UCA 40–10–20, civil and criminal penalties. The plan provisions of the Utah Coal Mining and Reclamation Act that Utah proposed to revise were UCA 40–10–28, recovery of reclamation costs and liens against reclaimed land, and UCA 40–10–28.1, certification of completion of coal reclamation.

In the March 29, 1994, **Federal Register** (59 FR 14591), OSM announced receipt of the proposed amendment, provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–911). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 28, 1994.

During its review of the amendment, OSM identified concerns relating to the provsions of the Utah Coal Mining and Reclamation Act at UCA 40–10–14 (3) and (6), procedural guidance for formal hearings and appeals of decisions by the Board and district court decisions; UCA 40–10–20(3), waiver of rights to contest the violation or amount of a civil penalty if the operator fails to forward the amount of the penalty within the time allowed; UCA 40–10–20(8), review proceedings of a civil penalty assessed for failure to correct a violation; and UCA 40–10–28 (1)(a)(ii) and (2)(a), sale price of reclaimed abandoned mine land and waiver of liens when certain criteria are met. OSM notified Utah of the concerns by letter dated June 10, 1994 (administrative record No. UT–935).

For each of the issues identified by OSM, Utah responded in a letter dated July 5, 1994, by submitting additional explanatory information (administrative record No. UT–949).

Based upon the additional explanatory information for the proposed program and plan amendment submitted by Utah, OSM reopened the public comment period in the July 29, 1994, **Federal Register** (59 FR 38579, administrative record No. UT–955). The public comment period ended on August 15, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15, 732.17, 884.15(a), and 884.14 finds, with certain exceptions and additional requirements, that the proposed program and plan amendment submitted by Utah on March 7, 1994, and supplemented with additional explanatory information on July 5, 1994, is no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Utah's Statutes

Utah proposed revisions to the following previously-approved provisions of the Utah Coal Mining and Reclamation Act that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (the corresponding SMCRA provisions are listed in parentheses):

UCA 40–10–20(1) (b) and (c) (section 518(a) of SMCRA), civil penalty for violation of Chapter 10, Title 40,
UCA 40–10–20(3) (b), (c), and (d) (section 518(b) of SMCRA), public hearings,
UCA 40–10–20 (5) and (6) (sections 518 (e) and (f) of SMCRA), criminal penalties, and
UCA 40–10–28 (1), (1)(a)(i), (1)(b)(ii), and (iii) (sections 407 and 408 of SMCRA), recovery of reclamation costs and liens against reclaimed land.

Because the proposed revisions to these previously-approved sections of the Utah Coal Mining and Reclamation Act are nonsubstantive in nature, the Director finds that these proposed statutes are no less stringent than SMCRA. The Director approves the proposed revisions.

2. Substantive Revisions to Utah's Statutes That Are Substantively Identical to Provisions of SMCRA and the Federal Regulations

Utah proposed revisions to the following provisions of the Utah Coal Mining and Reclamation Act that are substantive in nature and contain language that is substantively identical to the provisions of SMCRA and the Federal regulations (listed in parentheses).

UCA 40–10–20(2) (section 518(c) of SMCRA and 30 CFR 723.19 and 723.20), informal conferences,
UCA 40–10–20(3)(e) (section 518(b) of SMCRA and 30 CFR 723.20), public hearings, and
UCA 40–10–28.1(6) (section 411(f) of SMCRA and 30 CFR 875.15(d)), certification of completion of coal reclamation.

Because these proposed revisions to the Utah Coal Mining and Reclamation Act are substantively identical to the corresponding provisions of SMCRA and the Federal regulations, the Director finds that they are no less stringent than SMCRA and no less effective than the Federal regulations. The Director approves the proposed revisions.

3. UCA 40–10–14(6), Appeal to District Court

Previously-approved UCA 40–10–14(6), regarding Board decisions on permit applications, provided, in part, that:

> Any applicant, or any person with an interest which is or may be adversely affected who has participated in the proceedings as an objector, and who is aggrieved by the decision of the board, or if the board fails to act within the time limits specified in [Title 40, Chapter 10], has the right to appeal in the

district court for the county in which the proposed operation is located.

In this amendment, Utah proposed to add language to UCA 40–10–14(6) to provide that any party to the action in district court may appeal from the final judgment, order, or decree of the district court. Utah also proposed deletion of the provision that required that review of the adjudication of the district court is by the Utah Supreme Court.

By way of clarification, Utah provided additional information, stating, among other things, that, where an appeal of the Board's decision is the issue at hand, "the record established by the Board in the hearing transcript becomes the trial record which is reviewed by the Utah Supreme Court" (administration record No. UT–949). Utah further stated that where the Board fails to act, relief may be sought by an applicant or interested person in the State district court for the county where the proposed operation is located. "Under these conditions, the case or controversy is heard by state District Court and it then becomes the court of record. Appeals are thereafter to the Utah Supreme Court." The State cited provisions of the Utah Judicial Code at UCA Title 78, Chapter 2, as support for its explanation of the appellate process.

Section 526(e) of SMCRA provides, in part, that action taken by a State regulatory authority under an approved State program is subject to judicial review by a court of competent jurisdiction in accordance with State law. Although the Director finds the clarifying information to be consistent with section 526(e) of SMCRA, the Director finds that the currently-approved Utah program contains some apparent internal inconsistencies regarding the appellate process for Board decisions on permit applications. That is, although UCA 78–2–2(3)(e)(iv) appears to specify, as Utah stated in its clarifying information, that appeals of Board decisions are to the Utah Supreme Court, the first sentence of UCA 40–10–14(6), previously approved by OSM, appears to require that such appeals are to the State district court in the county where the proposed operation is located.

The Director finds that the proposed revision at UCA 40–10–14(6) is not consistent with section 526(e) of SMCRA and does not approve it. The Director requires Utah to amend its program to eliminate the discrepancy in the appellate procedures that govern Board decisions on permit applications in a manner no less stringent than the requirements of section 526(e) of SMCRA.

4. UCA 40–10–20 (1)(a) and (3)(a), Delegation of Authority for Assessing Civil Penalties in Certain Circumstances

At UCA 40–10–20 (1)(a) and (3)(a), Utah proposed to change the responsible party from the Board to the Division of Oil, Gas and Mining (Division) for assessing civil penalties when a violation of permit condition or other provision of Chapter 10, Title 40 occurs. Section 518(i) of SMCRA provides, in part, that States shall incorporate into their programs, civil and criminal penalty provisions that are no less stringent than section 518 of SMCRA and procedural requirements relating to these provisions that are the same or similar to those set forth in SMCRA. Utah's proposed transfer of authority for civil penalty assessments from the Board to the Division is not inconsistent with section 518(i) of SMCRA. Therefore, the Director approves the proposed revision to UCA 40–10–20 (1)(a) and (3)(a).

5. UCA 40–10–20(3), Contest of Violation or Amount of Penalty

Utah proposed to delete existing UCA 40–10–20(3) in its entirety. Most of the requirements of existing UCA 40–10–20(3) are recodified in this amendment as UCA 40–10–20(2) (see finding No. 2). One requirement of existing UCA 40–10–20(3) that is not retained and recodified elsewhere in the statute pertains to a waiver of rights to contest the violation or the amount of the penalty when the operator fails to forward to the Board within 30 days of receipt of the notice of violation the proposed civil penalty for placement in an escrow account.

Section 518(c) of SMCRA provides, in part, that failure to forward the amount of a proposed civil penalty to the Secretary within the specified time "shall result in a waiver of all legal rights to contest the violation or the amount of the penalty." In order to be no less stringent than SMCRA, the Utah program must include a similar provision.

Although this amendment does not include the waiver requirement, OSM notes that Utah has in another amendment dated April 14, 1994, proposed a provision that is intended to resolve this deficiency (administrative record No. UT–917). In order to consider the additional proposal prior to making a final determination, the Director has decided to defer decision on the deletion of the part of existing UCA 40–10–20(3) that provided that an operator's failure to forward the amount of a proposed civil penalty to Utah within 30 days results in a waiver of all legal rights to contest the violation or the amount of the penalty.

6. UCA 40–10–20(8), Civil Penalty for Failure to Correct Violation

Utah proposed editorial revisions to UCA 40–10–20(8). However, aside from these revisions, OSM noted in its letter dated June 10, 1994, that, while section 518(h) of SMCRA specifically references section 525, regarding administrative reviews, and section 526, regarding judicial reviews, UCA 40–10–20(8) did not contain any specific cross-references to counterpart provisions of the Utah program. Utah responded (administrative record No. UT–949) that the reviews provided in SMCRA by reference are found in the State program at UCA 40–10–22. The Director finds that the reference provided by Utah meets the requirements of section 518(h) of SMCRA. Accordingly, the Director approves the proposed revisions to UCA 40–10–20(8).

7. UCA 40–10–28 (1)(a)(ii), Recovery of Reclamation Costs

UCA 40–10–28 (1)(a)(ii), provides a formula for determining the sale price of reclaimed abandoned mine lands to be sold to a State or local government for public purposes, but the formula does not include the cost of purchase as required by section 407(e) of SMCRA. This apparent deficiency in the Utah plan would render Utah's plan less stringent than section 407(e) of SMCRA, but OSM notes that Utah has proposed to address this deficiency in a separate amendment dated April 14, 1994 (administrative record No. UT–914). In order to consider the additional proposal prior to making a final determination, the Director has decided to defer decision on proposed UCA 40–10–28 (1)(a)(ii).

8. UCA 40–10–28 (1)(b)(i) and (2)(b), Delegation of Authority to Waive Fees and Liens Against Reclaimed Land

Utah proposed to revise its provisions at UCA 40–10–28 (1)(b)(i) and (2)(b) to provide that the Division rather than the Board may waive special charges for use of reclaimed land or liens against reclaimed land in certain circumstances. Title IV of SMCRA does not prohibit a State regulatory authority from delegating responsibility for administering and enforcing the Federal provisions. Section 413(a) of SMCRA provides, in part, that a State with an approved State program shall have the power and authority to engage in any work and to do all things necessary or expedient in order to implement and administer the provisions of Title IV. Utah's proposed transfer of authority to

waive special charges for use of or liens against reclaimed land in certain circumstances from the Board to the Division is not inconsistent with section 413(a) of SMCRA. Therefore, the Director approves the proposed revision to UCA 40–10–28 (1)(b)(i) and (2)(b).

9. UCA 40–10–28(2)(a), Liens Against Reclaimed Land

Utah proposed editorial revisions to UCA 40–10–28(2)(a), which requires that the Division shall place a lien against reclaimed abandoned mine land, the market value of which has increased as a result of the reclamation work, except where the surface owner neither consented to, participated in, nor exercised control over the mining operations which necessitated the reclamation work.

Section 408(a) of SMCRA has the same provisions, but it additionally specifies, with respect to the surface owner, that the provisions apply to a person owning the surface prior to May 2, 1977.

UCA 40–10–28(2)(a) does not include the specific date provided in section 408(a) of the SMCRA. The apparent deficiency in the Utah plan would render Utah's plan less stringent than section 408(a) of SMCRA, but OSM notes that Utah has proposed to address this deficiency in a separate amendment dated April 14, 1994 (administration record No. UT–914). In order to address this additional proposal prior to making a final determination, the Director has decided to defer decision on proposed UCA 40–10–28(2)(a).

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's response to them.

1. Public Comments

OSM invited public comments on the proposed Utah program and plan amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i) and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program and Utah plan (administrative records Nos. UT–903 and UT–952).

The Bureau of Mines responded in telephone conversations on March 27 and July 29, 1994, that it had no comments (administrative record No. UT–906 and UT–964).

The Bureau of Mines responded in telephone conversations on March 27 and July 29, 1994, that it had no comments (administrative record Nos. UT–906 and UT–964).

By memorandum dated June 8, 1994, the U.S. Fish and Wildlife Service stated that it had reviewed the proposed changes and has no comment on them (administrative record No. UT–938).

The U.S. Army Corps of Engineers responded on August 10, 1994, that it found the changes to be satisfactory to the agency (administrative record No. UT–963).

By letter dated August 15, 1994, the Mine Safety and Health Administration (MSHA) stated that it had reviewed the (administrative record No. UT–966). No revisions to the proposed amendment were suggested.

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 12512 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence. Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record Nos. UT–903 and UT–952). It responded on March 31 and July 28, 1994, that it had no comments and did not believe that there would be any impacts to water quality standards promulgated under authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) (administrative record Nos. UT–909 and UT–957).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. UT–903). Neither the SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, Utah's proposed amendment as submitted on March 7, 1994, and as supplemented with additional explanatory information on July 5, 1994.

The Director defers decision on, as discussed in: finding No. 5, UCA 40–10–20(3), concerning contest of violation or amount of civil penalty; finding No. 7, UCA 40–10–28(1)(a)(ii), concerning recovery of abandoned mine land reclamation costs; and finding No. 9, UCA 40–10–28(2)(a), concerning liens against reclaimed abandoned mine land.

The Director approves, as discussed in: finding No. 1, UCA 40–10–20(1) (b) and (c), concerning civil penalty for violation of chapter, UCA 40–10–20(3) (b), (c), and (d), concerning public hearings, UCA 40–10–20 (5) and (6), concerning criminal penalties, and UCA 40–10–28(1), (1)(a)(i), (1)(b) (ii), and (iii), concerning recovery of reclamation costs and liens against reclaimed abandoned mine land; finding No. 2, UCA 40–10–20(2), concerning informal conferences, UCA 40–10–20(3)(e), concerning public hearings, and UCA 40–10–28.1(6), concerning certification of completion of coal reclamation; finding No. 4, UCA 40–10–20(1)(a) and (3)(a), concerning delegation of authority for assessing civil penalties; finding No. 6, UCA 40–10–20(8), concerning civil penalty for failure to correct violation; and finding No. 8, UCA 40–10–28(1)(b)(i) and (2)(b), concerning delegation of authority to waive fees and liens against reclaimed abandoned mine land.

With the requirement that Utah further revise its statute, the Director does not approve, as discussed in: finding No. 3, UCA 40–10–14(6), concerning appeals to district court.

The Director is taking this opportunity to revise 30 CFR 944.20 to include the date Utah's plan was approved by OSM.

The Federal regulations at 30 CFR Part 944 codifying decisions concerning the Utah program and Utah plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program and plan amendment process and to encourage States to bring their programs and plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal

regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Utah program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Utah of only such provisions.

VII. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs, abandoned mine land reclamation (AMLR) plans, program amendments, and plan revisions since each such program or plan is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)) while State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

VIII. List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for Part 944, continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (bb) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(bb) With the exceptions of UCA 40–10–14(6), concerning appeals to district court and deletion of UCA 40–10–20(3), concerning contest of the violation or amount of the penalty, the revisions to the following sections of the Utah Code Annotated 1953, Title 40, as submitted to OSM on March 7, 1994, and as supplemented with explanatory information on July 5, 1994, are approved effective September 27, 1994:

40–10–14(3), Hearings.
40–10–20(1), Civil Penalty for Violation of Chapter.
40–10–20(2), Informal Conferences.
40–10–20(3), Public Hearings.
40–10–20 (5) and (6), Criminal Penalties.
40–10–20(8), Civil Penalty for Failure to Correct Violation.

3. Section 944.16 is amended by adding paragraph (b) to read as follows:

§ 944.16 Required program amendments.

* * * * *

(b) By March 26, 1995, Utah shall submit a proposed amendment for UCA 40–10–14(6) to eliminate the discrepancy in appellate procedures that govern Board of Oil, Gas and Mining decisions on permit applications in a manner no less stringent than section 526(e) of SMCRA.

4. Section 944.20(a) is revised to read as follows:

§ 944.20 Approval of Utah abandoned mine plan.

(a) The Utah Abandoned Mine Plan, as submitted on February 9, 1983, and as subsequently revised, is approved effective June 3, 1983.

* * * * *

5. Section 944.25 is amended by adding paragraph (b) to read as follows:

§ 944.25 Approval of amendments to State abandoned mine plan.

* * * * *

(b) With the exceptions of UCA 40-10–28(1)(a)(ii), concerning recovery of reclamation costs and UCA 40–10–28(2)(a), concerning liens against reclaimed land, the revisions to the following sections of the Utah Code Annotated 1953, Title 40, as submitted to OSM on March 7, 1994, are approved effective September 27, 1994:

40–10–28 (1), (1)(a)(i), and (1)(b), Recovery of Reclamation Costs.
40–10–28(2)(b), Liens Against Reclaimed Land.
40–10–28.1(6), Certification of Completion of Coal Reclamation.

[FR Doc. 94–23827 Filed 9–26–94; 8:45 am]
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30 CFR Part 944

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Utah regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed revisions to the Utah Coal Mining Rules pertaining to coal exploration subject to provisions of 43 CFR 3480 through 3487, responsibilities of the Division of Oil, Gas and Mining (Division) regarding coal exploration, requirements for coal exploration approval, notices of intention to conduct minor coal exploration, coal exploration compliance and required documents to be available in the exploration area, and performance standards for coal exploration operations that substantially disturb the natural land surface. Utah proposed the amendment with the intent of streamlining the Utah regulatory program and making the exploration process more responsive to field needs for coal seam information.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program for the regulation of coal exploration and coal mining and reclamation operations on non-Federal and non-Indian lands. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated January 27, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT–888). Utah submitted the proposed amendment at its own initiative. The provisions of the Utah Coal Mining Rules that Utah proposed to revise pertain to its coal exploration rules at Utah Administrative Rule (Utah Admin. R.) 645–200–100, scope of rules for coal exploration; Utah Admin. R. 645–200–200, responsibilities of the Division; Utah Admin. R. 645–201–100, requirements for coal exploration approval; Utah Admin. R. 645–201–200, notices of intention to conduct minor coal exploration; and Utah Admin. R. 645–202–100, required documents.

OSM announced receipt of the proposed amendment in the February 25, 1994, **Federal Register** (59 FR 9153), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. UT–897). Because no one requested a public hearing or meeting, none was held. The public comment period ended on March 28, 1994.

During its review of the amendment, OSM (1) identified concerns relating to the provisions of the Utah Coal Mining Rules at Utah Admin. R. 645–202–232, roads and other transportation facilities, and Utah Admin. R. 645–202–235, disturbance of the hydrologic balance, and (2) provided editorial comments. OSM notified Utah of the concerns by letter dated April 15, 1994 (administrative record No. UT–915).

Utah responded in a letter dated May 10, 1994, by submitting a revised amendment (administrative record No. UT–921). Utah proposed revisions to Utah Admin. R. 645–200–200, responsibilities; Utah Admin. R. 645–201–100, responsibilities for coal exploration plan review; Utah Admin. R. 645–201–200, notices of intention to conduct minor coal exploration; Utah Admin. R. 645–201–300, major coal exploration permits; Utah Admin. R. 645–202–100, required documents; and Utah Admin. R. 645–202–200, performance standards.

OSM announced receipt of the proposed revised amendment in the May 24, 1994, **Federal Register** (59 FR 26767) and reopened and extended the public comment period (administrative record No. UT–932). The public comment period ended on June 8, 1994.

During its review of the revised amendment, OSM identified additional concerns relating to (1) Utah Admin. R. 645–200–122, 645–200–123, and 645–201–210, lands designated as unsuitable for surface coal mining, and (2) Utah Admin. R. 645–202–235, disturbance of the hydrologic balance. OSM notified Utah of the concerns by letter dated July 7, 1994 (administrative record No. UT–943).

Utah responded in a letter dated July 11, 1994, by submitting a revised amendment (administrative record No. UT–950). Utah proposed revisions to Utah Admin. R. 645–200–100, scope of rules for coal exploration; Utah Admin. R. 645–201–200, notices of intention to conduct minor coal exploration; and Utah Admin. R. 645–202–200, performance standards.

Based upon the additional revisions to the proposed program amendment submitted by Utah, OSM reopened the public comment period in the July 29, 1994, **Federal Register** (59 FR 38578, administrative record No. UT–956). The public comment period ended on August 15, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Utah on January 27, 1994, and as revised by it on May 10 and July 11, 1994, is no less effective than the corresponding Federal regulations.

Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Utah's Coal Mining Rules

Utah proposed revisions to the following previously approved rules that are nonsubstantive in nature and consist of minor editorial or grammatical changes (the corresponding Federal regulation provisions are listed in parentheses):

Utah Admin. R. 645–201–323.100 (30 CFR 772.12(b)(8)(iv)), narrative description of the proposed exploration area, and

Utah Admin. R. 645–201–342.200 (30 CFR 772.12(d)(2)(ii)), approval or disapproval of an application for a major coal exploration permit.

Because the proposed revisions to these previously approved rules are nonsubstantive in nature, the Director finds that the proposed Utah rules are no less effective than the corresponding Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to Utah's Coal Mining Rules That Are Substantially Identical to the Corresponding Provisions of the Federal Regulations

Utah proposed revisions to the following rules that are substantive in nature and contain language that is substantially identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses):

Utah Admin. R. 645–200–121 (30 CFR 772.1), coal exploration which is subject to 43 CFR parts 3480 through 3487,

Utah Admin. R. 645–201–200 through 220 (30 CFR 772.11), notices of intention to conduct minor coal exploration,

Utah Admin. R. 645–202–100 (30 CFR 815.13), required documents,

Utah Admin. R. 645–202–232 (30 CFR 815.15(b)), performance standards for

roads or other transportation facilities used for coal exploration, and

Utah Admin. R. 645–202–235 (30 CFR 815.15(i), performance standards which minimize disturbance of the hydrologic balance.

Because these proposed Utah rules are substantially identical to the corresponding provisons of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. Utah Admin. R. 645–200–122, R. 645–200–123, 645–201–223, and 645–201–310, Coal Exploration in Relation to an Approved Permit Area

Utah proposed that its rules at Utah Admin. R. 645–200–122, 645–200–123, 645–201–223, and 645–201–310 setting forth the scope of Utah's coal exploration rules, would apply to "coal exploration" instead of coal exploration that occurs "outside an approved permit area" or coal exploration that occurs" "in relation to an approved permit area."

The corresponding Federal regulations at 30 CFR 772.11, for coal exploration operations removing 250 tons or less of coal, and at 30 CFR 772.12, for coal exploration operations removing more than 250 tons of coal, apply to coal exploration conducted "outside a permit area." In promulgating this language, OSM explained in the preamble for these Federal regulations that a coal exploration permit is not appropriate for coal exploration on lands covered by a surface coal mining permit because exploration within the permit area should have been planned as an integral part of the surface coal mining and reclamation operations (44 FR 14901, 15017–8; March 13, 1979). The effect of these Federal regulations is that, for proposed coal exploration within the permit area, the State regulatory authority would review and approve, as appropriate, the proposed coal exploration in conjunction with the review and approval of a permit application, and for coal exploration outside the permit area, would review and approve the proposed coal exploration pursuant to the appropriate rules for coal exploration.

Utah's proposed deletions of the phrases concerning approved permit areas are consistent with OSM's regulations and the rationale for them in the preamble to the Federal regulations. Therefore, the Director finds that Utah's proposed revisions to Utah Amin. R. 645–200–122, 645–200–123, 645–201–223, and 645–201–310 are no less effective than the corresponding Federal regulations at 30 CFR 772.11 and 772.12. The Director approves these proposed rules.

4. Utah Admin. R. 645–200–220, 645–200–230, and 645–201–100 through 645–201–130, Responsibilities of the Division and Coal Exploration Plan Review

Utah proposed revisions to its rules at (1) Utah Admin. R. 645–200–220 to provide that it is the Division's responsibility to review and enforce the terms of each notice of intention to conduct coal exploration; (2) Utah Amin. R. 645–200–230 to provide that it is the Division's responsibility to review and approve or disapprove major coal exploration applications and issue, condition, suspend, revoke, and enforce major coal exploration permits and coordinate with other government agencies; and (3) Utah Admin. R. 645–201–100 through 645–201–130 to provide that it is the Division's responsibility to review coal exploration plans on lands which are not subject to the requirements of 43 CFR 3480 through 3487, and to provide that, on lands [Federal lands] where the requirements of 43 CFR 3480 through 3487 apply, the review of coal exploration plans will be guided by the appropriate part of 43 CFR.

The Federal regulations at 30 CFR part 772 establish the requirements and procedures applicable to coal exploration operations on all lands except for Federal lands subject to the requirements of 43 CFR parts 3480 through 3487. The Federal regulations at 43 CFR 3480 through 3487 pertain to operations for the exploration, development, and production of Federal coal under Federal coal leases, licenses, and permits, regardless of surface ownership, pursuant to the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181, *et seq.*). The responsibility for administration of the Mineral Leasing Act is vested with the Bureau of Land Management.

Utah's proposed revision at Utah Admin. R. 645–201–110 and 645–201–120 to provide that only coal exploration operations on lands which are not subject to 43 CFR parts 3480–3487 will be regulated by the Division is thus an appropriate limitation on the Division's regulatory authority and is consistent with the corresponding limitation in the Federal regulations.

In addition, although the specific responsibilities of a State regulatory authority in administering the coal exploration program within a State are not addressed in the Federal regulations at 30 CFR Part 772 for coal exploration, the Federal regulation at 30 CFR 731.14(c)(1) requires each State to have enacted and promulgated laws and regulations which will allow the State to implement, administer, and enforce its program, and to regulate coal exploration and surface coal mining and reclamation operations in accordance with SMCRA. Utah's proposed regulations at Utah Admin. R. 645–200–220 and 645–200–230, specifying the regulatory responsibilities of the Division, are thus consistent with the requirements of 30 CFR 731.14(c)(1).

Therefore, based on the foregoing discussion, the Director finds that Utah Admin. R. 645–200–220, 645–200–230, and 645–201–100 through 645–201–130 are not inconsistent with the Federal regulations at 30 CFR Part 772. The Director approves these proposed rules.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's response to them.

1. Public Comments

OSM invited public comments on the proposed amendment (administrative record No. UT–891), but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program.

In separate telephone conversations on February 11, June 1, and July 29, 1994, the Bureau of Mines stated it had no comments on the proposed amendment (administrative record Nos. UT–893, UT–933, and UT–965).

The U.S. Fish and Wildlife Service responded by letter dated March 7, 1994, that it found nothing of significant concern to the agency and again, by letters dated June 8 and August 9, 1994, that it had reviewed the proposed changes and had no comment on them (administrative record Nos. UT–901, UT–937, and UT–960).

By letters dated March 23 and August 29, 1994, the Mine Safety and Health Administration (MSHA) stated that it had reviewed the amendment and that there appeared to be no conflict with the requirements of 30 CFR (administrative record No. UT–904).

The U.S. Army Corps of Engineers responded by letters dated June 6 and August 10, 1994, that it found the changes to be satisfactory (administrative record Nos. UT–934 and UT–962).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its amendment pertained to air or water quality standards. Therefore, OSM did not request EPA's concurrence with the proposed amendment. However, pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. UT–891). EPA responded by letters dated February 15 and June 8, 1994 (administrative record Nos. UT–894 and UT–936), that it had no comments on the proposed amendment and that it did not believe there would be any impacts to water quality standards promulgated under authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. UT–891). By letter dated August 4, 1994, the SHPO indicated, after review of Utah Admin. R. 645–202–300, that it concurred with the content of the rule and OSM's determination of no effect with respect to the consultation requirements of 36 CFR Part 800 (administrative record No. UT–959). The ACHP did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves Utah's proposed amendment as submitted on January 27, 1994, and revised on May 10 and July 11, 1994. The Director approves, as discussed in: Finding No. 1, Utah Admin. R. 645–201–323.100, concerning the narrative description of the proposed exploration area, and Utah Admin. R. 645–201–342.200, concerning approval or disapproval of an application for a major coal exploration permit; finding No. 2, Utah Admin. R. 645–200–121, concerning coal exploration which is subject to 43 CFR Parts 3480 through 3487, Utah Admin. R. 645–201–200 through 220, concerning, notices of intention to conduct minor coal exploration, Utah Admin. R. 645–202–100, concerning required documents, Utah Admin. R. 645–202–232, concerning performance standards for roads or other transportation facilities used for coal exploration, and Utah Admin. R. 645–202–235, concerning performance standards which minimize disturbance of the hydrologic balance; finding No. 3, Utah Admin. R. 645–200–122, 645–200–123, 645–201–223, and 645–201–310, concerning coal exploration in relation to an approved permit area; and finding No. 4, Utah Admin. R. 645–200–220, 645–200–230, and 645–201–100 through 645–201–130, concerning the Division's responsibilities and coal exploration plan review.

The Federal regulations at 30 CFR Part 944, codifying decisions concerning the Utah program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12886 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

VII. List of Subjects in 30 CFR 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 19, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding paragraph (aa) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(aa) Revisions to the following Utah Coal Mining Rules, as submitted to OSM on January 27, 1994, and as revised on

May 10 and July 11, 1994, are approved effective September 27, 1994:

645–200–121, 122, and 123, Coal Exploration Categories.
645–200–220, and 230, Division Responsibilities.
645–201–100 through 130, Responsibilities for Coal Exploration Plan Review.
645–201–200 through 220 and 223, Notices of Intention to Conduct Minor Coal Exploration.
645–201–310, Major Coal Exploration Permits.
645–201–323.100, Narrative Description of the Proposed Exploration Area.
645–201–342.200, Approval or Disapproval of an Application for a Major Coal Exploration Permit.
645–202–100, Required Documents.
645–202–232, Performance Standards for Roads or Other Transportation Facilities Used for Coal Exploration.
645–202–235, Performance Standards which Minimize Disturbance of the Hydrologic Balance.

[FR Doc. 94–23823 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 946

Virginia Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with exceptions, of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment includes changes to Virginia's regulations relative to siltation structures and impoundments, revegetation standards for success, and roads and road construction. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards and to clarify and correct inconsistencies in Virginia's rules.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, P.O. Drawer 1217, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Virginia Program

The Secretary of the Interior approved the Virginia program on December 15, 1981. Background information on the Virginia program including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Proposed Amendment

By letter dated October 22, 1993 (Administrative Record No. VA–829), Virginia submitted proposed amendments to its regulatory program. The amendments address issues initially submitted to OSM on October 1, 1990 (Administrative Record Number VA–768), but subsequently withdrawn by Virginia in a letter dated May 12, 1992 (Administrative Record No. VA–818), as discussed in the final rule issued July 7, 1992 (57 FR 29788). Virginia submitted the request to withdraw portions of the October 1, 1990, submission (as modified April 18, 1991) in order to reconsider various proposals. Virginia's October 22, 1993, submission addresses the sections that Virginia withdrew in its May 12, 1992, letter except for §§ 773.16(c)(4)(ii) and 773.16(c)(7).

OSM announced receipt of the October 22, 1993, proposed amendments in the November 4, 1993, **Federal Register** (58 FR 58827), and in the same document opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period closed on December 6, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. Section 480–03–19.816/817.49(a)(3)

Virginia proposes to add new stability design requirements at § 480–03–19.816/817.49(a)(3)(ii) for impoundments not meeting the size or other criteria of 30 CFR 77.216(a), except for a coal mine waste impounding structure. The impoundments, located where failure would not be expected to result in loss of life or serious property damage, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions. These proposed provisions are substantively identical to the Federal rule at 30 CFR 816/817.49(a)(3)(ii). The amendment further provides for use of earth embankments whose top widths are no less than 10 feet and whose embankment slopes are 2h:1v or flatter, provided the permittee documents that a minimum static safety factor of 1.3 can be met using the graphical solution methods outlined in the "Bureau of Mines Report of Investigations/1981, RI 8564, Factor of Safety Charts for Estimating the Stability of Saturated and Unsaturated Tailings Pond Embankments, United States Department of the Interior." By letter dated February 23, 1994 (Administrative Record No. VA–836), OSM advised Virginia that the graphical solution methods could be used in lieu of engineering tests, for low hazard impoundments not meeting the size or other criteria of 30 CFR 77.216(a) if all the appropriate parameters needed to use the graphs in RI 8564 are adequately documented for each embankment. OSM pointed out that the appropriate parameters included:

—Unit weight of the soil
—Height of the embankment
—Internal friction angle
—Cohesion
—Pore pressure ratio
—Slope of the embankment
—Depth factor

In addition to satisfying these parameter requirements, OSM stated that the embankment would have to be constructed of homogeneous material and the stiff base under the foundation must be flat. By letter dated March 16, 1994 (Administrative Record No. VA–837), Virginia agreed that the parameters set forth in OSM's letter of February 23, 1994, will be required by the State for use with the graphs in RI 8564 and that the parameters must be documented for each embankment. Virginia further agreed that the embankment will be required to be constructed of homogeneous material and the stiff base under the foundation will be required to be flat. The Federal regulations at 30 CFR 816/817.49(a)(3)(ii), 780.25(c)(3) and 784.16(c)(3) provide for an alternative to engineering tests that establish for impoundments a minimum

static safety factor of 1.3. If a State regulatory authority, through the State program amendment process, can establish engineering design standards that ensure stability comparable to the 1.3 minimum static safety factor, then such design standards are no less effective than 816/817.49(a)(3)(ii). The Director has determined that the proposed amendment to the Virginia regulations at § VR 480.03.19.816/817.49(a)(3)(ii), as clarified by Virginia on March 16, 1994, ensures stability comparable to the 1.3 minimum static safety factor and is no less effective than the Federal rules at 30 CFR 816/817.49(a)(3)(ii).

2. Section VR 480–03–19.816/817.116(b)(3)

Virginia proposes to revise § VR 480–03–19.816/817.116(b)(3)(v)(A) regarding the stocking of trees, shrubs, half-shrubs, and the ground cover established on the revegetated area where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land, by deleting the phrase "approximate the stocking and ground cover on the surrounding unmined area." The Director finds the deleted language to be duplicative of requirements already found in the Virginia program. Therefore, the proposed deletion will not render Virginia's regulations less effective than the Federal requirements at 30 CFR 816.116(b)(3).

3. Section VR 480–03–19.816/817.116(c)(3)

Virginia proposed to revise these subsections by deleting the term "conservation" and replacing that term with the term "husbandry." In its submittal of this amendment Virginia stated that the wording change was made to make the language consistent with the counterpart Federal provisions at 30 CFR 816/817.116(c)(4). In addition to the proposed wording change, Virginia submitted administrative record information containing a list of normal husbandry practices and related reference materials intended to support the practices identified by Virginia as normal husbandry practices.

The Federal regulations at 30 CFR 816/817.116(c)(4) allow State regulatory authorities to select certain husbandry practices that will not extend the period of responsibility for successful revegetation and the bond liability of the permittee. These practices must be expected to continue as part of the postmining land use or that after discontinuance, the likelihood of permanent success is not reduced. Such practices must be submitted through the State program amendment process and must be approved by OSM before the State can implement such practices.

Upon review of the materials provided by Virginia, OSM determined that there was no document establishing the list of practices as Virginia policy. In addition, there was no information explaining how the lists and technical references would be used. In a letter to Virginia dated February 23, 1994 (Administrative Record No. VA–836), OSM addressed its concerns with the proposed husbandry practices amendment. Virginia responded by letter dated May 12, 1994 (Administrative Record No. VA–838). The State provided the following clarification.

Virginia stated that within 30 days of OSM's approval of the husbandry practices provision, Virginia will issue a policy statement concerning husbandry practices. The draft policy statement submitted by Virginia reads as follows:

> The Virginia program at 480–03–19.816/817.116(c)(3) provides that the Division may approve selective husbandry practices that may be utilized without extending the period of responsibility for revegetation success and bond liability. On October 1, 1990, DMLR submitted for OSM's approval a limited list of the selected practices that can be used in Virginia. On _____ OSM published in the **Federal Register** its final approval of the selected husbandry practices.
>
> Pursuant to this program amendment, there are a finite number of husbandry practices that have been approved by OSM. Coal surface mining operations may utilize only this list of practices without extending the bond liability period. For a copy of the program amendment or a description and supporting literature/publications, please contact Jerry Legg at the Division's Big Stone Gap Office.

This draft language satisfies one of OSM's concerns about the proposed husbandry practices by making the following point: The list of husbandry practices approved by OSM comprises the only approved husbandry practices which may be used by industry without restarting the period of responsibility for reclamation success and bond liability.

The following husbandry practices, were submitted and described by Virginia on October 22, 1993 (Administrative Record Number VA–829).

Forestry—Common management practices for the land use of unmanaged forestry that will be allowed in Virginia without the restart of the bonding liability period:

Replanting of trees
Herbicide application
Pest control
Repair of rills and gullies as necessary to implement the land use

Commercial Forestry—Common management practices for land use of commercial forestry that will be allowed in Virginia without the restart of the bonding liability period:

Replanting of trees
Herbicide application
Basal pruning
Insecticide application
Mowing
Fertilization and liming
Repair of rills and gullies as necessary to implement the land use

Hayland/Pasture—Common management practices for the land use of hayland/pasture that will be allowed in Virginia without the restart of the bonding liability period:

Repair of rills and gullies
Application of lime fertilizer
Maintenance, weed and brush control
Rotation or continuous grazing
Reseeding or spot seeding
Fencing

Commercial, Industrial, Residential, or Recreational—Common management practices for the land uses of commercial, industrial, residential, or recreational that will be allowed in Virginia without the restart of the bonding liability period:

Planting or replanting of trees
Application of lime and fertilizer
Surface roughing or the repair of rills and gullies
Seeding or reseeding
Irrigation
Sodding
Weed and pest control
Topsoiling and other standard landscaping practices
Gravel or asphalt
Construct structures

In the administrative record information provided by Virginia concerning the husbandry practices of reseeding and spot seeding, these practices are limited to those situations listed below.

Hayland/Pasture

Periodic reseeding to maintain or improve the desired combination of grasses and legumes.

Seeding for weed control.

Spot seeding in high traffic areas: e.g., around water troughs, salt licks, and areas damaged by livestock.

Seeding of reclaimed rills and gullies.

Commercial, Industrial, Residential, or Recreational

Reseeding to prevent rill erosion.

Seeding to maintain the desired mix of plants.

In its May 12, 1994, letter to OSM, Virginia also clarified the following points concerning its implementation of the husbandry practices provision. Virginia proposes to limit the extent of reseeding or spot seeding that it will allow as husbandry practice to a maximum of 10 percent of the applicable area. Virginia will also use the 10-percent figure to limit areas where liming, fertilization, and irrigation may be used in excess of the levels normally applied to similar lands with the same land use.

The 10-percent figure is inspired by the Virginia regulations concerning revegetation success. Specifically, VR 480–03–19.816.116(a)(2) provides that ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the approved success standard. The Federal regulations at 30 CFR 816.116(a)(2) have a similar standard.

While the 10-percent statistical standard in the revegetation rules does not directly apply to husbandry practices, the proposed limiting of reseeding or spot seeding to 10 percent is reasonable. However, the Director finds that some additional limits must apply. For example, normal husbandry practices do not include large barren blocks of the reclaimed area. On the contrary, large blocks of barren areas (such as a block representing 10 percent of the applicable area) would indicate failed reclamation, not successful revegetation. Additionally, in revegetated areas which pass the established 90-percent standard bare or poorly revegetated areas are likely to be scattered about the applicable area, and not large blocks of barren land. Again, large blocks of barren areas would indicate failed reclamation. Consequently, the reseeding of such large blocks of barren areas representing failed reclamation would be augmentative seeding and would necessitate the restarting of the period of responsibility for reclamation success and bond liability. In addition, the reestablished vegetation must be in place for a sufficient length of time so as not to adversely affect Virginia's ability to make a valid determination at the time of bond release of the success of the reclamation.

In the special case of the repair of rills and gullies as part of a forestry postmining land use, the administrative record contains a September 27, 1990, letter from the Virginia Department of Forestry. In that letter, the Regional Forester states that rills and gullies need not be repaired "as a part of typical forest management unless the magnitude of the gully would interfere with the land use (of forestry)." The letter goes on to say that rills and gullies often occur naturally in the steep slope areas of the Appalachian Region. OSM agrees that the repair of occasional and minor rills and gullies where proper grading and erosion management is practiced could be considered part of normal forestry management practice.

Virginia clarified its interpretation of the degree of allowable repair of rills and gullies. Since erosion is a natural phenomenon, the repair of minor rills and gullies is not viewed by the Virginia program as a violation, nor does it require restarting of the bonding clock. However, the State added, the Virginia program considers erosion that repeatedly creates rills and gullies over a large area as a violation of at least one performance standard and potentially a violation of several standards. When the permittee fails to comply with the Virginia performance standards and rills and gullies repeatedly develop over a large area, Virginia will require restarting of the responsibility period. Virginia has demonstrated, and the Director finds through this amendment, and Virginia's clarifications and administrative record information, that in the State of Virginia, certain specified instances of rill and gully repair associated with land used for Forestry, Commercial forestry, Commercial, industrial, residential, or recreational, and Hayland/pasture will be considered a normal husbandry practice.

Virginia also clarified that the husbandry practices for areas designed to enhance fish and wildlife will be consistent with the practices set forth for unmanaged forestry. The Director finds this to be reasonable.

Virginia stated that since the Virginia coalfields are primarily located on steep slopes, there has been no incident where cropland, other than hay, has been developed on the postmining land use. Consequently, Virginia has not developed nor proposes any husbandry practice for such croplands. Should the Virginia coalfields expand or crop production become a viable option, the State will develop husbandry practices relevant to those crops and submit them to OSM for approval. Such practices will not be permitted by the State until approved by OSM. The Director concurs with the understanding that the State will submit any new husbandry practices to OSM for approval prior to their being permitted in Virginia.

With the exceptions listed below, the Director finds the proposed amendment as augmented by the administrative record information submitted with this amendment, and as clarified by Virginia by letter dated May 12, 1994, is no less effective than the Federal regulations at 30 CFR 816/817.116(c)(4). This finding is made with the understanding that the policy statement to be issued by Virginia concerning normal husbandry practices will be identical in meaning to the draft language of that policy statement submitted to OSM by letter dated May 12, 1994. The Director is not approving as normal husbandry practice the reseeding of large blocks of areas made barren by poor reclamation, or where the reestablished vegetation has not been in place for a sufficient length of time for Virginia to make a valid determination of the success of the reclamation at the time of bond release.

4. VR § 480–03–19.816/817.151(b)

Virginia proposes to revise this section by changing the title from "Embankments" to "Safety factor," and by changing the language in (b)(1) to (1) reference "organic material" rather than "vegetative material," and (2) add the phrase "or other unsuitable material." These changes were proposed by Virginia in response to an issue letter from OSM dated March 20, 1991 (Administrative Record No. VA–792). The issue letter refers to the proposed program amendment submitted by Virginia on October 1, 1990, as discussed herein at II. Submission of Amendment. In that letter, OSM also asked Virginia to amend this rule to reflect that keyway cuts extend a minimum of two feet below the toe of the fill and that material placed in road embankments will be within acceptable moisture content levels. In its current submission, Virginia did not make the suggested changes, but provided clarification intended to show that its current regulations adequately address OSM's concerns.

Virginia's Department of Mines, Minerals and Energy (DMME) interprets its existing regulations to require keyway cuts beneath embankments on steep slopes to provide for stability of road embankments. The design of the keyway will be prepared by, or under the direction of, the applicant's registered professional engineer and will be reviewed by a DMME engineer. A minimum width of ten feet is specified and the keyway must be sloped inward in all cases. While other specifications may be proposed by the applicant or required by DMME, taking into account the conditions of the site, DMME believes the general requirement that keyway cuts be constructed at the toe of the road fills on steep slopes and the specific width and slope standards provide sufficient detail to ensure road embankment stability in most site

specific cases. However, DMME interprets its regulations to require appropriate design given unusual site specific conditions. DMME retains the authority to require a keyway that has a two foot minimum depth below the toe of a road fill embankment as necessary when the foundations of the embankment is located in bedrock.

DMME also feels that its current regulations adequately address OSM's concerns regarding moisture content of materials placed in road embankments on steep slopes. According to DMME, its regulations require such road embankments to be constructed in uniform compacted layers. In order to achieve a desired degree of compaction, materials must be placed within the acceptable range of moisture content. The DMME interprets its rule to embody the requirement that materials must be within the acceptable range of moisture content if the larger performance standard, that of placement in compacted layers, is to be achieved. DMME believes that its existing regulation is as effective as the Federal regulation. The Director finds that based upon the March 20, 1991, letter and the clarification provided by Virginia, that VR 480–03–19.816/817.151(b)(1) through (4) as set forth in Virginia's October 22, 1993, submission is consistent with the Federal rules set forth at 30 CFR 816/817.151, 780.37(c) and 784.24(c).

5. VR § 480–03–19.816/817.152

Virginia proposes to revise the language of this rule relating to the waiver of design standards for existing roads. As originally submitted on October 22, 1993, the proposed language could be read to imply that existing roads do not have to meet the performance standards of VR 480–03–19.816/817.150 and 816/817/151. In its issue letter dated February 23, 1994, OSM suggested new language which would resolve the controversy. In its March 16, 1994, response to the issue letter, Virginia revised the proposed language consistent with OSM's suggestion. The current proposal provides that where existing roads that are to be used meet the performance standards of 816/817.150 and 816/817.151 and it can be demonstrated that reconstruction to meet the design standards of those provisions would result in greater environmental harm, the Division may waive the design requirements. Therefore, the Director finds that the provisions of VR 480–03–19.816/817.152, as revised on March 16, 1994, are not inconsistent with the requirements of 30 CFR 701.11(e) which allow existing structures that meet the performance standards but not the design requirements to be exempt from meeting the design requirements.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), the Director solicited comments from various Federal agencies with an actual or potential interest in the Virginia program. The U.S. Soil Conservation Service, U.S. Mine Safety and Health Administration, and the Environmental Protection Agency acknowledged receipt of the amendment without comment.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Air Act (42 U.S.C. 7401 *et seq.*) or the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

V. Director's Decision

Based on the above findings, the Director approves, with the exceptions noted in Finding 3 above, the proposed amendment with supplemental administrative record information which was submitted by Virginia on October 22, 1993, and as revised on March 16, 1994, and on May 12, 1994.

The Federal regulations at 30 CFR 946, codifying decisions concerning the Virginia program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not operational until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Virginia of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that

require approval by OMB under the Paperwork Reduction Act (44 U.S.C 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1994.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended by adding paragraph (hh) to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(hh) The following amendment, with supplemental administrative record information, pertaining to the Virginia regulatory program, as submitted to OSM on October 22, 1993, and revised on March 16, 1994, and May 12, 1994, is approved, except as noted herein, effective September 27, 1994. The amendment consists of revisions to the following provisions of the Virginia Coal Surface Mining Reclamation Regulations.

VR 480–03–19.816	Topic
816.49(a)(3)(ii)	Permanent Program Performance Standards—Surface Mining Activities; Impoundments.
816.116(b)(3)(v)(A)	Permanent Program Performance Standards—Surface Mining Activities; Revegetation: Standards for Success.
816.116(c)(3)	Permanent Program Performance Standards—Surface Mining Activities; Revegetation: Standards for Success, except not approved as normal husbandry practice is the reseeding of large blocks of areas made barren by poor reclamation, or where the reestablished vegetation has not been in place for a sufficient length of time for Virginia to make a valid determination of the success of the reclamation at the time of bond release.
816.151(b)	Permanent Program Performance Standards—Surface Mining Activities; Primary Roads.
816.152	Permanent Program Performance Standards—Surface Mining Activities; Existing Roads.
817.49(a)(3)(ii)	Permanent Program Performance Standards—Underground Mining Activities; Impoundments.
817.116(b)(3)(v)(A)	Permanent Program Performance Standards—Underground Mining Activities; Revegetation: Standards for Success.
817.116(c)(3)	Permanent Program Performance Standards—Underground Mining Activities; Revegetation: Standards for Success.
817.151(b)	Permanent Program Performance Standards—Underground Mining Activities; Primary Roads.
817.152	Permanent Program Performance Standards—Underground Mining Activities; Existing Roads.

[FR Doc. 94–23826 Filed 9–26–94; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Huntington 94–006]

RIN 2115–AA97

Safety Zone; Ohio River, Mile 313.0 to 315.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Ohio River. This regulation is needed to control vessel traffic in the regulated area to prevent potential safety hazards for transiting vessels resulting from pipelaying operations, including underwater blasting, as part of a gas pipeline construction project in the vicinity of mile 314.0, Ohio River, Ceredo-Kenova, West Virginia. Vessel movements within this safety zone are permitted under the criteria set forth in this regulation.

EFFECTIVE DATES: This regulation is effective at 7 a.m. EDT on September 12, 1994. It terminates on October 31, 1994 at 8 p.m. EST, unless terminated sooner by the Captain of the Port Huntington.

FOR FURTHER INFORMATION CONTACT: LTJG Sean Moon, Chief of the Port Operations Department, Captain of the Port, Huntington, West Virginia at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are ENS Steve Frye, Project Officer, Marine Safety Office, Huntington, West Virginia and LT S. Moody, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, anticipated pipelaying operations, including underwater blasting, as part of a gas pipeline construction project in the vicinity of mile 314.0, Ohio River, Ceredo-Kenova, West Virginia, have created a situation which presents an immediate hazard to navigation, life, and property. As a result, the Coast Guard deems it to be in the public's best interest to issue a regulation immediately.

Background and Purpose

The activity requiring this regulation is a gas pipeline construction project. The Captain of the Port Huntington did

not receive notice of the project until September 2, 1994. Pentzien, Inc. of Omaha, Nebraska, working under contract for Columbia Gas of Charleston, West Virginia, will begin construction September 12, 1994 on an open-cut, dredged crossing in which a new gas line will replace the old gas line between Wayne County, West Virginia and Lawrence County, Ohio at mile 314.0 on the Ohio River. Pentzien, Inc. engineers anticipate completion of the construction on or before October 31, 1994. The presence of a drill barge and dredging equipment, conducting dredging and underwater blasting operations, will pose an obstructive and, at times, explosive hazard to waterborne traffic transiting in the vicinity of the construction project work site. In order to provide for the safety of vessel traffic, the Captain of the Port Huntington intends to regulate vessel traffic in that portion of the Ohio River where dredging and blasting operations will be taking place until the hazard is mitigated. All transiting vessels must contact the M/V JOE KIZZIAH, which will be tending the dredging and drill barges, on either channel 13 or 16 in order to transit the area during dredging operations. No vessels will be allowed to transit during the blasting portion of these operations. Notice of this safety zone will be published in the Local Notice to Mariners and in regularly scheduled Broadcast Notice to Mariners.

Description of the Dredging

The dredging operation will be taking place 24 hours per day, seven (7) days a week. Excavation of the river bottom will be with a 100 ton bucket dredge mounted on a 120 foot by 45 foot spud barge, MANITOWAC. The MANITOWAC will be tended by M/V JOE KIZZIAH and should always be in position to allow safe passage to either its left or right. Mariners should contact M/V JOE KIZZIAH for passing instructions. Upon request, the MANITOWAC will cease dredging operations and move to allow sufficient distance for the safe passage of commercial traffic. The M/V JOE KIZZIAH, as well as the dredging and drill barges, will display proper day marks, and lighting during night operations. Such night operations will not involve explosives.

Description of the Blasting

On the average, contractors plan to blast just once a day, occurring sometime after 3:00 p.m., but before dark. No blasting will take place when there is restricted visibility (the contractor must be able to see from bank to bank before blasting). The purpose of the blasting is to form a trench across the subsurface of the Ohio River into which sections of piping will be laid. The drill barge, DRILL BARGE NO. 1, will work in concert with the dredge MANITOWAC drilling into the dredged subsurface of the river and place explosives in the drilled holes as it goes. Drilling will cease each day at 3:00 p.m. at which time contractors will put detonators in place and prepare the area for blasting. Both the dredge and drill barges will be removed to a position well distant from the blasting. Notification of blasting will take place two hours, one hour, forty-five (45) minutes, thirty (30) minutes, fifteen (15) minutes, and immediately prior to blasting. Notification will be via VHF radio channels 13 and 16. After the drill and supply barges have been moved to a safe distance, two boats will be available for the security of the immediate blast area. The boats will be placed up and downriver of the blasting area. These boats will patrol and warn any recreational/commercial vessels traffic of the impending blast. No blasting will be permitted unless all river traffic is removed to a safe location outside of the blasting area. In addition to radio transmissions, contractors will sound warning signals. The warning signal will be a one (1) minute series of long blasts three (3) minutes prior to the blast signal. The blast signal will be a series of short blasts one (1) minute prior to the blast. Immediately following the blast and an inspection of the blast area, an all clear signal will be sounded. The all clear signal will be a prolonged blast, followed by radio notification on VHF channels 13 and 16. Signals will only be sounded by the person responsible for blasting operations. If a vessel not involved with blasting operations is within the safety zone, the contractor will not conduct the detonation until that vessel has cleared the regulated area. The drill barge and blasting equipment will be moved off site to the river bank every night to reduce the obstructive river hazard. The establishment of this safety zone regulation ensures that vessels transiting in the vicinity of the blasting area will maintain a safe distance to eliminate the associated risk. The safety zone also ensures that communication is established between the contractors and vessels transiting the waters within the safety zone. With proper communication between all parties, the contractor is assured of having ample time to comply with a request to move his operation temporarily to allow a vessel to navigate through the zone safely.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, due to the limited duration of actual river closures.

Small Entities

The Coast Guard finds that the impact on small entities is not substantial. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this regulation and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation as an action required to protect public safety.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section 165.T02–055 is added, to read as follows:

§ 165.T02–055 Safety Zone: Ohio River.

(a) *Location.* The Ohio River between mile 313.0 and 315.0 is established as a safety zone.

(b) *Effective dates.* This section becomes effective on September 12, 1994 at 7 a.m. EDT. It terminates on October 31, 1994 at 8 p.m. EST, unless terminated sooner by the Captain of the Port Huntington.

(c) *Regulations.*

(1) Except with the permission of the Captain of the Port, all vessels must:

(i) Remain outside the safety zone once the contract vessel M/V JOE KIZZIAH has completed broadcast notice on Channels 13 and 16 VHF–FM 15 minutes prior to blasting and remain outside of the zone until it has given the all-clear signal (a prolonged blast) and made broadcast notice of the same on Channel 13 or 16 VHF–FM.

(ii) Communicate with the contract vessel M/V JOE KIZZIAH on channel 13 or 16 VHF–FM to arrange for safe passage when either the dredge MANITOWAC and DRILL BARGE NO. 1 (or both) are on site in the Ohio River, providing at least twenty (20) minutes advance notice prior to transiting through the regulated area.

(iii) Provide the contract vessel M/V JOE KIZZIAH at least twenty (20) minutes advance notice to move/suspend operations in any case where the transiting vessel operator believes the safe passage of his vessel or tow is jeopardized by the presence/operation of the dredge MANITOWAC or the DRILL BARGE NO. 1.

(2) Except with the permission of the Captain of the Port, vessels involved with the Columbia gasline blasting and dredging operations must:

(i) M/V JOE KIZZIAH: Communicate with and arrange safe passage through the safety zone for all vessels not involved in the pipelaying project.

(ii) M/V JOE KIZZIAH: Initiate appropriate broadcast notices and warning signals to local mariners prior to and after conducting blasting operations. Two hours, one hour, forty-five (45) minutes, thirty (30) minutes, and fifteen (15) minutes prior to blasting, broadcast on channels 13 and 16 VHF–FM the intention to conduct blasting operations. Approximately three (3) minutes before a blast round is to be detonated, give a series of long blasts for one (1) minute to indicate that the blast area is being secured. Determine the blast area to be secured. Approximately one (1) minute prior to the blast, sound a final warning, consisting of a series of short blasts. Immediately following the blast, inspect/survey the blast area to determine whether it is clear to resume operations. Give an all clear signal consisting of a prolonged blast and radio notification on Channels 13 and 16 VHF–FM, after area is determined to be clear and safe for the resumption of normal operations.

(iii) DRILL BARGE NO. 1: Do not blast if a vessel not involved with the blasting operation is inside the safety zone, or if any contract vessel has not relocated to a safe distance away from the blast area.

(iv) DRILL BARGE NO. 1: Do not initiate any blasting operations in periods of restricted visibility (operator must ensure there is clear bank-to-bank visibility).

(v) All vessels: Relocate to a safe distance prior to conducting blasting operations.

(3) The Captain of the Port may, upon request, authorize a deviation from any rule in this section if he determines that the proposed operations can be done safely.

(4) The Captain of the Port may direct the movement of any vessel within the safety zone as appropriate to ensure the safe navigation of vessels through the safety zone.

Dated: September 9, 1994, 4:30 p.m. EDT.

F.A. Nyhuis,

Commander, U.S. Coast Guard, Captain of the Port, Huntington, WV.

[FR Doc. 94–23896 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AF39

Loan Guaranty: Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations by updating the credit underwriting standards and procedures for processing VA guaranteed home loans. Updating the standards and procedures to keep pace with current economic conditions will increase the likelihood that a veteran obtaining a VA guaranteed loan will be able to repay the loan.

EFFECTIVE DATE: These regulatory amendments are effective October 27, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–7366.

SUPPLEMENTARY INFORMATION: On September 29, 1993, VA published in the **Federal Register** (58 FR 50875) proposed regulatory amendments to 38 CFR 36.4337. VA proposed to amend the credit underwriting standards and procedures for processing VA guaranteed home loans (1) by updating the figures in the residual income guidelines; (2) by requiring that income tax returns be submitted with applications for borrowers who are self-employed, paid on a commission basis, employed in the building trades, or have seasonal jobs; (3) by providing more specific time frames for considering whether income from part-time employment, second jobs overtime, self-employment, and commissions may be considered stable and reliable; (4) by adding guidelines for underwriting cases involving foreclosures and Federally-related debts; and (5) by deleting the requirement that lenders check with VA regional offices on prior VA loans. VA also proposed to delete union dues from items considered job-related expenses because these dues are part of the residual income figure. Please refer to the September 29, 1993 **Federal Register** for a complete discussion of the proposed amendments. VA is adopting the regulatory amendments as originally proposed except for the minor editorial and terminology changes discussed below.

VA received three comments on the proposed amendments. One commenter favored all the amendments. The second, a national association representing certified public accountants, suggested that more accurate accounting terms be used to describe VA's financial requirements for self-employed borrowers. Specifically, the commenter noted that "compile" is the correct term to use to describe the case where an external accountant will "prepare" the financial statements, as required by section 36.4337(f)(7)(i). The commenter also pointed out that independent accountants do not "certify the accuracy" of financial statements, rather, the technically correct usage is to

say that the accountant conducts an "audit". VA agrees that the commenter's suggested terminology is more precise. Accordingly, we are revising paragraph (f)(7)(i) of § 36.4337 of the regulations to read that the profit and loss statement and balance sheet required for self employed applicants be "compiled", rather than "prepared", by an accountant. The words "certified as accurate" are also being deleted from the sentence which was proposed to read, "In some cases the nature of the business or the content of the financial statement may necessitate an independent audit certified as accurate by the accountant."

The third commenter requested clarification of how a loan underwriter determines the stability and reliability of a self-employed applicant's income.

The proposed new paragraph (f)(7) of § 36.4337 states that "income from self-employment is generally considered stable when the applicant has been in business for at least 2 years and that income from less than 2 years of self-employment usually cannot be considered stable unless the applicant has had previous related employment and/or extensive specialized training." It also states that "When an applicant has been self-employed less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes * * *."

As the regulations provide, VA does not require that in every case the self-employed applicant have a two-year period of continuous employment with no gaps. If the applicant has been self-employed for less than two years, it is appropriate in underwriting the loan to also consider the applicant's related employment or specialized training. For example, sufficient weight might be given to the fact that the applicant has had specialized training in his or her field of endeavor, and that therefore, the income from self-employment should be viewed as stable, even though it has been for less than 2 years. However, when the self-employment has been for less than one year, it would be very difficult to consider the income stable and reliable. In other words, in cases where the loan applicant has been self-employed for less than one year, it would not be possible to view his or her income as stable unless the applicant's training and/or related experience is such as to clearly show a very strong likelihood of success.

This commenter also asked "If the two-year history of employment applies, must it be continuous or should factors such as schooling or training be considered during that time even if no income resulted?"

As noted above, the proposed regulations provide for the consideration of training and schooling when determining the adequacy of income from self-employment. Thus it is possible to consider income as stable and reliable with less than 2 years of continuous employment, provided gaps in employment are sufficiently explained by adequate documentation of schooling or training. It is clear that the language in paragraph (f)(7)(i) is adequate to prescribe the intended standard and, therefore, the paragraph will be published as originally proposed.

VA is making an editorial change to paragraph (g) of the regulations. Language now contained in paragraph (f)(1) of the regulations explaining the requirements of the Equal Credit Opportunity Act, is being repeated in paragraph (g) for the purposes of clarity.

Accordingly, except for the terminology and editorial changes already discussed, VA is publishing these regulations as originally proposed.

The information collection requirement contained in paragraphs (f)(6), (f)(7) and (f)(9) of § 36.4337 of these regulations has been approved by the Office of Management and Budget (OMB) under OMB control number 2900–0521.

The Secretary hereby certifies that the proposed regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These changes will not result in any major new administrative or procedural burdens on lenders or other program participants. They simply revise the criteria established by VA in determining whether home loans for veterans will be guaranteed by VA based on the veteran's income and credit history.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing Loan program—housing and community development, Manufactured homes, Veterans.

These amendments are made final under the authority granted the Secretary by section 501(a) of title 38, United States Code.

Approved: August 15, 1994.

Jesse Brown,

Secretary for Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36, is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 §§ 36.4300 through 36.4375 is revised to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

2. Section 36.4337 is revised to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility and lender certification

(a) *Use of standards.* Except for refinancing loans guaranteed pursuant to 38 U.S.C. 3710(a)(8), the standards contained in paragraphs (c) through (j) of this section will be used to determine that the veteran's present and anticipated income and expenses, and credit history are satisfactory.

(b) *Waiver of standards.* Use of the standards in paragraphs (c) through (j) of this section for underwriting home loans will be waived only in extraordinary circumstances when the Secretary determines, considering the totality of circumstances, that the veteran is a satisfactory credit risk.

(c) *Methods.* The two primary underwriting tools that will be used in determining the adequacy of the veteran's present and anticipated income are debt-to-income ratio and residual income analysis. They are described in paragraphs (d) through (f) of this section. Ordinarily, to qualify for a loan, the veteran must meet both standards. Failure to meet one standard, however, will not automatically disqualify a veteran. The following shall apply to cases where a veteran does not meet both standards:

(1) If the debt-to-income ratio is 41 percent or less, and the veteran does not meet the residual income standard, the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(2) If the debt-to-income ratio is greater than 41 percent, (unless it is larger due solely to the existence of tax-free income which should be noted in the loan file) the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (c)(4) of this section.

(3) If the ratio is greater than 41 percent and the residual income exceeds the guidelines by at least 20 percent the second level review and statement of justification is not required.

(4) In any case described by paragraphs (c)(1) and (c)(2) of this section, the lender must fully justify the decision to approve the loan or submit the loan to the Secretary for prior approval in writing. The lender's statement must not be perfunctory, but

should address the specific compensating factors, as set forth in paragraph (c)(5), justifying the approval or submission of the loan. The statement must be signed by the underwriter's supervisor. It must be stressed that the statute requires not only consideration of a veteran's present and anticipated income and expenses, but also that the veteran be a satisfactory credit risk.

Therefore, meeting both the debt-to-income ratio and residual income standards does not mean the loan is automatically approved. It is the lender's responsibility to base the loan approval or disapproval on all the factors present for any individual veteran. The veteran's credit must be evaluated based on criteria set forth in paragraph (g) of this section as well as a variety of compensating factors that should be evaluated.

(5) The following are examples of acceptable compensating factors to be considered in the course of underwriting a loan:

(i) Excellent long-term credit;

(ii) Conservative use of consumer credit;

(iii) Minimal consumer debt;

(iv) Long-term employment;

(v) Significant liquid assets;

(vi) Downpayment or the existence of equity in refinancing loans;

(vii) Little or no increase in shelter expense;

(viii) Military benefits;

(ix) Satisfactory homeownership experience;

(x) High residual income; and

(xi) Low debt-to-income ratio.

(6) The list in paragraph (c)(5) is not exhaustive and the items are not in any priority order. Valid compensating factors should represent unusual strengths rather than mere satisfaction of basic program requirements. Compensating factors must be relevant to the marginality or weakness.

(d) *Debt-to-income-ratio.* A debt-to-income ratio that compares the veteran's anticipated monthly housing expense and total monthly obligations to his or her stable monthly income will be computed to assist in the assessment of the potential risk of the loan. The ratio will be determined by taking the sum of the monthly Principal, Interest, Taxes and Insurance (PITI) to the loan being applied for, homeowners and other assessments such as special assessments, condominium fees, homeowners association fees, etc., and any long-term obligations divided by the total of gross salary or earnings and other compensation or income. The ratio should be rounded to the nearest two digits; e.g., 35.6 percent would be rounded to 36 percent. The standard is 41 percent or less. If the ratio is greater than 41 percent, (unless it is larger due solely to the existence of tax free income which should be noted in the loan file) the steps cited in paragraphs (c)(1) through (c)(6) of this section apply.

(e) *Residual income guidelines.* The guidelines provided in this paragraph for residual income will be used to determine whether the veteran's monthly residual income will be adequate to meet living expenses after estimated monthly shelter expenses have been paid and other monthly obligations have been met. The guidelines for residual income are based on data supplied in the Consumer Expenditure Survey (CES) published by the Department of Labor's Bureau of Labor Statistics. Regional minimum incomes have been developed for loan amounts up to $69,999 and for loan amounts of $70,000 and above. It is recognized that the purchase price of the property may affect family expenditure levels in individual cases. This factor may be given consideration in the final determination in individual loan analyses. For example, a family purchasing in a higher-priced neighborhood may feel a need to incur higher than average expenses to support a lifestyle comparable to that in their environment, whereas a substantially lower-priced home purchase may not compel such expenditures. It should also be clearly understood from this information that no single factor is a final determinant in any applicant's qualification for a VA guaranteed loan. Once the residual income has been established, other important factors must be examined. One such consideration is the amount being paid currently for rental or housing expenses. If the proposed shelter expense is materially in excess of what is currently being paid, the case may require closer scrutiny. In such cases, consideration should be given to the ability of the borrower and spouse to accumulate liquid assets; such as cash and bonds, and to the amount of debts incurred while paying a lesser amount for shelter. For example, if an application indicates little or no capital reserves and excessive obligations, it may not be reasonable to conclude that a substantial increase in shelter expenses can be absorbed. Another factor of prime importance is the applicant's manner of meeting obligations. A poor credit history alone is a basis for disapproving a loan, as is an obviously inadequate income. When one or the other is marginal, however, the remaining aspect must be closely examined to assure that the loan applied for will not exceed the applicant's ability or capacity to repay. Therefore, it is important to remember that the figures provided below for residual income are to be used as a guide and should be used in conjunction with the steps outlined in paragraphs (c) through (j) of this section. The residual income guidelines are as follows:

(1) Table of residual incomes by region (for loan amounts to $69,999 and below):

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $69,999 and below]

Family size*	Northeast	Midwest	South	West
1	$375	$367	$367	$409
2	629	616	616	686
3	758	742	742	826
4	854	835	835	930
5	886	867	867	965

*For families with more than five members, add $75 for each additional member up to a family of seven.

(2) Table of residual incomes by region (for loan amounts of $70,000 and above):

TABLE OF RESIDUAL INCOMES BY REGION

[For loan amounts of $70,000 and above]

Family size*	Northeast	Midwest	South	West
1	$433	$424	$424	$472
2	726	710	710	791
3	874	855	855	952
4	986	964	964	1074
5	1021	999	999	1113

*For families with more than five members, add $80 for each additional member up to a family of seven.

(3) *Geographic regions for residual income guidelines:* Northeast—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont; Midwest—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin; South—Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, West Virginia; West—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming.

(4) *Military adjustments:* For loan applications involving an active-duty serviceperson or military retiree, the

residual income figures will be reduced by a minimum of 5 percent if there is a clear indication that the borrower or spouse will continue to receive the benefits resulting from the use of facilities on a nearby military base. (This reduction applies to tables in paragraph (e).)

(f) *Stability and reliability of income.* Only stable and reliable income of the veteran and spouse can be considered in determining ability to meet mortgage payments. Income can be considered stable and reliable if it can be concluded that it will continue during the foreseeable future.

(1) *Verification.* Income of the borrower and spouse which is derived from employment and which is considered in determining the family's ability to meet the mortgage payments, payments on debts and other obligations, and other expenses, must be verified. If the spouse is employed and will be contractually obligated on the loan, the combined income of both the veteran and spouse is considered when the income of the veteran alone is not sufficient to qualify for the amount of the loan sought. In other than community property States, if the spouse will not be contractually obligated on the loan, Regulation B, promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act prohibits any request for, or consideration of information concerning the spouse (including income, employment, assets, or liabilities), except that if the applicant is relying on alimony, child support, or maintenance payments from a spouse or former spouse as a basis for repayment of the loan, information concerning such spouse or former spouse may be requested and considered (see paragraph (f)(4) of this section). In community property States, information concerning a spouse may be requested and considered in the same manner as that for the applicant. The standards applied to income of the veteran are also applicable to that of the spouse. There can be no discounting of income on account of sex, marital status, or any other basis prohibited by the Equal Credit Opportunity Act. Income claimed by an applicant that is not or cannot be verified cannot be given considered when analyzing the loan. If the veteran or spouse has been employed by a present employer for less than 2 years, a 2-year history covering prior employment, schooling or other training must be secured. Any periods of unemployment must be explained. Employment verifications and pay stubs must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the employment verification is within 90 days of the date of the veteran's application to the lender.

(2) *Active duty applicants.* (i) In the case of an active duty applicant, a military Leave & Earnings Statement is required and will be used instead of an employment verification. The statement must be no more than 90 days old and must be the original or a lender-certified copy of the original. For loans closed automatically, this requirement is satisfied if the date of the Leave and Earnings Statement is within 90 days of the date of the borrower's application to the lender.

(ii) For service members within 12 months of release from active duty one of the following is also required:

(A) Documentation that the service member has in fact already reenlisted or extended his/her period of active duty to a date beyond the 12 month period following the projected closing of the loan.

(B) Verification of a valid offer of local civilian employment following release from active duty. All data pertinent to sound underwriting procedures (date employment will begin, earnings, etc.) must be included.

(C) A statement from the service member that he/she intends to reenlist or extend his/her period of active duty to a date beyond the 12 month period following the projected loan closing date, and a statement from the service member's commanding officer confirming that the service member is eligible to reenlist or extend his/her active duty as indicated and that the commanding officer has no reason to believe that such reenlistment or extension of active duty will not be granted.

(D) Other unusually strong positive underwriting factors, such as a downpayment of at least 10 percent, significant cash reserves, or clear evidence of strong ties to the community coupled with a nonmilitary spouse's income so high that only minimal income from the active duty service member is needed to qualify.

(iii) Each active duty member who applies for a loan must be counseled through the use of VA Form 26–0592, Counseling Checklist for Military Homebuyers. Lenders must submit a signed and dated VA Form 26–0592 with each prior approval loan application or automatic loan report involving a borrower on active duty.

(3) *Income reliability.* Income received by the borrower and spouse is to be used only if it can be concluded that the income will continue during the foreseeable future and thus be properly considered in determining ability to meet the mortgage payments. There can be no discounting of income solely because it is derived from an annuity, pension or other retirement benefit, or from part-time employment. However, unless income from overtime work and part-time or second jobs can be accorded a reasonable likelihood that it is continuous and will continue in the foreseeable future, such income should not be used. Generally, the reliability of such income cannot be demonstrated unless the income has continued for 2 years. The hours of duty and other work conditions of the applicant's primary job, and the period of time in which the applicant was employed under such arrangement must be such as to permit a clear conclusion as to a good probability that overtime or part-time or secondary employment can and will continue. Income from overtime work and part-time jobs not eligible for inclusion as primary income may, if properly verified for at least 12 months, be used to offset the payments due on debts and obligations of an intermediate term, i.e., 6 to 24 months. Such income must be described in the loan file. The amount of any pension or compensation and other income such as dividends from stocks, interest from bonds, savings accounts, or other deposits, rents, royalties, etc., will be used as primary income if it is reasonable to conclude that such income will continue in the foreseeable future. Otherwise, it may be used only to offset intermediate-term debts, as above. Also, the likely duration of certain military allowances cannot be determined, and therefore will be used only to offset intermediate-term obligations. Such allowances are: Pro-pay, flight or hazard pay, and overseas or combat pay, all of which are subject to periodic review and/or testing of the recipient to ascertain whether eligibility for such pay will continue. Only if it can be shown that such pay has continued for a prolonged period and can be expected to continue because of the nature of the recipient's assigned duties, will such income be considered as primary income. For instance, flight pay verified for a pilot can be regarded as probably continuous and thus should be added to the base pay. Income derived from service in the reserves or National Guard may be used if the applicant has served in such capacity for a period of time sufficient to evidence good probability that such income will continue. The total period of active and reserve service may be helpful in this regard. Otherwise, such income may be

used to offset intermediate-term debts. There are a number of additional income sources whose contingent nature precludes their being considered as available for repayment of a long-term mortgage obligation. Temporary income items such as VA educational allowances and unemployment compensation do not represent stable and reliable income and will not be taken into consideration in determining the ability of the veteran to meet the income requirement of the governing law. As required by the Equal Opportunity Act Amendments of 1976, Public Law 94–239, income from public assistance programs is used to qualify a loan if it can be determined that the income will probably continue for a substantial fraction of the term of the loan; i.e., one-third or more. For instance, aid to dependent children being received for a 5-year old child that will continue until the child achieves majority would be used to qualify for a 30-year loan.

(4) *Alimony, child support, maintenance payments.* If an applicant chooses to reveal income from alimony, child support, or maintenance payments (after first having been informed that any such disclosure is voluntary pursuant to the Federal Reserve Board's Regulation B), such payments are considered as income to the extent that the payments are likely to be consistently made. Factors to be considered in determining the likelihood of consistent payments include, but are not limited to: Whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available under the Fair Credit Reporting Act or other applicable laws. However, the Fair Credit Reporting Act (15 U.S.C. 1681(b)) limits the permissible purposes for which credit reports may be ordered, in the absence of written instructions of the consumer to whom the report relates, to business transactions involving the subject of the credit report or extensions of credit to the subject of the credit report.

(5) *Military quarters allowance.* With respect to off-base housing (quarters) allowances for service personnel on active duty, it is the policy of the Department of Defense (DoD) to utilize available on-base housing when possible. In order for a quarters allowance to be considered as continuing income, it is necessary that the applicant furnish written authorization from his or her commanding officer for off-base housing. This authorization should verify that quarters will not be made available and that the individual should make permanent arrangements for nonmilitary housing. DD Form 1747, Status of Housing Availability, is used by the Family Housing Office to advise personnel regarding family housing. The applicant's quarters allowance cannot be considered unless item b (Permanent) or d is completed on DD Form 1747, dated October 1990. of course, if the applicant's income less quarters allowance is sufficient, there is no need for assurance that the applicant has permission to occupy nonmilitary housing provided that a determination can be made that the occupancy requirements of the law will be met. Also, authorization obtain off-base housing will not be required when certain duty assignments would clearly qualify service personnel with families for quarters allowance. For instance, off-base housing authorizations need not be obtained for service personnel stationed overseas who are not accompanied by their families, recruiters on detached duty, or military personnel stationed in areas where no on-base housing exists. In any case in which no off-base housing authorization is obtained, an explanation of the circumstances justifying its omission must be included with the loan application except when it has been established by the VA facility of jurisdiction that the waiting lists for on-base housing are so long that it is improbable that individuals desiring to purchase off-base housing would be precluded from doing so in the foreseeable future. If stations make such a determination, a release shall be issued to inform lenders.

(6) *Commissions.* When all or a major portion of the veteran's income is derived from commissions, it will be necessary to establish the stability of such income if it is to be considered in the loan analysis for the repayment of the mortgage debt and/or short-term obligations. In order to assess the value of such income, lenders should obtain written verification of the actual amount of commissions paid to date, the basis for the payment of such commissions and when commissions are paid; i.e., monthly, quarterly, semiannually, or annually. Lenders should also obtain signed and dated individual income tax returns, plus applicable schedules, for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. The length of the veteran's employment in the type of occupation for which commissions are paid is also an important factor in the assessment of the stability of the income. If the veteran has been employed for a relatively short time, the income should not normally be considered stable unless the product or service was the same or closely related to the product or service sold in an immediate prior position. Generally, income from commissions is considered stable when the applicant has been receiving such income for at least 2 years. Less than 2 years of income from commissions cannot usually be considered stable. When an applicant has received income from commissions for less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes; such cases would require in-depth development.

(7) *Self-employment.* Generally, income from self-employment is considered stable when the applicant has been in business for at least 2 years. Less than 2 years of income from self-employment cannot usually be considered stable unless the applicant has had previous related employment and/or extensive specialized training. When an applicant has been self-employed less than 1 year, it will rarely be possible to demonstrate that the income is stable for qualifying purposes such cases would require in-depth development. The following documentation is required for all self-employed borrowers:

(i) A profit and loss statement for the prior fiscal year (12-month accounting cycle), plus the period year to date since the end of the last fiscal year (or for whatever shorter period records may be available), and a current balance sheet showing all assets and liabilities. The profit and loss statement and balance sheet will be compiled by an accountant based on the financial records. In some cases the nature of the business or the content of the financial statement may necessitate an independent audit by the accountant. Depending on the situation, this data may be on the veteran and/or the business; and

(ii) Copies of signed individual income tax returns, plus all applicable schedules for the previous 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record, must be obtained. If the business is a corporation or partnership, copies of signed federal business income tax returns for the previous two years plus all applicable schedules for the corporation or partnership must be obtained; and

(iii) If the business is a corporation or partnership, a list of all stockholders or

partners showing the interest each holds in the business will be required. Some cases may justify a written credit report on the business as well as the applicant. When the business is of an unusual type and it is difficult to determine the probability of its continued operation, explanation as to the function and purpose of the business may be needed from the applicant and/or any other qualified party with the acknowledged expertise to express a valid opinion.

(8) *Recently discharged veterans.* Loan applications received from recently discharged veterans who have little or no employment experience other than their military occupation and from veterans seeking VA guaranteed loans who have retired after 20 years of active military duty require special attention. The retirement income of the latter veterans in may cases may not be sufficient to meet the statutory income requirements for the loan amount sought. Many have obtained full-time employment and have been employed in their new jobs for a very short time.

(i) It is essential in determining whether veterans in these categories qualify from the income standpoint for the amount of the loan sought, that the facts in respect to their present employment and retirement income be fully developed, and that each case be considered on its individual merits.

(ii) In most cases the veteran's current income or current income plus his or her retirement income is sufficient. The problem lies in determining whether it can be properly concluded that such income level will continue for the foreseeable future. If the veteran's employment status is that of a trainee or apprentice, this will, of course, be a factor. In cases of the self-employed, the question to be resolved is whether there are reasonable prospects that the business enterprise will be successful and produce the required income. Unless a favorable conclusion can be made, the income from such source should not be considered in the loan analysis.

(iii) If a recently discharged veteran has no prior employment history and the veteran's verification of employment shows he or she has not been on the job a sufficient time in which to become established, consideration should be given to the duties the veteran performed in the military service. When it can be determined that the duties a veteran performed in the service are similar or are in direct relation to the duties of the applicant's present position, such duties may be construed as adding weight to his or her present employment experience and the income from the veteran's present employment thus may be considered available for qualifying the loan, notwithstanding the fact that the applicant has been on the present job only a short time. This same principle may be applied to veterans recently retired from the service. In addition, when the veteran's income from retirement, in relation to the total of the estimated shelter expense, long-term debts and amount available for family support, is such that only minimal income from employment is necessary to qualify from the income standpoint, it would be proper to resolve the doubt in favor of the veteran. It would be erroneous, however, to give consideration to a veteran's income from employment for a short duration in a job requiring skills for which the applicant has had no training or experience.

(iv) To illustrate the provisions of paragraph (f), it would be proper to use short-term employment income in qualifying a veteran who had experience as an airplane mechanic in the military service and the individual's employment after discharge or retirement from the service is in the same or allied field; e.g., auto mechanic or machinist. This presumes, however, that the verification of employment included a statement that the veteran was performing the duties of the job satisfactorily, the possibility of continued employment was favorable and that the loan application is eligible in all other respects. An example of nonqualifying experience is that of a veteran who was an Air Force pilot and has been employed in insurance sales on commission for a short time. Most cases, of course, fall somewhere between those extremes. It is for this reason that the facts of each case must be fully developed prior to closing the loan automatically or submitting the case to VA for prior approval.

(9) *Employment of short duration.* The provisions of paragraph (f)(7) of this section are similarly applicable to applicants whose employment is of short duration. Such cases will entail careful consideration of the employer's confirmation of employment, probability of permanency, past employment record, the applicant's qualifications for the position, and previous training, including that received in the military service. In the event that such considerations do not enable a determination that the income from the veteran's current position has a reasonable likelihood of continuance, such income should not be considered in the analysis. Applications received from persons employed in the building trades, or in other occupations affected by climatic conditions, should be supported by documentation evidencing the applicant's total earnings to date and covering a period of not less than 1 year as well as signed and dated copies of complete income tax returns, including all schedules for the past 2 years or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earnings record. If the applicant works out of a union, evidence of the previous year's earnings should be obtained together with a verification of employment from the current employer.

(10) *Rental-income.* (i) *Multi-unit subject property.* When the loan pertains to a structure with more than a one-family dwelling unit, the prospective rental income will not be considered unless the veteran can demonstrate a reasonable likelihood of success as a landlord, and sufficient cash reserves are verified to enable the veteran to carry the mortgage loan payments (principal, interest, taxes, and insurance) without assistance from the rental income for a period of at least 6 months. The determination of the veteran's likelihood of success as a landlord will be based on documentation of any prior experience in managing rental units, or other collection activities. The amount of rental income to be used in the loan analysis will be based on the prior rental history of the units as verified by the seller's financial records (e.g., prior years' tax returns) for existing structures or, for proposed construction, the appraiser's opinion of the property's fair monthly rental. Adjustments will be applied to reduce estimated gross rental income by proper allowances for operating expenses and vacancy losses.

(ii) *Rental of existing home.* Proposed rental of a veteran's existing property may be used to offset the mortgage payment on that property, provided there is no indication that the property will be difficult to rent. If available, a copy of the rental agreement should be obtained. It is the responsibility of the loan underwriter to be aware of the condition of the local rental market. For instance, in areas where the rental market is very strong the absence of a lease should not automatically prohibit the offset of the mortgage by the proposed rental income.

(iii) *Other rental property.* If income from rental property will be used to qualify for the new loan, the documentation required of a self-employed applicant should be obtained together with evidence of cash reserves equaling 3 months PITI of the rental property. As for any self-employed earnings (see paragraph (f)(7) of this section), depreciation claimed may be

added back in as income. In the case of a veteran who has no experience as a landlord, it is unlikely that the income from a rental property may be used to qualify for the new loan.

(ll) *Taxes and other deductions.* Deductions to be applied for Federal income taxes ad Social Security may be obtained from the Employer's Tax Guide (Circular E) issued by the Internal Revenue Service (IRS). (For veterans receiving a mortgage credit certificate (MCC), see paragraph (f)(12) of this section.) Any State or local taxes should be estimated or obtained from charts similar to those provided by IRS which may be available in those States with withholding taxes. A determination of the amount paid or withheld for retirement purposes should be made and used when calculating deductions from gross income. In determining whether a veteran-applicant meets the income criteria for a loan, some consideration may be given to the potential tax benefits the veteran will realize if the loan is approved. This can be done by using the instructions and worksheet portion of IRS Form W–4, Employee's Withholding Allowance Certificate, to compute the total number of permissible withholding allowances. That number can then be used when referring to IRS Circular E and any appropriate similar State withholding charts to arrive at the amount of Federal and State income tax to be deducted from gross income.

(12) *Mortgage credit certificates.* (i) The Internal Revenue Code, as amended by the Tax Reform Act of 1984, allows States and other political subdivisions to trade in all or part of their authority to issue mortgage revenue bonds for authority to issue MCCs. Veterans who are recipients of MCCs may realize a significant reduction in their income tax liability by receiving a Federal tax credit for a percentage of their mortgage interest payment on debt incurred on or after January 1, 1985.

(ii) Lenders must provide a copy of the MCC to VA with the home loan application. The MCC will specify the rate of credit allowed and the amount of certified indebtedness; i.e., the indebtedness incurred by the veteran to acquire a principal residence or as a qualified home improvement or rehabilitation loan.

(iii) For credit underwriting purposes, the amount of tax credit allowed to a veteran under an MCC will be treated as a reduction in the monthly Federal income tax. For example, a veteran having a $600 monthly interest payment and an MCC providing a 30-percent tax credit would receive a $180 (30%×$600) tax credit each month. However, because the annual tax credit, which amounts to $2,160 (12×$180), exceeds $2,000 and is based on a 30-percent credit rate, the maximum tax credit the veteran can receive is limited to $2,000 per year (Pub. L. 98–369) or $167 per month ($2,000÷12). As a consequence of the tax credit, the interest on which a deduction can be taken will be reduced by the amount of the tax credit to $433 ($600 − $167). This reduction should also be reflected when calculating Federal income tax.

(iv) For underwriting purposes, the amount of the tax credit is limited to the amount of the veteran's maximum tax liability. If, in the example in paragraph (f)(12)(iii), the veteran's tax liability for the year were only $1,500, the monthly tax credit would be limited to $125 ($1,500÷12).

(g) *Credit.* The conclusion reached as to whether or not the borrower and spouse are satisfactory credit risks must also be based on a careful analysis of the available credit data. Regulation B (Equal Credit Opportunity Act) requires that lenders include, in evaluating creditworthiness on a veteran's request, the credit history, when available, of any account reported in the name of the veteran's spouse or former spouse which the veteran can demonstrate reflects accurately the veteran's willingness or ability to repay. In other that community property States, if the spouse will not be contractually obligated on the loan, Regulation B, promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act prohibits any request for, or consideration of information about the spouse concerning income, employment, assets or liabilities. In community property States, information concerning a spouse may be requested and considered in the same manner as that for the applicant.

(1) *Adverse data.* If the analysis develops any derogatory credit information and, despite such facts, it is determined that the borrower and spouse are satisfactory credit risks, the basis for the decision must be explained. If a borrower and spouse have debts outstanding which have not been paid timely, or which they have refused to pay, the fact that the outstanding debts are paid after the acceptability of the credit is questioned or in anticipation of applying for new credit does not, of course, alter the fact that the record for paying debts has been unsatisfactory. With respect to unpaid debts, lenders may take into consideration a veterans's claim of bona fide or legal defenses. This is not applicable when the debt has been reduced to judgment.

(2) *Bankruptcy.* When the credit information shows that the borrower or spouse has been discharged in bankruptcy under the "straight" liquidation and discharge provisions of the bankruptcy law, this would not in itself disqualify the loan. However, in such cases it is necessary to develop complete information as to the facts and circumstances concerning the bankruptcy. Generally speaking, when the borrower or spouse, as the case may be, has been regularly employed (not self-employed) and has been discharged in bankruptcy within the last 2 or 3 years, it probably would not be possible to determine that the borrower or spouse is a satisfactory credit risk unless both of the following requirements are satisfied:

(i) The borrower or spouse has obtained credit subsequent to the bankruptcy and has met the credit payments in a satisfactory manner over a continued period, and

(ii) The bankruptcy was caused by circumstances beyond control of the borrower or spouse, e.g., unemployment, prolonged strikes, medical bills not covered by insurance. The circumstances alleged must be verified. If a borrower or spouse is self-employed, has been adjudicated bankrupt, and subsequently obtains a permanent position, a finding as to satisfactory credit risk may be made provided there is no derogatory credit information prior to self-employment, there is no evidence of derogatory credit information subsequent to the bankruptcy, and the failure of the business was not due to misconduct. A bankruptcy discharged more than 5 years ago may be disregarded. A bankruptcy discharged between 3 and 5 years ago may be given some consideration, depending upon the circumstances of the bankruptcy and submission of evidence that the veteran has been paying his or her obligations in a timely manner.

(3) *Petition under Chapter 13 of Bankruptcy Law.* A wage earner's petition under chapter 13 of the Bankruptcy Law filed by the borrower or spouse is indicative of an effort to pay their creditors. Some plans may provide for full payment of debts while others arrange for payment of scaled down debts. Regular payments are made to a court-appointed trustee over a 2- to 3-year period (or up to 5 years in some cases). When the borrowers have made all payments in a satisfactory manner, they may be considered as having reestablished satisfactory credit. When they apply for a home loan before completion of the payout period, favorable consideration may

nevertheless be given if at least three-fourths of the payments have been made satisfactorily and the Trustee or Bankruptcy Judge (Referee) approves of the new credit.

(4) *Foreclosures.* (i) When the credit information shows that the veteran or spouse has had a foreclosure on a prior mortgage, e.g., a VA guaranteed, or HUD insured mortgage, this will not in itself disqualify the borrower from obtaining the loan. Lenders and field station personnel should refer to the preceding guidelines on bankruptcies for cases involving foreclosures. As with a borrower who has been adjudicated bankrupt, it is necessary to develop complete information as to the facts and circumstances of the foreclosure.

(ii) When VA pays a claim on a VA guaranteed loan as a result of a foreclosure, the original veteran may be required to repay any loss to the Government. In some instances VA may waive the veteran's debt, in part or totally, based on the facts and circumstances of the case. However, guaranty entitlement cannot be restored unless the Government's loss has been repaid in full, regardless of whether or not the debt has been waived, compromised, or discharged in bankruptcy. Therefore, a veteran who is seeking a new VA loan after having experienced a foreclosure on a prior VA loan will in most cases have only remaining entitlement to apply to the new loan. The lender should assure that the veteran has sufficient entitlement for its secondary marketing purposes.

(5) *Federal debts.* An applicant for a Federally-assisted loan will not be considered a satisfactory credit risk for such loan if the applicant is presently delinquent or in default on any debt to the Federal Government, e.g., a Small Business Administration loan, a U.S. Guaranteed Student loan, a debt to the Public Health Service, or where there is a judgment lien against the applicant's property for a debt owed to the Government. The applicant may not be approved for the loan until the delinquent account has been brought current or satisfactory arrangements have been made between the borrower and the Federal agency owed, or the judgment is paid or otherwise satisfied. Of course, the applicant must also be able to otherwise qualify for the loan from an income and remaining credit standpoint. Refinancing under VA's interest rate reduction refinancing provisions, however, is allowed even if the borrower is delinquent on the VA guaranteed mortgage being refinanced. Prior approval processing is required in such cases.

(6) *Absence of credit history.* The fact that recently discharged veterans may have had no opportunity to develop a credit history will not preclude a determination of satisfactory credit. Similarly, other loan applicants may not have established credit histories as a result of a preference for purchasing consumer items with cash rather than credit. There are also cases in which individuals may be genuinely wary of acquiring new obligations following bankruptcy, consumer credit counseling (debt proration), or other disruptive credit occurrence. The absence of the credit history in these cases will not generally be viewed as an adverse factor in credit underwriting. However, before a favorable decision is made for cases involving bankruptcies or other derogatory credit factors, efforts should be made to develop evidence of timely payment of non-installment debts such as rent and utilities. It is anticipated that this special consideration in the absence of a credit history following bankruptcy would be the rare case and generally confined to bankruptcies which occurred over 3 years ago.

(7) *Long-term v. Short-term-debts.* All known debts and obligations including any alimony and/or child support payments of the borrower and spouse must be documented. Significant liabilities to be deducted from the total income in determining ability to meet the mortgage payments are accounts that, generally, are of a relatively long-term; i.e., 6 months or over. Other accounts for terms of less than 6 months must, of course, be considered in determining ability to meet family expenses. Certainly any account with less than 6 months' duration which requires payments so large as to cause a severe impact on the family's resources for any period of time must be considered in the loan analysis. For example, monthly payments of $300 on an auto loan with a remaining balance of $1,500 would be included in those obligations to be deducted from the total income regardless of the fact that the account can be expected to pay out in 5 months. It is clear that the applicant will, in this case, continue to carry the burden of those $300 payments for the first, most critical, months of the home loan. Similarly, when the credit information shows open accounts of several years' duration which are clearly of a revolving or open-end type, the regular monthly payment for such accounts should be considered as a long-term obligation to be deducted from income.

(8) *Requirements for verification.* If the credit investigation reveals debts or obligations of a material nature which were not divulged by the applicant, lenders must be certain to obtain clarification as to the status of such debts from the borrower. A proper analysis is obviously not possible unless there is total correlation between the obligations claimed by the borrower and those revealed by a credit report or deposit verification. Conversely, significant debts and obligations reported by the borrower must be dated. If the credit report fails to provide necessary information on such accounts, lenders will be expected to obtain their own verifications of those debts directly from the creditors. Credit reports and verifications must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the credit report or verification is within 90 days of the date of the veteran's application to the lender. Of major significance are the applicant's rental history and outstanding, assumed, or recently retired mortgages, if any, particularly prior VA loans. Lenders should be sure ratings on such accounts are obtained; a written explanation is reburied when ratings are not available. A determination is necessary as to whether alimony and/or child support payments are required. Verification of the amount of such obligations should be obtained, although documentation concerning an applicant's divorce should not be obtained automatically unless it is necessary to verify the amount of any alimony or child support liability indicated by the applicant. If in the routine course of processing the loan application, however, direct evidence is received (e.g., from the credit report) that an obligation to pay alimony or child support exists (as opposed to mere evidence that the veteran was previously divorced), the discrepancy between the loan application and credit report can and should be fully resolved in the same manner as any other such discrepancy would be handled.

(9) *Job-related expenses.* Known job-related expenses should be documented. This will include costs for any dependent care, significant commuting costs, etc. When a family's circumstances are such that dependent care arrangements would probably be necessary, it is important to determine the cost of such services in order to arrive at an accurate total of deductions.

(10) *Credit reports.* Credit reports obtained by lenders on VA guaranteed loan applications must be in conformance with the Residential Mortgage Credit Report Standards formulated jointly by the Department of Veterans Affairs, Federal National

Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, Farmers Home Administration, credit repositories, repository affiliated consumer reporting agencies and independent consumer reporting agencies. The Residential Mortgage Credit Report is a detailed account of the credit, employment, and residence history as well as public records information concerning an individual. All credit reports obtained by the lender must be submitted to VA.

(h) *Borrower's personal and financial status.* The number and ages of dependents have an important bearing on whether income after deduction of fixed charges is sufficient to support the family. Type and duration of employment of both the borrower and spouse are important as an indication of stability of their employment. The amount of liquid assets owned by the borrower or spouse, or both, is an important factor in determining that they have sufficient funds to close the loan, as well as being significant in analyzing the overall qualifications for the loan. (It is imperative that adequate cash assets from the veteran's own resources are verified to allow the payment of any difference between the sales price of the property and the loan amount, in addition to that necessary to cover closing costs, if the sales price exceeds the reasonable value established by VA (38 CFR 36.4336(a)(3)). Verifications must be no more than 90 days old to be considered valid. For loans closed on the automatic basis, this requirement will be considered satisfied if the date of the deposit verification is within 90 days of the date of the veteran's application to the lender. Current monthly rental or other housing expense is an important consideration when compared to that to be undertaken in connection with the contemplated housing purchase.

(i) *Estimated monthly shelter expenses.* It is important that monthly expenses such as taxes, insurance, assessments and maintenance and utilities be estimated accurately based on property location and type of house; e.g., old or new, large or small, rather than using or applying a "rule of thumb" to all properties alike. Maintenance and utility amounts for various types of property should be realistically estimated. Local utility companies should be consulted for current rates. The age and type of construction of a house may well affect these expenses. In the case of condominiums or houses in a planned unit development (PUD), the monthly amount of the maintenance assessment payable to a homeowners association should be added. If the amount currently assessed is less than the maximum provided in the covenants or master deed, and it appears likely that the amount will be insufficient for operation of the condominium or PUD, the amount used will be the maximum the veteran could be charged. If it is expected that real estate taxes will be raised, or if any special assessments are expected, the increased or additional amounts should be used. In special flood hazard areas, include the premium for any required flood insurance.

(j) *Lender responsibility.* (1) Lenders are fully responsible for developing all credit information; i.e., for obtaining verifications of employment and deposit, credit reports, and for the accuracy of the information contained in the loan application.

(2) Verifications of employment and deposits, and requests for credit reports and/or credit information must be initiated and received by the lender.

(3) In cases where the real estate broker/agent or any other party requests any of this information, the report(s) must be returned directly to the lender. This fact must be disclosed by appropriately completing the required certification on the loan application or report and the parties must be identified as agents of the lender.

(4) Where the lender relies on other parties to secure any of the credit or employment information or otherwise accepts such information obtained by any other party, such parties shall be construed for purposes of the submission of the loan documents to VA to be authorized agents of the lender, regardless of the actual relationship between such parties and the lender, even if disclosure is not provided to VA under paragraph (j)(3) of this section. Any negligent or willful representation by such parties shall be imputed to the lender as if the lender had processed those documents and the lender shall remain responsible for the quality and accuracy of the information provided to VA.

(5) All credit reports secured by the lender or other parties as identified in paragraphs (j)(3) and (j)(4) of this section shall be provided to VA. If updated credit reports reflect materially different information than that in other reports such discrepancies must be explained by the lender and the ultimate decision as to the effects of the discrepancy upon the loan application fully addressed by the underwriter.

(k) *Lender certification.* Lenders originating loans are responsible for determining and certifying to VA on the appropriate application or closing form that the loan meets all statutory and regulatory requirements. Lenders will affirmatively certify that loans were made in full compliance with the law and loan guaranty regulations as prescribed in this section.

(1) *Definitions.* The definitions contained in part 42 of this chapter and the following definitions are applicable in this section.

(i) *Another appropriate amount.* In determining the appropriate amount of a lender's civil penalty in cases where the Secretary has not sustained a loss or where two times the amount of the Secretary's loss on the loan involved does not exceed $10,000, the Secretary shall consider:

(A) The materiality and importance of the false certification to the determination to issue the guaranty, or to approve the assumption;

(B) The frequency and past pattern of such false certifications by the lender; and,

(C) Any exculpatory or mitigating circumstances.

(ii) *Complaint* includes the assessment of liability served pursuant to this subsection.

(iii) *Defendant* means a lender named in the complaint.

(iv) *Lender* includes the holder approving loan assumptions pursuant to 38 U.S.C. 3714.

(2) *Procedures for certification.*

(i) As a condition to VA issuance of a loan guaranty on all loans closed on or after October 27, 1994, and as a prerequisite to an effective loan assumption on all loans assumed pursuant to 38 U.S.C. 3714 on or after October 27, 1994, the following certification shall accompany each loan closing or assumption package:

"The undersigned lender certifies that the (loan) (assumption) application, all verifications of employment, deposit, and other income and credit verification documents have been processed in compliance with 38 CFR part 36; that all credit reports obtained or generated in connection with the processing of this borrower's (loan) (assumption) application have been provided to VA; that, to the best of the undersigned lender's knowledge and belief the (loan) (assumption) meets the underwriting standards recited in chapter 37 of title 38 United States Code and 38 CFR part 36; and that all information provided in support of this (loan) (assumption) is true, complete and accurate to the best of the undersigned lender's knowledge and belief."

(ii) The certification shall be executed by an officer of the lender authorized to execute documents and act on behalf of the lender.

(3) Any lender who knowingly and willfully makes a false certification required pursuant to § 36.4337(k)(2) shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater.

(l) *Assessment of liability.* (1) Upon an assessment confirmed by the Under Secretary for Benefits, in consultation with the Investigating Official, that a certification, as required in this section, is false, a report of findings of the Under Secretary for Benefits shall be submitted to the Reviewing Official setting forth:

(i) The evidence that supports the allegations of a false certification and of liability;

(ii) A description of the claims or statements upon which the allegations of liability are based;

(iii) The amount of the VA demand to be made; and,

(iv) Any exculpatory or mitigating circumstances that may relate to the certification.

(2) The Reviewing Official shall review all of the information provided and will either inform the Under Secretary for Benefits and the Investigating Official that there is not adequate evidence, that the lender is liable, or serve a complaint on the lender stating:

(i) The allegations of a false certification and of liability;

(ii) The amount being assessed by the Secretary and the basis for the amount assessed;

(iii) Instructions on how to satisfy the assessment and how to file an answer to request a hearing, including a specific statement of the lender's right to request a hearing by filing an answer and to be represented by counsel; and

(iv) That failure to file an answer within 30 days of the complaint will result in the imposition of the assessment without right to appeal the assessment to the Secretary.

(m) *Hearing procedures.* A lender hearing on an assessment established pursuant to this section shall be governed by the procedures recited at 38 CFR 42.8 through 42.47.

(n) *Additional remedies.* Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and part 44 of this title or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18, U.S.C. and 31 U.S.C. 3732. (Authority (38 U.S.C. 3710).

(Information collection requirements contained in 36.4337 were approved by the Office of Management and Budget under control number 2900–0521)

[FR Doc. 94–23753 Filed 9–26–94; 8:45 am]

BILLING CODE 8320–01–P–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 128, NJ–13–1–6104a; FRL–5051–3]

Approval and Promulgation of Implementation Plans; New Jersey Ozone State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the New Jersey State Implementation Plan for ozone related to development of reasonably available control technologies for all source categories of volatile organic compounds for which EPA has issued a control techniques guideline document. This revision has been submitted in response to requirements to control ozone established in the Clean Air Act. New Jersey's submittals contained additional revisions, which EPA will be acting on in separate **Federal Register** actions.

DATES: This final rule is effective on November 28, 1994 unless adverse or critical comments are received by October 27, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: All comments should be addressed to: William J. Muszynski, Deputy Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 26 Federal Plaza, room 402, New York, New York 10278.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Raymond Werner, Chief, State Implementation Plan Section, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act (Act) sets forth a number of requirements that states with areas designated as nonattainment for ozone had to satisfy by November 15, 1992.

New Jersey must address a number of requirements of the Act including the requirements:

- To adopt Reasonably Available Control Techniques (RACT) regulations for all source types for which the Environmental Protection Agency (EPA) has developed Control Techniques Guidelines (CTGs);
- To adopt RACT regulations for all other major sources of volatile organic compounds (VOCs);
- To adopt RACT regulations for all major sources of oxides of nitrogen (NOx);
- To develop and adopt an enhanced inspection and maintenance program;
- To develop and adopt measures to offset emission increases due to increases in vehicle miles travelled (VMT) or in the number of vehicle trips;
- To adopt an emission statement program;
- To revise its new source review program to meet the new requirements of the Act;
- To develop and adopt an Employer Trip Reduction program;
- To develop an emission inventory; and
- To develop and adopt a small business assistance program.

These measures are intended to reduce emissions of VOCs and NOx. VOCs and NOx are precursors of ozone in the lower atmosphere, which is a primary component of smog. A more detailed summary of these requirements, including the relevant statutory provisions can be found in the General Preamble to title I of the Act (57 FR 13498, April 16, 1992).

The specific requirements that New Jersey must meet vary by area, depending upon the severity of the ozone problem. Eighteen of the twenty one counties in New Jersey are designated as severe nonattainment for ozone. Of the remaining three counties, Atlantic and Cape May Counties are designated as moderate nonattainment for ozone and Warren County is designated as marginal nonattainment for ozone. In addition, section 184(a) of the Act recognizes that ozone is a regional problem by designating all of New Jersey as part of an ozone transport region. Since most of New Jersey is designated as severe nonattainment for ozone, and all of New Jersey is part of an ozone transport region, New Jersey has chosen to implement statewide all

of the control requirements that are addressed in this action.

State Submittal

On November 15, 1992, New Jersey submitted to EPA a request to revise its SIP for ozone. This submittal had undergone public hearings on October 27, October 29 and November 5, 1992. While New Jersey did address additional requirements in its November 15, 1992 submittal, the only requirement that EPA is addressing in this action is the requirement to adopt RACT regulations for all source types for which EPA has developed CTGs. EPA will take action on the other submittals that New Jersey made in other **Federal Register** actions.

Section 110(k) of the Clean Air Act requires EPA to determine if a state's SIP submittal is complete within sixty days of submittal but not later than six months later than that date. If EPA does not notify a state of the completeness of a submittal within six months of receipt it is automatically deemed complete. The criteria that EPA uses to determine completeness are set forth in 40 CFR part 51, appendix V. On April 20, 1993, EPA sent New Jersey a letter informing it that its November 15, 1992 submittal was not complete because it did not contain a compilation of the public comments and the State's responses to those comments. On May 14, 1993, New Jersey submitted a compilation of public comments and the State's responses to these comments. These public comments did not result in any substantive changes to New Jersey's submittal. Most of the comments involved portions of the SIP which New Jersey is still developing and will be better addressed as part of those SIP submittals. On June 10, 1993, EPA wrote to New Jersey and informed them that EPA had reviewed its May 14, 1993 submittal and was finding New Jersey's submittal complete insofar as it contained adopted RACT regulations for all source types for which EPA has developed CTGs. The following summarizes EPA's evaluation of New Jersey's submittal.

The Act sets forth two separate provisions requiring states to promulgate VOC RACT rules in ozone nonattainment areas. RACT is defined as the lowest emission that a particular source is capable of meeting with the application of control technology that is reasonably available considering technological and economic feasibility.

The first provision, referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the Act was amended in 1990. Under the pre-amended Clean Air Act, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of CTG documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. Under section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Areas, such as New Jersey, that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

In the mid and late 1980's, EPA issued SIP Calls, notifying numerous states that they contained nonattainment areas that had failed to attain the ozone standard. In the SIP Calls, EPA required states to correct deficiencies in their existing RACT rules and to adopt rules that were required but not yet adopted. Under the amended Act, section 182(a)(2)(A) requires states to correct these RACT rules by May 15, 1991. New Jersey submitted its RACT fix-up rules to EPA on March 13, 1992, which EPA approved on April 15, 1994 (59 FR 17933). Thus New Jersey has met the RACT fix up requirement and no further action needs to be taken with respect to this requirement in today's action.

The second provision, set forth in section 182(b)(2) applies to moderate (and above) ozone nonattainment areas. The goal of this provision is to ensure that areas, that were not required previously to adopt RACT for some or all of the CTGs or for major stationary sources not covered by a CTG, adopt rules and "catch-up" to those areas previously subject to more stringent RACT requirements. In addition, the RACT catch-up provision requires those areas for which the major source definition has been lowered to adopt RACT for those sources now covered by the more stringent major stationary source definition. Section 182(b)(2) sets forth three requirements for the purpose of achieving those goals. First 182(b)(2) requires states to adopt RACT for sources subject to pre-enactment CTGs. Next, this provision requires states to adopt RACT for all sources subject to any new CTGs issued after enactment of the Amendments. Finally, section 182(b)(2) requires RACT for all major stationary sources not subject to a CTG. Section 182(b)(2) requires these rules to be submitted to EPA by November 15, 1992. Moreover, under section 185, all areas in the Ozone Transport Region, which includes all of New Jersey are subject to this requirement.

New Jersey has met the RACT requirement as it applies to sources for which there was a pre-enactment CTG. New Jersey has adopted rules for all but three of the pre-enactment CTGs and incorporated them into Subchapter 16, "Control and Prohibition of Air Pollutants by Volatile Organic Compounds." The three CTG source categories for which New Jersey has not incorporated specific control requirements into Subchapter 16 are: rubber tire manufacturing; high density polyethylene, polypropylene and polystyrene resin manufacturing and air oxidation processes in synthetic organic chemical manufacturing industry facilities. In its 1982 SIP for the Attainment and Maintenance of the Ozone and Carbon Monoxide National Ambient Air Quality Standards, New Jersey declared that it had no rubber tire manufacturing facilities. EPA approved this declaration on November 9, 1983. New Jersey reaffirmed this declaration in its November 15, 1992 submittal. New Jersey submitted on March 31, 1987, and supplemented on May 4, 1991, an equivalency demonstration which showed that high density polyethylene, polypropylene and polystyrene resin processes would be regulated under general provisions contained in both Subchapter 8 and Subchapter 16. An equivalency demonstration must show that the state rules applicable to the source category result in emissions within five percent of the emissions that would result from the control requirements recommended by the CTG. EPA approved this demonstration on October 9, 1991. On November 21, 1989, New Jersey submitted an equivalency demonstration showing that air oxidation processes at synthetic organic chemical manufacturing industry facilities would be regulated under general provisions contained in both Subchapter 8 and Subchapter 16. This submittal was supplemented on May 10, 1991. EPA approved this demonstration on September 24, 1991. EPA is approving New Jersey's reaffirmation that there are no rubber tire manufacturing sources in New Jersey. As a result of EPA's approval of New

Jersey's negative declaration and of New Jersey's equivalency demonstrations, EPA finds that New Jersey has fully approved rules for all pre-enactment CTGs.

As to the requirement for adopting RACT for sources subject to a post-enactment CTG, New Jersey has followed the process set forth by EPA in its CTG document issued as appendix B to the General Preamble. In appendix B, EPA provided that states could delay submission of non-CTG rules for those sources the state anticipates will be covered by one of EPA's 11 proposed post-enactment CTGs. Section 183(a) requires EPA to issue these 11 CTGs by November 15, 1993. Pursuant to the procedure established in appendix B, New Jersey is required to adopt regulations in accordance with a CTG issued by November 15, 1993, in accordance with the schedule set forth by EPA. In the alternative, for source categories for which a CTG is not issued by that date, the State will adopt RACT for those source categories by November 15, 1994. Appendix B also requires states to submit a list of sources that it anticipates will be covered by such a CTG. As part of its November 15, 1992 submittal, New Jersey submitted a list of sources that it anticipates will be covered by such a CTG. New Jersey also indicated that it intends to adopt RACT regulations for all of those sources by the required date.

On November 15, 1993, EPA published a CTG for reactor processes and distillation operations in the synthetic organic chemical manufacturing industry. On March 23, 1994, in 56 FR 13717, EPA published an addendum to that CTG. In that addendum EPA explained that states are required to adopt RACT rules for this CTG category by March 23, 1995 and that sources must be in compliance with these rules no later than November 15, 1996. EPA did not publish any additional CTGs by the November 15, 1993 deadline. Therefore, in order to meet the appendix B requirement, New Jersey must adopt RACT rules for reactor processes and distillation operations in the synthetic organic chemical manufacturing industry by March 23, 1995. In addition, New Jersey must adopt RACT rules for all major sources which would be subject to other post-enactment CTG categories by November 15, 1994.

Finally, New Jersey was required to submit by November 15, 1992, non-CTG RACT rules for all major sources not covered by a pre-enactment CTG and not anticipated to be covered by a post-enactment CTG. New Jersey failed to submit such regulations on the required date and on January 15, 1993, EPA notified the Governor of New Jersey that it was starting the 18-month sanction process required by section 179(a) of the Act. On November 15, 1993, New Jersey made submittals intending to meet this requirement. EPA determined that this submittal was complete on December 29, 1993. This determination stopped the sanction process. EPA will be taking action on this state submittal in a separate **Federal Register** action.

Summary

In this rulemaking, EPA is approving New Jersey's reaffirmation that there are no major sources of rubber tire manufacturing in New Jersey. In addition EPA finds that this reaffirmation along with New Jersey's previously approved regulations and demonstrations fulfills the section 182(b)(2) RACT catch-up requirements to adopt RACT requirements for all sources for which EPA issued a CTG before the 1990 amendments to the Act.

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

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this direct final action will be effective November 28, 1994 unless, by October 27, 1994, adverse or critical comments are received.

If the EPA receives such comments, this rule will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that this rule will be effective November 28, 1994. (See 47 FR 27073 and 59 FR 24059).

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

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

This rule has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under section 307(b)(l) of the Act, petitions for judicial review of this rule must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This rule may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 26, 1994.

William J. Muszynski, P.E.,

Deputy Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart FF—New Jersey

2. Section 52.1582 is amended by adding new paragraph (c) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

* * * * *

(c) The November 15, 1993 SIP revision submitted by the New Jersey Department of Environmental Protection and Energy demonstrates the fulfillment of section 182(b)(2)(B) of the Clean Air Act for states to adopt RACT regulations for all sources for which EPA has issued a CTG before enactment of the 1990 Clean Air Act.

[FR Doc. 94–23695 Filed 9–26–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 282

[FRL–5074–6]

Underground Storage Tank Program: Approved State Program for Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of Kansas' underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective November 28, 1994, unless EPA publishes a prior **Federal Register** notice withdrawing this immediate final rule. All comments on the codification of Kansas' underground storage tank program must be received by the close of business October 27, 1994. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of November 28, 1994, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to WSTM/RCRA/STPG, Underground Storage Tank Program, U.S. EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Comments received by EPA may be inspected at the above address from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Lee Daniels, Underground Storage Tank Program, U.S. EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551–7651.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a **Federal Register** document announcing its decision to grant approval to Kansas. (59 FR 29201 June 6, 1994). Approval was effective on July 6, 1994.

EPA codifies its approval of State programs in 40 CFR part 282 and incorporates by reference therein the state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions. Today's rulemaking codifies EPA's approval of the Kansas underground storage tank program. This codification reflects the state program in effect at the time EPA granted Kansas approval under section 9004(a), 42 U.S.C. 6991c(a) for its underground storage tank program. Notice and opportunity for comment were provided earlier on the Agency's decision to approve the Kansas program, and EPA is not now reopening that decision nor requesting comment on it.

This effort provides clear notice to the public of the scope of the approved program in each state. By codifying the approved Kansas program and by amending the Code of Federal Regulations whenever a new or different set of requirements is approved in Kansas, the status of federally approved requirements of the Kansas program will be readily discernible. Only those provisions of the Kansas underground storage tank program for which approval has been granted by EPA will be incorporated by reference for enforcement purposes.

To codify EPA's approval of Kansas' underground storage tank program, EPA has added § 282.66 to title 40 of the CFR. Section 282.66 incorporates by reference for enforcement purposes the State's statutes and regulations. Section 282.66 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the underground storage tank program under subtitle I of RCRA.

The Agency retains the authority under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the state authorized analogs to these provisions. Therefore, the approved Kansas enforcement authorities will not be incorporated by reference. Section 282.66 lists those approved Kansas authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's underground storage tank program are not part of the federally approved state program. These non-approved provisions are not part of the RCRA subtitle I program because they are "broader in scope" than subtitle I of RCRA. See 40 CFR 281.12(a)(3)(ii). As a result, state provisions which are "broader in scope" than the federal program are not incorporated by reference for purposes of enforcement in part 282. Section 282.66 of the codification simply lists for reference and clarity the Kansas statutory and regulatory provisions which are "broader in scope" than the federal program and which are not, therefore, part of the approved program being codified today. "Broader in scope" provisions cannot be enforced by EPA; the State, however, will continue to enforce such provisions.

Certification Under the Regulatory Flexibility Act

This rule codifies the decision already made (59 FR 29201 June 6, 1994) to approve the Kansas underground storage tank program and thus has no separate effect. Therefore, this rule does not require a regulatory flexibility analysis. Thus, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule.

This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 282

Environmental protection, Hazardous substances, Incorporation by reference, Intergovernmental relations, State program approval, Underground storage tanks, Water pollution control.

Dated: August 23, 1994.

Dennis Grams,

Regional Administrator.

For the reasons set forth in the preamble, 40 CFR part 282 is amended as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

Subpart B—Approved State Programs

2. Subpart B is amended by adding section 282.66 to read as follows:

§ 282.66 Kansas State-Administered Program.

(a) The State of Kansas is approved to administer and enforce an underground storage tank program in lieu of the federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Kansas Department of Health and Environment, was approved by EPA pursuant to 42 U S.C. 6991c and part 281 of this Chapter EPA approved the Kansas program on June 6, 1994 and it was effective on July 6, 1994.

(b) Kansas has primary responsibility for enforcing its underground storage tank program. However, EPA retains the authority to exercise its inspection and enforcement authorities under sections 9005 and 9006 of subtitle I of RCRA, 42 U.S.C. 6991d and 6991e, as well as under other statutory and regulatory provisions.

(c) To retain program approval, Kansas must revise its approved program to adopt new changes to the federal subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Kansas obtains approval for the revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the **Federal Register**.

(d) Kansas has final approval for the following elements submitted to EPA in Kansas' program application for final approval and approved by EPA on June 6, 1994. Copies may be obtained from the Underground Storage Tank Program, Kansas Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas, 66620–0001.

(1) *State statutes and regulations.* (i) The provisions cited in this paragraph are incorporated by reference as part of the underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(A) Kansas Statutory Requirements Applicable to the Underground Storage Tank Program, 1994

(B) Kansas Regulatory Requirements Applicable to the Underground Storage Tank Program, 1994

(ii) The following statutes and regulations are part of the approved state program, although not incorporated by reference herein for enforcement purposes.

(A) The statutory provisions include: Kansas Statutes Annotated, Chapter 65, Public Health, Article 34, Kansas Storage Tank Act, Sections 108, 109 and 113.

(iii) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes.

(A) Kansas Statutes Annotated, Chapter 65, Article 34, Sections 105(2) insofar as it applies to aboveground storage tanks, (8) insofar as it applies to tank tightness tester qualifications, (11) & (12) insofar as it applies to licensing tank installers and fees for these licenses, (13) insofar as it applies to aboveground storage tanks; 106 insofar as it applies to aboveground storage tanks; 110 insofar as it applies licensing of tank installers and contractors; 111 insofar as it applies suspension of licenses; 112 insofar as it applies to agreements between secretary and local governments; 114 & 114a insofar as it applies to the storage tank release trust fund; 116 & 117 insofar as it applies to the storage tank release fund; 118 insofar as it applies to corrective action for aboveground storage tanks; 119–125 insofar as it applies to the storage tank release fund; 126 & 127 insofar as it applies to the third party liability insurance plan; 128 insofar as it applies to the storage tank fee fund; 129 & 130 insofar as it applies to the aboveground petroleum storage tank release trust fund.

(B) Kansas Department of Health and Environment Permanent Administrative Regulations, Chapter 28, Article 44, Section 18 insofar as it applies to registration of non-regulated underground storage tanks; 20–22 insofar as they require underground storage tank installers, tank tightness testers and contractors to be licensed; 23(b)(5) insofar as it applies to heating oil tanks.

(2) *Statement of legal authority.* (i) "Attorney General's Statement for Final Approval", signed by the Attorney General of Kansas on August 23, 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(ii) Letter from the Attorney General of Kansas to EPA, August 23, 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Procedures for Adequate Enforcement" submitted as part of the original application in September, 1993, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application in September 1993, though not incorporated by reference, are referenced as part of the approved

underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 7 and the Kansas Department of Health and Environment, signed by the EPA Regional Administrator on April 29, 1994, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by adding in alphabetical order "Kansas" and its listing.

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Kansas

(a) The statutory provisions include Kansas Statutes Annotated, 1992; Chapter 65, Public Health; Article 34, Kansas Storage Tank Act:

Section 100 Statement of legislative findings
Section 101 Citation of Act
Section 102 Definitions
Section 103 Exceptions to application of Act
Section 104 Notification
Section 105 Rules and regulations, except for 65–34, 105 (a)(2), (a)(8), (a)(11), (a)(12) and the following words in (a)(13), "and aboveground storage tanks in existence on July 1, 1992" and "and aboveground storage tanks placed in service prior to July 1, 1992"
Section 106 Permits to construct, install, modify, or operate storage tank, except for the following words in 65–34, 106(a), "and any aboveground storage tank registered with the department on July 1, 1992"
Section 107 Evidence of financial responsibility required; limitation of liability
Section 115 Liability for costs of corrective action
Section 118 Corrective action; duties of owners and operators; duties of Secretary; consent agreement; contents, except for the following words in 65–34, 118(b), "or from the aboveground fund if the release was from an aboveground petroleum storage tank." and "or from the aboveground fund, if the release was from an aboveground petroleum storage tank."

(b) The regulatory provisions include Kansas Administrative Regulations, 1992; Chapter 28, Department of Health and Environment; Article 44, Petroleum Products Storage Tanks:

Section 12 General provisions
Section 13 Program scope and interim prohibition
Section 14 Definitions
Section 15 Application for installation or modification of an underground storage tank
Section 16 Underground storage tank systems: design, construction, installation and notification
Section 17 Underground storage tank operating permit
Section 19 General operating requirements
Section 23 Release detection, except for 28–44–23(b)(5)
Section 24 Release reporting, investigation, and confirmation
Section 25 Release response and corrective action for underground storage tank systems containing petroleum or hazardous substances
Section 26 Out-of-service underground storage tank systems and closure
Section 27 Financial responsibility

[FR Doc. 94–23600 Filed 9–26–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–13; RM–8431]

Radio Broadcasting Services; Agana, Guam

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 275C to Agana, Guam, as that community's sixth local FM service, at the request of Inter-Island Communications, Inc., *See* 59 FR 10606, March 7, 1994. Channel 275C can be allotted to Agana, Guam, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 275C at Agana, Guam are North Latitude 13–28–27 and West Longitude 144–44–52. With this action, this proceeding is terminated.

DATES: Effective Nov. 7, 1994. The window period for filing applications for Channel 275C at Agana, Guam, will be open on November 8, 1994, and close on December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94–13, adopted September 14, 1994, and released September 21, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Guam, amended by adding Channel 275C at Agana.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–23784 Filed 9–26–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 59, No. 186
Tuesday, September 27, 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

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD39

1995 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Act of 1949 (1949 Act), as amended, requires the Secretary of Agriculture to implement an Acreage Reduction Program (ARP) for the 1995 crop of upland cotton which will result in a ratio of carry-over to total disappearance of 29.5 percent. This proposed rule would amend the regulations to set forth the acreage reduction percentage for the 1995 crop of upland cotton.

DATES: Comments must be received on or before October 17, 1994 in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Director, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Wayne E. Bjorlie, Fibers and Rice Analysis Division, ASCS, USDA, room 3754–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–7954.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by OMB under the provisions of 44 U.S.C. 35.

Request for Public Comment

Comments are requested with respect to this proposed rule, and such comments shall be considered in developing the final rule.

Background

In accordance with section 103B of the 1949 Act, an ARP is required to be implemented for the 1995 crop of upland cotton if it is determined that the total supply of upland cotton, in the absence of an ARP, will be excessive, taking into account the need for an adequate carry-over to maintain reasonable and stable supplies and prices and to meet a national emergency.

Land diversion payments also may be made to producers of upland cotton, whether or not an ARP for upland cotton is in effect, if needed to assist in adjusting the total national acreage of upland cotton to desirable goals. If, at the time of final announcement of the ARP, the projected carry-over of upland cotton for the crop year is equal to or greater than 8 million bales, a paid land diversion shall be offered to upland cotton producers. A paid land diversion has not been considered because, given the existing supply/use situation, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (from 0 to 25 percent) to the upland cotton crop acreage base for the crop for each upland cotton-producing farm. In making such a determination, the number of acres placed into the program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

A number of acres on the farm shall be devoted to conservation uses, in accordance with regulations issued by the Secretary. The acres required to be devoted to conservation uses may be reduced, at the request of the producer, if the producer's total estimated deficiency payments which would be received under the feed grain, rice, wheat, upland and ELS cotton programs are estimated to be reduced in order to comply with the payment limitations set forth in section 1001 of the Food Security Act of 1985. The amount of the reduction in the acres required to be devoted to conservation uses is proportional to the estimated reduction in payments, in accordance with 7 CFR 1413.53.

Producers who knowingly produce upland cotton in excess of the permitted upland cotton acreage for the farm plus any upland cotton acreage planted in

accordance with the flexibility provisions are ineligible for upland cotton loans and payments with respect to that farm.

If it is determined that an ARP for the 1995 crop of upland cotton is needed, a preliminary announcement of the ARP uniform percentage requirement (from 0 to 25 percent) must be made not later than November 1 of the calendar year preceding the year in which the crop is harvested. Not later than January 1 of the calendar year in which the crop is harvested, a final announcement of the ARP uniform percentage requirement must be made. Producers in early planting areas may elect to participate in the program on the terms of the ARP first announced for the crop, or as subsequently revised, if the Secretary determines that the producers may be unfairly disadvantaged by the revision. The ARP for the 1995 crop of upland cotton must be set at a level that will result in a ratio of carry-over to total disappearance of 29.5 percent, based on the most recent projection of carry-over and total disappearance at the time of announcement of the ARP. For the purposes of this provision, the term "total disappearance" means all upland cotton utilization, including total domestic, total export, and total residual disappearance.

Based on August 1994 supply/use estimates, ending stocks for the 1995 marketing year under a 5-percent ARP, a 10-percent ARP, and a 15-percent ARP are 5.35 million bales, 5.10 million bales, and 4.75 million bales, respectively. Such ARP levels would result in ratios of carry-over to total disappearance of 30.6, 29.7, and 28.1 percent, respectively. For the purposes of this proposed rule, these three ARP options will be considered. However, because of changes in the supply/use situation that may develop between now and November 1, the actual announced preliminary ARP may be different from the options discussed in this rule.

The estimated impacts of the ARP options are shown in the following table.

UPLAND COTTON SUPPLY/DEMAND ESTIMATES

Item	Option 1	Option 2	Option 3
	Percent		
ARP	5	10	15
Participation	90	88	85
	Thousand		
Planted	14,150	13,650	13,050

UPLAND COTTON SUPPLY/DEMAND ESTIMATES—Continued

Item	Option 1	Option 2	Option 3
	Thousand bales		
Production	18,400	17,850	17,200
Domestic Use	10,900	10,800	10,700
Exports	6,600	6,400	6,200
Ending Stocks	5,350	5,100	4,750
	Percent		
Stocks to Use	30.6	29.7	28.1
	Million dollars		
Deficiency Payments	833	725	612

Accordingly, comments are requested as to the 1995 acreage reduction percentage for upland cotton. The final determination of this percentage will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Revising paragraphs (a)(3)(iii) and (a)(3)(iv),

B. Adding paragraph (a)(3)(v),

C. Adding paragraph (d)(5) and adding and reserving paragraphs (d)(5)(i) and (d)(5)(ii), and

D. Adding paragraph (d)(5)(iii) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(3) * * *

(iii) 1993 upland cotton, 7.5 percent;

(iv) 1994 upland cotton, 11.0 percent; and

(v) 1995 upland cotton shall be within the range of 0 to 25 percent, as determined and announced by CCC.

* * * * *

(d) * * *

(5) For the 1995 crop:

(i)–(ii) [Reserved]

(iii) Shall not be made available to producers of the 1995 crop upland cotton.

* * * * *

Signed at Washington, DC, on September 20, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–23796 Filed 9–26–94; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Reexamination of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is expanding its reexamination of its enforcement program to include the issue of Notices of Enforcement Discretion for operating power reactors and requests public comment on issues associated with that matter. The NRC is soliciting comments from interested public interest groups, the regulated industry, states, and concerned citizens. This request is intended to assist the NRC in a review of its enforcement program which is being conducted to make recommendations for improvements in the regulatory process.

DATES: The comment period expires October 24, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: David Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Comments may also be provided electronically by accessing the NRC bulletin board system (BBS) that is a subsystem of FedWorld, which is

operated by the National Technical Information Service. The NRC BBS can be accessed directly by a toll free number, (800) 303–9672, at modem speeds up to 9600 Baud with communication parameters set at 8 data bits, no parity, 1 stop bit, full duplex, and ANSI terminal emulation. Select the Subsystems/Databases" option from the "NRC Main Menu" and then the 'Enforcement Program" option The Help/Information Center" from the 'Enforcement Program Menu" provides selections on "Request for Comments on the Enforcement Policy" and "How to Leave an Official Comment " The NRC BBS can also be accessed from the FedWorld "Subsystems/Databases" menu, which would facilitate user access using the Internet. FedWorld's access via Internet is Telnet access: fedworld.gov (192.239.92.3); FTP site access: ftp.fedworld.gov (192.239.92.205), and World Wide Web (Home Page): www.fedworld.gov (this is the URL).

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2741. Questions on the NRC BBS may be directed to Tom Dunning at (301) 504–1189.

SUPPLEMENTARY INFORMATION: On August 23, 1994 (59 FR 43298) [1], the Review Team for the Reexamination of the NRC Enforcement Program issued a **Federal Register** notice announcing a reexamination of the NRC enforcement program and requesting comments on the enforcement program. The comment period will close for that notice on October 24, 1994. Comments for this notice should also be submitted by October 24, 1994.

The purpose of this review effort is to (i) Perform an assessment of the NRC's enforcement program to determine whether the defined purposes of the enforcement program are appropriate, (ii) determine whether the NRC's enforcement practices and procedures for issuing enforcement actions are consistent with those purposes, and (iii) provide recommendations on any changes the Review Team believes advisable. It is expected that the Review Team will complete its review and issue its report, including recommendations, by the end of January 1995.

In the August 23, 1994 notice comments were requested on a variety of matters associated with the enforcement program. Item G. of the notice, entitled "Exercise of Discretion," raised two issues associated with the exercise of enforcement discretion. However, a note was included under Item G. that provided that the enforcement review was not addressing section VII.C. of the Enforcement Policy entitled, "Exercise of Discretion for an Operating Reactor" that addresses "Notices of Enforcement Discretion" (NOEDs). 59 FR 43303 The Review Team has since reconsidered its position and concluded that this issue should be considered as part of the reexamination Comments are now requested on this issue as described below

On September 12, 1994, a report entitled, "Notice of Enforcement Discretion Review Team Report," was issued which addressed a number of issues associated with the issuances of NOEDs. The recommendations in this report have not yet been adopted by the NRC. The report and its recommendations are undergoing staff review. A copy of that report is available for inspection and copying in the Commission's Public Document Room. In addition it is available on the NRC bulletin board system (BBS) that is a subsystem of FedWorld. Access to the NRC BBS is described in the **ADDRESSES** section above.

In providing comments on the issue addressed below, please key comments to the numbering system used to identify the specific issues by providing the issue number before the particular comment (e.g., Response to K.1). General or anecdotal comments (such as a general comment to the effect that some enforcement conferences have not been effective or that some enforcement cases have been inconsistent with the Enforcement Policy) will not be particularly useful. Rather comments should be as specific as possible and should reference specific cases, as appropriate, so that the Review Team can understand and evaluate the comment. Responses which call for a "yes" or "no" answer should be accompanied with an explanation as to why the commenter agrees or disagrees with the issue. When the term licensee is used in the issues listed below, it refers, as applicable, to licensees, vendors, and other persons subject to NRC enforcement actions.

Comments may be provided in hard copy or through the NRC electronic bulletin board (BBS). Instructions for accessing the NRC BBS are provided in the **ADDRESSES** section above.

Comments are requested on the following specific issues:

K. Exercise of Enforcement Discretion for Operating Reactors

The NRC requires that a licensee operate its facility in compliance with the NRC's regulations and the specific facility's license. When a licensee fails to comply with the conditions of its license or the NRC's regulations, the staff normally takes enforcement action against that licensee in accordance with the NRC Enforcement Policy Section VII.C of the Enforcement Policy, 10 CFR part 2, appendix C, recognizes that on occasion circumstances may arise where a power reactor licensee's compliance with a technical specification limiting condition for operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in start up without any corresponding health and safety benefits. In these circumstances it may be appropriate not to enforce the applicable requirements provided that the NRC is clearly satisfied that the action is consistent with protecting the public health and safety. Before issuing a NOED to a licensee, the licensee must justify the safety basis for the request and provide whatever information NRC deems necessary in making a decision as to whether to exercise this discretion. NOEDs are infrequently used and when issued are placed in the NRC Public Document Room. The use of enforcement discretion does not change the fact that a violation of a license requirement occurred. Under the Enforcement Policy, the NRC staff is to take enforcement action when it determines that there is an underlying violation that caused the need to seek the issuance of the NOED.

1. Under what circumstances should this type of enforcement discretion be exercised and why?

In addition to the above specific issues and those raised in the August 23, 1994 notice, commenters are invited to provide any other views on the NRC enforcement program which may assist the NRC in improving the effectiveness of NRC enforcement efforts.

Dated at Rockville, Maryland, this 21st day of September 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–23821 Filed 9–26–94; 8:45 am]

BILLING CODE 7590–01–M

[1] This notice was corrected on September 6, 1994 (59 FR 46004), by deleting the reference to a "Proposed rule" appearing in the action line of the August 23, 1994 notice.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–137–AD]

Airworthiness Directives; Raytheon Corporate Jets Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of proposed rulemaking (NPRM)

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon Corporate Jets Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125 series airplanes. This proposal would require inspections to detect cracking of the sidestay jack pivots of the main landing gear, and replacement of the sidestay jack pivot assemblies with new assemblies. This proposal is prompted by a report of fracturing of a jack pivot, which resulted in the inability of the main landing gear to deploy. The actions specified by the proposed AD are intended to prevent a wheels-up landing.

DATES: Comments must be received by November 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–137–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Manager Product Support, Customer Support Department, Raytheon Corporate Jets, Inc., Adams Field, P. O. Box 3356, Little Rock, Arkansas 72203. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–137–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–137–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Raytheon Corporate Jets Model Hawker 800 and 1000 and Model DH/BH/HS/BAe 125 series airplanes. The CAA advises that it has received a report of fracturing of a jack pivot, which resulted in the inability of the main landing gear (MLG) to deploy. The cracks are apparently caused by metal fatigue. This condition, if not corrected, could result in a wheels-up landing.

Raytheon Corporate Jets has issued Service Bulletin SB 32–233, dated June 24, 1994, which describes procedures for repetitive inspections to detect cracking of the sidestay jack pivots of the MLG, and replacement of the sidestay jack pivot assemblies with new assemblies. The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspections to detect cracking of the sidestay jack pivots of the MLG, and replacement of the sidestay jack pivot assemblies with new assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The referenced service bulletin recommends completion of the initial inspection within 28 days after the issuance date of the service bulletin. However, the manufacturer has notified the FAA that there is a delay in the availability of replacement parts for the sidestay jack pivot assemblies. The FAA has determined that a compliance time for the initial inspection within 28 days after the effective date of the final rule for this action will allow adequate time for the manufacturer to provide the replacement parts and for operators to comply with the requirements of this AD.

The FAA estimates that 550 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The FAA has been advised that the manufacturer plans to provide the required parts at no cost to the operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $181,500, or $330 per airplane.

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

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Corporate Jets, Inc. (Formerly De Havilland; Hawker Siddley; British Aerospace, PLC): Docket 94–NM–137–AD.

Applicability: Model Hawker 800 and 1000 series airplanes and Model DH/BH/HS/BAe 125–1A through–1000A series airplanes; equipped with main landing gear (MLG) sidestay assemblies on which Post-Mod 252091 steel jack pivots have been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of the MLG to deploy and a consequent wheels-up landing, accomplish the following:

(a) Perform a detailed visual inspection, using a 10X magnifier, to detect cracking of the sidestay assembly jack pivot of the left and right MLG, in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994, at the latest of the times specified in paragraphs (a)(1), (a)(2), or (a)(3) of this AD.

(1) Within 28 days after the effective date of this AD; or

(2) Prior to the accumulation of 3,000 total landings on the sidestay assembly since new; or

(3) Prior to the accumulation of 1,000 total landings since overhaul of the sidestay assembly.

(b) If no cracks are found and the sidestay assembly has been overhauled prior to the accomplishment of the inspection specified in paragraph (a) of this AD: Accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994.

(1) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 1,000 landings.

(2) Prior to the accumulation of 4,000 total landings on the jack pivot assembly since the sidestay assembly was last overhauled, or within 300 landings after the effective date of this AD, whichever occurs later: Replace the jack pivot assembly with a new assembly. Thereafter, prior to the accumulation of 4,000 landings, remove the jack pivot assembly and replace it with a new assembly in accordance with the service bulletin.

(c) If no cracks are found and the sidestay assembly has not been overhauled prior to accomplishment of the inspection required by paragraph (a) of this AD: Prior to the accumulation of 4,000 total landings on the jack pivot assembly, or within 300 landings after the effective date of this AD, whichever occurs later, replace the jack pivot assembly with a new assembly in accordance with Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

(d) If any crack is found that does not exceed the limits specified in Raytheon Corporate Jets Service Bulletin SB 32–233 dated June 24, 1994, accomplish the requirements of paragraphs (d)(1), (d)(2), or (d)(3) of this AD, as applicable, in accordance with the service bulletin.

(1) For sidestay assemblies that have accumulated 4,000 or more total landings since new that have been overhauled prior to accomplishment of the inspection specified in paragraph (a) of this AD: Accomplish paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.

(i) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 100 landings.

(ii) Prior to the accumulation of 4,000 total landings on the jack pivot assembly since the sidestay assembly was last overhauled, or within 300 landings after the effective date of this AD, whichever occurs later: Replace the jack pivot assembly with a new assembly. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

(2) For any sidestay assemblies that have accumulated 4,000 or more total landings since new that have not been overhauled: Accomplish paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 100 landings.

(ii) Within 300 landings after the effective date of this AD, replace the jack pivot assembly with a new assembly. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

(3) For sidestay assemblies that have accumulated less than 4,000 total landings since new: Accomplish paragraphs (d)(3)(i) and (d)(3)(ii) of this AD.

(i) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 100 landings.

(ii) Prior to the accumulation of 4,000 total landings on the jack pivot assembly, or within 300 landings after the effective date of this AD, whichever occurs later, replace the jack pivot assembly with a new assembly. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

(e) If, during any inspection required by this AD, any crack is found that exceeds the limits specified in paragraph 2.B.(6)(c) of the Accomplishment Instructions of Raytheon Corporate Jets Service Bulletin SB 32–233, dated June 24, 1994: Prior to further flight, replace the cracked pivot assembly with a new assembly in accordance with the service bulletin. Thereafter, prior to the accumulation of 4,000 landings on the jack pivot assembly, replace it with a new assembly in accordance with the service bulletin.

(f) An alternative method of compliance t or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on September 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23814 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–89–AD]

Airworthiness Directives; de Havilland Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8 series airplanes. This proposal would require inspection to detect corrosion on areas of the airplane structure where black film thermal insulation is used, and repair, if necessary; and replacement of black insulation blankets with certain aluminized (silver) insulation. This proposal is prompted by reports of corrosion forming on areas of the airplane structure where the black film covers the thermal insulation blankets. The actions specified by the proposed AD are intended to prevent degradation of the structural capability of the airplane fuselage and sudden loss of cabin pressure due to corrosion of the airplane fuselage structure.

DATES: Comments must be received by November 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

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–89–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–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–100 and –300 series airplanes. Transport Canada Aviation advises that there have been reports of corrosion forming on areas of the airplane structure where black Orcon film covers the thermal insulation blankets. Investigation revealed that the black Orcon film used to insulate the forward fuselage, passenger compartment, flight compartment, and ventilation ducts contains carbon. The cause of this corrosion has been attributed to the formation of condensation on any aluminum airplane structure when it is in contact with the carbon in the black Orcon film. Such corrosion, if not detected and corrected in a timely manner, could result in degradation of the strength of the airplane fuselage structure and could lead to sudden loss of cabin pressure.

Bombardier, Inc. (formerly de Havilland) has issued Service Bulletins S.B. 8–25–89, Revision D; S.B. 8–25–90, Revision B; S.B. 8–25–91, Revision C; S.B. 8–25–92, Revision D; and S. B. 8–25–93, Revision B; all dated January 19, 1994. These service bulletins describe procedures for one-time visual inspection to detect corrosion on areas of the airplane structure where black film thermal insulation is used, and repaired, if necessary. The service bulletins also describe procedures for replacement of black Orcon film insulation blankets with AN4C aluminized (silver) film thermal insulation blankets in various areas of the airplane structure, Transport Canada Aviation classified these service bulletins as mandatory and issued Canadian Airworthiness Directive CF–94–08, dated April 26, 1994, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection to detect corrosion on areas of the airplane structure where black film thermal insulation is used, and repaired, if necessary. This proposed AD also would require replacement of black Orcon film thermal insulation blankets with AN4C aluminized (silver) film insulation blankets. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 125 airplanes of U.S. registry would be affected by this

proposed AD, that it would require approximately 650 work hours to accomplish the required actions, at an average labor charge of $55 per work hour. The FAA has been advised that the manufacturer plans to provide required parts and to accomplish the required modification at no expense to operators. Therefore, there is no cost impact on U.S. operators that is associated with this proposed rule with regard to labor charges or parts costs.

The FAA does recognize, however, that while operators may incur administrative costs associated with compliance to this proposed rule, the one-year compliance time specified in paragraph (a) of this proposed AD should allow ample time for the proposed requirements to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

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:

De Havilland, Inc.: Docket 94–NM–89–AD.

Applicability: Model DHC–8–100 and –300 series airplanes, variants and serial numbers specified in paragraph (a) of this AD, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capability of the fuselage and sudden loss of cabin pressure, accomplish the following:

(a) For airplanes listed in the following table: Within one year after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with the Bombardier Service Bulletins, all dated January 19, 1994, as listed in the table below, as applicable.

DHC–8 models	Airplane serial numbers	Service bulletin number	Revision level
101, 102, 103, and 106	003 through 353 inclusive	S.B. 8–25–89	D
101, 102, 103, and 106	003 through 380 inclusive	S.B. 8–25–90	B
101, 102, 103, 106, 301, 311, and 314	003 through 337 inclusive, 339, 341 through 347 inclusive, 349, 350, 351, 353, and 356.	S.B. 8–25–91	C
301, 311, and 314	100 through 336 inclusive, 342, 350, and 356	S.B. 8–25–92	D
301, 311, and 314	100 through 381 inclusive	S.B. 8–25–93	B

(1) Perform a visual inspection to detect corrosion of the passenger compartment, flight compartment, forward fuselage, and air conditioning system. If any corrosion is found; prior to further flight, repair damage in accordance with the applicable service bulletin.

(2) Replace the black Orcon film insulation blankets with AN4C aluminized (silver) film thermal insulation blankets in accordance with the applicable service bulletin.

(b) As of one year after the effective date of this AD, no person shall install black Orcon film insulation, part number AN46B/AN36B, on any airplane.

(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, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York 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 September 21, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–23813 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 94–AAL–4]

Proposed Realignment of G–8, G–10, G–12, R–99, B–27, B–37, V–308, and V–328; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to extend Colored Federal Airways G–10 and R–99 and realign Colored Federal Airway B–37 as a result of the decommissioning of the Cape Spencer Marine Nondirectional Beacon (NDB); revise the descriptions of G–8, G–12, and B–27 Colored Federal airways; and, as a result of the decommissioning of the Quinhagak, AK, very high frequency omnidirectional range/distance measuring equipment (VOR/DME), realign Federal Airway V–328 and remove a segment of V–308. These

actions would enhance navigation and reduce both pilot and air traffic controller workloads.

DATES: Comments must be received on or before November 11, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 94–AAL–4, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AAL–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend Colored Federal Airways G–10, R–99, and realign Colored Federal Airway B–37 as a result of the decommissioning of the Cape Spencer Marine NDB. Colored Federal Airways G–10 and R–99 would be extended and would include an extension of G–10 from Woody Island to Kachemak. King Salmon, AK, NDB was inadvertently used in the descriptions of Colored Federal Airways G–8 and G–12, and as a result of this proposal, Saldo, AK, NDB would replace King Salmon, AK, NDB. King Salmon, AK, Locator Outer Marker in the description of B–27 would be replaced with Saldo, AK, NDB. Finally, as a result of the Quinhagak, AK, VOR/DME being decommissioned, this action would remove that segment of V–308 between Quinhagak, AK, and Bethel, AK, and would realign V–328 as a direct route between Dillingham, AK, and Kipnuk, AK. Colored Federal airways are published in paragraphs 6009(a), 6009(b), and 6009(d) respectively, and Alaskan VOR Federal airways are published in paragraph 6010(b), of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airways and the Alaskan VOR Federal airways listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6009(a) Green Federal Airways

* * * * *

G–8 [Revised]

From Shemya, AK, NDB, 20 AGL Adak, AK, NDB; 20 AGL Dutch Harbor, AK, NDB; 20 AGL INT Dutch Harbor NDB 041° and Elfee, AK, NDB 253° bearings; 20 AGL Elfee NDB; 20 AGL Saldo, AK, NDB; INT Saldo NDB 054° and Kachemak, AK, NDB 269° bearings, to Kachemak NDB. From Campbell Lake, AK, NDB, via INT Campbell Lake NDB 032° and Skwentna, AK, NDB 111° bearings; Glenallen, AK, NDB; INT Glenallen NDB 052° and Nabesna, AK, NDB 252° bearings; Nabesna NDB.

* * * * *

G–10 [Revised]

From Cape Newnham, AK, NDB; St. Paul Island, AK, NDB; Elfee, AK, NDB, 20 AGL INT Elfee NDB 041° and Port Heiden, AK, NDB 248° bearings; 20 AGL Port Heiden NDB; 67 miles 12 AGL, 77 miles 85 MSL, 67 miles 12 AGL, Woody Island, AK, NDB; to Kachemak, NDB.

* * * * *

G–12 [Revised]

From Saldo, AK, NDB; Port Heiden, AK, NDB; Borland, AK, NDB; to Elfee, AK, NDB.

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Paragraph 6009(b) Red Federal Airways

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R-99 [Revised]

From St. Paul Island, AK, NDB; Dutch Harbor, AK, NDB; Saldo, AK, NDB; Iliamna AK, NDB; INT Iliamna NDB 124° and Kachemak, AK, NDB 269° bearings; to Kachemak.

* * * * *

Paragraph 6009(d) Blue Federal Airways

* * * * *

B-27 [Revised]

From Woody Island, AK, NDB, 50 miles 12 AGL, 50 miles 95 MSL, 53 miles 12 AGL, Saldo, AK, NDB; 51 miles 12 AGL, 84 miles 70 MSL, 63 miles 12 AGL, Oscarville, AK, NDB; St. Marys, AK, NDB; Fort Davis, AK, NDB; 35 miles 12 AGL, 71 miles 55 MSL, 54 miles 12 AGL, Hotham, AK, NDB.

* * * * *

B-37 [Revised]

From Summer Strait, AK, NDB; Elephant, AK, NDB; INT Elephant NDB 272°T(243°M) and Ocean Cape, AK, NDB 139°T(110°M) bearings.

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Paragraph 6010(b) Alaskan VOR Federal Airways

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V-308 [Revised]

From Bethel, AK; INT Bethel 066°T(047°M) and Sparrevohn, AK, 279°T(257°M) radials; to Sparrevohn.

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V-328 [Revised]

From Dillingham, AK; to Kipnuk, AK.

* * * * *

Issued in Washington, DC, on September 16, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94-23879 Filed 9-26-94, 8:45 am]

Billing Code 4910-13-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Regulatory Program

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Oklahoma regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to revegetation success standards and statistically valid sampling techniques, and guidelines for phase I, II, and III bond release. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., October 12, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, Oklahoma 74135,

Oklahoma Department of Mines, 4040 N. Lincoln Boulevard, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

By letter dated February 17, 1994, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. OK-959.01). Oklahoma submitted the proposed amendment in response to the required program amendments at 30 CFR 936.16 (a) through (i). Oklahoma proposed to amend the Bond Release Guidelines that are referenced in subsections 816.116(a) and 817.116(a) of the Oklahoma rules.

OSM announced receipt of the proposed amendment in the March 8, 1994, **Federal Register** (59 FR 10770), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. OK-959.06). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 7, 1994.

During its review of the amendment, OSM identified concerns with Oklahoma's proposed revisions to the Bond Release Guidelines. OSM notified Oklahoma of these concerns by letter dated May 20, 1994 (administrative record No. OK—959.10). Oklahoma responded in a letter dated July 21, 1994, by submitting a revised amendment and additional explanatory information (administrative record No. OK-959.11).

OSM announced receipt of the July 21, 1994, revisions to the proposed amendment in the August 9, 1994, **Federal Register** (59 FR 40505) and invited public comment on its adequacy (administrative record No. OK-959.16). The public comment period closed on August 24, 1994.

By letter dated September 2, 1994 (administrative record No. OK-959.19), Oklahoma, at its own initiative in response to the U.S. Soil Conservation Service, Oklahoma State Office (SCS), August 29, 1994, comment letter (administrative record No. OK-959.18), submitted a revised amendment. Oklahoma proposes revisions to the Bond Release Guidelines in Appendices A, F, and O, concerning, respectively, the definition of "productivity," the method of sampling for production on pastureland and grazingland, and the methods for calculating a technical standard for productivity on lands reclaimed for use as pastureland and grazingland.

Specifically, Oklahoma proposes to revise the definition of "productivity" to refer to the amount of total, rather than harvestable, biomass. Also, with respect to the method of production sampling, Oklahoma proposes to (1) recommend that pastureland or grazingland with a predominance of warm season species be clipped during September or October and cool season species be clipped during May or June and (2) require that vegetation be clipped to ground level rather than within approximately two inches of ground level. Lastly, with respect to the calculation of technical standards, Oklahoma proposes (1) to require for

pastureland that SCS soil productivity figures expressed in animal unit months (AUM's) be converted to pounds per acre by multiplying the AUM's by 1560 and (2) to clarify for grazingland that clipping for productivity is a direct comparison to the SCS soil productivity figures expressed in pounds per acre.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon conterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 15, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–23828 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–05–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of recodification of Oklahoma's coal mining rules and revisions to the rules pertaining to reclamation plan requirements for ponds, impoundments, banks, dams, and embankments; road systems; subsidence control plans; transportation facilities; requirements for releasing performance bonds; hydrologic balance requirements for siltation structures; revegetation standards for success; subsidence control; soil removal requirements for prime farmland; soil stockpiling requirements for prime farmland; and soil replacement requirements for prime farmland. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t. October 27, 1994. If requested, a public hearing on the proposed amendment will be held on October 24, 1994. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on October 12, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under FOR FURTHER INFORMATION CONTACT.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

By letter dated September 14, 1994, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. OK–963). Oklahoma submitted the proposed amendment with the intention of revising the Oklahoma program to be consistent with the corresponding Federal regulations.

Oklahoma proposes to recodify its rules according to the standards set forth by the Oklahoma State Legislature and the Office of Administrative Code. The proposed recodification revises the Oklahoma rules from series 816 for surface coal mining operations and series 817 for underground coal mining operations to series 460 with underlying chapters and subchapters specifying the various surface and underground coal mining provisions.

In addition, Oklahoma proposes to revise the Oklahoma Coal Rules and Regulations at §§ 780.25 and 784.16, reclamation plan for ponds, impoundments, banks, dams, and embankments; § 780.37, road systems; § 784.20, subsidence control plans; § 784.24, transportation facilities; section 800.40, requirement to release performance bonds; §§ 816.46 and 817.46, hydrologic balance and siltation structures; § 816.116, revegetation success standards; § 816.121, subsidence control; § 823.12, prime farmland soil removal; § 823.13, prime farmland soil stockpiling; and § 823.14, prime farmland soil replacement.

More specifically, Oklahoma proposes the following revisions. It proposes to revise §§ 780.25 and 784.16, regarding the reclamation plan requirements for ponds, impoundments, banks, dams, and embankments, by deleting language allowing professional geologists and qualified, registered professional land surveyors to certify plans and detailed designs. In addition, Oklahoma proposes in both provisions to replace the phrase "regulatory authority' with the term "Department."

Oklahoma proposes to revise § 780.37, regarding road systems, by deleting language allowing qualified, registered professional land surveyors to certify plans and drawings for primary roads.

Oklahoma proposes to revise § 784.20, regarding subsidence control plans, by removing the phrase "to the extent required under State law" from the requirement that a permit application include a subsidence control plan containing a description of the measures to be taken to mitigate or remedy any subsidence-related material to, or diminution in value or reasonable foreseeable use of structures or facilities.

Oklahoma proposes to revise § 784.24, regarding transportation facilities, by deleting language allowing qualified, registered professional land surveyors to certify plans and drawings for primary roads.

Oklahoma proposes to revise § 800.40, regarding the requirement to release performance bonds, by providing that the Department may arrange with the permittee to allow access to the permit area upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

Oklahoma proposes to revise §§ 816.46 and 817.46, regarding the hydrologic balance requirements for siltation structures, by (1) striking a cross-reference to provisions that grant authority to qualified, registered professional land surveyors to certify plans and detailed designs for ponds, impoundments, banks, dams, and embankments; and (2) adding language to require that the qualified, registered professional engineer or land surveyor certifying the construction of siltation structures shall have experience in pond construction.

Oklahoma proposes to revise § 816.116, regarding revegetation success standards, to require that prior to approving selective husbandry practices, the Department must obtain the approval of the Director of the Office of Surface Mining that such practices are normal husbandry practices.

Oklahoma proposes to revise § 816.121, regarding subsidence control, by deleting the phrase "to the extent required under applicable provisions of State law" from the requirement to correct material damage resulting from subsidence.

Oklahoma proposes to revise § 823.12, regarding soil stockpiling requirements for prime farmland, to include the E horizon in the description of topsoil for prime farmland. In addition, Oklahoma proposes to delete the phrase "an equal or" from the requirement that a final soil have a greater productive capacity than that which existed prior to mining.

Lastly, Oklahoma proposes to revise sections 823.13 and 823.14, regarding soil stockpiling and soil replacement requirements for prime farmland, to include the E horizon in the description of topsoil for prime farmland.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under FOR FURTHER INFORMATION CONTACT by 4:00 p.m., c.d.t., on October 12, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to

discuss the proposed amendment may request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under ADDRESSES. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 20, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–23825 Filed 9–20–94; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 936

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma regulatory program (hereinafter, the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to the Small Operator Assistance Program (SOAP). The amendment is intended to revise the Oklahoma program to be consistent with SMCRA and the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., October 27, 1994. If requested, a public hearing on the proposed amendment will be held on October 24, 1994. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.s.t., October 12, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under FOR FURTHER INFORMATION CONTACT.

ADDRESSES: Written comments should be mailed or hand delivered to James H. Moncrief at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

II. Proposed Amendment

By letter dated September 14, 1994, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. OK–964). Oklahoma submitted the proposed amendment at its own initiative. The SOAP provisions of the Oklahoma Coal Rules and Regulations that Oklahoma proposes to revise are: Section 795.6, eligibility for assistance; Part 795.9, program services and data requirements; and § 795.12, applicant liability.

Specifically, Oklahoma proposes to revise its rules pertaining to an applicant's eligibility for SOAP assistance at § 795.6(a)(2) by requiring the applicant to establish that the probably total actual and attributed production from all locations during any consecutive 12-month period either during the term of the permit or during the first 5 years after issuance of the permit, whichever period is shorter, will not exceed 300,000 tons and at § 795.6(a)(2)(iv) to require that attributed production will include all coal produced by operations owned by

members of the applicant's family and the applicant's relatives, unless it is established that there is no direct or indirect business relationship between or among them.

Oklahoma proposes to revise its rules pertaining to the kinds of data collected and the results furnished to the SOAP program administrator at (1) Section 795.9(b)(2) to include the geologic drilling and the statement of the results of test borings or core samplings for the proposed permit area; (2) Section 795.9(b)(3) to include the collection of archeological information required by section 779.12(b) and any other archeological and historical information required by the regulatory authority, and the preparation of plans necessitated thereby; (3) Section 795.9(b)(4) to include the 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 under § 780.16 and any other applicable regulations; (4) Section 795.9(3)(5) to include pre-blast surveys if requested under § 816.62(b); and (5) Section 795.9(3)(6) to include the development of cross-section maps and plans required under § 779.25.

Oklahoma proposes to revise its rules pertaining to the applicant's liability at §§ 795.12(a) (2) and (3) to provide that the applicant shall reimburse the Department of Mines (Department) for the cost of SOAP laboratory services performed pursuant to Part 795 if the program administrator finds that the applicant's actual and attributed annual production of coal for all locations exceeds 300,000 tons during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit, whichever period is shorter, or if the permit is sold, transferred, or assigned to another person and the transferee's total annual and attributed production exceeds the 300,000-ton annual production limit during any consecutive 12-month period of the remaining term of the permit.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t., October 12, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 21, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94-23822 Filed 9-26-94; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 944

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Utah regulatory program (hereinafter, the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Utah rules pertaining to the confidentiality of coal exploration information. The amendment is intended to revise the Utah program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.d.t., October 27, 1994. If requested, a public hearing on the proposed amendment will be held on October 24, 1994. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., October 12, 1994. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102.

Utah Coal Regulatory Program, Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180-1203, Telephone: (801) 538-5340.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

By letter dated September 9, 1994, Utah submitted a proposed amendment to its program pursuant to SMCRA (administrative record No. UT-971). Utah submitted the proposed amendment in response to the required program amendment at 30 CFR 944.16(a). The provision of the Utah Coal Mining Rules that Utah proposes to revise is Utah Administrative Rule (Utah Admin. R.) 645-203-200, Confidentiality.

Specifically, Utah proposes to revise Utah Admin. R. 645-203-200 by inserting language to specify that the Division of Oil, Gas and Mining (Division) will not make information available for public inspection, if the information "concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the person intending to conduct coal exploration or that the information is confidential under the standards of the Federal Act." Utah also proposes to delete language that limited confidential information to information "classified as being protected, private, or controlled under the Government Records Access and Management Act (GRAMA) or confidential under other applicable State or federal laws, rules, or regulations."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., October 12, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

V. List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1994.

Russell F. Price,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–23824 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–94–110]

Drawbridge Operation Regulations; Fore River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations governing the Qunicy Weymouth Bridge over the Fore River at mile 3.5 between Quincy and Weymouth, Massachusetts. This change will restrict the exemption in the existing regulations which permits all commercial vessels to obtain bridge openings during vehicular traffic rush hours. This proposed regulation will permit bridge openings only for self-propelled vessels greater than 10,000 gross tons during the two rush hour periods. This change is expected to alleviate some of the traffic congestion caused when the bridge opens during rush hour.

DATES: Comments must be received on or before November 28, 1994.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350. The comments and other materials referenced in this notice will be available for inspection and copying by appointment at the Captain John Foster Williams Federal Building, Room 628, 408 Atlantic Avenue, Boston, Massachusetts. Normal office hours are between 6:30 a.m. and 3 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–94–110), specify the section of this proposal to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bounded material is requested. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in light of the comments received. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (obr), First Coast Guard District under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The drafters of this notice are Mr. John McDonald, First Coast Guard District Bridge Branch, Project Manager and Lieutenant Commander F.J. Kenney, First Coast Guard District Legal Office, Project Counsel.

Background and Purpose

Requests have been received proposing a change to the present operating regulations in 33 CFR 117.621 which state that the Quincy Weymouth Bridge need not be opened from 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday. However, commercial vessels are exempt from the two vehicular rush hour closed periods in the existing regulations and can have the bridge opened on signal at any time. Traffic delays result whenever the draws open during the morning and evening rush hours. This proposed rule will change the wording to allow only tide dependent self-propelled vessels greater than 10,000 gross tons to obtain a bridge opening during the two rush hour closed periods. By further limiting the number of rush hour openings, this change to the regulations should provide relief from the traffic delays created when the draws are opened during the two closed periods while still meeting the needs of navigation.

Discussion of Proposed Amendments

The Quincy Weymouth Bridge over the Fore River between Quincy and Weymouth has a vertical clearance of 33′ above mean high water (MHW) and 43′ above mean low water (MLW). The channel depth is 35′ at mean low water. The pilots of the vessels greater than 10,000 gross tons must transit through the bridge at or near the high tide for safety reasons. The Fore River channel width, turns, cross currents and the width of the bridge present a safety risk to the larger vessels. transiting at high tide with a favorable current reduces the risk of allisions and groundings.

The current regulations for the Quincy Weymouth Bridge are that the draws need not be opened from 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except holidays observed in the locality.

Traffic delays during the rush hours were frequent due to the commercial barge and tug traffic requesting bridge openings. The Coast Guard held several meetings with local officials, CITGO Petroleum Corporation, and marine interests to discuss safety issues, economic impacts and possible solutions to the vehicular traffic problems in the Quincy Weymouth area. A voluntary agreement resulted that allowed only tide dependent, self-propelled vessels greater than 10,000 gross tons to obtain bridge openings at any time including the rush hour periods. This voluntary action has been successful in alleviating traffic delays resulting from bridge openings during the rush hours. The Coast Guard proposes to change the regulations to make permanent the voluntary agreement, and will specifically state that only self-propelled vessels greater than 10,000 gross tons may pass through the bridge during rush hours. The existing rush hour time periods 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. stated in the existing regulations will be retained. The provision in the existing regulations for the passage of public vessels of the United States, state or municipal government vessels through the draw at any time is now published at 33 CFR 117.31 as a requirement for all bridges in the United States.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of executive order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. If has been exempted from review by the office of management and budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the regulation will not prevent the mariners from passing through the Quincy Weymouth Bridge but just require mariners to plan their transits around the two closed periods and the high tide.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard will accept comments on the economic impact on small entities, in connection with this proposal for a permanent change to the regulations where indicated under **ADDRESSES.**

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not raise sufficient federalism implications to warrant preparation of a federal assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g(5) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination Statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.621 is revised to read as follows:

§ 117.621 Fore River.

The draw of the SR3A bridge, mile 3.5 between Quincy Point and North Weymouth, shall open on signal, except that:

(a) From 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday, except holidays observed in the locality, the draw need not be opened.

(b) The draw shall open on signal at all times for self-propelled vessels greater than 10,000 gross tons.

Dated: September 13, 1994.

J.L. Linnon,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 94–23895 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 128 NJ–13–1–6104b; FRL–5051–4]

Approval and Promulgation of Implementation Plans; New Jersey Ozone State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of New Jersey related to development of reasonably available control technologies for all source categories of volatile organic compounds for which EPA has issued a control techniques guideline document. In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct

final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this proposed rule. Any parties interested in commenting on this proposed rule should do so at this time.

DATES: Comments must be received on or before October 27, 1994.

ADDRESSES: All comments should be addressed to: William J. Muszynski, Deputy Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 26 Federal Plaza, room 402, New York, New York 10278.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Raymond Werner, Chief, State Implementation Plan Section, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: July 26, 1994.

William J. Muszynski, P.E.,

Deputy Regional Administrator.

[FR Doc. 94–23694 Filed 9–26–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 85

[FRL–5080–6]

Supplemental Notice of Proposed Rulemaking on Ozone Transport Commission; Emission Vehicle Program for the Northeast Ozone Transport Region

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to Supplemental Notice of Proposed Rulemaking.

SUMMARY: The SNPRM which was published on Thursday, September 22, 1994 at 59 FR 48664 referencing five working days after publication as the deadline to request a hearing, is amended as follows: EPA will hold a public hearing on the Supplemental Notice of Proposed Rulemaking if one is requested by 12:00 p.m. Wednesday, September 28, 1994. The hearing, if requested, would begin at 9:00 a.m. and continue until all commenters have an opportunity to testify. The hearing, if requested, will be held in U.S. EPA Auditorium at 401 M Street, SW., in Washington, DC.

DATES: The hearing, if requested, would be held on Thursday, September 29 beginning at 9:00 a.m. in the U.S. EPA Auditorium at 401 M Street, SW., Washington, DC.

ADDRESSES: The hearing, if requested, will be held in Washington, D.C. Written comments should be submitted (in duplicate if possible) to the Air Docket (see address below). Copies of information relevant to this matter are available for inspection in public docket A–94–11 at the Air Docket (LE–131) of the EPA, room M–1500, 401 M Street SW., Washington, DC 20460, tel. (202) 260–7548, between the hours of 8:00 a.m. to 4:00 p.m., on Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Michael Shields, Office of Mobile Sources, U.S. EPA, 401 M Street, SW., Washington, DC 20460, tel. (202) 260–3450.

Dated: September 22, 1994.

Richard D. Wilson,

Deputy Assistant Administrator.

[FR Doc. 94–23917 Filed 9–26–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[GN Docket No. 94–90; DA 94–1012]

Private Land Mobile Radio Services; Eligibility for Specialized Mobile Radio Services and Radio Services in the 220–222 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: On August 2, 1994, the Commission released a Notice of Proposed Rule Making, FCC 94–202, concerning private land mobile radio services. This Order extends the deadlines for comments and reply comments in this proceeding in response to a request filed by American Mobile Telecommunications Association. This extension will provide interested parties enough time to complete their review and submit meaningful comments on the issues we raised in this proceeding.

DATES: Comments must be filed on or before October 5, 1994, and reply comments must be filed on or before October 20, 1994.

FOR FURTHER INFORMATION CONTACT: Sue McNeil, Private Radio Bureau, Land Mobile and Microwave Division, (202) 634–2443.

SUPPLEMENTARY INFORMATION: A summary of the Notice of Proposed Rule Making in this docket was published in the **Federal Register** on August 18, 1994 (59 FR 42563).

Order

Adopted: September 16, 1994.

Released: September 16, 1994.

In the Matter of: Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220–222 MHz Land Mobile Band and Use of Radio Dispatch Communications.

By the Chief, Private Radio Bureau:

1. On September 6, 1994, American Mobile Telecommunications Association, Inc. ("AMTA") filed a Motion For Extension Of Time regarding the time for filing Comments and Reply Comments in the above-entitled proceeding. AMTA requests that the Commission extend the deadlines for filing comments and reply comments from September 21, 1994 and October 6, 1994 to October 21, 1994 and November 7, 1994 respectively. RAM Mobile Data USA Limited Partnership ("RMD") has filed an opposition to AMTA's request.

2. AMTA asserts that the rule changes proposed in this proceeding, if adopted, would fundamentally affect the wireless industry and the regulatory environment in which AMTA's members operate. AMTA seeks an extension of time so that it may evaluate these proposals in light of the Commission's recently adopted Third Report and Order in GN–Docket No. 93–252, which establishes new technical, operational, and licensing rules for commercial mobile radio services (CMRS).[1] AMTA observes that the text of the *CMRS Order* has not yet been released and requests that parties have the opportunity to review the text so that they can assess the substantive impact of the *CMRS Order* on the issues raised in this proceeding.[2]

3. RMD opposes AMTA's extension request on the grounds that it could delay disposition of a pending waiver petition submitted by RMD to waive the wireline restriction. RMD also argues that a delay would be inconsistent with the Commission's overall goal of

[1] *Third Report and Order*, GN Docket No. 93–252, FCC 94–212, adopted August 9, 1994, release pending *(CMRS Order)*.

[2] AMTA Motion at 4.

establishing regulatory parity between SMRs and competing CMRS providers.[3]

4. We find that the public interest would be served by granting a short extension so that interested parties have the opportunity to assess the impact of the *CMRS Order* on the issues raised in this proceeding. We agree with RMD, however, that undue delay in this proceeding should be avoided. We therefore conclude that a two-week extension of the comment and reply deadlines is appropriate.

5. Accordingly, it is ordered, pursuant to § 1.46 of the Commission's Rules, 47 CFR 1.46, that the deadline for filing initial comments in this proceeding is extended from September 21, 1994 to October 5, 1994, and that the deadline for filing reply comments is extended from October 6, 1994 to October 20, 1994.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 94-23836 Filed 9-26-94; 8:45 am]

BILLING CODE 6712-01-M

[3] RMD Opposition at 2.

Notices

Federal Register
Vol. 59, No. 186
Tuesday, September 27, 1994

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

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[FES 94–30]

Availability of the Final Environmental Impact Statement for the Exxon Valdez Oil Spill Restoration Plan

AGENCIES: Forest Service, Department of Agriculture, and the Office of the Secretary, Department of the Interior. National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce is a cooperating agency.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Exxon Valdez Restoration Plan.

SUMMARY: On behalf of the *Exxon Valdez* Trustee Council, the Department of Agriculture, Forest Service announces the availability of the Final Environmental Impact Statement (FEIS) for the *Exxon Valdez* Oil Spill Restoration Plan. The responsible official for the preparation of the FEIS is the Regional Forester, Phil Janik. The Restoration Plan will establish management direction and guide all natural resource restoration activities covered by the civil settlement to the *Exxon Valdez* oil spill.

DATES: It is anticipated that a decision will be made on the Restoration Program approximately 30 days after publication of the Notice of Availability by the Environmental Protection Agency in the **Federal Register**.

ADDRESSES: Copies of a Summary of the FEIS or copies of the FEIS itself are available on request from the Oil Spill Public Information Office, 645 G. Street, Anchorage, Alaska, 99501. Phone number (907) 278–8008 or within Alaska (800) 478–7745, outside Alaska (800) 283–7745. Copies also will be sent to public libraries in Anchorage, Juneau, Fairbanks, Valdez, Cordova, Kodiak, Homer, and Seward, Alaska.

SUPPLEMENTARY INFORMATION:

A. Introduction

On October 8, 1991, a federal court approved settlement between the State and Federal Governments and Exxon under which Exxon will pay $1 billion in criminal restitution and civil damages to the governments. The State and Federal Trustees will receive $900 million in civil damages from Exxon over the 10 years. The funds are to be used to restore to their pre-spill condition the natural resources and the services they provide, injured by the *Exxon Valdez* oil spill. This includes the restoration of any natural resources injured, lost or destroyed and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resource and affected services. Restoration includes all phases of injury assessment, restoration, replacement, and enhancement of natural resources, and acquisition of equivalent resources and services.

All decisions about restoration and uses of restoration funds are made by six natural resources Trustees, three Federal and three State. The three Federal Trustees are: The Administrator for the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the Secretaries of the Department of Agriculture and of the Interior. The three State Trustees are: The Commissioners of Fish and Game, and Environmental Conservation, and the Attorney General. A Trustee Council, located in Alaska, composed of the three State Trustees and designees of the three Federal Trustees, is responsible for decisions relating to the assessment of injuries, uses of the restoration funds, and all restoration activities including the preparation of a Restoration Plan.

On April 10, 1992 (57 FR 12473–12475) on behalf of the Exxon Valdez Trustee Council, the Forest Service published a Notice of Intent to prepare an EIS on the Restoration Plan. This was later revised on January 14, 1994 (59 FR 2352–2353).

The Trustee Council released a Draft Restoration Plan in November 1993, which was the proposed action for the analysis conducted in the FEIS. The Draft Environmental Impact Statement (DEIS) was released for public comment on June 17, 1994 (59 FR 31191) followed by a 45-day comment period ending on August 1, 1994.

B. Comments

The comment period on the DEIS was 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** During the comment period for the DEIS public meetings were held on the following dates at the locations shown:

June 27, 1994—Anchorage, AK
June 29, 1994—Seward, AK
July 1, 1994—Homer, AK
July 5, 1994—Kodiak, AK
July 7, 1994—Cordova, AK
July 19, 1994—Valdez, AK

In addition, a teleconference was held on July 20, 1994. Opportunities for involvement were provided in the following communities:

Akhiok
Chignik
Chignik Lagoon
Chignik Lake
Cordova
Fairbanks
Homer
Ivanof Bay
Juneau
Karluk
Kodiak
Larsen Bay
Nanwalek
Old Harbor
Ouzinkie
Perryville
Port Graham
Port Lions
Seldovia
Seward
Soldotna
Tatitlek
Valdez
Whittier

Dated: September 21, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

Dated: September 19, 1994.

Phil Janik,

Regional Forester, Alaska Region, Forest Service, Department of Agriculture.

[FR Doc. 94–23782 Filed 9–26–94; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of country of origin adjustment for certain chocolate crumb from Australia.

SUMMARY: This notice adjusts the country of origin for the quota quantity of chocolate crumb containing over 5.5 percent of butterfat (except for retail) assigned to Australia.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Trade Analysis Division, Foreign Agricultural Service, Room 5531 South Building, Department of Agriculture, Washington, D.C. 20250–1000 or telephone at (202) 720–2916.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under Executive Order 12866 and Departmental Regulation 1512–1 and has been determined not to be a significant regulatory action since it will not have any of the significant effects specified in that order. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota article specified herein may be entered does not restrict the ability of importers to import this quota article, but only permits 1,750,000 kilograms of the article allocated to Australia to be imported from certain other countries.

Notice

Subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS) contains import limitations imposed on certain dairy products, including certain chocolate crumb. U.S. note 3(a)(iii) of subchapter IV of chapter 99 of the HTS permits the reallocation of the quota quantity of a dairy article listed in chapter 99 among the countries of origin specified for a given article if it is determined that the quota quantity assigned to a particular country is not likely to be entered from that country within a given calendar year. I hereby determine that it is not likely that 1,750,000 kilograms of chocolate crumb containing over 5.5 percent butterfat specified in HTS subheading 9904.10.63 for Australia will be entered from that country during calendar year 1994.

Notice is hereby given that 1,750,000 kilograms of chocolate crumb containing over 5.5 percent butterfat specified in HTS subheading 9904.10.63 for Australia may be imported from Australia, Ireland, the Netherlands, New Zealand and the United Kingdom for the remainder of the 1994 quota year.

The entire quota quantity for HTS subheading 9904.10.63 will revert to Australia on January 1, 1995.

Issued at Washington, D.C. this 21st day of September 1994.

Christopher E. Goldthwait,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 94–23855 Filed 9–26–94; 8:45 am]

BILLING CODE 3410–10–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 3:30 p.m. on October 27, 1994, at the Anchorage Hilton, 500 West Third Avenue, Anchorage, Alaska 99501. The purpose of the meeting is to plan future program activities and discuss civil rights issues in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Rosalee Walker or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 19, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–23801 Filed 9–26–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will be convened at 2:00 p.m. and adjourn at 4:00 p.m. on Tuesday, October 18, 1994, in the State Legislative Office Building, Capitol Avenue, Hartford, Connecticut 06105. The purpose of the meeting is to adopt a proposal for a 1995 project and also to release *Campus Tensions in Connecticut: Searching for Solutions in the '90s.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Ivor J. Echols, 203–688–2009 or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 19, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–23800 Filed 9–26–94; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 12:30 p.m. and adjourn at 6:00 p.m. on October 28, 1994, at the San Juan College, 4601 College Boulevard, Farmington, New Mexico 87402. The purpose of the meeting is to discuss civil rights and race relations issues in northwestern New Mexico.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Emma Armendariz or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the

services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 19, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–23802 Filed 9–26–94; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092294D]

Marine Mammals; Pinniped Removal Authority

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

ACTION: Notice of establishment of a Pinniped-Fishery Interaction Task Force and notice of first public meeting.

SUMMARY: NMFS announces the establishment of a Pinniped-Fishery Interaction Task Force (Task Force) on the sea lion/steelhead conflict at the Ballard Locks in Seattle, WA. The Task Force is being established pursuant to section 120 of the Marine Mammal Protection Act (MMPA), as recently amended. Section 120 of the MMPA sets forth a process for consideration of intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on salmonids that migrate through the Ballard Locks in Seattle. The first Task Force meeting, which is open to the public, coincides with the date of establishment of the Task Force.

DATES: The first public meeting of the Task Force, is scheduled for September 30, 1994, at 10:00 a.m.

ADDRESSES: The Task Force meeting will be held in the Auditorium, Building 9, at NOAA's Western Regional Center, 7600 Sand Point Way NE. in Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Joe Scordino, Northwest Region, 206–526–6143 or Ken Hollingshead, Office of Protected Resources, 301–713–2055.

SUPPLEMENTARY INFORMATION: NMFS received an application from the State of Washington on July 12, 1994, to consider the lethal removal of California sea lions that are depredating a wild run of winter steelhead as they migrate through the Ballard Locks. In accordance with the process set forth in section 120 of the MMPA, NMFS determined that the State's application provided sufficient evidence to warrant establishment of a Task Force to consider authorizing the intentional lethal taking of California sea lions that prey on wild winter-run steelhead that migrate through the Ballard Locks in Seattle, WA. Notice of receipt and acceptance of the State's application, along with an explanation of the process set forth in section 120 of the MMPA, was published in the **Federal Register** on August 2, 1994 (59 FR 39325) with a request for public comments. The public comment period closed on September 10, 1994, and approximately 100 public comments were received.

NMFS announces that, effective September 30, 1994, the Pinniped-Fishery Interaction Task Force is established and will have 60 days (in accordance with section 120 of the MMPA) or until November 30, 1994 to develop and submit its recommendations to NMFS. The Task Force will have 21 members consisting of scientists who are knowledgeable about the sea lion/steelhead conflict, representatives of conservation and fishing community organizations, the State, Indian tribes, NOAA and other Federal agencies involved in the conflict at the Locks.

The Task Force is to review the public comments received in response to the **Federal Register** document and pertinent factual information on the sea lion/steelhead interaction and within 60 days:

1. Recommend to NMFS whether to approve or deny the proposed intentional lethal taking of pinnipeds, along with the recommendation a description of the specific pinniped individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and

2. Suggest non-lethal alternatives, if available and practicable, including a recommended course of action.

All meetings will be open to the public, but the public will not be allowed to discuss or debate issues with the Task Force at its meetings. However, NMFS does intend to have a pre-designated, limited amount of time at the Task Force's first meeting to allow the public to provide new or relevant information that may assist the Task Force in its deliberations. Subsequent meetings will be determined by the Task Force during its deliberations. Public notice of subsequent meetings of the Task Force will be announced through NOAA Press Releases. The public may call the NOAA Public Affairs Office in Seattle at 206–526–6046 to obtain more detailed information on the Task Force meeting dates, times and locations.

In addition, in accordance with section 120 of the MMPA, the Task Force may need to meet again after January of 1995 to discuss the effectiveness of its recommended actions after implementation. Specifically, the MMPA requires that the Task Force evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. If implementation is ineffective in eliminating the interaction problem, the Task Force shall recommend additional actions. If the implementation is effective, the Task Force shall so advise NMFS and the Task Force will be disbanded.

In considering whether the State's application should be approved or denied, the Task Force is to consider:

1. Population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

2. Past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

3. The extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

4. The extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

NMFS expects the Task Force to strive to reach agreement on its recommendations. To enhance this process, NMFS has procured the services of a professional facilitator to chair the meetings of the Task Force. However, if consensus is not achieved, the Task Force should have each member vote on the controversial decisions or recommendations. The Task Force recommendation on whether to recommend lethal taking and other determinations should be made upon a simple majority vote; however, the minority view should be provided the opportunity to submit its recommendations in writing to NMFS at the same time the majority view is submitted. The basis and justification for the recommendations and determinations should be included in the Task Force's written

recommendation. The Task Force should specifically address those considerations outlined above, and any other considerations used by the Task Force in formulating its recommendations. Other considerations may include the likelihood of success of the proposed or recommended action and relationship to any long-term solutions to the interaction problem.

The role of the Task Force is to provide recommendations to NMFS; the final decision on whether to approve the requested lethal removal remains with NMFS. In this regard, NMFS has asked the Task Force to fully consider and provide recommendations on all aspects of the interaction problem, including nonlethal alternatives and steps that should be taken toward a long-term solution. In accordance with the MMPA, upon receipt of the Task Force's recommendations, NMFS will have 30 days to decide whether to approve or deny the State's application for lethal removal. Notice of the final decision will be published in the **Federal Register**.

Dated: September 22, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–23990 Filed 9–26–94; 8:45 am]

BILLING CODE 3510–22–F

[Docket No. 940964–4264; I.D. 081594C]

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Notice.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) no longer believes that the Atlantic mackerel fishery will require the imposition of some type of limited-entry management system. Therefore, August 13, 1992, is no longer considered a control date for entry into the Atlantic mackerel fishery.

EFFECTIVE DATE: September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Resource Policy Analyst, 508-281-9104.

SUPPLEMENTARY INFORMATION: As part of its preliminary deliberation of Amendment 5 to Fishery Management Plan for Atlantic mackerel, *Loligo* and *Illex* squid, and butterfish fisheries (FMP), the Council considered limited-entry management measures designed to address overfishing and overcapitalization in these fisheries. A notice announcing an August 13, 1992, control date for each of the three fisheries was published in the **Federal Register** (57 FR 36384, August 13, 1992). The intent of that notice was to promote public awareness of potential eligibility criteria for access to those fisheries and possible imposition of some form of limited-entry management regime.

Recent information regarding levels of biomass, fishing effort, and catch was presented to the Council on July 13, 1994. This information indicated that harvest levels for the squid and butterfish fisheries are approaching allowable biological catch levels. Further, the combination of increased demand, constant production capacity, and decreasing biomass demonstrates that the possibility of overfishing and overcapitalization in these fisheries persists. To address this potential, the Council is still considering a limited-entry system. Thus, a control date continues to be necessary to discourage additional entry. The Council and NMFS believe that the previously announced August 13, 1992, control date is appropriate for the squid and butterfish fisheries.

The data also indicated that Atlantic mackerel catch and fishing effort decreased in 1993 and 1994 while stock size remained fairly constant. Further, stock biomass estimates are extremely high. Due to these facts, the Council believes that the Atlantic mackerel fishery will not require a limited-entry management system in the near future. Therefore, NMFS announces the recision of the August 13, 1992, control date with respect to this fishery.

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

Dated: September 21, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–23781 Filed 9–26–94; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet October 19, 1994, from 9:00 a.m. to 3:30 p.m., at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy had determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LCDR, D. B. Rich, Pentagon, Room 4D534, Washington, DC 20350, Telephone Number: (703) 693-7248.

Dated: September 16, 1994

L. R. McNees

LCDR, JAGC, USN

[FR Doc. 94–23805 Filed 9–26–94; 8:45 am]

BILLING CODE 3810–AE–F

Record of Decision for the Final Supplemental Environmental Impact Statement (FSEIS) for Dredging at Pier D of the Puget Sound Naval Shipyard, Bremerton, Washington

Pursuant to section 102(2) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations on Implementing NEPA Procedures (40 CFR parts 1500–1508), the Department of the Navy announces its decision to implement the final supplemental environmental impact statement (FSEIS) for dredging at Pier D of the Puget Sound Naval Shipyard (PSNS), Bremerton, Washington. This decision updates and supplements the Record of Decision for the Final Programmatic Environmental Impact Statement for the Fast Combat Support Ship (AOE–6 Class) U.S. West Coast Homeporting Program which was issued on March 10, 1992.

The proposed action is to dredge and make structural upgrades at Pier D of the PSNS, and dispose of the dredged material in federally and state approved disposal sites. The action will provide the necessary bathymetry for permanent berthing for up to two AOE–6 Class ships and temporary berthing of one of the largest deep draft ships already homeported at PSNS, typically an aircraft carrier. The proposed action has been developed from a combination of three berthing configurations and five disposal options. The required dredging quantity is approximately 105,000 cubic yards, of which approximately 53,400 cubic yards are contaminated and are unsuitable for in-water disposal. The

disposal method is a mixed mode of operation which utilizes an upland facility (landfill) for contaminated sediment disposal and an in-water site for disposing of clean material. The primary upland disposal site is the Olympic View Sanitary Landfill (OVSL) about 10 miles south of Bremerton. The Roosevelt Regional Landfill (RRL) and Columbia Ridge Landfill and Recycling Center (CRLRC) would be used as backup in the event of unforeseen problems at OVSL. Each of these landfills is currently authorized to accept the type of dredged materials produced by this project which have been designated unsuitable for in-water disposal by regulatory agencies. The primary in-water disposal site is the Puget Sound Dredge Disposal Analysis (PSDDA) approved Elliot Bay disposal site near Seattle which is about 15 miles east of PSNS; backup sites include PSDDA approved Commencement Bay near Tacoma or Port Gardner near Everett.

Other berthing configurations and the "No Action" alternative were considered and eliminated. Other berthing configurations would not address the Navy's need for operational flexibility at PSNS with respect to large deep-draft vessels. The "No Action" alternative would not accommodate Navy's AOE–6 homeporting mission in the west coast.

Disposal options considered and eliminated were capped aquatic disposal (CAD), an upland disposal facility (CDF), near-shore confined disposal (NCDF), and a combination of PSDDA and NCDF.

Although an alternative requiring less dredging or "no action" would have fewer environmental impacts (but would not fulfill the purpose and need for the project), the dredging and dredged material disposal methods chosen will have the least practicable impacts and are environmentally preferred.

Transfer of the dredged material designated for upland disposal from marine to upland transportation will occur at a shoreside transfer area located near the west side of PSNS. The shoreside transfer area will be paved with an impervious pavement and curbing to prevent penetration of liquids into subsurface soils, or uncontrolled release into Sinclair Inlet. Within this area, dredged materials will be segregated according to moisture content, and loaded onto trucks for transport to the landfill. Runoff will be directed to sumps that will be used to convey water to settling tanks before discharging into Sinclair Inlet. If the moisture content of the dredged materials is too high for disposal at the landfill site, soil stabilization/solidification treatment measures will be employed to mitigate the problems. Materials that are acceptable to the landfill will not be treated prior to disposal.

Treatment will be through the addition of a portland cement/pozzolan mixture and/or additional drying. In a portland cement/pozzolan reaction, portland cement is combined with flyash or other pozzolan to produce a sediment-concrete mixture. Water is entrained in the hydration of the portland cement. The moist material will be screened and mechanically fed to a pugmill-type mixing plant. Portland cement/pozzolan soil additives are added through pneumatic system to the pugmill mixer. The treated material will be delivered to the landfill storage site thoroughly mixed and relatively uniform in appearance with all ingredients evenly distributed.

The preferred site for upland disposal is the OVSL in Kitsap County. The RRL and CRLRC are designated as alternative sites to provide flexibility and ensure project completion. Although OVSL has enough capacity for the volume determined to be unsuitable for open-water disposal, unforeseen circumstances related to dredging, transportation, or landfill operations could adversely affect the overall project schedule. Rather than delay the project, the alternative disposal sites would be used until use of the OVSL is reestablished. Use of these sites would involve the same process as described above for dewatering and treatment, but transportation would occur by rail car rather than by truck.

Dredging causes localized short-term effects on water quality in the immediate vicinity of the dredge operation. This will be mitigated through the use of regulatory dilution zones and water quality monitoring during the dredging operation. If water quality effects exceed these of regulatory requirements, such as alterations in pH value, dissolved oxygen, and/or turbidity to an unacceptable quantity, the dredging operation will be halted until the cause of the water quality degradation is identified and mitigated. Dredging is allowed to proceed only after all practicable measures are taken to correct the problem. The FSEIS and water quality permits provide water quality mitigation requirements. These requirements are a part of the construction specification detailing approaches and equipment requirements to maintain environmental quality.

Temporary losses will occur in benthic infauna, epifauna, and other bottom dwelling organisms through destruction of existing benthic habitat in the area affected by dredging. However, these losses are anticipated to be recovered within about a year after completion of the work.

Dredging operation, tug-barge transportation, and truck/train hauling operation will produce short term localized increases in air emissions and noise. No safety related effects are anticipated from these impacts. The affected area is in attainment with clean air standards and an air conformity analysis is not required.

The SEIS was prepared by the Navy in coordination with the U.S. Environmental Protection Agency, Region X; U.S. Army Corps of Engineers, Seattle District; Washington State Department of Ecology; City of Bremerton; and the Suquamish Tribe. The FSEIS was distributed to agencies and officials of federal, state and local governments, citizen groups and associates, public libraries, and other interested parties for review. The comment period ended on September 6, 1994. All significant issues identified were resolved through discussions with concerned agencies and parties.

Questions regarding the Draft and Final Supplemental Environmental Impact Statement prepared for this action may be directed to: Commanding Officer, Engineering Field Activity Northwest, Naval Facilities Engineering Command, 3505 Anderson Hill Road, Silverdale, WA, 98383–9130 (Attn: Mr. Peter Havens, Code 232.PH), telephone (206) 396–5976, fax (206) 396–7929.

Dated: September 21, 1994.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

Dated: September 21, 1994.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 94–23795 Filed 9–26–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Howard University

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(B) to Howard University,

School of Continuing Education, Silver Spring, MD 20910 under Grant Number DE-FG01-94AD83565. The purpose of the award is to assist in the establishment of a network of colleges and universities within the metropolitan Washington, DC, Virginia, and Maryland area which have curricula addressing technologies and public policies in the following areas: Energy and the environment; Advanced materials development; Advanced manufacturing and process technology; High performance computing and communications; High energy and nuclear physics; Bioscience and biotechnology; Business and public administration professions supporting these technologies. The contemplated period of performance will be five (5) years October 1, 1994—September 30, 1999. The network will link the policy and program office of DOE with appropriate academic institutions to facilitate rapid interchange of information and concepts regarding the direction of Federal energy programs, policies and technologies. The Department is funding the first budget period (10/1/94-9/30/95) in the approximate amount of 75,000—Howard University will be cost sharing approximately $13,456, the total budget is estimated to be $88,377.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Rosemarie Marshall, HR-531.11, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The proposed grant will provide funding to Howard University, which is a nationally recognized historically black academic institution with a broad curriculum. The Howard University School of Continuing Education (HUSCE) is one of the 17 schools and colleges of Howard University. HUSCE was established in April 1986 to meet the special higher-education needs of a rapidly expanding community of professionals, administrators, entrepreneurs, technical personnel, paraprofessionals and other adults. A part of the mission of the HUSCE is to serve as the central administrative unit for coordinating all continuing education at the University and for administering the Summer Sessions.

The program is meritorious because it not only provides the interface desired in the above subject areas, but also supports the Department's objective of building a well-educated and diverse community in energy-related fields of study reflecting the core values articulated in the Department of Energy Strategic Plan. This project will promote education as well as provide local colleges and universities the opportunity to provide a curriculum to the community which will better prepare them to gain employment with the Department of Energy.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the application represents a beneficial method for the Department to form partnerships with the academic community to foster educational growth closely attuned to national energy policy and technology development. The result should be university graduates which represent a diverse population with the foundation required to more adequately address the national energy challenges.

Craig S. Frame,

Contracting Officer, Operations Branch A-1, Office of Placement and Administration.

[FR Doc. 94-23882 Filed 9-26-94; 8:45 am]

BILLING CODE 6450-01-M

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of September 30, 1994.

ACHARYA, SARBESWAR NMI
ACKERLY, LAWRENCE R
ADLER, IRA M
ALESSI, VICTOR E.
ALLEN, GROVER L
ANDERSEN, ARTHUR T
ANDERSON, PHYLLIS L.
ANNAN, ROBERT H
BACA, FRANK A
BACHER, STEPHEN EUGENE
BAKER, KENNETH E
BAMBERGER, CRAIG S
BARBER, ROBERT W
BARKER, JR., WILLIAM L
BARRETT, LAKE H.
BARTHOLOMEW, JOHN W
BARTLEY, WILLIAM C
BAUBLITZ, JOHN E
BEAN, EARL W
BECHTEL, THOMAS F
BECKETT, THOMAS H
BECKNER, EVERET H
BEECY, DAVID J
BELL, GEORGE E
BELLOWS, JERRY L
BENEDICT, GEORGE W
BERGHOLZ, JR., WARREN E
BERLS, JR., ROBERT E.
BERNARD, PETER A
BERUBE, RAYMOND P
BIELAN, DOUGLAS J
BINGHAM, CARLETON D
BISHOP, YVONNE M
BIXBY, WILLIS W
BLACK, RICHARD L
BLACKWOOD, EDWARD B.
BORGSTROM, CAROL M
BORGSTROM, HOWARD G
BOWMAN, GERALD C.
BOYD, GERALD G
BRADLEY, THERON M., JR.
BRESEE, JAMES C
BREZNAY, GEORGE
BRICE, JAMES F
BRODMAN, JOHN R
BROGAN, JOHN J
BROLIN, EDSON C
BROWN, FREDERICK R
BROWN, JR., CHARLES H
BROWN, RICHARD W.
BRUSH, PETER N.
BRYANT, MCKINLEY E
BUFFUM, ELIZABETH
BURNS, THOMAS F., JR.
CANTER, HOWARD R.
CARABETTA, RALPH A
CARDINALI, HENRY A
CAREY, JR., EDWIN F.
CARLSON, LYNDA T
CARUSO, GUY F.
CHAPMAN, NAOMI R
CHAPPELL, GERALD F
CHAPUT, ERNEST S
CHERNOCK, WARREN P.
CHRISTENSEN, WILLIAM J
CHRISTOPHER, ROBERT K.
CHUN, SUN W
CHURCH, BRUCE W
CLAFLIN, ALAN B
CLAGETT, WILLIAM H. IV
CLARK, JOHN R
CLAUSEN, MAX JON
COLE, GEORGE F III
COLEMAN, HOWARD S
COMBS, MARSHALL O
CONE, RONALD E
CONLEY, MICHAEL W
COOK, JOHN S
CORNWELL, THOMAS F
COSTELLO, WILLIAM J
COTE, JOEL S
COWAN, STEPHEN P
CRANDALL, DAVID H
CRAWFORD, TIMOTHY S
CROWE, RICHARD C.
CULPEPPER, JAMES W
CUMESTY, EDWARD G
CURTIS, JAMES H
CYGELMAN, ANDRE I
CZAJKOWSKI, ANTHONY F.
DAGOSTINO, THOMAS S
DAVIES, JAMES D.
DAVIES, NELIA A
DAVIS, JAMES T
DECKER, JAMES F

DEGRASSE, JR., ROBERT W.
DEHANAS, THOMAS W
DEMAIRE, JUDITH M.
DENNISON, WILLIAM J
DER, VICTOR K
DIALS, GEORGE E
DIAZ, JR., ROMULO L
DIDISHEIM, PETER F.
DIEBOLD, ROBERT E
DIENES, NICHOLAS S
DIFIGLIO, CARMEN
DIRKS, TIMOTHY M
DIVONE, LOUIS V
DOHERTY, DONALD P
DOMAGALA, MARTIN J
DORSEY, WILLIAM A
DOVER, AGNES P.
DOYLE, MARK J.
DURNAN, DENIS D
EDMONDSON, JOHN J
EGGER, MARY H
ENGEL, WALTER P
ERB, DONALD E
ESVELT, TERENCE G
EVANS, THOMAS W
FAUSETT, STEPHEN A
FEIBUS, HOWARD
FEIDER, JAMES C.
FIORE, JAMES J
FIORI, MARIO P
FISHER, ROGER E
FITZGERALD, JR., JOSEPH E
FORD, JAMES L
FORD, JOHN A
FORRISTER, DERRICK L.
FORSYTHE, LARRY A
FOX PENNER, PETER S.
FRANK, CLYDE WILLIAM
FRANKLIN, JOHN R
FREI, MARK W
FRIEDMAN, GREGORY H
FRYE, KEITH N
FURIGA, RICHARD D
FYGI, ERIC J
GARSON, HENRY K
GAULDIN, MICHAEL
GEBUS, GEORGE R
GEIDL, JOHN C
GEISBUSH, JON C
GIBSON, JR., WILLIAM C
GICALE, JR., LOUIS J.
GILBERT, FRANCIS C
GILBERTSON, MARK A.
GOLDENBERG, NEAL
GOLDENBERG, RALPH D
GOLDMAN, DAVID TOBIAS
GOLDSMITH, ROBERT
GOLLOMP, LAWRENCE A
GRAHAM, A. DIANE
GREEVES, ROBERT E
GREINER, LLOYD M.
GROSS, THOMAS J
GRUENSPECHT, HOWARD K
GUIDICE, CARL W
GUIDICE, STEPHEN J
GUYER, ARTHUR E
HABERMAN, NORTON
HACSKAYLO, MICHAEL S
HAHN, RICHARD D
HALE, DOUGLAS R
HALL, JAMES C
HALL, JR., SPAIN W
HALSTED, JR., CHARLES G
HAMER JR, DAVID L
HAMRIC, JON P
HANESSIAN, SOUREN
HANSON, RONALD D
HARDIN, MICHAEL G
HARDY, RANDALL W.
HARRIS, JESSIE J
HARTMAN, JAMES K
HARVEY, GORDON W
HASPEL, ABRAHAM E.
HAWKINS, FRANCIS C
HAYMOND, GEORGE R
HEATH, CHARLES C
HEENAN, THOMAS F
HEFFERNAN, JAMES H
HENDERSON, LYNWOOD H
HENDRICKS, NANCY L.
HENDRIE, DAVID L.
HENSLEY, JR., WILLIE F
HESS, WILMOT N.
HEUSSER, ROGER K
HICKEY, SUE F
HICKOK, STEVEN G
HIRAHARA, JAMES S
HOFFMAN, ALLAN R.
HOGAN, DANNY A
HOPF, RICHARD H
HOPKINS, T. J.
HOWELL, JERRY C
HUGHES, JEFFREY L.
HUNTER, RAY A
HUTZLER, MARY JEAN
INGE, JR., EDWIN F
INLOW, RUSH O
ISAACS, THOMAS H.
IZATT, RONALD D
JAFFE, HAROLD
JEWETT, DAVID S
JICHA, JR., JOHN J
JOHNSON, MILTON D
JOHNSON, OWEN B
JOHNSTON, MARC
JONES, C. RICK
JONES, DAVID A
JOSEPH, ANTIONETTE GRAYSON
JUCKETT, DONALD A.
KAROL, MICHAEL S
KATZ, MAURICE J
KEHELEY, WAYNE E
KELIHER, JOHN G
KELLY, CYNTHIA C
KENNEDY, JOHN P
KESSLER, ROLAND R
KIGHT, GENE H
KILGORE, WEBSTER C
KILPATRICK, MICHAEL A
KINGSBURY, ROBERT L
KLEIN, KEITH A
KLEIN, SUSAN ELAINE
KNUTH, DONALD F.
KOONTZ, MAX A
LAGRONE, JOE B
LANDERS, JAMES C
LANE, ANTHONY R
LANGAN, WILLIAM T
LANGENFELD, CHERRI J.
LARSON, JR., VICTOR R
LASH, TERRY R.
LAVIN, ANN W.
LECLAIRE, DAVID B
LEWIS, JR., HOWARD E
LEWIS, LENORA J
LEWIS, ROGER A.
LIEN, STEPHEN C.T.
LIGHTNER, RALPH G
LIQUE, E DIANE W
LONGTON, JOSEPH N
LOOSE, RONALD R
LORENZ, MILTON C
LOWE, OWEN W.
LUONGO, KENNETH N.
LYNCH, OLIVER D. T. JR.
LYTLE, JILL ELLMAN
MAGRUDER, JAMES K
MAHER, JOSEPH R
MANGENO, JAMES J
MANN, THOMAS O
MANNING, WILLIAM F
MARCHESE, ANDREW R.
MARIANELLI, ROBERT S
MARLAY, ROBERT C
MAROLDO, JAMES H
MARQUESS, PAUL T
MARQUEZ, RICHARD A
MARTIN, CHARLES F
MAUPIN, GARY T
MAXEY, KENNETH G.
MAYHEW, DELMAR D
MC CALLUM, EDWARD J
MCALLISTER, JR., JOHN A.
MCBRIDE, THOMAS F.
MCCAMMON, HELEN M
MCCOY, FRANK R. III
MCFADDEN, JR., GEORGE L
MCINTYRE, DONALD D
MICHELSEN, STEPHEN J
MILLER, CLARENCE L
MILLHONE, JOHN P
MILNER, RONALD A
MOCK, JOHN E
MONLYN, SYLVIA MCDONALD
MOORE, KENNETH G
MORRIS, MARCIA L
MOURNIGHAN, STEPHEN D
MRAVCA, ANDREW E
MURPHY, ROBERT E
NEALY, CARSON L.
NEFF, JR., JEFFERSON O
NEILSEN, FINN K
NELSON, DAVID B
NELSON, JR., ROBERT M
NELSON, RODNEY R
NETTLES, JR, JOHN J.
NEWHOUSE, ALAN R
NEWMAN, DAVID G
NICHOLS, CLAYTON R
NOLAN, ELIZABETH A.
NULTON, JOHN D
O'BRIEN, JR., ROBERT A
O'FALLON, JOHN R
OLIVER, LAWRENCE R
OLSON, GARY C
PARNES, SANFORD J.
PATRINOS, ARISTIDES A.

PATTERSON, II, JOHN R
PATTON, GLORIA S
PEARMAN, JR., DONALD W
PELLETIER, RAYMOND
PERIN, STEPHEN G
PETERS, FRANKLIN G
PETTENGILL, HARRY J
PETTIS, LAWRENCE A
PLAISANCE, JR., PAUL J
PODONSKY, GLENN S
POE, ROBERT W
POLLOCK, III, WALTER E.
POWERS, JAMES G.
PRAY, CHARLES P.
PREWITT, JANA S.
PRICE, JR., ROBERT S
PRUDOM, GERALD H.
PRZYBYLEK, CHARLES S
PYE, DAVID B
RABBEN, ROBERT G
REDDICK, WILLIAM C
REDENIUS, RICHARD D.
REICHER, DAN W.
REID, JAMES E
REPKE, WOLFGANG C
RHOADES, DANIEL R
RICHARDSON, STEVEN D.
RIGGS, JOHN A.
ROBERTS, MICHAEL
ROBERTSON, JOHN S
ROBISON, SALLY A
ROCK, BERNARD J
RODEHEAVER, THOMAS N
RODEKOHR, MARK E
ROLLOW, THOMAS A
ROMM, JOSEPH J.
ROONEY, JOHN M
ROSEN, SOL
ROSENZWEIG, RICHARD
ROSSELLI, ROBERT M
ROUSSO, SAMUEL NMI
ROZZI, DOLORES L
RUDINS, GEORGE
RUDY, GREGORY P.
RUMSEY, TERRY CORNWELL
SABRE, RANDOLPH E
SALM, PHILIP E
SALTZMAN, JEROME D.
SALVADOR, LOUIS A
SAMBER, MARTIN
SAN MARTIN, ROBERT L
SCARBOROUGH, MURIEL L
SCHEETZ, KARL G
SCHMITT, CARL H
SCHMITT, EUGENE C
SCHMITT, WILLIAM A
SCHNAPP, ROBERT
SCHNEIDER, SANDRA L
SCOTT, RANDAL
SEASON, JR., HARRY T
SEMEDO, BARBARA
SHAFER, JOHN M
SHELOR, DWIGHT E
SHIRLEY, SR., JOHN W
SIEBERT, JR., ARLIE B
SIEGEL, JACK S
SIENKIEWICZ JR, E W
SILVERMAN, MARK N.
SIMON, ROBERT M.
SIMPSON, CHARLES KYLE
SINGER, MARVIN I
SITZER, SCOTT B
SJOBLOM, GLEN L.
SJOSTROM, LEONARD C
SMEDLEY, ELIZABETH E
SMITH, DAVID A
SMITH, DOUGLAS W.
SMITHWICK, GROVER A
SOHINKI, STEPHEN M.
SPIGAL, HARVARD P
SPILLER, REGINAL W.
STADLER, SILAS D.
STALLMAN, ROBERT M.
STARK, RICHARD M
STELLO, JR., VICTOR (NMN)
STEPHENS, RICHARD E
STEVENSON, F DEE
STEWART, JOHN B
STEWART, JR., FRANK M
STEWART, JR., JAKE W.
STONE, PHILIP M
STRAKEY, JR JOSEPH P
STREB, ALAN J
STUMBAUGH, DAVID C
SULAK, STANLEY R
SULLIVAN, MARY ANNE
SWINK, DENISE F
SYE, LINDA G.
TABOAS, ANIBAL L
TAILLIE, DENNIS K
TAMURA, THOMAS T
TATE, JR., DANIEL C.
TAVARES, ANTONIO F.
TECLAW, CHARLES E.
TEDROW, RICHARD T
THOMAS, IRAN L
THOMPSON, JERRY F
THROCKMORTON, RALPH R
TIERNEY, CHARLES R
TILLMAN, LUTHER J
TORKOS, THOMAS M
TSENG, JOHN C
TUCKER, WILLIAM E
TURI, JAMES A
TURNER, JAMES M
TUTTLE, III, EDWARD H
TWINING, BRUCE G
UTHUS, DOUGLAS B
VAETH, TERRY A
VAGTS, KENNETH A
VOLPE, FREDERICK J
WAGNER, MARY LOUISE
WAGONER, JOHN D
WALSH, ROBERT J
WALTON, HOWARD L
WARNICK, WALTER L
WATTS, CAROLYN H.
WEIDENFELLER, NANCY K.
WEINER, LAWRENCE A.
WERNER, JAMES D.
WESTERBECK, GERALD W
WHITE, JAMES K
WHITEMAN, ALBERT E
WIEBER, PAUL R
WIEKER, THOMAS L
WILCYNSKI, JOHN M
WILKEN, DANIEL H.
WILLIAMS, EDWARD R
WILLIAMS, MARK H.
WILLIAMSON, RICHARD H
WILLIS, JOHN W
WILMOT, EDWIN L
WISENBAKER, JR., WILLIAM
WOOLEY, JOHN C
YUAN-SOO HOO, CAMILLE C.

Issued in Washington, D.C. September 21, 1994.

Thomas T. Tamura,

Principal Deputy Assistant Secretary for Human Resources and Administration.

[FR Doc. 94–23881 Filed 9–26–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. EL94–54–000, et al.]

IES Utilities, Inc., et al.; Electric Rate and Corporate Regulation Filings

September 20, 1994.

Take notice that the following filings have been made with the Commission:

1. IES Utilities, Inc.

[Docket No. EL94–54–000]

Take notice that on August 3, 1994, IES Utilities, Inc. tendered for filing an amendment to its March 24, 1994 filing in the above-referenced docket.

Comment date: September 30, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. UtiliCorp United Inc.

[Docket No. ES94–38–000]

Take notice that on September 13, 1994, UtiliCorp United Inc. (UtiliCorp) filed an application under § 204 of the Federal Power Act seeking authority to issue up to and including 3 million shares of common stock, par value $1.00 per share, pursuant to a Dividend Reinvestment and Common Stock Purchase Plan. Also, UtiliCorp requests exemption from the Commission's competitive bidding regulations.

Comment date: October 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. New York Electric & Gas Corporation

[Docket No. ER94–1018–000]

Take notice that on September 6, 1994 New York Electric & Gas Corporation tendered for filing a Notice of Withdrawal of its March 3, 1994 filing in the above-referenced docket.

Comment date: September 29, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Morgan Stanley Capital Group, Inc.

[Docket No. ER94–1384–000]

Take notice that on September 9, 1994, Morgan Stanley Capital Group,

Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Dayton Power and Light Company

[Docket No. ER94–1469–000]

Take notice that on September 14, 1994, the Dayton Power and Light Company tendered for filing an amendment to its July 19, 1994 filing in the above-referenced docket.

Comment date: October 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Electrade Corporation

[Docket No. ER94–1478–001]

Take notice that Electrade Corporation (Electrade) on August 31, 1994, tendered for filing to Rules 205 and 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, 385.207 (1993), its revised Rate Schedule No. 1, to be effective September 20, 1994.

Electrade's application to engage in electric power and energy transactions as a marketer was accepted for filing by the Commission on August 25, 1994. In the instant filing, Electrade proposes that no sales will be made pursuant to its Rate Schedule No. 1 to any entity controlled by, under common control with, or controlling Electrade Corporation.

Rate Schedule No. 1, as revised, provides for the sale of energy and capacity at prices mutually agreed upon by the purchaser and Electrade, and prohibits affiliates sales.

Comment date: October 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Company of New Hampshire

[Docket No. ER94–1617–000]

Take notice that on September 1, 1994, Public Service Company of New Hampshire (PSNH) tendered for filing an Amendment (the "Amendment") to the Resale Service Agreement between PSNH and each of the following Municipal Systems (the "Municipal Customers"): The Town of Ashland, New Hampshire (Electric Light Department), New Hampton Village Precinct, and the Town of Wolfeboro (Municipal Electric Department). PSNH has requested an effective date for the Amendment of November 1, 1994.

PSNH states that the Amendment would implement an additional charge under the Resale Service Agreements to permit PSNH to recover from its Municipal Customers the increased costs to PSNH resulting from PSNH's implementation of the Statement of Financial Accounting Standards No. 106 which concerns the accounting for the post-retirement benefits other than pensions.

PSNH states that copies of the filing were served on the Municipal Customers and the New Hampshire Public Utilities Commission, which is the only State Commission within whose jurisdiction the Municipal Customers distribute and sell electric energy at retail.

Comment date: October 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Delmarva Power & Light Company

[Docket No. ER94–1620–000]

Take notice that Delmarva Power & Light Company (DP&L) on September 2, 1994, tendered for filing a revised fuel adjustment clause rate schedule.

The affected customers and their FERC rate schedules are as follows:

Customer	FERC rate schedule Nos.
Old Dominion Electric Cooperative	51, 52, 53
Lewes, Delaware	61
Seaford, Delaware	62
Berlin, Maryland	63
Middletown, Delaware	65
New Castle, Delaware	66
Milford, Delaware	67
Newark, Delaware	69

The proposed changes would modify the fuel adjustment clause so that demand charge payments associated with natural gas contracts are recoverable through the fuel adjustment clause.

Copies of the filing were served upon Delmarva's jurisdictional customers named above and upon the Delaware and Maryland Public Service Commissions, as well as the Virginia State Corporation Commission.

Comment date: October 5, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Borough of Zelienople, Pennsylvania

[Docket No. TX94–9–000]

Take notice that on September 9, 1994, the Borough of Zelienople (Borough) tendered for filing an application requesting that the Commission order Pennsylvania Power Company (Penn Power) to immediately provide transmission services pursuant to Sections 211 and 212 of the Federal Power Act.

In its application, the Borough seeks up to 7 MW of firm transmission services over Penn Power's system to the existing terminal pole and monitoring points where Penn Power's service lines meet Zelienople's 4 kV system. The Borough requested the firm transmission services for the receipt of electric power from Duquesne Light Company from a 69 kV point of interconnect at Penn Power's Valley-Frisco Substation at 69 kV to be delivered from that point by Penn Power to the 4 kV metering point at Penn Power's substation located in the Borough or, alteratively, at 138 kV at Penn Power's Hoytdale Substation.

The proposed date for initiating the requested transmission service is September 1, 1994, or as soon thereafter as possible. The proposed date for terminating the requested transmission services is September 1, 1999, or five years after initiating service.

Comment date: October 7, 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–23798 Filed 9–26–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 10854–002]

Notice of Application

September 20, 1994.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

The Federal Energy Regulatory Commission (FERC) has received an application for initial license of the Cataract Hydroelectric Project, FERC No. 10854–002. The project is located on the Escanaba River Basin in Marquette Co, near Gwinn, Michigan.

The FERC staff intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act.

As part of the EA preparation process, FERC staff will conduct a site visit of the project on October 6, 1994. The site visit will provide an opportunity for interested parties to observe environmental conditions at the project area.

If you would like to attend the site visit, we will meet at 10:00 p.m. to Tuesday, October 6, at Jerry's Restaurant Parking Lot, Highway M–35 across from the Gwinn High School. The Cataract Hydro Project address and directions to the meeting location are as follows:

From Marquette, MI, travel approximately 8 miles west on US 41. Turn south on Highway M–35, travel approximately 25 miles to the City of Gwinn. Highway M–35 is the main road through Gwinn.

We will conclude the site visit at the Hydroelectric Project location. Please be aware that you will be responsible for your own lodging, transportation, and meals.

Please notify Mr. Max Curtis, Upper Peninsula Power Company (UPPCo), at (906) 487–5063, if you plan to attend the site visit. All those attending the site visit are urged to refrain from any communication concerning the merits of the license application to any member of the Commission staff or Commission's Contractor, CH2M HILL, outside of the established process for developing the licensing record.

For further information, please contact Ms. Angel Oliver at (202) 219–2998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–23886 Filed 9–26–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5076–7]

Availability of Proposed Approval Decisions and Lists Under CWA Section 303(d)

AGENCY: U.S. Environmental Protection Agency (USEPA), Region VII.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of lists for the Region VII states of Kansas, Nebraska and Missouri submitted to EPA pursuant to CWA section 303(d)(2) as well as EPA's proposed decisions to approve these lists, and requests public comment.

DATES: Comments must be submitted to EPA on or before November 14, 1994.

ADDRESSES: Comments on these items should be sent to Jerome Pitt, U.S. Environmental Protection Agency Region VII, Water Management Division, 726 Minnesota Ave., Kansas City, Kansas 66101.

Copies of these items can be obtained by writing or calling Jerome Pitt, U.S. Environmental Protection Agency Region VII, Water Management Division, 726 Minnesota Ave., Kansas City, Kansas 66101; Phone: 913–551–7766; FAX: 913–551–7765.

FOR FURTHER INFORMATION CONTACT: Jerome L. Pitt at 913–551–766.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each State identify those waters for which existing required pollution controls are not stringent enough to implement State water quality standards. For those waters, states are required to establish total maximum daily loads (TMDLs) according to priority ranking. The identified waters and loads are required to be submitted to the Environmental Protection Agency (EPA) for approval from "time to time."

On January 11, 1985 EPA published a final rule (50 FR 1775) that established 40 CFR part 130 (Water Quality Planning and Management). This rule established certain requirements for State and local government water quality programs, including requirements related to the implementation of section 303(d) of the CWA. The regulation did not specify dates for State compliance with the section 303(d) requirements, but reiterated the statutory provision calling for submission from time to time. On July 24, 1992, EPA published a final rule (57 FR 33040) that amended 40 CFR 130.7. The rule established that each state shall submit biennially to the Regional Administrator beginning in 1992 the list of waters, pollutants causing impairment, and the priority ranking including waters targeted for TMDL development within the next two years.

Consistent with EPA's amended regulation Kansas, Nebraska and Missouri have submitted to EPA for approval their list decisions under section 303(d)(2). EPA today proposes to approve these lists submitted by Kansas, Nebraska and Missouri and solicits public comment on the proposed approval decisions and on the state lists.

Dated: September 19, 1994.

Ronald R. Ritter,

Director, Water Management Division, USEPA Region VII.

[FR Doc. 94–23888 Filed 9–26–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. part 540, as amended:

American Canadian Caribbean Line, Inc., P.O. Box 368, 461 Water Street, Warren, Rhode Island 02885

Vessel: NIAGARA PRINCE

Dated: September 21, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–23807 Filed 9–26–94; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 94–19]

L.B.L. Enterprises, Inc. v. Con-Freight Marine Line, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by L.B.L. Enterprises, Inc. ("Complainant") against Con-Freight Marine Line, Inc. ("Respondent") was served September 21, 1994.

Complainant alleges that Respondent is a non vessel operating common carrier that violated section 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. § 1709(d)(1). Complainant states that Respondent prepared a bill of lading incorrectly showing the Port of Discharge to be St. Petersburg, Russia on two shipments to Riga, Latvia, corrected the port of discharge while the two shipments were in transit without correcting the delivery contact agent which Complainant later found handled shipments only to Russia, refused to reimburse Complainant for costs of a Latvian driver to transport the shipments from St. Petersburg to Riga after promising to do so, and caused both shipments to arrive late. Further, Complainant alleges respondent refused to return a security deposit that was required for release of the second shipment in St. Petersburg, after promising to do so.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61,

and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by September 21, 1995, and the final decision of the Commission shall be issued by January 19, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 94–23810 Filed 9–26–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2379 ..	Fabian Forwarders Company, Inc., 125 Yellowstone Drive, Reno, NV 89512.	Aug. 5, 1994.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–23806 Filed 9–26–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2366
Name: Transtec Ocean Express Inc.
Address: 19443 Laurel Park Rd., Ste. 107, Rancho Dominguez, CA 90220
Date Revoked: July 13, 1994
Reason: Surrendered license voluntarily.

License Number: 3553
Name: International Relocation Co. dba ABcom International Transportation and Trading Co.
Address: 15272 Bolsa Chica Rd., Huntington Beach, CA 92649
Date Revoked: July 21, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2211
Name: Golden Eagle International Forwarding, Inc.
Address: 9270 NW 100th Street, Medley, FL 33178
Date Revoked: July 22, 1994
Reason: Surrendered license voluntarily.

License Number: 3342
Name: Maria Velez De Espinosa dba MV Ocean Freight Forwarders
Address: Rio Tallaboa AV–9, Valley Verde, Bayamon, PR 00961
Date Revoked: July 27, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 2397
Name: Carl Ronay dba Aero-Mar-Terra Forwarding
Address: 1027 main, #B, Pasadena, TX 77506
Date Revoked: July 27, 1994
Reason: Surrendered license voluntarily.

License Number: 165
Name: Gerard F. Tujague, Inc.
Address: 401 Sanlin Bldg., P.O. Box 53037, New Orleans, La 70153
Date Revoked: August 1, 1994
Reason: Surrendered license voluntarily.

License Number: 3559
Name: Brunswick International, Inc.
Address: 14 Kennedy Blvd., East Brunswick, New Jersey 08816
Date Revoked: August 5, 1994
Reason: Surrendered license voluntarily.

License Number: 3362
Name: Logistic Distribution System USA, Inc. dba LDS USA
Address: 18 Self Blvd., Carteret, NJ 07008
Date Revoked: August 5, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 624
Name: Rapid World Forwarders, Inc.
Address: 27 Park Place, New York, NY 10007
Date Revoked: August 9, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3283
Name: John Clark International, Inc.
Address: 845 Chicago Ave., Ste. 218, Evanston, IL 60202
Date Revoked: August 10, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 1830
Name: Westwind Overseas Limited
Address: 633 Broadway, Hastings-On-Hudson, New York, NY 10706
Date Revoked: August 11, 1994
Reason: Failed to maintain a valid surety bond.

License Number: 3671
Name: Kanmar, Corp.
Address: 1701 W. 62nd Street, Hialeah, FL 33012
Date Revoked: August 13, 1994
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–23808 Filed 9–26–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

IBT Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. IBT Bancorp, Inc., Mt. Pleasant, Michigan; to engage *de novo* through its subsidiary IBT Financial Services, Inc., Mr. Pleasant, Michigan, in full service securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in the state of Michigan.

2. Northern Bankshares, Inc., McFarland, Wisconsin; to expand the scope of its lending activity of making and servicing loans by increasing loan participations, in an aggregate amount, up to $2 million, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. National City Bancshares, Inc., Evansville, Indiana; to engage *de novo* through its subsidiary NCBE Leasing Corp., Evansville, Indiana, in (1) leasing personal and real property; and (2) acting as agent, broker or adviser in the leasing of personal or real property, pursuant to § 225.25(b)(5) and (b)(i) and (ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 21, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23817 Filed 9–26–94; 8:45 am]

BILLING CODE 6210–01–F

South Pointe Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 21, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. South Pointe Financial Corporation, Marion, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of South Pointe Bank, Marion, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. The First National Bank of St. James, ESOP, St. James, Minnesota; to acquire as the result of a stock redemption, 13.72 percent, for a total of 41.89 percent, of the voting shares of The First National Agency at St. James, St. James, Minnesota, and thereby indirectly acquire The First National Bank at St. James, St. James, Minnesota.

Board of Governors of the Federal Reserve System, September 21, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–23818 Filed 9–26–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Request For Comments Concerning a Study of Federal-State Cooperation

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is conducting a study mandated by Section 13 of the Federal Trade Commission Act Amendments of 1994, Public Law 103–312, which requires that the Commission review "its statutory responsibilities to identify those matters within its jurisdiction where Federal enforcement is particularly necessary or desirable and those areas that might more effectively be enforced at the State or local level." The Commission requests public comment concerning these issues.

DATES: Written comments will be accepted until October 27, 1994.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth and Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine D. Kolish, Assistant Director, Division of Enforcement, Bureau of Consumer Protection, (202) 326–3042, or Joan S. Greenbaum, Associate Director for Regions, Bureau of Competition, (202) 326–2629, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Federal Trade Commission Act Amendments of 1994 became law on August 26, 1994. Public Law 103–312, 108 Stat. 1691. Section 13 directs the Commission, within six months of the bill's enactment, to transmit to the Committee on Commerce, Science and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on Federal-State Cooperation. The report is "to identify those matters within [The Commission's] jurisdiction where Federal enforcement is particularly necessary or desirable and those areas that might more effectively be enforced at the State or local level." In conducting this review, the Commission is directed to "consider the resources available to the Commission and the States, as well as particular rules that have been promulgated by the Commission." In addition, the Commission must "consider such other issues as will result in more efficient implementation of the statutory responsibilities of the Commission."

Section 13 directs the Commission to "consult with the attorneys general of the States, representatives of consumers and industry, and other interested parties." The Commission is issuing this Notice to solicit written comments from interested members of the public on the issues described above. Because the report must be transmitted to Congress by February 27, 1995, the comment period is limited to 30 days.

Commission staff expects to hold informal meetings with persons and groups interested in the topics to be addressed in the report. All interested parties are nonetheless urged to file

written comments, because the staff may not be able to accommodate all of the interested groups that wish to meet.

Comments should focus on areas of the Commission's enforcement authority that might be implemented more effectively and efficiently by altering the present manner in which enforcement activity is shared between the Commission and State or local agencies. Specific areas of interest include enforcement allocations respecting trade regulation rules, deceptive marketing practices, deceptive advertising, consumer credit and debt collection practices, and anticompetitive conduct that primarily affects consumers within a particular State or local area versus conduct that has primarily regional or national impact. In any assessment of enforcement allocations in these areas, the impact on resources available to the Commission and the States to carry out their other law enforcement responsibilities should be considered. Comments should discuss the basis for any recommendations, and describe any statutory changes or changes in the Commission's rules that might be necessary to implement the recommendations. Comments directed to telemarketing practices should recognize that the statutory authority of both the Commission and the States has recently been affected by the Telemarketing and Consumer Fraud and Abuse Prevention Act, Public Law 103–297, 108 Stat. 1545 (Aug. 16, 1994).

The Commission anticipates that both the range and the analysis of enforcement reallocation opportunities may differ with respect to the Commission's consumer protection and competition missions. Therefore, comments dealing specifically with the Commission's consumer protection responsibilities should be segregated from comments dealing with the Commission's maintaining competition responsibilities. Documents containing the former should be titled "Consumer Protection Comment;" those containing the latter should be titled "Maintaining Competition Comment."

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–23877 Filed 9–26–94; 8:45 am]

BILLING CODE 6750–01–M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

[Between: 082294 and 090294]

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Loewen Group Inc.; Tex Kilpatrick; Kilpatrick Enterprises, Inc	94–1772	08/22/94
The Loewen Group Inc.; K.D. Kilpatrick; Kilpatrick Enterprises, Inc	94–1773	08/22/94
American Barrick Resources Corporation; Lac Minerals Ltd.; Lac Minerals Ltd	94–1873	08/22/94
The Chase Manhattan Corporation; American Residential Holding Corporation; American Residential Holding Corporation	94–1919	08/22/94
Merrill Lynch Capital Appreciation Partnership B–XXV, LP; U.S.A. Foods, Inc.; Newco	94–1823	08/23/94
Merrill Lynch Capital Appreciation Company Limited II; U.S.A. Foods, Inc.; Newco	94–1824	08/23/94
N.V. Verenigd Bezit VNU; Boston Ventures Limited Partnership II; Bill Holdings, Inc	94–1843	08/23/94
Amoco Corporation; E.I. duPont de Nemours and Company; E.I. duPont de Nemours and Company	94–1857	08/23/94
Gerber Scientific, Inc.; Microdynamics, Inc.; Microdynamics, Inc	94–1884	08/23/94
Rockwell International Corporation; ABI (Joint Venture); ABI (Joint Venture)	94–1888	08/23/94
Craig O. McCaw; Craig O. McCaw; Shreveport Cellular Telephone Company	94–1898	08/23/94
Mr. Deepak Kulkarni; Hanson PLC; Proctor & Schwartz Inc	94–1910	08/23/94
Capsure Holdings Corp.; John Knox Jr.; Universal Surety Holding Corporation	94–1917	08/23/94
Offshore Logistics, Inc.; Grasso Corporation; Grasso Corporation	94–1918	08/23/94
Cairn Energy PLC; President and Fellows of Harvard College; Smith Offshore Exploration Company II	94–1930	08/23/94
President and Fellows of Harvard College; Cairn Energy PLC; Cairn Energy USA, Inc	94–1937	08/23/94
Campbell Soup Company; Fresh Start Foods Limited Partnership; Fresh Start Foods Limited Partnership	94–1940	08/23/94
NEXTEL Communications, Inc.; Saber Communications, Inc.; Saber Communications, Inc	94–1945	08/23/94
PhyCor, Inc.; Holt-Krock Clinic; Holt-Krock Clinic	94–1948	08/23/94
USX Corporation; Kwik Sak, Incorporated; Kwik Sak, Incorporated	94–1958	08/23/94
United Meridian Corporation; General Atlantic Resources, Inc.; General Atlantic Resources, Inc	94–1964	08/23/94
General Electric Company; Stephen B. Goot; Total Audio Visual Services, Inc	94–1965	08/23/94
NV Koninklijke KNP BT; Ivan Allen Company; Ivan Allen Company	94–1986	08/23/94
United Meridian Corporation; General Atlantic Resources, Inc.; General Atlantic Resources, Inc	94–2013	08/23/94
National Spinning Co., Inc.; Equity Holdings Limited; Caron International Inc	94–1889	08/25/94
Western Resources, Inc.; HUB Entity (Joint Venture); HUB Entity (Joint Venture)	94–1907	08/25/94
Enron Corp.; HUB Entity (Joint Venture); HUB Entity (Joint Venture)	94–1912	08/25/94
Kuhlman Corporation; Communication Cable, Inc.; Communication Cable, Inc	94–1931	08/25/94
Frontenac VI Limited Partnership; Kimberly-Clark Corporation; Kimberly-Clark Corporation	94–1972	08/25/94
Edward L. Perl, M.D.; Coastal Healthcare Group, Inc.; Coastal Healthcare Group, Inc	94–1987	08/25/94
Golden Eagle Industries, Inc.; National Gypsum Company; National Gypsum Company	94–1906	08/26/94
BMC West Corporation; Economy Lumber & Hardware Co., Inc.; Greeley Economy Lumber & Hardware, Inc	94–1933	08/26/94
Bessemer Securities Corporation; Gary G. Moose; FEDCO Automotive Components Company, Inc	94–1950	08/26/94
APS Holding Corporation; Sieg Company; Sieg Company	94–1951	08/26/94

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

[Between: 082294 and 090294]

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Bessemer Securities Corporation; Timothy G. Brodene; FEDCO Automotive Components Company, Inc	94–1952	08/26/94
Ajinomoto Co., Inc.; Tate & Lyle; Orsan Corporation	94–1955	08/26/94
WMX Technologies, Inc.; Santa Fe Pacific Corporation; Rail-Cycle L.P	94–1974	08/26/94
Joseph Littlejohn & Levy Fund, L.P.; Tyco International Ltd.; Tyco International Ltd	94–1979	08/26/94
Tyco International Ltd.; Kendall International, Inc.; Kendall International, Inc	94–1981	08/26/94
Richard A. Gilleland; Tyco International Ltd.; Tyco International Ltd	94–1982	08/26/94
The Clayton & Dubilier Private Equity Fund IV, L.P.; Tyco International Ltd.; Tyco International Ltd	94–1983	08/26/94
Steelcase, Inc.; Ivan Allen Company; Ivan Allent Company	94–1985	08/26/94
ConAgra, Inc.; Larry Dinkin; MC Retail Foods	94–1997	08/26/94
Foster Wheeler Corporation; Enserch Corporation; Enserch Environmental Corporation	94–1998	08/26/94
K–III Communications Corporation; Whittle Communications L.P.; Whittle Communications L.P	94–2010	08/26/94
AmeriQuest Technolgoies, Inc.; Robec, Inc.; Robec, Inc	94–2016	08/26/94
Craig O. McCaw; Cook Inlet Region, Inc.; Cook Inlet Communications Corporation	94–2018	08/26/94
Cook Inlet Region Inc.; Craig O. McCaw; LIN Television Corporation	94–2019	08/26/94
Host Marriott Corporation; Glendale Federal Bank, Federal Savings Bank; San Francisco Airport Marriott Hotel	94–2021	08/26/94
Integon Corporation; The Travelers Inc.; Bankers and Shippers Insurance Company ("Bankers")	94–1894	08/29/94
The Garfield Weston Charitable Foundation; Kooperativa forbundet; Karlshamns USA, Inc	94–1914	08/29/94
ConAgra, Inc.; The SK Equity Fund, L.P.; Marie Callender Pie Shops, Inc	94–1994	08/29/94
Cygne Designs, Inc.; W. Glynn Manson; G.J.M. Manufacturing Ltd. (BVI)	94–2003	08/29/94
W. Glynn Manson; Cygne Designs, Inc.; Cygne Designs, Inc	94–2004	08/29/94
Nextel Communications, Inc.; MobileMedia Corporation; MobileMedia Communications, Inc	94–2025	08/29/94
Allen K. Breed; Hamlin, Incorporated; Hamlin, Incorporated	94–1916	08/30/94
Hitachi, Ltd.; NEWCO; NEWCO	94–1992	08/30/94
Texas Instruments Incorporated; NEWCO; NEWCO	94–1993	08/30/94
Nabors Industries, Inc.; Sundowner Offshore Services, Inc.; Sundowner Offshore Services, Inc	94–2026	08/30/94
Norwest Corporation; C.H. Robinson Company; CHR Equipment Financing, Inc	94–2038	08/30/94
First Financial Management Corporation; New Valley Corporation (debtor-in-possession); Western Union Financial Services, Inc	94–2036	09/01/94
Sulzer AG; Voith Sulzer Papiertechnik GmbH; Voith Sulzer Papiertechnik GmbH	94–1614	09/02/94
Familiengesellschaft Dr. HannsVoith GbR; Voith-Sulzer Papiertechnik GmbH; Voith-Sulzer Papiertechnik GmbH	94–1615	09/02/94
J.R. Hendrick, III; Joshua P. Darden, Jr.; Colonial Chevrolet Company, L.P	94–1900	09/02/94
Warburg, Pincus Investors, L.P.; Joshua P. Darden, Jr.; Colonial Chevrolet Company, L.P	94–1947	09/02/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contract Representatives; Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–23875 Filed 9–26–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–837]

General Railway Signal Co.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens and modifies the Commission's 1964 order by terminating the order consistent with the Commission's new policy that the public interest requires setting aside orders in effect for more than twenty years.

DATES: Consent order issued September 24, 1964. Modifying order issued August 29, 1994.

FOR FURTHER INFORMATION CONTACT: Daniel Ducore, FTC/S–2115, Washington, D.C. 20580. (202) 326–2526.

SUPPLEMENTARY INFORMATION: In the Matter of General Railway Signal Co. The prohibited trade practices and/or corrective actions as set forth at 29 FR 14071, are deleted as indicated in the summary.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; Sec. 2, 49 Stat. 1526; 15 U.S.C. 45, 13)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–23876 Filed 9–26–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3135]

Chemopharm Laboratory Inc., d/b/a CP Industries; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval. would prohibit, among other things, a Utah corporation that markets the ice melting product, Superior Sno-N-Ice, from making any environmental claim about any product unless it possesses and relies on competent and reliable scientific evidence to substantiate the claims. In addition, the respondent would be prohibited from misrepresenting the existence or contents of any test or study.

DATES: Comments must be received on or before November 28, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary. Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL. 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C.

46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Chemopharm Laboratory Inc., d/b/a CP Industries, a corporation ("proposed respondent"), and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between Chemopharm Laboratory Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Chemopharm Laboratory Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah with its principal office or place of business at 503 North 400 West, Salt Lake City, Utah 84103.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

1. The term "product" means any product that is offered for sale, sold or distributed to the public by respondent, its successors and assigns, under the "Superior Sno-N-Ice Melter" band name or any other brand name of respondent, its successors and assigns; and also means any product sold or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

2. The term "competent and reliable scientific evidence" means tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant areas, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered that respondent, Chemopharm Laboratory Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product is "environmentally safe," "protects the total environment," or otherwise offers any environmental benefit; or

B. Such product provides the environmental benefits of Calcium Magnesium Acetate,

unless such representation is true and, at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

II

It is further ordered that respondent, Chemopharm Laboratory Inc., a corporation, its successors and assigns, and its offers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results,

conclusions, or interpretations of any test or study.

III

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representations; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that the respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this Order.

V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Chemopharm Laboratory, Inc., d/b/a CP Industries, an Utah corporation ("CP Industries" or "respondent"). Upon this agreement, the respondent will cease and desist from claiming that any product is environmentally safe, protects the total environment, otherwise offers any environmental benefit, or provides the environmental benefits of Calcium Magnesium Acetate ("CMA"), unless such representation is true and, at the time of making such representation, it possesses adequate substantiation. The proposed consent agreement also prohibits CP Industries from misrepresenting the results of any test or study.

The proposed consent order has been placed on the public record for sixy (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the proposed order contained in the agreement.

This matter concerns claims made for CP Industries' Superior Sno-N-Ice Melter product. The complaint accompanying the proposed consent order alleges, in part, that the respondent engaged in deceptive acts and practices in violation of Section 5 of the Federal Trade Commission Act. According to the complaint, the respondent represented that Superior Sno-N-Ice Melter does not harm or damage the environment; that Superior Sno-N-Ice Melter provides the environmental benefits of CMA; that scientific studies of CMA demonstrate that Superior Sno-N-Ice is beneficial to the environment; and that it had a reasonable basis for these claims. In fact, Superior Sno-N-Ice Melter contains about 95% sodium chloride (i.e., rock salt) which does harm or damage the environment. Therefore, Superior Sno-N-Ice does harm or damage the environment; Superior Sno-N-Ice Melter does not provide the environmental benefits of CMA; and scientific studies of CMA do not demonstrate that Superior Sno-N-Ice Melter is beneficial to the environment. The complaint therefore alleges that the claims are false and misleading and also alleges that CP Industries lacked a reasonable basis for making the claims.

The consent order contains provisions designed to prevent the respondents from engaging in similar allegedly illegal acts and practices in the future.

Paragraph I of the proposed consent order requires CP Industries to cease representing that any product is "environmentally safe," "protects the total environment," or otherwise offers any environmental benefit; or that any product provides the environmental benefits of CMA, unless such representation is true and substantiated. Paragraph II of the order prohibits CP Industries from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

The remaining parts of the proposed consent order require the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to each of its operating divisions and to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–23878 Filed 9–26–94; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[G–93–3]

Delegation of Authority to the Secretary of Transportation; Correction

AGENCY: Federal Supply Service, GSA.

ACTION: Correction to notice.

SUMMARY: This document contains corrections to notice document [G–93–3] which was published Wednesday, August 11, 1993 (58 FR 42732). The document, erroneously addressed to the Secretary of Transportation, is changed to read as follows:

Delegation of Authority to the Secretary of the Treasury

Pursuant to the authority vested in the Administrator of General Services by section 3726 of title 31, United States Code, and redelegated to the Director, Office of Transportation Audits, Federal Supply Service, I have determined that it is both cost-effective and in the public interest to delegate authority to the Secretary of the Treasury; specifically, to the U.S. Customs Service, to conduct a prepayment audit of transportation bills relating to the movement of domestic and foreign household goods, motor, air and rail freight, air passenger, and water freight, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, subpart 101–41,

and amendments thereto. This prepayment audit will be conducted by the General Services Administration's (GSA's) contractors, at the contractors' sites, for the U.S. Customs Service, Indianapolis, Indiana.

The Secretary of the Treasury may redelegate this authority to any officer, official, or employee of the Department of the Treasury

The Secretary of the Treasury shall notify GSA in writing of these additional delegations. This delegation is effective upon publication in the Federal Register

Dated September 16, 1994

Joseph J. Cosimano,

Director, Office of Transportation Audits

[FR Doc. 94-23799 Filed 9-26-94, 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC-508]

Cooperative Agreement With the Iowa Department of Public Health for Health Assessment of Persian Gulf War Veterans

Summary

The Centers for Disease Control and Prevention (CDC) announces the anticipated availability of fiscal year (FY) 1995 funds for a cooperative agreement with the Iowa Department of Public Health (IDPH) for Health Assessments of Persian Gulf War Veterans. Approximately $1.50 million is expected to be available in FY 1995 to fund this project. It is expected that the award will begin on or about December 1, 1994, and will be made for a 12-month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this cooperative agreement will be to conduct a pilot survey which will assess the past and present health status of Iowa residents who are Persian Gulf War veterans compared with other Iowa residents who are Persian Gulf War-era veterans, in terms of self-reported health outcomes. This assessment will serve as a model for potential future similar assessments undertaken by other Federal agencies, States, local governments, or universities. CDC will serve as the principal point of contact with the Department of Defense and other Federal agencies to secure names and locating information for the study participants; provide expert review, comment and approval on all study protocols, data collection instruments, analysis plans, media releases, draft and final reports, and publications generated by the recipient and its contractors and ensures appropriate involvement of related Federal agencies and veteran services organizations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (To order a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under the Public Health Service Act, section 301 (42 U.S.C. 241).

Smoke-Free Workplace

PHS 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 to protect and advance the physical and mental health of the American people.

Eligible Applicants

Assistance will be provided only to IDPH for conducting this project. No other applications are solicited. The Program Announcement and application kit have been sent to IDPH.

IDPH is the most appropriate organization to conduct the work under this cooperative agreement for the following reasons:

1. IDPH among the States has taken aggressive and positive steps to address the health concerns among Iowa Gulf War veterans. It has already established vital links among Iowa veterans' groups and scientists to address these concerns and are therefore in the strongest position to carry out this effort rapidly and cost effectively.

2. IDPH has the statutory responsibility for protecting and enhancing the public health of the citizens of the State of Iowa. This includes assessing the impact of the Persian Gulf War experience on the health of Iowa residents who are Gulf War or Gulf War-era veterans.

3. IDPH has access to vital statistics and related State collected data which will be essential components of the project.

4. IDPH has ongoing and established organizational relationships with other Iowa agencies and veterans' groups which will be involved in providing essential support for this project.

Executive Order 12372 Review

The application is subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. IDPH should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective application and receive any necessary instructions on the State process. If the SPOC has any State process recommendations on the application submitted to CDC, they should send them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application due date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

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 is 93.283.

Other Requirements

A. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review

committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 508 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, GA 30305, telephone (404) 842-6796.

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: September 20, 1994.

Deborah L. Jones,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-23811 Filed 9-26-94; 8:45 am]

BILLING CODE 4163-18-P

Office of the Secretary

Health Care Financing Administration

Administration for Children and Families

[ORD-069-N]

Medicaid Program; Demonstration Proposals Pursuant to Section 1115(a) of the Social Security Act; Policies and Procedures

AGENCIES: Office of the Secretary, Health Care Financing Administration (HCFA), and Administration for Children and Families (ACF), HHS.

ACTION: Public Notice.

SUMMARY: This public notice informs interested parties of (1) the principles the Department of Health and Human Services ordinarily will consider when deciding whether to exercise its discretion to approve or disapprove demonstration projects under the authority in Section 1115(a) of the Social Security Act, 42 U.S.C. § 1315(a); (2) the kinds of procedures the Department would expect States to employ in involving the public in the development of proposed demonstration projects under Section 1115; and (3) the procedures the Department ordinarily will follow in reviewing demonstration proposals. The principles and procedures described in this public notice are being provided for the information of interested parties, and are not legally binding on the Department of Health and Human Services. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity, by any person or entity, against the United States, its agencies or instrumentalities, the States, or any other person.

FOR FURTHER INFORMATION CONTACT: Howard Rolston, Administration for Children and Families, Department of Health and Human Services, at (202) 401-9220.

Thomas Kickham, Health Care Financing Administration, Department of Health and Human Services, at (410) 966-6503.

SUPPLEMENTARY INFORMATION:

I. Introduction

Demonstration Proposals Pursuant to Section 1115 of the Social Security Act—General Policies and Procedures

Under Section 1115, the Department of Health and Human Services is given latitude, subject to the requirements of the Social Security Act, to consider and approve research and demonstration proposals with a broad range of policy objectives. The Department desires to facilitate the testing of new policy approaches to social problems. Such demonstrations can provide valuable knowledge that will help lead to improvements in achieving the purposes of the Act. The Department also is committed to both a thorough and an expeditious review of State requests to conduct such demonstrations.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. In order to ensure a sound, expeditious and open decision-making process, the Department will be guided by the policies and procedures described in this statement in accepting and reviewing proposals submitted pursuant to section 1115.

II. General Considerations

To facilitate the testing of new policy approaches to social problems the Department will—

- Work with States to develop research and demonstrations in areas consistent with the Department's policy goals;
- Consider proposals that test alternatives that diverge from that policy direction; and
- Consider, as a criterion for approval, a State's ability to implement the research or demonstration project.

While the Department expects to review and accept a range of proposals, it may disapprove or limit proposals on policy grounds or because the proposal creates potential constitutional problems or violations of civil rights laws or equal protection requirements. The Department seeks proposals which preserve and enhance beneficiary access to quality services. Within this overall policy framework, the Department is prepared to—

- Grant waivers to test the same or related policy innovations in multiple States, (replication is a valid mechanism by which the effectiveness of policy changes can be assessed);
- Approve demonstration projects ranging in scale from reasonably small to state-wide or multi-state, and
- Consider joint Medicare-Medicaid demonstrations, such as those granted in the Program for All-Inclusive Care for the Elderly (PACE) and Social Health Maintenance Organization (SHMO) demonstrations, and Aid to Families with Dependent Children (AFDC)-Medicaid waivers.

III. Duration

The complex range of policy issues, design methodologies, and unanticipated events inherent in any research or demonstration makes it very difficult to establish a single Department policy on the duration of 1115 waivers. However, the Department is committed, through negotiations with State applicants, to—

- Approve waivers of at least sufficient duration to give new policy approaches a fair test. The duration of waiver approval should be congruent with the magnitude and complexity of the project (for example, large-scale statewide reform programs will typically require waivers of five years);
- Provide reasonable time for the preparation of meaningful evaluation results prior to the conclusion of the demonstration; and
- Recognize that new approaches often involve considerable start-up time and allowance for implementation delays.

The Department is also committed, when successful demonstrations provide an appropriate basis, to working with State governments to seek permanent statutory changes incorporating those results. In such cases, consideration will be given to a

reasonable extension of existing waivers.

IV. Evaluation

As with the duration of waivers, the complex range of policy issues, design methodologies, and unanticipated events also makes it very difficult to establish a single Department policy on evaluation. This Department is committed to a policy of meaningful evaluations using a broad range of appropriate evaluation strategies (including true experimental, quasi-experimental, and qualitative designs) and will be flexible and project-specific in the application of evaluation techniques. This policy will be most evident with health care waivers. Within-site randomized design is the preferred approach for most AFDC waivers. The Department will consider alternative evaluation designs when such designs are methodologically comparable. The Department is also eager to ensure that the evaluation process be as unintrusive as possible to the beneficiaries in terms of implementing and operating the policy approach to be demonstrated, while ensuring that critical lessons are learned from the demonstration.

V. Cost Neutrality

The Department's fiduciary obligations in a period of extreme budgetary stringency require maintenance of the principle of cost neutrality, but the Department believes it should be possible to apply that principle flexibly.

- The Department will assess cost neutrality over the life of a demonstration project, not on a year-by-year basis, since many demonstrations involve making "up-front" investments in order to achieve out-year savings.
- The Department recognizes the difficulty of making appropriate baseline projections of Medicaid expenditures, and is open to development of a new methodology in that regard.
- In assessing budget neutrality, the Department will not rule out consideration of other cost neutral arrangements proposed by States.
- States may be required to conform, within a reasonable period of time, relevant aspects of their demonstrations to the terms of national health care reform legislation, including global budgeting requirements, and to the terms of national welfare reform legislation.

VI. Timeliness and Administrative Complexity

The Department is committed to minimizing the administrative burden on the States and to reducing the processing time for waiver requests. In order to accomplish this the Department has adopted a number of procedures, including—

- Expanding pre-application consultation with States;
- Setting, and sharing with applicants, a well-defined schedule for each application, with established target dates for processing and reaching a decision on the application;
- Maintaining, to the extent feasible, a policy of one consolidated request for further information;
- Sharing proposed terms and conditions with applicants before making final decisions;
- Establishing concurrent, rather than sequential, review of waivers by all relevant units of the Department and with other relevant Departments and the Office of Management and Budget;
- Expanding technical assistance activities to the States; and
- Developing multi-state waiver solicitations in areas of priority concern, including integrated long-term care system development, services for adolescents, and services in rural areas.

The Department will continue to follow and develop procedures, and commit internal resources to reviewing demonstration proposals, necessary for a sound and expeditious review process.

VII. State Notice Procedures

The Department recognizes that people who may be affected by a demonstration project have a legitimate interest in learning about proposed projects and having input into the decision-making process prior to the time a proposal is submitted to the Department. A process that facilitates public involvement and input promotes sound decision-making.

There are many ways that States can provide for such input. In order to allow for public input into the proposals, the Department expects States to ordinarily follow one (or more if the State desires) of the processes described in this section.

1. At any time prior to submitting a section 1115 demonstration proposal to the Department of Health and Human Services, a State may provide to the Department a written description of the process the State will use for receipt of public input into the proposal prior to its submission to the Department.

Within 15 days of receipt of such description, the Department will notify the State whether the described process provides adequate opportunity for public input. The Department will accept any process that—

- Includes the holding of one or more public hearings, at which the most recent working proposal is described and made available to the public, and time is provided during which comments can be received; or
- Uses a commission or other similar process, where meetings are open to members of the public, in the development of the proposal; or
- Results from enactment of a proposal by the State legislature prior to submission of the demonstration proposal, where the outline of such proposal is contained in the legislative enactment; or
- Provides for formal notice and comment in accordance with the State's administrative procedure act; provided that such notice must be given at least 30 days prior to submission; or
- Includes notice of the intent to submit a demonstration proposal in newspapers of general circulation, and provides a mechanism for receiving a copy of the working proposal and an opportunity, which shall not be less than 30 days, to comment on the proposal; or,
- Includes any other similar process for public input that would afford an interested party the opportunity to learn about the contents of the proposal, and to comment on its contents.

The State shall include in the demonstration proposal it submits to the Department a statement (a narrative of several sentences) briefly describing the process that it followed in implementing the process previously presented to the Department. The Department may find a proposal incomplete if the process has not been followed.

2. A State that has not followed the procedures described in paragraph 1. must submit a description of the process that was used in the State to obtain public input, at the time it submits its demonstration proposal. The Department will notify the State if the process was adequate within 15 days after the application is submitted, applying the same criteria as in paragraph 1. If the process was not adequate, the State can cure the inadequacy by—

Posting a notice in the newspaper of widest circulation in each city with a population of 100,000 or more, or in the newspaper of widest circulation in the State if there is no city with a population of 100,000, indicating that a demonstration proposal has been submitted. Such notice shall describe

the major elements of the proposed demonstration and any changes in benefits, payments, eligibility, responsibilities, or provider selection requested in the proposal. The notice shall indicate how interested persons can obtain copies of the proposal and shall specify that written comments will be accepted by the State for a period of thirty days. If a State follows such a procedure, the State should respond to requests for copies of the proposal within seven days. The State should maintain a record of all comments received through this process.

All HHS commitments with respect to times for responding to demonstration proposals shall be tolled until this process is completed.

VIII. Federal Notice

The Department of Health and Human Services intends to publish a monthly notice in the **Federal Register** of all new and pending proposals submitted pursuant to section 1115. The notice will indicate that the Department accepts written comments regarding all demonstration project proposals.

The Department will maintain a list of organizations that have requested notice that a demonstration proposal has been received and will notify such organizations when a proposal is received.

IX. Comments

The Department will not approve or disapprove a proposal for at least 30 days after the proposal has been received, in order to receive and consider comments. The Department will attempt, if feasible, to acknowledge receipt of all comments, but the Department will not provide written responses to comments.

X. Findings

The Department will prepare a decision memorandum at the time a demonstration proposal is granted or denied, discussing why the Department granted or denied the proposal and how an approved demonstration meets the criteria established by statute.

XI. Administrative Record

The Department will maintain an administrative record which will generally consist of: the formal demonstration application from the State; issue papers sent to the State and State responses; public and Congressional comments sent to the Department and any Department responses; the Department's decision memorandum regarding the granting or denial of a proposal; and the final terms and conditions, and waivers, sent to the State and the State acceptance of them.

XII. Sub-state Demonstrations

When a demonstration is to be implemented in only part of a State, the State will be required to provide information on the likely demographic composition of populations subject to and not subject to the demonstration in the State. When relevant, the Department will require that the evaluation component of a project address the impact of the project on particular subgroups of the population.

XIII. Implementation Reviews

As part of the terms and conditions of any demonstration proposal that is granted, the Department may require periodic evaluations of how the project is being implemented. The Department will review, and when appropriate investigate, documented complaints that a State is failing to comply with requirements specified in the terms and conditions and implementing waivers of any approved demonstration.

XIV. Legal Effect

This notice is intended to inform the public and the States regarding procedures the Department ordinarily will follow in exercising the Secretary's discretionary authority with respect to State demonstration proposals under section 1115. This notice does not create any right or benefit, substantive or procedural, enforceable at law or equity, by any person or entity, against the United States, its agencies or instrumentalities, the States, or any other person.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations and Experiments.)

Dated: September 16, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 16, 1994.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Dated: September 19, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–23960 Filed 9–26–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Outer Continental Shelf Advisory Board; Notice of Renewal/Revision

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix). Notice is hereby given that the Secretary of the Interior is renewing the Outer Continental Shelf (OCS) Advisory Board Charter and revising it to reflect the Minerals Management Service's royalty management mandate, and renaming it the Minerals Management Advisory Board.

The purpose of the OCS Advisory Board is to provide advice to the Secretary of the Interior and other officers of the Department in the performance of discretionary functions of the OCS Lands Act, as amended, including all aspects of leasing, exploration, development, and protection of the resources of the OCS. The charter is being revised to allow the Board to advise the Department on discretionary functions under the Federal Oil and Gas Royalty Management Act of 1982, the Geothermal Steam Act of 1970, the mineral leasing laws for coal and other solid mineral leases, as well as the OCS Lands Act.

Further information regarding the Committee may be obtained from the Chief, Office of Advisory Board Support, Minerals Management Service, Department of the Interior, 381 Elden Street, Herndon, Virginia 22070.

Certification

I hereby certify that the renewal and renaming/revision of the Outer Continental Shelf Advisory Board Charter is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et seq.*, 30 U.S.C. 1701 *et seq.*, and 30 U.S.C. 1001 *et set.*

Dated: September 9, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94–23803 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Land Management

[NV–930–4210–05; N–57459]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Nye County, Nevada.

SUMMARY: The following described public land in Pahrump, Nye County, Nevada has been examined and found suitable for classification for sale utilizing non-competitive procedures, at not less than the fair market value.

Authority for the sale is Section 203 and Section 209 of P.L. 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719).

Mount Diablo Meridian, Nevada

T. 21 S., R. 54 E.,
Sec. 31, E½NE¼NW¼SE¼.
Containing 5 acres, more or less.

This parcel of land, situated in Pahrump is being offered as a non-competitive FLMPA sale to Mr. Edward E. Wheeler. This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests. The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals. and will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Nye County/the City of Pahrump. Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94–579, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: September 14, 1994.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 94–23520 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–HC–M

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction to Notice of Tribal Consultation Meetings.

SUMMARY: By publication in the **Federal Register** on September 8, 1994, the Bureau of Indian Affairs gave Notice of Tribal Consultation Meetings concerning potential issues in Indian Education Programs.

This Notice corrects the above mentioned Notice by changing the location of the meeting which was specified by the September 8 publication for October 19, 1994, in Tulsa, Oklahoma. The location of the meeting is changed to Oklahoma City, Oklahoma. The October 19, 1994 date remains unchanged. All other information published in the September 8, 1994 Notice also remains unchanged.

DATES: Effective on publication.

FOR FURTHER INFORMATION CONTACT: Mr. Jimmy Baker, may be contacted for information regarding the specific address and other details for the Oklahoma City meeting. Mr. Baker may be contacted at (405) 945–6051.

Dated: September 15, 1994.

Ada E. Deer

Assistant Secretary—Indian Affairs.

[FR Doc. 94–23587 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–02–P

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the American Chaffseed for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the American chaffseed (*Schwalbea americana*). The American chaffseed, which historically occurred in all the coastal states from Massachusetts to Louisiana as well as the inland states of Kentucky and Tennessee, is now limited to New Jersey, North Carolina, South Carolina, Georgia, and Florida. The species was listed as endangered in 1992 due to its extirpation from over half of its historical range and a decline in known occurrences. Although the number of known populations has increased substantially since the time of its listing, threats to the survival of the American chaffseed remain, primarily due to fire suppression and concomitant vegetational succession of the fire-maintained ecosystems where the species occurs. The recovery objective for this species is to be able to reclassify it to threatened status by protecting at least 50 distinct, self-sustaining American chaffseed populations. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received December 27, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Building D–1, Pleasantville, New Jersey 08232, telephone 609–646–0620. Comments should be sent to this address, to the attention of Dana Peters.

FOR FURTHER INFORMATION CONTACT: Dana Peters (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an

opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft American Chaffseed (*Schwalbea americana*) Recovery Plan. This perennial member of the figwort family, a montypic genus, is primarily a coastal plain species of the Atlantic and Gulf coasts. The few inland exceptions to its coastal distribution are historic records. Although the number of known extant occurrences of the American chaffseed has increased three-fold since the species' listing in 1992 (due mainly to intensive searches in South Carolina), its range has undergone a significant contraction since the species was first recognized in 1935: where it used to be found in 13 states from Massachusetts in the North to Texas in the South, it now occurs in 5 states, from New Jersey to Florida.

Its decline is attributed primarily to development and succession of its habitat, and these threats to the species' survival persist. Sandy pineland communities where the species exists have proven to be especially vulnerable to development because soils are level, deep, and suitable for building sites. Remaining American chaffseed sites are threatened primarily by activities or management practices that result in restriction or suppression of fire, which is apparently needed to maintain the open subclimax ecosystem inhabited by the species. Other continuing threats to American chaffseed include inadvertent disturbance to plants, discontinuation of game management and the consequent cessation of burning, conversion of the fire-maintained flatwoods and savannas to commercial pine plantations, commercial pine straw raking, and the increasing restrictions on prescribed burning of forest tracts.

Reclassification of the American chaffseed is the primary objective of the draft Recovery Plan. Reclassification to threatened status will be considered when at least 50 geographically distinct American chaffseed populations are permanently protected and managed as needed to ensure long-range viability, and the species is established or found at four additional sites in the northern portion of its range. A delisting objective is not being defined at this time.

Recovery of the American chaffseed will be achieved through a combination of habitat protection and management, reintroduction of the species in portions of its former range, research aimed at better understanding the species' biology in order to predict viability of populations, and research to determine the best techniques to maintain the species and its habitat.

The draft Recovery Plan is being submitted for agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 20, 1994.

Ronald E. Lambertson,

Regional Director.

[FR Doc. 94–23809 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Recovery Plan for the Maguire Daisy (Erigeron Maguirei) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Maguire daisy (*Erigeron maguirei*). The Maguire daisy occurs in Emery and Wayne Counties, Utah. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before October 27, 1994 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Written comments and materials regarding this plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist (see **ADDRESSES** above), at telephone 801/524–5001.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies also will take these comments into account in the course of implementing approved recovery plans.

The Maguire daisy is a perennial, herbaceous plant in the composite family (Asteraceae). The plant's stems are up to 18 cm (7 inches) tall. One to three flower heads are borne at the end of each stem. Each floral head has 15 to 20 pinkish white ray flowers and orange disk flowers. The species range is in the San Rafael Swell in Emery County and in Capitol Reef in Wayne County, Utah. Currently 25 locations representing 5 separate populations are known with a total population of approximately 3,000 individuals.

The Maguire daisy (*Erigeron maguirei* var. *maguirei*) was listed as an endangered species under the authority of the Act, as amended, on September 5, 1985 (50 FR 36089). The species (*Erigeron maguirei*) was proposed for reclassification as threatened on September 7, 1994 (59 FR 46219). This species was listed due to its small population size and to current and potential threats from grazing and surface disturbing activities of the

species habitat. The goal of the recovery plan is to maintain viable populations to ensure the species survival and to guide recovery efforts to facilitate delisting the species. Recovery efforts will focus on protecting the species population and habitat from habitat destroying activities through the section 6, 7, and 9 prohibitions of the Act for plant species. Biological and ecological research of the species' biology and its relationship and interaction with its environment is necessary to guide future management of the species population and habitat to ensure its continued survival and the preservation of the species ecosystem. Additional recovery efforts will focus on inventory of potential habitat and minimum viable population studies of its known populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described above. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 15, 1994.

Terry T. Terrell,

Acting Regional Director, Region 6, Denver.

[FR Doc. 94–23720 Filed 9–21–94; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Mclean Hilton in Mclean, Virginia.

The agenda will cover the following principal subjects:

Tuesday, November 1, 1994

—The 5-Year Program 1997–2002
—The Secretary's Science Inititaitve—Erasing Bureau Lines for Research
—Gulf of Mexico Issues:
- The Gulf of Mexico Program
- The Air Quality Study

—Updates
- OCS Oil and Gas Legislative Subcommittee
- Hard Minerals Subcommittee

Wednesday, November 2, 1994

—Safety and Environmental Management Program:
- Update of MMS and Industry's Progress with the Program
- U.S.C.G. and International Initiatives

—New Technological Developments Drilling Fluids
—Committee Roundtable

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than October 14, 1994, to the Office of Advisory Board Support, Minerals Management Service, 381 Elden Street, MS–4110, Herndon, Virginia, 22070, Attention: Terry Holman.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Terry Holman at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the Minerals Management Service in Herndon, Virginia.

DATES: Tuesday, November 1 and Wednesday, November 2, 1994.

ADDRESSES: Mclean Hilton, 7920 Jones Branch Drive, Mclean, Virginia, (703) 847–5000.

FOR FURTHER INFORMATION CONTACT: Terry Holman, Office of Advisory Board Support, Minerals Management Service, 381 Elden Street, MS–4110, Herndon, Virginia, 22070 or call 703–787–1211.

Authority: Federal Advisory Committee Act, P.L. No. 92-463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: September 16, 1994.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 94–23804 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

General Management Plan/ Environmental Impact Statement for Mount Rainier National Park, WA

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the General Management Plan for Mount Rainier National Park, Washington.

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Mount Rainier National Park, Washington. The GMP/EIS will describe and analyze a proposal and alternatives for the future management of the park for approximately 15 years past approval of the plan.

A Master Plan was completed for Mount Rainier National Park in 1974; however, this plan is outdated and does not address current issues. In recent years, visitor use in the park has increased substantially, resulting in traffic circulation and parking problems, as well as degradation of vegetation and erosion of soil from off-trail use. External encroachments and adverse impacts along the park boundaries are also increasing. Current projects and plans that are addressing some immediate needs of the park include a gateway community assistance initiative, a transportation study and a Natural Resource Management Plan. The results of these projects will provide vital information for the GMP.

Issues to be addressed in the GMP/EIS include, but are not limited to: Traffic and circulation patterns, impacts of land uses outside the park, geological and hydrologic hazards and natural resources and visitor use management. Visitor density and distribution in the park and methods to mitigate impact on park resources while ensuring a quality visitor experience will also be considered. Alternatives to address these issues will be developed in cooperation with the public and will include a no-action alternative. Additionally, the EIS will provide a comprehensive analysis of impacts, taking into account cumulative effects.

Representatives of federal, state and local agencies, private organizations and individuals from the general public who may be interested in or affected by the proposed GMP/EIS are invited to participate in the scoping process by responding to this Notice with written comments. The scoping process will help define issues, concerns, and potential impacts related to the plan. Public scoping meetings are expected to be held in November 1994. The time and location of these meetings will be announced prior to that time through the local media and the park's mailing list.

The draft GMP/EIS is expected to be available for public review in 1997 and the final GMP/EIS and Record of Decision completed one year later.

The responsible official is Charles H. Odegaard, Regional Director, Pacific Northwest Region, National Park Service.

DATES: Written comments about the scope of issues and impact topics to be analyzed in the GMP/EIS should be received no later than 60 days from the date of publication of this Notice.

ADDRESSES: Written comments concerning the GMP/EIS should be sent to the Superintendent, Mount Rainier National Park, Ashford, Washington 98304–9751.

FOR FURTHER INFORMATION CONTACT: Eric Walkinshaw, Chief of Planning and Professional Services, Mount Rainier National Park at the above address or at telephone number (206) 569–2211, extension 3362.

Dated: September 15, 1994.

William C. Walters,

Deputy Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 94–23787 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 17, 1994. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by October 12, 1994.

Carol D. Shull,

Chief of Registration, National Register.

GEORGIA

Talbot County

Lockhart—Cosby Plantation, GA 208, 7 mi. E of Talbotton, Talbot vicinity, 94001215

LOUISIANA

Rapides Parish

Lamourie Lock, Jct. of Lamourie Rd. and US 71, Lecompte vicinity, 94001218

MARYLAND

Baltimore Independent City

Sanitory Laundry Company Building (Cast Iron Architecture of Baltimore MPS), 118–120 N. Paca St., Baltimore, 94001213

NEW JERSEY

Essex County

Vreeland Homestead, 216 Chesnut St., Nutley, 94001217

NORTH DAKOTA

McHenry County

Norway Lutheran Church and Cemetery, 10 mi. S of Denbigh, S of the Souris R., Denbigh vicinity, 94001216

OREGON

Marion County

Shipley, U.G., House and Garden, 260 Washington St., S, Salem, 94001219

PUERTO RICO

Ponce Municipality

Hacienda Buena Vista, PR 10 N of Corral Viejo, Barrio Magueyes vicinity, 94001214

[FR Doc. 94–23869 Filed 9–26–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–103 (Sub-No. 8X)]

The Kansas City Southern Railway Company—Abandonment Exemption—In Le Flore and Haskell Counties, OK

The Kansas City Southern Railway Company (KCS) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon two intersecting rail lines totaling approximately 29.65 miles in Le Flore and Haskell Counties, OK, as follows: (1) approximately 9.50 miles of the Midland Valley Branch extending between the point of connection with KCS's main line at milepost 20.80 in Panama and milepost 30.30 near Bokoshe; and (2) approximately 20.15 miles of the Fort Smith and Van Buren Railway Company line extending between the point of connection with KCS's main line at milepost 20.12 in Coal Creek, and the end of the line at milepost 40.27 in McCurtain.[1]

KCS has certified that: (1) no local traffic has moved over the lines for at least 2 years; (2) overhead traffic has been rerouted; (3) no formal complaint filed by a user of rail service on the lines (or a State or local government entity acting on behalf of such user) regarding cessation of service over the lines either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.[2]

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 October 27, 1994 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file OFAs under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 17, 1994.[5] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 27, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Jay M. Nadlman, 114 West Eleventh St., Kansas City, MO 64105–1804.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

The Rails to Trails Conservancy (RTC) supports the abandonment and seeks issuance of a notice of interim trail use/rail banking (NITU) under 16 U.S.C. 1247(d) covering the involved lines. RTC has submitted a statement of willingness to assume financial responsibility for the trail in compliance with 49 CFR 1152.29. KCS consents to this request and is willing to negotiate with RTC.

While expressions of interest in interim trail use need not be filed until 10 days after the date the notice of exemption is published in the **Federal Register** [49 CFR 1152.29(b)(2)], the provisions of 16 U.S.C. 1247(d) (Trails Act) are applicable, and all of the criteria for imposing trail use/rail

[1] KCS was authorized to acquire The Fort Smith and Van Buren Railway Company (FSVB) in 1939 in Finance Docket No. 12475. FSVB no longer exists as a separate legal entity; it was merged into KCS on July 6, 1992.

[2] This notice has been delayed to allow KCS to comply with the filing requirements of 49 CFR 1152.50(d)(1), to clarify the status of FSVB, and to confirm that the proposed transaction is abandonment and not merely service discontinuance.

[3] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environ-mental issues (whether raised by a party or by the Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay based on environmental concerns should file its request as soon as possible to permit Commission review and action before the exemption's effective date.

[4] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[5] The Commission will accept late-filed trail use statements so long as it retains jurisdiction.

banking have been met. Accordingly, based on KCS's willingness to enter into negotiations with RTC, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If a mutually acceptable final agreement is reached, further Commission approval is not necessary. If no agreement is reached within 180 days, KCS may fully abandon the lines. *See* 49 CFR 1152.29(d)(1).

Issuance of this NITU does not preclude other parties from filing interim trail use/rail banking requests. Nor does it preclude KCS from negotiating with other parties in addition to RTC during the NITU negotiating period. If additional trail use requests are filed, KCS is directed to respond to them. Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

The parties should note that operation of the trail use procedures could be delayed, or even foreclosed, by the OFA process under 49 U.S.C. 10905. As stated in *Rail Abandonments—Use of Rights-of-Way as Trails*, 2 I.C.C.2d 591 (1986) (*Trails*), OFA's to acquire rail lines for continued rail service or to subsidize rail operations take priority over interim trail use conditions.[6] Accordingly, if a formal expression of intent to file an OFA is timely filed under 49 CFR 1152.27(c)(2), the effective date of this notice will be postponed 10 days beyond the effective date indicated here. In addition, the effective date may be further postponed at later stages in the OFA process. *See* 49 CFR 1152.27 (e)(2) and (f). Finally, if the line is sold under the OFA procedures, the notice for abandonment exemption will be dismissed and trail use precluded. Alternatively, if a sale under the OFA procedures does not occur, trail use may proceed.

KCS has filed an environmental report addressing the effects of the abandonment, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) issued an environmental assessment (EA) on September 9, 1994, and comments were due on September 21, 1994. The EA recommended that an historic condition be imposed found that the right-of-way may be suitable for other public use. Because we are now issuing this notice, we will give interested persons an additional 15 days, to October 12, 1994, to file comments to the EA. Interested persons may obtain a copy of the EA from SEA by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEA at (202) 927–6248.

Environmental, historic preservation, or public use conditions will be imposed, where appropriate, in a subsequent decision.

It is ordered:

1. Subject to the conditions set forth above, KCS may discontinue service, cancel tariffs for the lines on not less than 10 days' notice to the Commission, and salvage track and material consistent with interim trail use/rail banking after the effective date of this notice of exemption and NITU. Tariff cancellations must refer to this notice by date and docket number.

2. If an interim trail use/rail banking agreement is reached, then with respect to the right-of-way it must require the trail user to assume, for the term of the agreement, full responsibility for management, for any legal liability arising out of transfer or use (unless the user is immune from liability, in which case it need only indemnify the railroad for any potential liability), and for the payment of any and all taxes that may be levied or assessed.

3. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right of-way.

4. If interim trail use is implemented and subsequently the user intends to terminate trail use, it must send the Commission a copy of this notice of exemption and NITU and request that it be vacated on a specified date.

5. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this notice of exemption and NITU, interim trail use may be implemented. If no agreement is reached by that time, KCS may fully abandon the lines.

Decided: September 21, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–23874 Filed 9–26–94; 8:45 am]

BILLING CODE 7035–01–P

[6] The statement in *Trails* that section 10905 does not apply to abandonment or discontinuance exemptions has since been superseded by the adoption of rules allowing OFAs in these exemption proceedings. *See* 49 CFR 1152.27.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances: Established Revised 1994 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA).

ACTION: Interim notice establishing a 1994 aggregate production quota and request for comments.

SUMMARY: This interim notice establishes a revised 1994 aggregate production quota for methylphenidate, a Schedule II controlled substance, as required under the Controlled Substances Act of 1970.

DATES: This is effective on September 27, 1994. Comments must be submitted on or before October 27, 1994.

ADDRESSES: Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994).

The DEA established initial 1994 aggregate production quotas for controlled substances in Schedules I and II, including methylphenidate, in a **Federal Register** notice published on October 8, 1993 (58 FR 52508). DEA revised some of the aggregate production quotas, including that for methylphenidate, on June 22, 1994 (59 FR 32223) in accordance with 21 CFR 1303.13.

Since publication of the revised 1994 aggregate production quotas, DEA has received information which necessitates an increase in methylphenidate's 1994 aggregate production quota. Because this increase is immediately required to meet the 1994 year-end medical needs of the United States, an interim rule is being established.

Based on a review of 1993 year-end inventories, 1994 manufacturing quotas, 1994 sales, export requirements and other information available to the DEA, the Deputy Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator by section 0.100 of title 28 of the Code of Federal

Regulations, and redelegated to the Deputy Administrator pursuant to 59 FR 23637 (May 6, 1994), hereby establishes the following revised 1994 aggregate production quota for methylphenidate, expressed in grams of anhydrous base:

Basic Class—Established Revised Schedule II—1994 Quotas
Methylphenidate—8,189,000

All interested persons are invited to submit their comments in writing regarding this interim notice.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that his action does not require a regulatory flexibility analysis.

Dated: September 20, 1994.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 94–23788 Filed 9–26–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Fall meetings of the Board and Committee of the Business Research Advisory Council will be held on October 19 and 20, 1994. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, October 19, 1994

10:00–12:00 p.m.—Committee on Productivity and Foreign Labor Statistics

1. Election of Chair and new Vice-Chair
2. Brief report on recent developments in the productivity office
3. Productivity, unit labor costs, and international competitiveness in manufacturing
4. Report on the Federal Productivity Measurement Program

2:00–4:00 p.m.—Committee on Price Indexes

1. The Consumer Price Index (CPI) and the CPI Revision
2. The Producer Price Indexes (PPI) Program
3. Election of new Vice-Chair

6:00 p.m.–Committee on Economic Growth

Delphi exercise addressing the following key issues that underlie forthcoming BLS projections:

1. Female labor force participation
2. Health care reform
3. Savings and investment
4. Industrial restructuring
5. Personnel supply services

Thursday, October 20, 1994

8:00–9:30 a.m.—Committee on Employment and Unemployment Statistics

1. Proposal for a National Wage Record Database
2. Need for Job Vacancy Statistics
3. Updates:
   a. Status of response to the American Statistical Association report on the establishment survey
   b. Standard Industrial Classification revision
   c. Secretary's Job Search Assistance Project
4. Other business

10:00–12:00 p.m.—Board Meeting

1. Chairperson's opening remarks
2. Commissioner Abraham's address and discussion
3. Business session
4. Chairperson's closing remarks

1:30–3:00 p.m.—Committee on Compensation and Working Conditions

1. Report on the Academic Conference of Employee benefits Survey/ Employment Cost Index (EBS/ECI) Integration
2. New union/nonunion data from the Employee Benefits Survey
3. New cost level data from the Employment Cost Index
4. Other business

The meetings are open to the public. Persons with disabilities wishing to attend should contact Constance B. DiCesare, Liaison, Business Research Advisory Council, at (202) 606–5887, for appropriate accommodations.

Signed at Washington, D.C. the 20th day of September 1994.

Katherine G. Abraham,

Commissioner.

[FR Doc. 94–23865 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

[TA–W–29,841]

Season-All Industries Indiana, Pennsylvania; Affirmative Determination Regarding Application for Reconsideration

On August 10, 1994, Local #611 of the International Union of Electrical Workers (IUE) requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on July 12, 1994 and published in the **Federal Register** on July 26, 1994 (59 FR 37996).

The union claims that Season-All's customers are now importing from Canada.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 16th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23862 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

TA–W–30,089 Sara Lee Knit Products, Cleveland Avenue, Martinsville, Virginia
TA–W–30,089A Sara Lee Knit Products, Gretna, Virginia
TA–W–30,090 Sara Lee Knit Products, Midway, Georgia Plant, Midway, Georgia

TA-W-30,091 Sara Lee Knit Products, Cloverleaf Knitting, Martinsville, Virginia

TA-W-30,092 Sara Lee Knit Products, Central Distribution, Martinsville, Virginia

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers of Sara Lee Knit Products at the Cleveland Avenue plant in Martinsville, Virginia; Midway, Georgia; Cloverleaf Knitting in Martinsville, Virginia; and the Distribution Center in Martinsville, Virginia. The certification notice was issued on August 26, 1994 and will soon be published in the Federal Register.

At the request of the company, the Department reviewed the certification for workers producing men's, women's and children's fleecewear at the subject firm. The findings show that production at Sara Lee Knit Products in Gretna, Virginia was integrated with that of the Martinsville, Virginia plant. The Gretna plant will close by the end of September, 1994.

The amended notice applicable to TA-W-30,089 through TA-W-30,092 is hereby issued as follows:

All workers of Sara Lee Knit Products, Martinsville, Virginia (TA-W-30,089) Gretna, Virginia (TA-W-30,089A) Midway, Georgia (TA-W-30,090); Cloverleaf Knitting, Martinsville, Virginia (TA-W-30,091) and the Central Distribution Center, Martinsville, Virginia (TA-W-30,092), respectively, who were engaged in employment related to the production of men's, women's and children's fleecewear and provided administrative, office, warehousing and distribution services who became totally or partially separated from employment on or after June 27, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of September 1994.

Victor J. Trunzo,

Program Director, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-23860 Filed 9-26-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,858]

Wetterau/Supervalu, Bloomington, IN; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated August 11, 1994, the AFL-CIO Community Services on behalf of the workers requested administrative reconsideration of the subject petition for trade adjustment assistant (TAA). The denial notice was published in the **Federal Register** on July 19, 1994 (59 FR 36793).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation files show that the workers do not produce an article within the meaning of Section 222(3) of the Trade Act and this issue was fully addressed in the Department's negative determination. The workers performed wholesale and retail services.

Only in very limited instances are service workers certified for TAA, namely, the worker separations must be caused by a reduced demand for their services from a parent or controlling firm whose workers produce an article and whose workers are currently under a certification for TAA. These conditions were not met for the subject workers.

All other considerations which the union makes, i.e., declining net earnings and opening more stores to carry imported food, are moot because the workers do not produce an article and as such are outside the scope of the Trade Act.

The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by foreign competition but only to those who experienced a decline in sales or production and employment and an increase in imports of like or directly competitive articles (not services) which contributed importantly to declines in sales or production and employment at the workers' firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 15th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Service, Office of Trade Adjustment Assistance.

[FR Doc. 94-23859 Filed 9-26-94; 8:45 am]

BILLING CODE 4510-30-M

Notice of Changes in Status of Extended Benefit (EB) Periods for the States of Alaska, Rhode Island, and Washington

This notice announces changes in benefit period eligibility under the Extended Benefit (EB) Program for the States of Alaska, Rhode Island, and Washington.

Summary

The following changes have occurred since the publication of the last notice regarding States' EB status:

- August 6, 1994 Alaska's 13-week insured unemployment rate for the week ending July 16, 1994 fell below 6.0 percent and was less than 120 percent of the average for the corresponding period for the prior two years, causing the State to trigger "off" EB effective August 6, 1994.
- August 13, 1994 Rhode Island triggered "off" EB. The EB trigger mechanisms for Rhode Island had been below the thresholds necessary to be triggered "on" to EB since the week beginning June 5, 1994. However, Section 203(b)(1)(A) of the Federal-State Extended Unemployment Compensation Act of 1970 specifies that no EB period shall last for less than 13 consecutive weeks, regardless of whether or not the necessary thresholds are met. That 13-week period ended for Rhode Island on August 13, 1994.
- August 27, 1994 The State of Washington triggered "off" EB. The EB trigger mechanisms for the State had been below the thresholds necessary to be triggered "on" to EB since the week beginning June 12, 1994. However, as stated above, Section 203(b)(1)(A) of the Federal-State Extended Unemployment Compensation Act of 1970 specifies that no EB period shall last for less than 13 consecutive weeks, regardless of whether or not the necessary thresholds are met. That 13-week period ended for Washington on August 27, 1994.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the

operating instructions issued to the States by the U.S. Department of Labor. In the case of a State ending an EB period, the State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits informing them of the ending of the EB period and its effect on the individual's right to Extended Benefits (20 CFR 615.13(c)(4)).

Persons who believe they may be entitled to EB benefits, or who wish to inquire about their rights under the programs, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, D.C., on September 21, 1994.

Doug Ross,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 94-23864 Filed 9-26-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,504]

Alsco Amerimark Building Products Gnadenhutten, OH, Notice of Negative Determination Regarding Application for Reconsideration

By an application dated August 12, 1994, the United Steelworkers of America (USW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 20, 1994 and published in the **Federal Register** on June 30, 1994 (59 FR 33786).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produce coated or painted aluminum coil.

Investigation findings show that the plant melted scrap aluminum cans and rolled the aluminum into coils which were then painted. The smelter and rolling mill closed in December 1993. Currently the plant is painting only domestically purchased coil.

Its claimed that imports of Russian aluminum ingots and coil affected the pricing of aluminum coil.

The articles produced by the subject workers is coated aluminum coil, not aluminum ingots or aluminum coil. Accordingly, the Department must look at imports of coated aluminum coil. Granted, the price of domestic aluminum may have been affected by imports of Russian aluminum. Price, however, is not one of the worker group criteria necessary for a worker group certification. The Department's survey of Amerimark's customers shows that none of them reported increased import purchases of coated aluminum coil while reducing their purchases from Amerimark during the period applicable to the petition. Customer comments from the Department's survey indicated there were non-trade reasons for Amerimark's customers reducing their purchases from Amerimark.

Other findings show that Amerimark did not purchase ingots (foreign or domestic) for use in its production process for coated aluminum coil but purchased scrap aluminum cans. The scrap market is a different market from the London Metals Exchange (LME).

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 16th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-23861 Filed 9-26-94; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-30,290]

BP Exploration (Alaska) Incorporated Anchorage, AK; Notice of Termination of Investigation

Pursuant to Section 211 of the Trade Act of 1974, an investigation was initiated on August 23, 1994 in response to a worker petition which was filed on September 6, 1994 on behalf of workers at BP Exploration (Alaska) Incorporated, Anchorage, Alaska.

An active certification covering the petitioning group of workers remains in effect (TA-W29,861A), under the company name BP Exploration and Oil Incorporated with operations in Alaska. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 19th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94-23858 Filed 9-26-94; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 7, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 7, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, D.C. this 12th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Scrab Rock Feeders, Inc (Wkrs)	Othello, WA	09/12/94	08/29/94	30,301	Beef cattle.
McDonnell Douglas Aerospace (Wkrs)	Huntington Beach, CA.	09/12/94	08/05/94	30,302	Aerospace station, research and design.
Pathfinder Mines Corp (Co)	Shirley Basin, WY	09/12/94	08/30/94	30,303	Uranium oxide.
Paulsen Wire Rope Corp (Wkrs)	Sunbury, PA	09/12/94	09/01/94	30,304	Steel wire rope.
Fishing Vessel Hawk (Wkrs)	Fairhaven, MA	09/12/94	08/29/94	30,305	Sea scallops.
MASX Energy Services, Inc (Co)	Houston, TX	09/12/94	08/25/94	30,306	Oil and gas drilling, production tools.
General Electric Consumer Service (IBEW).	Elk Grove, IL	09/12/94	08/30/94	30,307	TV's and VCR's repair.
Wilgrig (USA) (Co)	Lafayette, LA	09/12/94	09/06/94	30,308	Oil drilling.
Centrilift (Co)	Claremore, OK	09/12/94	08/30/94	30,309	Electrical submersible pumps.
Niagara Mohawk Power Corp (IBEW)	Syracuse, NY	09/12/94	08/29/94	30,310	Electric power generation.
Monasco Aerosystems (Wkrs)	Burbank, CA	09/12/94	08/17/94	30,311	Commercial and military landing gears.
Carr Well Service (Wkrs)	Odessa, TX	09/12/94	08/30/94	30,312	Oil drilling.
ITT Rayonier, Inc (AWPPW)	Port Angeles, WA	09/12/94	07/18/94	30,313	Sulfite pulps.
Copes-Vulcan, Inc (Wkrs)	Lake City, PA	09/12/94	09/02/94	30,314	Administrative services.
Mascotech Industrial Components (Wkrs).	Mesick, MI	09/12/94	08/29/94	30,315	Automotive components.
Electric Apparatus Service (Wkrs)	Philadelphia, PA	09/12/94	08/29/94	30,316	Metal sprays.
Exxon Co. U.S.A. (Wkrs)	New Orleans, LA	09/12/94	08/30/94	30,317	Crude oil.
Carmen Dress Co., Inc (ILGWU)	Luzerne, PA	09/12/94	08/31/94	30,318	Ladies' dresses.
Baker Performance Chemicals, Inc (Co).	Houston, TX	09/12/94	08/29/94	30,319	Oil field production chemicals.
Amerada Hess Corp (Wkrs)	Midland, TX	09/12/94	09/01/94	30,320	Crude oil, natural gas.
AGH Trimsurce Inc. (Wkrs)	New York, NY	09/12/94	08/01/94	30,321	Shoulder pads for garments.

[FR Doc. 94–23856 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00202]

Slaks Fifth Avenue USA Enterprises New York, NY; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on August 9, 1994 in response to a petition filed on behalf of the workers at Slaks Fifth Avenue, USA Enterprises, New York, New York. The workers are engaged in administrative and marketing functions.

In a letter transmitted on August 10, 1994, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 16th day of September 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23863 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,974]

Vic Manufacturing Company Minneapolis, MN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Vic Manufacturing Company, Minneapolis, Minnesota. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29,974; Vic Manufacturing Company Minneapolis, Minnesota (September 19, 1994)

Signed at Washington, D.C. this 19th day of September, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–23857 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12:00 noon, Wednesday, October 5, 1994, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, N.W., Washington, D.C. 20210.

This work group was formed by the Advisory Council to study issues relating to defined contribution plans covered by ERISA.

The purpose of the October 5 meeting is to discuss the group's preliminary findings, conclusions and recommendations concerning the educational aspects, coverage and participation and the adequacy of defined contribution plans. The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written

request on or before October 3, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 3, 1994.

Signed at Washington, D.C. this 21st day of September, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits, Administration.

[FR Doc. 94–23837 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee; Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Healthcare Reform of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until noon, Tuesday, October 4, 1994, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to healthcare reform for employee benefit plans covered by ERISA.

The purpose of the October 4 meeting is to have a hearing on and discussion of healthcare reform and the Employee Retirement Income Security Act of 1974, as amended (ERISA). The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before October 3, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 3, 1994.

Signed at Washington, DC this 21st day of September, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–23838 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 1:00 p.m. until 3:30 p.m., Tuesday, October 4, 1994, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington DC 20210.

This work group was formed by the Advisory Council to study issues relating to reporting and disclosure requirement for employee benefit plans covered by ERISA.

The purpose of the October 4 meeting is to (1) review witness testimony of prior meetings, (2) review public comments received from a request for information regarding summary plan description and individual benefit reporting and recordkeeping and (3) compilation of a first draft report to the Council. The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before October 3, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 3, 1994.

Signed at Washington, DC this 21st day of September, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–23839 Filed 9–26–94; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR part 50, Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," Section III.G.3, to the Power Authority of the State of New York (the licensee) for the Indian Point Nuclear Generating Unit No. 3 (IP3), located at the licensee's site in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

Section III.G.3 of the 10 CFR Part 50, Appendix R, specifies requirements to ensure that the alternate shutdown system is independent of shutdown equipment that does not meet the requirements of Section III.G.2 of Appendix R. Section III.G.2 of Appendix R specifies requirements to ensure that one train of redundant equipment necessary to achieve and maintain hot shutdown remains free of fire damage.

During a programmatic review of the Fire Protection Program and Appendix R compliance strategy at Indian Point Nuclear Generating Unit No. 3, the Power Authority of the State of New York identified that the alternate shutdown system did not meet the requirements of 10 CFR Part 50, Appendix R, Section III.G.3. Specifically, components in the alternate shutdown system were located in the same fire area as redundant shutdown instrumentation cables which did not meet the requirements of Section III.G.2 of Appendix R.

The licensee has, therefore, requested exemption from the requirements of 10

CFR part 50, Appendix R, Section III.G.3, to allow an operator to enter the fire area to perform manual actions.

Need for the Proposed Action

The proposed exemption is needed to permit the licensee to operate the plant without being in violation of the Commission's regulations and to obviate the need for modifications. Physical modification of the plant to achieve compliance with 10 CFR Part 50, Appendix R, Section III.G.3, would require design changes, for example: wrapping one redundant train of instrumentation cables in a 1 hour fire wrap, or relocation of the instrument isolation cabinets out of fire area ETN–4 or the construction of the fire barriers to make the upper penetration area a separate fire area. The detailed development and implementation of such design changes would result in a significant expenditure of engineering and financial resources without a significant safety benefit.

Environmental Impacts of the Proposed Action

Section III.G.3 of 10 CFR Part 50, Appendix R, specifies requirements to ensure that the alternate shutdown system is independent of shutdown equipment that does not meet the requirements of Section III.G.2 of Appendix R. Section III.G.2 of Appendix R specifies requirements to ensure that one train of redundant equipment necessary to achieve and maintain hot shutdown remains free of fire damage. The licensee has determined that the alternate shutdown system does not meet these requirements because components in the alternate shutdown system were located in the same fire area as redundant shutdown instrumentation cable which did not meet the requirements of Section III.G.2 of Appendix R. The licensee has, therefore, requested exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.G.3, to allow an operator to enter the fire area to perform manual actions.

Safe shutdown, during a postulated fire in the entryway tunnel, would be accomplished through use of the alternate safe shutdown system. Process monitoring information to support use of the alternate shutdown system is routed to the alternate safe shutdown locations through instrument isolation cabinets located in the upper electrical penetration area. These cabinets provide the operators with the ability to interrupt the normal signal paths routed to the central control room and reconfigure the instrument loops to provide instrument loop indication at the alternate safe shutdown panels located outside of the control room. The instrument loops cannot be remotely reconfigured, necessitating operator action in the fire affected area.

The fire hazard incurred by the operator during this action is minimal for several reasons. Because of the glass and asbestos braid construction of the cables in these areas, fire is not expected to propagate along the cables to any significant degree. A postulated fire in the entryway would be detected and extinguished, through manual or automatic means, before the fire became extensive. Additionally, the distance from the fire to the cabinets is approximately 165 feet and, while in the fire affected area, an operator would not be in the immediate vicinity of the fire. Furthermore, the operator would not be in the affected area for more than a few minutes and would access the area via the primary auxiliary building, avoiding the vicinity of the fire. A smoke analysis has shown that the amount of smoke in the area would not inhibit the necessary operator actions. Therefore, the proposed exemption would not affect the licensee's ability to implement alternate safe shutdown procedures.

Based on the considerations discussed above, the Commission concludes that the proposed exemption would not affect radiological plant effluents, nor result in any significant occupational exposure. In addition, the exemption does not affect nonradiological plan effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

As an alternative to the proposed action, the Commission considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. The alternative would also result in a significant expenditure of engineering and financial resources, without a significant safety benefit.

Alternate Use of Procedures

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement for the Indian Point Nuclear Generating Station Unit No. 3," dated February 1975.

Agencies and Persons Consulted

The Commission consulted with the State of New York regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the exemption under consideration.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated November 17, 1993, as supplemented September 6, 1994. This document is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York.

Dated at Rockville, Maryland, this 21st day of September 1994.

For the Nuclear Regulatory Commission.

Michael J. Case,

Acting Director, Project Directorate I–I Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 94–23820 Filed 9–26–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

September 21, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Cali Realty Corp.
  Common Stock, $.01 Par Value (File No. 7–12923)
Citicorp
  Depositary Shares (rep. 1/10 sh. Adj. Rate Cum. Pfd., Ser. 19, without Par Value) (File No. 7–12924)
Consolidated Papers, Inc.
  Common Stock, $1.00 Par Value (File No. 7–12925)
Evans Withycombe Residential, Inc.

Common Stock, $.01 Par Value (File No. 7–12926)
Enron Capital Resources, L.P.
9% Cum. Pfd., Ser. A (File No. 7–12927)
Empresa Nacional Electricdad, S.A. (Chile)
American Depositary Shares (rep. 30 sh. of Common Stock without Par Value) (File No. 7–12928)
Ford Holdings, Inc.
Depositary Shares (rep. 1/4000 sh. of Ser. D Cum. Pfd., $1.00 Par Value) (File No. 7–12929)
Home Properties of New York, Inc.
Common Stock, $.01 Par Value (File No. 7–12930)
John Hancock Bank & Thrift Opportunity Fund
Common Shares of Beneficial Interest, No Par Value (File No. 7–12931)
Loewen Group Capital, L.P.
9.45% Cum. Mo. Inc. Pfd. Sec. (MIPS), Series A (File No. 7–12932)
Morgan Stanley Asia-Pacific Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12933)
Niagara Mohawk Power Corp.
Pfd. Stock, Ser. 9½%, $25.00 Par Value (File No. 7–12934)
Peco Energy Capital L.P.
9% Cum. Mo. Inc. Pfd. Sec. (MIPS), Ser. A (File No. 7–12935)
Rightchoice Managed Care, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–12936)
Shandong Huaneng Power Development Co. Ltd.
American Depositary Shares (rep. 50 Ord. N sh. RMB 1.00 Par Value) (File No. 7–12937)
Storage Equities, Inc.
Cum. Pfd. Ser. D (File No. 7–12938)
Trigen Energy Co.
Common Stock, Without Par Value (File No. 7–12939)
TVX Gold, Inc.
Common Shares, Without Par Value (File No. 7–12940)
U.S. Surgical Corp.
$2.20 Depositary Shares (rep. 1/50 sh. Ser. A Cv. Pfd. Stock, $5.00 Par Value, DECS) (File No. 7–12941)
Weeks Corp.
Common Stock, $.01 Par Value (File No. 7–12942)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 13, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23791 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34690; File No. SR–NASD–94–38]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Addition of Listing Requirements to Prohibit Immediate Withdrawal of Units From Inclusion on Nasdaq

September 20, 1994.

On July 28, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 Thereunder.[3] The rule change amends the listing requirements found in Parts II and III of Schedule D to the NASD By-Laws to include additional requirements for units.

Under the rule as amended, in order to be included on the National Association of Securities Dealers Automated Quotation Service ("Nasdaq"), units included for quotation on Nasdaq must continue to be included for a minimum period of 30 days from the first day of inclusion, barring suspension or withdrawal for regulatory purposes. The rule also requires those issuers or underwriters seeking to withdraw units from inclusion to provide the NASD with notice of their intent at least 15 days prior to withdrawal. In addition, an issuer of units will be required to include in its prospectus or other offering document a statement disclosing any intention to withdraw the units immediately after the minimum inclusion period.

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release [4] and by publication in the **Federal Register.**[5]

No comments were received in response to the notice. This order approves the proposed rule change.

The new listing requirements have been proposed in response to the concerns of the NASD related to issuers that list and then almost immediately thereafter withdraw units from inclusion after trading has commenced.[6] As the NASD indicated in its rule filing, problems have arisen in instances where, shortly after certain units had been included for quotation and trading had commenced, the issuers or their underwriters suddenly withdrew their units from inclusion without any prior disclosure of their intention or advance notice to investors, market makers, or Nasdaq. Because active trading in these securities had commenced with the expectation that the units would continue to be included on Nasdaq, the sudden withdrawal from quotation significantly and adversely affected the market makers and investors who traded in these securities.

The practice of immediate withdrawal of units from inclusion without adequate disclosure clearly poses harm to traders and investors in these securities and adversely affects the integrity of the Nasdaq Stock Market. The practice leads to confusion because market participants who have purchased the units are left without a liquid market in which to trade these securities.

Moreover, if the lead underwriter involved in an offering also dominates or controls the market in the units, concerns regarding manipulation of the security may arise. A sudden withdrawal may cause difficulties for investors and market makers alike who may have established short positions in the units. These traders may be unable to cover their short positions after the withdrawal has occurred, and are likely to be required to cover these short positions by purchasing the components of the unit separately, frequently at a premium to the price originally being quoted prior to the withdrawal. In fact, in situations where warrants have not been issued separately from the unit, it may be impossible to "recreate" the unit so as to cover the short position.

To address these concerns, the NASD's proposal makes three changes to its inclusion criteria for units. As noted, for both Nasdaq Small Cap℠

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[1] The proposed rule change was initially submitted on June 21, 1994, and was amended twice prior to the publication of the Notice; once on July 22, 1994, and again on July 28, 1994.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Rel. No. 34515 (August 10, 1994).

[5] 59 FR 42626 (August 18, 1994).

[6] Generally, units are created by combining common stock of a corporation already quoted on Nasdaq with warrants for the same common stock.

units and National Market units, the proposal will impose a minimum 30-day period within which the units may not be withdrawn, absent a legitimate regulatory interest in so doing. In addition, the amendment will require issuers and underwriters seeking to withdraw units from inclusion to provide the NASD with at least 15 days notice of their intention to withdraw, so that the NASD may provide adequate notice to investors and market makers before the withdrawal occurs. Issuers having any intention to withdraw the units immediately after the minimum inclusion period also will have to disclose their intention in the prospectus or other offering document.

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[7] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change addresses concerns regarding the trading and inclusion process for units and enhances the integrity of Nasdaq listings. With the minimum inclusion requirement of 30 days for units, the amendment enhances the likelihood that an orderly trading market in these securities will exist. Similarly, requiring both a 15-day advance notice of withdrawal and an adequate disclosure of an issuer's intention to withdraw its units from inclusion promotes proper disclosure of information of use to all market participants.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-94-38 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-23843 Filed 9-26-94; 8:45 am]

BILLING CODE 8010-01-M

[7] 15 U.S.C. 78o-3(b)(6).

[8] 17 CFR 200.30-3(a)(12).

[Release No. 34-34691; File No. SR-NYSE-94-14]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Health Care Portfolio Market Index Target-Term Securities ("MITTS").

I. Introduction

September 20, 1994.

On April 12, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to list and trade Market Index Target-Term Securities ("MITTS"),[3] the return on which is based upon a portfolio of securities of health care companies ("Health Care Portfolio").[4] Notice of the proposal appeared in the **Federal Register** on April 28, 1994.[5] No comment letters were received on the proposed rule change. On August 9, 1994, the NYSE filed Amendment No. 1 to the proposed rule change.[6] This order approves the proposal, as amended.

II. Description of the Proposal

Under Section 703.19 of the Exchange's Listed Company Manual ("Manual"), the NYSE may approve for listing securities which can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.[7] The NYSE is now proposing under Section 703.19 of the Manual to list for trading MITTS based on the Health Care Portfolio ("Health Care Portfolio MITTS").[8]

As with the other MITTS products, the Health Care Portfolio MITTS will conform to the listing guidelines under Section 703.19 of the Manual, which provides that: (1) Issues must have a minimum public distribution of one million securities; (2) a minimum of 400 shareholders; (3) a minimum duration of one year; (4) a market value of at least $4 million; and (5) otherwise comply with the NYSE's initial listing criteria.[9] In addition, the Exchange will monitor the Health Care Portfolio MITTS to verify compliance with the Exchange's continued listing criteria.[10] MITTS are non-callable senior hybrid debt securities of Merrill Lynch that provide for a single payment at maturity, and will bear no periodic payments of interest. Health Care Portfolio MITTS will entitle the owner at maturity to receive an amount based upon the percentage change between the "Original Portfolio Value" and the "Ending Average Portfolio Value,"

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

[4] The Health Care Portfolio is a static portfolio consisting of 22 equity securities listed as common shares in the United States. The components of the portfolio represent companies that offer a variety of goods and services in the health care industry.

[5] See Securities Exchange Act Release No. 33933 (April 20, 1994), 59 FR 22030 (April 28, 1994).

[6] Amendment No. 1 to the proposed rule change provides that the value of the Health Care Portfolio will be calculated continuously and disseminated to the Options Price Reporting Authority ("OPRA") no less frequently than once every minute throughout the trading day. See Letter from James Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated August 9, 1994 ("Amendment No. 1").

[7] *See* Securities Exchange Act Release Nos. 29229 (May 23, 1991), 56 FR 24852 (May 31, 1991); and 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990") ("Hybrid Approval Orders").

[8] The Commission recently approved the listing and trading on the Exchange of MITTS based upon (1) a global portfolio of securities representing telecommunications companies, and (2) a portfolio of European companies. See Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); and 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993) ("MITTS Approval Orders").

[9] The hybrid listing standards in Section 703.19 of the Manual are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed equities which meet the Exchange's original listing standards. Domestic issuers must also meet the earnings and net tangible assets criteria set forth in Sections 102.01 and 102.02 of the Manual. Specifically, the minimum original listing criteria requires that issuers have: (1) 2,000 holders holding 100 shares or more or have 2,200 holders with an average monthly trading volume of 100,000 shares; (2) a public float of 1.1 million shares; (3) an aggregate public market value of $18 million or total net tangible assets of $18 million; and (4) earnings before taxes of $2.5 million in the latest fiscal year and earnings before taxes of $2 million in each of the preceding two fiscal years, or earnings before taxes of $6.5 million in the aggregate for the last three fiscal years with a $4.5 million minimum in the most recent fiscal year (all three years are required to be profitable).

[10] The continued listing criteria for capital or common stock requires that: (1) The number of holders of 100 shares or more is equal to or greater than 1,200; (2) the number of publicly-held shares is equal to or greater than 600,000; (3) the aggregate market value of publicly-held shares is equal to or greater than $5 million; (4) the aggregate market value of shares outstanding (excluding treasury stock) is equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000; and (5) net tangible assets available to common stock are equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000. In addition, the continued listing standards for bonds require that outstanding publicly-held bonds have an aggregate market value or principal amount equal to or greater than $1 million. See Section 802 of the Manual.

subject to a minimum repayment amount. The "Original Portfolio Value" is the value of the Health Care Portfolio on the date on which the issuer prices the Health Care Portfolio MITTS issue for the initial offering to the public. The "Ending Average Portfolio Value" is the average of the values of the Health Care Portfolio at the end of the five calendar quarters preceding the expiration of the Health Care Portfolio MITTS on December 31, 1999.[11] The Ending Average Portfolio Value will be used in calculating the amount owners will receive upon maturity.[12]

If the market value of the portfolio has declined, the owner will receive not less than a specified percentage of the principal amount of the security. (For instance, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than 10%, the owners of the Health Care Portfolio MITTS will receive 90% of the principal amount of the securities.) The payment at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio. Health Care Portfolio MITTS are cash-settled in that they do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the Health Care Portfolio securities.

According to the NYSE, Health Care Portfolio MITTS will allow investors to combine the protection of a portion of the principal amount of the MITTS with a potential additional payment based upon the performance of a portfolio of securities representing 22 highly capitalized health care companies. Health Care Portfolio MITTS will mature on December 31, 1999.

The Health Care Portfolio consists of securities of 22 health care companies that have significantly different levels of market capitalization, ranging from a high of approximately $28.0 billion (Bristol Meyers Squibb Co.) to a low of approximately $311 million (Living Centers of America, Inc.).[13] Nineteen of the securities in the Health Care Portfolio are traded on the NYSE and the remainder are National Market securities traded through NASDAQ. The average daily trading volume for the components of the Health Care Portfolio for the period from November 5, 1992, through March 7, 1994, ranged from a high of approximately 1.03 million shares (Abbott Laboratories), to a low of approximately 20,335 shares (Living Centers of America, Inc.).

At the outset, each of the securities in the Health Care Portfolio will have equal representation. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or through NASDAQ, to be included in the calculation of the portfolio. Accordingly, each of the 22 companies included in the Health Care Portfolio will represent approximately 4.54 percent of the total portfolio at the time of issuance.

The multiplier for each security in the Health Care Portfolio will generally remain unchanged except for limited adjustments that may be necessary as a result of stock splits or stock dividends.[14] There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a portfolio security. In addition, no adjustments of any multiplier of a portfolio security will be made unless such adjustment would require a change of at least 1% in the multiplier then in effect.

If the issuer of a security included in the Health Care Portfolio no longer exists, whether for reason of a merger, acquisition or similar type of corporate control transaction, then Merrill Lynch will assign to that security a value equal to the security's final value for the purposes of calculating portfolio values. For example, if a company included in the portfolio is acquired by another company, Merrill Lynch shall thereafter assign a value to the shares of the acquired company's securities equal to the value per share at which time the acquisition takes place.

If the issuer of a portfolio security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency or other similar adjudication, such security will continue to be included in the Health Care Portfolio so long as a market price on an exchange or through NASDAQ for such security is available. If such a market price is no longer available for a portfolio security, including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of the portfolio security will be assigned a value of zero in connection with calculating the daily portfolio value and the closing portfolio value of the Health Care Portfolio, for so long as no such market price exists for that security.[15]

The value of the Health Care Portfolio will be calculated by an independent third party and will be disseminated through OPRA at least one each minute throughout the trading day.[16] The portfolio value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the portfolio securities.

Like other issues of MITTS listed on the NYSE, Health Care Portfolio MITTS may not be redeemed prior to maturity and are not callable by the issuer. Holders of Health Care Portfolio MITTS will be able to cash-out of their investment by selling the security on the NYSE. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the securities comprising the Health Care Portfolio and also on such other factors as the level of interest rates, the volatility of the value of the Health Care Portfolio, the time remaining to maturity, dividend rates, and the credit worthiness of the issuer, Merrill Lynch.[17]

Because Health Care Portfolio MITTS are linked to a portfolio of equity securities, the NYSE'S existing equity floor trading rules will apply to the trading of Health Care Portfolio MITTS.

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[11] Specifically, the Ending Average Portfolio Value will equal average of the quarterly values of the Health Care Portfolio beginning in the calendar quarter ending December 31, 1998. The quarterly value for each of the first four of the final five calendar quarters shall be the Health Care Portfolio value on the last scheduled Exchange trading day on which there is no market disruption event. The quarterly value for the final calendar quarter shall be the Health Care Portfolio Value on the seventh scheduled Exchange trading day preceding maturity of the Health Care MITTS unless there is a market disruption event in which case the sixth trading day preceding maturity shall be used.

[12] The Health Care Portfolio MITTS will entitle a holder at maturity to receive for each $10 principal amount of MITTS an amount equal to the Ending Average Portfolio Value of the Health Care Portfolio divided by 10, but in any event no less than $9 per each $10 principal amount of Health Care Portfolio MITTS.

[13] These values are as of March 7, 1994.

[14] Merrill Lynch will adjust the multiplier of any portfolio security if the security is subject to a stock split or reverse split to equal the product of the number of shares issued with respect to one share of the portfolio security and the prior multiplier. In the case of a stock dividend, the multiplier will be adjusted so that the new multiplier will equal the former multiplier plus the product of the number of shares of such portfolio security issued with respect to one share of the portfolio security and the prior multiplier.

[15] Merrill Lynch will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

[16] See Amendment No. 1, *supra* note 6.

[17] Merrill Lynch will deposit registered securities representing Health Care Portfolio MITTS with its depository, the Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading Health Care Portfolio MITTS.[18] Second, consistent with NYSE Rule 405, the Exchange will further require that a member or member firm specifically approve a customer's account for trading Health Care Portfolio MITTS prior to, or promptly after, the completion of the transaction. Third, Health Care Portfolio MITTS will be subject to the equity margin rules of the Exchange. Fourth, in accordance with the NYSE's Hybrid Approval Orders, the Exchange will, prior to trading Health Care Portfolio MITTS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in Health Care Portfolio MITTS and highlighting the special risks and characteristics of the Health Care Portfolio MITTS.[19]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). Specifically, the Commission believes that providing for exchange-trading of Health Care Portfolio MITTS will offer a new and innovative means of participating in the market for health care securities. In particular, the Commission believes that Health Care Portfolio MITTS will permit investors to gain equity exposure in health care companies, while at the same time, limiting the downside risk of the original investment. For the reasons discussed in the MITTS Approval Orders, the Commission finds that the listing and trading of Health Care Portfolio MITTS is consistent with the Act.[20]

As with other MITTS products, Health Care Portfolio MITTS are not leveraged instruments, however, their price will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of a Health Care Portfolio MITTS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rate of return of a MITTS is derivatively priced, based on the performance of a portfolio of securities, the Commission has several specific concerns regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to Health Care Portfolio MITTS. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of Health Care Portfolio MITTS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Health Care Portfolio MITTS.

The Commission realizes that Health Care Portfolio MITTS are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's continued listing standards which require issuers to maintain an aggregate market value of $5 million for its publicly-held shares.[21] In addition, the Exchange's hybrid listing standards further require that Health Care Portfolio MITTS have at least $4 million in market value. In any event, financial information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the Health Care Portfolio, will be publicly available.[22]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the MITTS Approval Orders, the Commission believes this concern is minimal given the size of Health Care Portfolio MITTS issuance in relation to the net worth of Merrill Lynch.[23]

The Commission also believes that the listing and trading of Health Care Portfolio MITTS should not unduly impact the market for the underlying securities comprising the Health Care Portfolio. First, as discussed above, the underlying securities comprising the portfolio are well-capitalized, highly liquid stocks. Second, because all of the components of the Health Care Portfolio will initially be equally weighed, no single stock or group of stocks dominates the Health Care Portfolio. Finally, the issuers of the underlying securities comprising the Health Care Portfolio, are subject to reporting requirements under the Act, and all of the portfolio securities are either listed or traded on, or traded through the facilities of U.S. securities markets.[24] Additionally, the NYSE's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Health Care Portfolio will be disseminated at least once every minute throughout the trading day. The Commission believes that this result is appropriate because, unlike previously approved MITTS products which contain foreign components, the Health Care Portfolio is comprised solely of securities traded in the U.S. for which real-time price information is available. The Commission believes that providing access to the value of the Health Care Portfolio at least once every minute throughout the trading day is extremely important and will provide benefits to investors in the product.[25]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. As discussed above, the Commission believes that investors and market participants will benefit from having the value of the Health Care Portfolio calculated and disseminated as frequently as possible throughout the trading day. The Commission believes that Amendment No. 1 provides this benefit without unduly burdening either the Exchange or the issuer of the Health Care Portfolio MITTS. Additionally, the Commission notes that Amendment No. 1 provides for significantly greater access by investors and market participants to current values of the Health Care Portfolio than did the original proposal which was noticed for the full 21-day comment period without any comments being received by the Commission. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to

[18] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[19] See Hybrid Approval Orders, *supra* note 7

[20] See MITTS Approval Orders, *supra* note 8.

[21] See *supra* note 10.

[22] The companies that comprise the Health Care Portfolio are reporting companies under the Act.

[23] See MITTS Approval Orders, *supra* note 8.

[24] The Commission notes that 19 of the component securities are traded on the NYSE and the remainder are National Market securities traded through Nasdaq.

[25] In this regard, the Commission believes that it is useful and beneficial for all investors and market participants to have access to the value of the Health Care Portfolio as frequently as possible and encourages the NYSE and Merrill Lynch to further explore the possibilities in this area, *i.e.*, calculating and disseminating the value of the portfolio at least once every 15 seconds as is done with other derivative products.

approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–14 and should be submitted by October 18, 1994.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (File No. SR–NYSE–94–14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23793 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34692; File No. SR–NYSE–94–15]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Restructuring Companies Portfolio Market Index Target-Term Securities ("MITTS")

September 20, 1994.

I. Introduction

On April 12, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to list and trade Market Index Target-Term Securities ("MITTS"),[3] the return on which is based upon a portfolio of securities of companies that have restructured or are in the process of restructuring ("Restructuring Companies Portfolio").[4] Notice of the proposal appeared in the **Federal Register** on April 28, 1994.[5] No comment letters were received on the proposed rule change. On August 9, 1994, the NYSE filed Amendment No. 1 to the proposed rule change.[6] This order approves the proposal, as amended.

II. Description of the Proposal

Under Section 703.19 of the Exchange's Listed Company Manual ("Manual"), the NYSE may approve for listing securities which can not be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, and warrants.[7] The NYSE is now proposing under Section 703.19 of the Manual to list for trading MITTS based on the Restructuring Companies Portfolio ("Restructuring Companies Portfolio MITTS").[8]

As with the other MITTS products, the Restructuring Companies Portfolio MITTS will conform to the listing guidelines under Section 703.19 of the Manual, which provide that: (1) Issues must have a minimum public distribution of one million securities; (2) a minimum of 400 shareholders; (3) a minimum duration of one year; (4) a market value of at least $4 million; and (5) otherwise comply with the NYSE's initial listing criteria.[9] In addition, the Exchange will monitor the Restructuring Companies Portfolio MITTS to verify compliance with the Exchange's continued listing criteria.[10] MITTS are non-callable senior hybrid debt securities of Merrill Lynch that provide for a single payment at maturity, and will bear no periodic payments of interest. Restructuring Companies Portfolio MITTS will entitle the owner at maturity to receive an amount based upon the percentage change between the "Original Portfolio Value" and the "Ending Average Portfolio Value," subject to a minimum repayment amount. The "Original Portfolio Value" is the value of the Restructuring Companies Portfolio on the date on which the issuer prices the Restructuring Companies Portfolio MITTS issue for the initial offering to the public. The "Ending Average Portfolio Value" is the average of the values of the Restructuring Companies Portfolio at the end of the five calendar quarters preceding the expiration of the Restructuring Companies Portfolio

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[26] 15 U.S.C. 78s(b)(2) (1988).

[27] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

[4] The Restructuring Companies Portfolio is a static portfolio consisting of 17 equity securities listed as common shares in the United States. The components of the portfolio represent companies which are generally perceived to have recently experienced declines in earnings as compared to historical levels and/or other adverse developments which have required some form of restructuring by such companies.

[5] See Securities Exchange Act Release No. 33934 (April 20, 1994), 59 FR 22040 (April 28, 1994).

[6] Amendment No. 1 to the proposed rule change provides that the value of the Restructuring Companies Portfolio will be calculated continuously and disseminated to the Options Price Reporting Authority ("OPRA") no less frequently than once every minute throughout the trading day. See Letter from James Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated August 9, 1994 ("Amendment No. 1").

[7] See Securities Exchange Act Release Nos. 29229 (May 23, 1991), 56 FR 24852 (May 31, 1991); and 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990) ("Hybrid Approval Orders").

[8] The Commission recently approved the listing and trading on the Exchange of MITTS based upon (1) A global portfolio of securities representing telecommunications companies, and (2) a portfolio of European companies. See Securities Exchange Act Release Nos. 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); and 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993) ("MITTS Approval Orders").

[9] The hybrid listing standards in Section 703.19 of the Manual are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed equities which meet the Exchange's original listing standards. Domestic issuers must also meet the earnings and net tangible assets criteria set forth in Sections 102.01 and 102.02 of the Manual. Specifically the minimum original listing criteria requires that issuers have: (1) 2,000 holders holding 100 shares or more or have 2,200 holders with an average monthly trading volume of 100,000 shares; (2) a public float of $1.1 million shares; (3) an aggregate public market value of $18 million or total net tangible assets of $18 million; and (4) earnings before taxes of $2.5 million in the latest fiscal year and earnings before taxes of $2 million in each of the preceding two fiscal years, or earnings before taxes of $6.5 million in the aggregate for the last three fiscal years with a $4.5 million minimum in the most recent fiscal year (all three years are required to be profitable).

[10] The continued listing criteria for capital or common stock requires that: (1) The number of holders of 100 shares or more is equal to or greater than 1,200; (2) the number of publicly-held shares is equal to or greater than 600,000; (3) the aggregate market value of publicly-held shares is equal to or greater than $5 million; (4) the aggregate market value of shares outstanding (excluding treasury stock) is equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000; and (5) net tangible assets available to common stock are equal to or greater than $8 million and average net income after taxes for the past three years is equal to or greater than $600,000. In addition, the continued listing standards for bonds require that outstanding publicly-held bonds have an aggregate market value or principal amount equal to or greater than $1 million. *See* Section 802 of the Manual

MITTS on December 31, 1999.[11] The Ending Average Portfolio Value will be used in calculating the amount owners will receive upon maturity.[12]

If the market value of the portfolio has declined, the owner will receive not less than a specified percentage of the principal amount of the security. (For instance, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than 10%, the owners of the Restructuring Companies Portfolio MITTS will receive 90% of the principal amount of the securities.) The payment at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio. Restructuring Companies Portfolio MITTS are cash-settled in that they do not give the holder any right to receive a portfolio security or any other ownership right or interest in the portfolio securities, although the return on the investment is based on the aggregate portfolio value of the Restructuring Companies Portfolio securities.

According to the NYSE, Restructuring Companies Portfolio MITTS will allow investors to combine the protection of a portion of the principal amount of the MITTS with a potential additional payment based upon the performance of a portfolio of securities representing 17 highly capitalized companies that either have restructured or are in the process of restructuring. Restructuring Companies Portfolio MITTS will mature on December 31, 1999.

The Restructuring Companies Portfolio consists of securities of 17 companies that have significantly different levels of market capitalization, ranging from a high of approximately $30. 2 billion (IBM) to a low of approximately $328 million (Arkis, Inc.).[13] Sixteen of the securities in the Restructuring Companies Portfolio are traded on the NYSE and one is a National Market security traded through Nasdaq. The average daily trading volume for the components of the Restructuring Companies Portfolio for the period from November 5, 1992, through March 7, 1994, ranged from a high of approximately 3.7 million shares (Eastman Kodak), to a low of approximately 93,008 shares (The Columbia Gas System, Inc.).

At the outset, each of the securities in the Restructuring Companies Portfolio will have equal representation. Specifically, each security included in the portfolio will be assigned a multiplier on the date of issuance so that the security represents an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security, given its market price on an exchange or through NASDAQ, to be included in the calculation of the portfolio. Accordingly, each of the 17 companies included in the Restructuring Companies Portfolio will represent approximately 5.88 percent of the total portfolio at the time of issuance.

The multiplier for each security in the Restructuring Companies Portfolio will generally remain unchanged except for limited adjustments that may be necessary as a result of stock splits or stock dividends.[14] There will be no adjustments to the multipliers to reflect cash dividends paid with respect to a portfolio security. In addition, no adjustments of any multiplier of a portfolio security will be made unless such adjustment would require a change of at least 1% in the multiplier then in effect.

If the issuer of a security included in the Restructuring Companies Portfolio no longer exists, whether for reason of a merger, acquisition or similar type of corporate control transaction, then Merrill Lynch will assign to that security a value equal to the security's final value for the purposes of calculating portfolio values. For example, if a company included in the portfolio is acquired by another company, Merrill Lynch shall thereafter assign a value to the shares of the acquired company's securities equal to the value per share at which time the acquisition takes place.

If the issuer of a portfolio security is in the process of liquidation or subject to a bankruptcy proceeding, insolvency, or other similar adjudication, such security will continue to be included in the Restructuring Companies Portfolio so long as a market price on an exchange or through NASDAQ for such security is available. If such a market price is no longer available for a portfolio security, including, but not limited to, liquidation, bankruptcy, insolvency, or any other similar proceeding, then the value of the portfolio security will be assigned a value of zero in connection with calculating the daily portfolio value and the closing portfolio value of the Restructuring Companies Portfolio, for so long as no such market price exists for that security.[15]

The value of the Restructuring Companies Portfolio will be calculated by an independent third party and will be disseminated through OPRA at least once each minute throughout the trading day.[16] The portfolio value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the portfolio securities.

Like other issues of MITTS listed on the NYSE, Restructuring Companies Portfolio MITTS may not be redeemed prior to maturity and are not callable by the issuer. Holders of Restructuring Companies Portfolio MITTS will be able to cash-out of their investment by selling the security on the NYSE. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the securities comprising the Restructuring Companies Portfolio and also on such other factors as the level of interest rates, the volatility of the value of the Restructuring Companies Portfolio, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer, Merrill Lynch.[17]

Because Restructuring Companies Portfolio MITTS are linked to a portfolio of equity securities, the NYSE's existing

[11] Specifically, the Ending Average Portfolio Value will equal the average of the quarterly values of the Restructuring Companies Portfolio beginning in the calendar quarter ending December 31, 1998. The quarterly value for each of the first four of the final five calendar quarters shall be the Restructuring Companies Portfolio value on the last scheduled Exchange trading day on which there is no market disruption event. The quarterly value for the final calendar quarter shall be the Restructuring Companies Portfolio Value on the seventh scheduled Exchange trading day preceding maturity of the Restructuring Companies MITTS unless there is a market disruption event in which case the sixth trading day preceding maturity shall be used.

[12] The Restructuring Companies Portfolio MITTS will entitle a holder at maturity to receive for each $10 principal amount of MITTS an amount equal to the Ending Average Portfolio Value of the Restructuring Companies Portfolio divided by 10, but in any event no less than $9 per each $10 principal amount of Restructuring Companies Portfolio MITTS.

[13] These values are as of March 7, 1994.

[14] Merrill Lynch will adjust the multiplier of any portfolio security if the security is subject to a stock split or reverse split to equal the product of the number of shares issued with respect to one share of the portfolio security and the prior multiplier. In the case of a stock dividend, the multiplier will be adjusted so that the new multiplier will equal the former multiplier plus the product of the number of shares of such portfolio security issued with respect to one share of the portfolio security and the prior multiplier.

[15] Merrill Lynch will not attempt to find a replacement stock or to compensate for the extinction of a security due to bankruptcy or a similar event.

[16] See Amendment No. 1, *supra* note 6.

[17] Merrill Lynch will deposit registered securities representing Restructuring Companies Portfolio MITTS with its depository, the Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

equity floor trading rules will apply to the trading of Restructuring Companies Portfolio MITTS. First, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading Restructuring Companies Portfolio MITTS.[18] Second, consistent with NYSE Rule 405, the Exchange will further require that a member or member firm specifically approve a customer's account for trading Restructuring Companies Portfolio MITTS prior to, or promptly after, the completion of the transaction. Third, Restructuring Companies Portfolio MITTS will be subject to the equity margin rules of the Exchange. Fourth, in accordance with the NYSE's Hybrid Approval Orders, the Exchange will, prior to trading Restructuring Companies Portfolio MITTS, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in Restructuring Companies Portfolio MITTS and highlighting the special risks and characteristics of the Restructuring Companies Portfolio MITTS.[19]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). Specifically, the Commission believes that providing for exchange-trading of Restructuring Companies Portfolio MITTS will offer a new and innovative means of participating in the market for securities of companies that have either recently restructured or are in the process of restructuring. In particular, the Commission believes that Restructuring Companies Portfolio MITTS will permit investors to gain equity exposure in such companies, while at the same time, limiting the downside risk of the original investment. For the reasons discussed in the MITTS Approval Orders, the Commission finds that the listing and trading of Restructuring Companies Portfolio MITTS is consistent with the Act.[20]

As with other MITTS products, Restructuring Companies Portfolio MITTS are not leveraged instruments, however, their price will still be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of a Restructuring Companies Portfolio MITTS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rate of return of a MITTS is derivatively priced, based on the price performance of a portfolio of securities, the Commission has several specific concerns regarding the trading of this type of product.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to Restructuring Companies Portfolio MITTS. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of Restructuring Companies Portfolio MITTS. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with Restructuring Companies Portfolio MITTS.

The Commission realizes that Restructuring Companies Portfolio MITTS are dependent upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the Exchange's continued listing standards which require issuers to maintain an aggregate market value of $5 million for its publicly-held shares.[21] In addition, the Exchange's hybrid listing standards further require that Restructuring Companies Portfolio MITTS have at least $4 million in market value. In any event, financial information regarding Merrill Lynch, in addition to the information on the issuers of the underlying securities comprising the Restructuring Companies Portfolio, will be publicly available.[22]

The Commission also has a systemic concern, however, that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will incur position exposure. As discussed in the MITTS Approval Orders, the Commission believes this concern is minimal given the size of Restructuring Companies Portfolio MITTS issuance in relation to the net worth of Merrill Lynch.[23]

The Commission also believes that the listing and trading of Restructuring Companies Portfolio MITTS should not unduly impact the market for the underlying securities comprising the Restructuring Companies Portfolio. First, as discussed above, the underlying securities comprising the portfolio are well-capitalized, highly liquid stocks. Second, because all of the components of the Restructuring Companies Portfolio will initially be equally weighted, no single stock or group of stocks dominates the Restructuring Companies Portfolio. Finally, the issuers of the underlying securities comprising the Restructuring Companies Portfolio, are subject to reporting requirements under the Act, and all of the portfolio securities are either listed or traded on, or traded through the facilities of, U.S. securities markets.[24] Additionally, the NYSE's surveillance procedures will serve to deter as well as detect any potential manipulation.

Finally, the Commission notes that the value of the Restructuring Companies Portfolio will be disseminated at least once every minute throughout the trading day. The Commission believes that this result is appropriate because, unlike previously approved MITTS products which contain foreign components, the Restructuring Companies Portfolio is comprised solely of securities traded in the U.S. for which real-time price information is available. The Commission believes that providing access to the value of the Restructuring Companies Portfolio at least once every minute throughout the trading day is extremely important and will provide benefits to investors in the product.[25]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. As discussed above, the Commission believes that investors and market participants will benefit from having the value of the

[18] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[19] See Hybrid Approval Orders, *supra* note 7.

[20] See Mitts Approval Orders, *supra* note 8.

[21] See supra note 10.

[22] The companies that comprise the Restructuring Companies Portfolio are reporting companies under the Act.

[23] See MITTS Approval Orders, *supra* note 8.

[24] The Commission notes that 16 of the component securities are traded on the NYSE and one is a National Market security traded through Nasdaq.

[25] In this regard, the Commission believes that it is useful and beneficial for all investors and market participants to have access to the value of the Restructuring Companies Portfolio as frequently as possible and encourages the NYSE and Merrill Lynch to further explore the possibilities in this area, *i.e.*, calculating and disseminating the value of the portfolio at least once every 15 seconds as is done with other derivative products.

Restructuring Companies Portfolio calculated and disseminated as frequently as possible throughout the trading day. The Commission believes that Amendment No. 1 provides this benefit without unduly burdening either the Exchange or the issuer of the Restructuring Companies Portfolio MITTS. Additionally, the Commission notes that Amendment No. 1 provides for significantly greater access by investors and market participants to current values of the Restructuring Companies Portfolio than did the original proposal which was noticed for the full 21-day comment period without any comments being received by the Commission. Accordingly, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–15 and should be submitted by October 18, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (File No. SR–NYSE–94–15), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23792 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

[26] 15 U.S.C. 78s(b)(2) (1988).

[27] 17 CFR 200.30–3(a)(12) (1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Incorporated

September 21, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Consorcio G Grupo Dina
Series L American Depository Shares, No Par Value (File No. 7–12949)
Fedders Corporation
Class A Common Stock, $.01 Par Value (File No. 7–12950)
Fund American Enterprises Holdings, Inc.
Common Stock, $1.00 Par Value (File No. 7–12951)
Grupo Tribasa
Common Stock, No Par Value (File No. 7–12952)
Merry Land & Investment Company
Common Stock, No Par Value (File No. 7–12953)
Rouge Steel Company
Common Stock, $.01 Par Value (File No. 7–12954)
UAL Corporation
Common Stock, $.05 Par Value (File No. 7–12955)
Valero Energy Corporation
$3.125 Cum. Cv. Pfd. (File No. 7–12956)
Weirton Steel Corporation
Common Stock, $.10 Par Value (File No. 7–12957)
Newbridge Networks Corporation
Common Stock, No Par Value (File No. 7–12958)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 13, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23790 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Eagle Financial Corp., Common Stock, $0.01 Par Value) File No. 1–9901

September 21, 1994.

Eagle Financial Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on August 23, 1994, to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotation/National Market System ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(4) The Company believes that firms making a market in the Company's

Common Stock on the NASDAQ/NMS system will be included to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before October 13, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23842 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20566; 811–8136]

Nuveen Premium Income Municipal Fund 7; Notice of Application

September 20, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Premium Income Municipal Fund 7.

RELEVANT ACT SECTION: Order requested under Section 8(f).

SUMMARY OF APPLICATION: Applicate seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on September 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 530 p.m. on October 15, 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, 333 West Wacker Drive, Chicago, Illinois 60606–1286.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Law Clerk, at (202) 942–0654, or Barry D. Miller, Senior Special Counsel, 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 a closed-end, diversified management company under the Act and organized as a business trust under the laws of the Commonwealth of Massachusetts. On November 5, 1993, Applicant filed a registration statement on Form N–2 under section 8(b) of the Act and under the Securities Act of 1933. Applicant's registration statement was not declared effective. Applicant has neither made a public offering of its shares, nor sold any securities.

2. Applicant has no shareholders; no assets, debts, or liabilities; and is not a party to any litigation or administrative proceeding.

3. Applicant is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–23794 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (LSB Industries, Inc., Common Stock, $.10 Par Value) File No. 1–7677

September 21, 1994.

LSB Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its Common Stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's Common Stock commenced trading on the NYSE at the opening of business on August 31, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its Common Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its Common Stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before October 13, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23841 Filed 9–26–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2740]

Alaska; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 13, 1994, I find that the Norwest Artic Borough and the Yukon Koyukuk Educational Region in the State of Alaska constitute a disaster area as a result of damages caused by severe storms and flooding beginning on August 8, 1994 and continuing.

Applications for loans for physical damage may be filed until the close of business on November 14, 1994, and for loans for economic injury until the close of business on June 13, 1995, at the address listed below:

U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 274006 and for economic injury the number is 834400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 19, 1994.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 94–23883 Filed 9–26–94; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates

The interest rate on Section 7(a) Small Business Administration direct loans (as amended by PL 97–35) and the SBA share of immediate participation loans is 8⅜ percent for the fiscal quarter beginning September 1, 1995.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4 (d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the September–December quarter of FY 95, this rate will be 7⅜ percent.

Dated: September 22, 1994.

John R. Cox,

Associate Administrator for Financial Assistance.

[FR Doc. 94–23830 Filed 9–26–94; 8:45 am]

BILLING CODE 8025–01–M

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the Northern District of California, dated July 15, 1994, the United States Small Business Administration hereby revokes the license of NSS Investment, Inc., a Nevada corporation, to function as a small business investment company under the Small Business Investment Company License No. 09/09–0235, issued to NSS Investments, Inc. on April 5, 1979, and said license is hereby declared null and void as of September 8, 1994.

Dated: September 20, 1994.

Darryl Hairston,

Deputy Associate Administrator for Investment.

[FR Doc. 94–23884 Filed 9–26–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Order Proposing Clarification of Contract Bulk Fare Exemption Authority

SUMMARY: We are publishing the order in its entirety as an appendix to this document.

DATES: Issued in Washington, DC., September 21, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia Thomas, Office of Aviation Analysis, Room 6401, 202–366–9721, or William J. Wagner, Office of Assistant General Counsel for Aviation Enforcement and Proceedings, Room 4116, 202–366–9342, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 205590.

John V. Coleman,

Director, Office of Aviation Analysis.

[Docket 44369; Order 94–9–31]

Exemption of Persons Who Contract for the Purchase of Blocks of Seats on Scheduled Service Pursuant to Applicable Tariffs for Resale to the Public

Order to Show Cause

Summary

By this order, we are proposing to clarify the extent to which activities by contract bulk fare operators are covered by the exemption granted to such persons by Order 88–9–2.

Background

By Order 81–7–109, the Civil Aeronautics Board (the Board) granted to persons who contract for blocks of seats with U.S. and foreign direct air carriers a blanket exemption from the requirements of sections 401, 402, and 403 of the Federal Aviation Act (the Act)[1] and of part 221 of the Board's regulations to the extent necessary to allow such persons, commonly referred to as "contract bulk fare operators," to resell the seats without filing tariffs or themselves having to obtain a certificate of public convenience and necessity or a foreign air carrier permit, as applicable.[2] By Order 88–9–2, the Department continued this exemption.

Traditionally, the marketing arrangement authorized by this exemption has been utilized by direct air carriers as an additional tool to enhance their marketing efforts but which is incidental to their overall scheduled service operations. The blanket exemption allows these direct air carriers to contract to sell a portion of their seats to middlemen (contract bulk fare operators). These contractors are then free to sell individual tickets to customers, either with or without a ground package, at whatever price their

[1] Pub. L. 103–272, enacted July 5, 1994, revised and recodified the Federal Aviation Act within Subtitle VII of Title 49 United States Code (Transportation) (the statute). For convenience in this order, we will refer both to the old section numbers in the Act and the new section numbers in the statute. The applicable provisions of sections 401, 402, and 403 are now contained in Subpart II (Economic Regulation) of Subtitle VII.

[2] Under 49 U.S.C. 40102(a)(2) (*see* former section 101(3) of the Act), any person who engages, either directly or indirectly, in air transportation operations is deemed to be an air carrier. 49 U.S.C. 40109 (*see* former section 101(3)) provides that air carriers not directly engaged in the operation of aircraft (*i.e.*, "indirect" air carriers) may be relieved from certain provisions of the statute to the extent and for such periods as the Secretary of Transportation decides are in the public interest.

business judgments dictate. The contractors generally pay for the seats in advance and are sometimes subject to cancellation penalties for returning unsold seats.[3] The direct air carrier continues to market seats on these flights on its own behalf through the normal air transportation distribution system.

The exemption is subject to certain disclosure and consumer protection provisions, specifically (a) that any direct air carrier implementing such marketing programs shall file tariff rules that clearly describe the relationship that exists between the direct air carrier and the passenger and that establish that, upon payment by the passenger, the direct air carrier bears the responsibility for safeguarding the passenger's money; (b) that any direct air carrier and any contractor operating under the exemption shall insure that consumers receive clear and conspicuous notice before payment of any special contractual conditions imposed either by the contractor or by the direct air carrier that are applicable to the passenger,[4] and (c) that any direct air carrier implementing these marketing programs in foreign air transportation must file tariffs that state the prices to be charged to the contractor.[5]

Current Usage

We have recently been faced with two novel situations in which U.S. direct air carriers and their contractors are attempting to avail themselves of this exemption.

In the first, the contractor uses the exemption to sell scheduled service in conjunction with an existing U.S. direct air carrier pending Department action on the contractor's own application for certificate or commuter authority. Indeed, the relationship between the contractor-applicant and the direct air carrier, while portrayed as a contract bulk fare arrangement, in fact can be substantially more. The contractor-applicant may provide the ground handling, may be involved in hiring personnel to staff the operation, and may even arrange for the aircraft to be used in the service. The contract operations may also be in markets that are geographically distinct from the "regular" scheduled operations of the direct air carrier. The situation is compounded by the fact that the direct air carrier may also register with the Department to use the trade name of the contractor-applicant for these services.[6] Typically, all of these arrangements are scheduled to terminate upon the contractor-applicant's receipt of its own operating authority.

In the second situation, the U.S. direct air carrier and contractor seek to convert an existing Public Charter program in which they are parties to scheduled service through use of the contract bulk fare exemption. Often, the direct air carrier holds charter-only authority and files an application with the Department seeking scheduled authority in order to operate under a contract bulk fare arrangement. In some cases, the operations represented by the contract bulk fare arrangement constitute most, if not all, of the scheduled operations proposed by the direct air carrier. In general, these operations are indistinguishable from charter flights, except that the contractor and direct air carrier are not subject to the consumer protection requirements applicable to Public Charter flights contained in 14 CFR part 380. Those rules require, among other things, the establishment of escrow accounts and surety arrangements for the protection of passenger funds, and the signing of operator-participant contracts that detail the rights and obligations of the passenger, charter operator, and direct air carrier.

Common to both situations is the fact that, in markets covered by the bulk fare contract, the contractor has agreed to buy the entire, or virtually the entire, capacity of the aircraft and is responsible for all of the marketing of that capacity. Normally, the direct air carrier does not perform any marketing function and does not sell air transportation on its own behalf in the markets covered by the contract. Rather, its sole function is to operate the aircraft for which it is paid a set price.

Discussion

The statute establishes a regulatory framework for conducting air transportation operations that balances a liberal entry policy for new air carriers, both direct and indirect, with Congress' concern for operational safety and consumer protection. Under the statute, a person who wants to engage in air transportation of passengers has two choices; either be found fit as an airline (*i.e.*, direct air carrier) or qualify as an indirect air carrier. In the case of the person who seeks to operate as a U.S. direct air carrier, that person has to meet a three-part test of demonstrating that it has the managerial competence, financial capability, and compliance disposition to operate the proposed airline safely and without imposing an undue risk on the public.[7] Until the Department finds that the applicant is fit to operate and it is issued appropriate direct air carrier authority, it is prohibited from advertising or otherwise holding out its services to the public (*see* 14 CFR 201.5). The intent of this rule is to prevent companies who have not or cannot meet the Department's rigorous fitness test from collecting money from potential passengers, thus exposing them to financial risks. While ultimately many applicants may be found fit and given U.S. direct air carrier authority, often this is not before a number of substantive changes have been made in the management team, ownership structure, or financial arrangements undertaken by the applicant. To allow such applicants to commence operations under the guise of a contract bulk fare arrangement prior to being found fit poses a potentially serious risk to consumers that we believe is not in the public interest.

In the case where an entity does not want to operate as a direct air carrier or its agent, but still wants to market air transportation on its own behalf, it is not subject to a fitness review, but must comply with the requirements that the Department has established to ensure that consumer funds and expectations are protected. This means complying

[3] *See* Orders 80–2–112 and 81–7–109.

[4] These conditions include the following: the terms and amount of any cancellation penalties, fees for reservation changes, or other special charges; limits on voluntary refunds—specifically, notice that clearly informs the passenger of risks in the event of voluntary cancellation by stating the exact amount of the applicable refund for such cancellation; limits on involuntary refunds, rerouting or ticket reissuance rights; limits on ticket endorsability or special ticket purchase; check-in or reconfirmation requirements; if true, the fact that the passenger may be assessed price increases after ticket purchase; if true, the fact that flight dates and times are not guaranteed at the time of purchase; and information on the allocation of responsibility between the contractor and direct air carrier for the passenger's funds and transportation. *See* Orders 86–9–61 and 88–9–2.

[5] Originally, the exemption granted by Order 81–7–109 also required that direct air carriers file with the Board the names and addresses of each contractor. This condition was eliminated by Order 88–9–2.

[6] Part 215 of the Department's Regulations (14 CFR part 215) establishes a regulatory system of registration and notification by air carriers who propose to use a trade name. Upon compliance with these requirements, use of the trade name is typically allowed. However, the Department will not register a trade name when it is certain that use of such name would constitute an unlawful holding out under 49 U.S.C. 41101(a) (*see* former section 401(a) of the Act) or there is a significant potential for, or actual, public confusion or other unfair or deceptive practices prohibited by 49 U.S.C. 41712 (*see* former section 411 of the Act). If the registration of an air carrier trade name will help effectuate an arrangement that will unlawfully circumvent our fitness standards, we have the authority to reject the name registration.

[7] The applicant must also demonstrate that it is a U.S. citizen as defined in 49 U.S.C. 40102(a)(15) (*see* former section 101(16) of the Act).

with the consumer protection provisions of the Public Charter rules (14 CFR part 380) or, in limited circumstances, the conditions of the contract bulk fare exemption.

In our view, the fundamental characteristic that distinguishes the typical contract bulk fare marketing arrangement contemplated in the exemption from the two situations described above lies in who is the true "operator" of the services in an economic sense—who has control. In the typical contract bulk fare arrangement, that control rests with the direct air carrier. Although the contractor assumes the risk for those seats that it has purchased from the direct air carrier, the direct air carrier has control over the scheduling of the flights involved, allocation of seat inventory, and ultimate responsibility for safeguarding the passengers' money. Moreover, since a contract bulk fare arrangement is merely one of a number of marketing tools used by a direct air carrier, that arrangement would be incidental to the overall scheduled operations of the direct air carrier. The risk of exposure to the direct air carrier from one contractor would therefore also be limited.

On the other hand, in the contractor-applicant and charter-conversion situations, the contractor is the "true" operator in an economic sense, and the purported contract bulk fare arrangements are the driving force behind the operation. Although the direct air carrier is responsible for the operation of the flight, the contractor controls the scheduling, allocation of inventory, and price, and bears that risk for marketing most, if not the total capacity, of the aircraft. Under these circumstances, it is difficult to distinguish these operations from those performed by a direct air carrier under a wet lease arrangement or by a charter operator under the Public Charter rules. More importantly, if the contract bulk fare operator should for any reason fail to remit collected funds, the direct air carrier nevertheless ultimately bears the responsibility to the passengers for either providing the air transportation or paying refunds. While this may not pose any undue risk in the case of a carrier with other substantial operations, in the situations described above, the amount of monies for which the direct air carrier could be held liable may be so great as to endanger its own economic viability and ultimately adversely affect its other customers.

Decision

We continue to believe that the contract bulk fare concept can be a valuable marketing tool for direct air carriers, and, where properly used, that the conditions imposed in our exemption orders provide adequate protection for consumers. However, when the Board originally granted—and we continued—the contract bulk fare exemption, it was envisioned that this authority would be used by existing scheduled carriers as a tool to expand their marketing capabilities, and that such contracts would be incidental to their other scheduled operations. It was not envisioned that applicants for direct air carrier authority could use the contract bulk fare mechanism as a means of "jump-starting" their proposed operations prior to being found fit, or that these arrangements would be used as a means of avoiding the Public Charter consumer protection requirements. Thus, it is our view that the two situations described above were not intended to be covered by the exemption granted by Orders 81–7–109 and 88–9–2. More importantly, the arrangements have the potential to create great risks for consumers, since they could be used to circumvent our fitness requirements or the consumer protection provisions of our charter rules.

Therefore, we have tentatively decided to amend the exemption to require that the direct air carrier be, as discussed above, the "true" operator of the service in an economic sense and the contract bulk fare arrangement be incidental to that carrier's overall scheduled operations. The direct air carrier may not use a contract bulk fare arrangement as the only means of holding out its scheduled services, but must, in fact, be holding out on its own behalf the scheduled air services that are also being sold under the contract bulk fare arrangement. Practically speaking, this means that the direct air carrier would be responsible for holding out scheduled service in its own name through the traditional marketing mechanisms of the industry, such as listing its flights in the Official Airline Guides or major computer reservations systems, or using travel agents or advertisements.

We do not wish to preclude the customary use by direct air carriers of the contract bulk fare exemption in the many resort or vacation markets in which they currently use it as an additional tool to expand the marketing of their scheduled service by selling seats to tour or cruise operators for packaging and resale. The direct air carriers involved in the these situations typically have extensive scheduled service operations elsewhere and the particular services involved in the contract bulk fare arrangement are under the ultimate economic control of the direct air carrier. We would consider these operations to be incidental to the overall scheduled operations of the direct air carrier even if it were to result in the sale of a large portion or even a majority of the seats in a particular market. In such circumstances, the contract bulk fare operations would not pose an undue risk to consumers or to the direct air carrier.

While we have been considering a clarification of the existing exemption, we have taken no action against contract bulk fare arrangements in which contractors could sell up to 85 percent of the seats on each flight in the markets in question.[8] However, such arrangements would not be permitted in the future to the extent that they are inconsistent with the policies we are proposing here. We will, however, consider requests for individual exemptions in specific cases. Moreover, in reviewing applications to register trade names and for new scheduled authority, we propose to apply the policies expressed in this order. Thus, if we are convinced that the use by a direct air carrier of the trade name of a contractor would constitute an unlawful holding out under section 41101(a) or should there be a significant potential for, or actual, public confusion or other unfair or deceptive practices prohibited by section 41712, we would not register the trade name for the direct air carrier. Nor would we approve an initial scheduled service application for U.S. certificate or commuter authority which relies primarily on a contract bulk fare arrangement as the underlying basis for the proposed scheduled operations.

Objections

We will give interested persons 15 days following the date of issuance of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to the policies proposed in this order. We will not entertain general, vague, or unsupported objections. If no objections are filed, we will issue an order that will make final our tentative findings and conclusions.

Accordingly,

[8] See, e.g., Orders 94–6–39, Mahalo Air, Inc., and 94–3–38, Great American Airways, Inc. In those orders, we also noted our concerns over the use of contract bulk fare arrangements as the primary means of marketing specific scheduled services, and indicated our intent to re-examine and clarify our policies with regard to such arrangements.

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above to amend the exemption granted by Order 88–9–2, that permits the use of contract bulk fare arrangements, to provide that the use of such arrangements for scheduled services must be incidental to the overall scheduled services of the direct air carrier, and that the direct air carrier must hold out the same scheduled service as its own and exercise ultimate economic control over the service.

2. We direct any interested persons having objections to the issuance of an order making final the tentative findings and conclusions stated above to file them with the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590, in Docket 44369, no later than 15 days after the date of issuance of this order; answers to objections shall be filed no later than 10 days thereafter.

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.

4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.

5. We will publish a copy of this order in the **Federal Register**.

By:

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–23789 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–62–P–M

Coast Guard

[CGD 94–071]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Towing Safety Advisory Committee (TSAC) and its work groups will meet to discuss various issues. Agenda will include working group reports and discussion of possible changes to Coast Guard licensing regulations. The meetings will be open to the public.

DATES: Meetings of the TSAC work groups will be held on Tuesday, November 8, 1994. These meetings are scheduled to run from 8 a.m. to 4 p.m. The Towing Safety Advisory Committee meeting will be held on Wednesday, November 9, 1994, from 8 a.m. to 12 noon.

ADDRESSES: The TSAC work groups will meet collectively at the U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, in Room 2415 at 8 a.m., and then proceed to rooms 1103, 3317, 5303, and 6303 for individual work group sessions. The TSAC Committee meeting will be held at U.S. Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590, in Room 4440.

FOR FURTHER INFORMATION CONTACT: Assistant Executive Director, LTJG Pat DeShon, Commandant (G–MTH–4), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–2997.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 1 *et seq.* The agenda for the Committee meeting follows:

1. Work group reports:
   a. Licensing
   b. Navigation equipment
   c. Casualty reporting
   d. Inland radar
   e. Model company concept
   f. Horsepower guidelines
2. Other topics of discussion:
   a. Proposed changes to Coast Guard licensing requirements
   b. Draft NVIC for Entry Level Training
   c. Endorsement for the QAT report
   d. Review regulatory efforts
3. Proposed tasking:
   a. The Committee will consider undertaking additional tasking associated with Towing Equipment (Winch, and Hawsers), and other tasking proposals.
   b. With advance notice, and at the discretion of the Chairman, members of the public may present oral statements during the meeting. Persons wishing to make oral presentations should notify the TSAC Assistant Executive Director no later than November 2, 1994. Written materials may be submitted for presentation to the Committee any time; however, to ensure distribution to each Committee member, 20 copies of the written material should be submitted to the Assistant Executive Director by October 26, 1994.

Dated: September 16, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–23893 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–14–M

[CGD 94–077]

Differential Global Positioning System, Gulf Intercoastal Region; Environmental Assessment

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard has prepared a Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for implementing a Differential Global Positioning System (DGPS) Service in the Gulf Intercoastal Corridor Region of the United States. The EA concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. This notice announces the availability of the EA and FONSI and solicits comments on them.

DATES: Comments must be received on or before October 27, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. 3 p.m., Monday through Friday, except Federal holidays, The telephone number is (202) 267–1477.

Copies of the EA and FONSI may be obtained by contacting LCDR George Privon at (202) 267–0297 or faxing a request at (202) 267–4427. A copy of the EA (less enclosures) is also available on the Electronic Bulletin Board System (BBS) at the GPS Information Center (GPSIC) in Alexandria, VA, (703) 313–5910. For information on the BBS, call the GPSIC watchstander at (703) 313–5900.

FOR FURTHER INFORMATION CONTACT: LCDR George Privon, Radionavigation Division, (202) 267–0297.

SUPPLEMENTARY INFORMATION:

Request for Comments

Copies of the Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) are available as described under **ADDRESSES.** The Coast Guard encourages interested persons to comment on these documents. The Coast Guard may revise these documents in view of the comments. If revisions are warranted, availability of the revised documents will be announced by a later notice in the **Federal Register.**

Background

As required by Congress, the Coast Guard is preparing to install the equipment necessary to implement a Differential Global Positioning System (DGPS) services in the Gulf Intercoastal Corridor area of the United States. DGPS is a new radionavigation service that improves upon the 100 meter accuracy of the existing Global Positioning System (GPS) to provide an accuracy of better than 10 meters. For vessels, this degree of accuracy is critical for precise electronic navigation in harbors and harbor approaches and will reduce the number of vessel grounding, collisions, personal injuries, fatalities, and potential hazardous cargo spills resulting from such incidents.

After extensive study, the Coast Guard has selected five sites along the Gulf Intercoastal Corridor coastline for the DGPS equipment. The sites are in the vicinity of Aransas Pass, TX; Galveston, TX; English Turn, LA; Mobile Point, AL; and Egmont Key, FL. The sites are already used for related purposes and were chosen, in part, because their proposed use is consistent with their past and present use, thus minimizing further impact on the environment. DGPS signal transmissions will be broadcast in the marine radiobeacon frequency band (283.5 to 325 KHz) using less than 50 watts (effective radiated power). Signal transmissions at these low frequency and power levels have not been found to be harmful to the surrounding environment.

Proposed Installations at Each Site

(a) Radiobeacon Antenna—The Coast Guard proposes to use either an 80 foot whip antenna or install a 90 foot guyed antenna with an accompanying ground plane. A ground plane for these antenna's consists of approximately 120 copper radials (6 gauge copper wire) installed 6 inches (or less) beneath the soil and projecting outward from the antenna base. The optimum radial length is between 200–300 feet, but this length may be shortened to fit within property boundaries. Wherever possible, a cable plow method will be used in the radial installation to minimize soil disturbance. Installation of the ground plane may require some clearing of trees and bushes on the site.

(b) DGPS Antennas—Each site will require two 10 foot masts to support four small (4 inches by 18 inches diameter) receiving antennas. The masts will be installed on a concrete foundation measuring approximately 3 feet by 3 feet by 15 inches. These masts are needed to support the primary and backup reference receivers and integrity monitors. The location of the two masts will be in the vicinity of the electronic equipment building or hut, but at least 50 feet to 100 feet from existing structures. (At Mobile Point, AL, mast height must be increased from 10 feet to approximately 20 feet to ensure the visibility of satellites is not blocked by existing structures. The mast foundations will be 5 feet 3 inches by 5 feet 3 inches by 4 feet and will be mounted right next to the transmitter building to minimize disturbance to the area.)

(c) Equipment shelter—Existing radiobeacon equipment shelters will be used at each site to house the DGPS equipment.

(d) Utilities—The Coast Guard proposes to use available commercial power as the primary source for the electronic equipment. However, existing diesel generators are available and may be utilized if backup power is needed. Telephone service is required at each site for remote monitoring and operation.

Description of Each Site

Aransas Pass, TX—This is the site of an existing marine radiobeacon. It is collocated with Coast Guard Station Port Aransas in Port Aransas, TX. This site has previously been partially upgraded and is transmitting prototype DGPS signals for test and evaluation purposes.

Galveston, TX—This is the site of an existing marine radiobeacon. It is located on East Beach near the South Jetty of Galveston Bay. This site has previously been partially upgraded and is transmitting prototype DGPS signals for test and evaluation purposes.

English Turn, LA—The site is collocated at the USCG Communication Station, which is approximately 10 miles Southeast of New Orleans. This site has previously been partially upgraded and is transmitting prototype DGPS signals for test and evaluation purposes.

Mobile Point, AL—The site is collocated at the Mobile Point Light, which is adjacent to Fort Morgan. Fort Morgan is listed in the National Register of Historic Places. The Coast Guard and AL State Historic Preservation Officer (SHPO) agree that the proposed project will have no effect on the adjacent fort.

Egmont Key, FL—Located approximately 5 miles Southwest of St. Petersburg at the entrance to Tampa Bay. This radiobeacon transmitting site is collocated at the Egmont Key Lighthouse, which is listed on the National Register of Historic Places. This site has previously been partially upgraded and is transmitting prototype DGPS signals for test and evaluation purposes in conjunction with the State of Florida. The Coast Guard and FL State Historic Preservation Officer (SHPO) agree that the proposed project will have no effect on the adjacent lightstation.

Implementation of a DGPS service in the Gulf Intercoastal Corridor Region is determined to have no significant effect on the quality of the human environment or require preparation of an Environmental Impact Statement.

Dated: September 19, 1994.

R.C. Houle,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–23894 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Child Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) is announcing the availability of a study entitled "The Performance of Child Restraint Devices in Transport Airplane Passenger Seats" (the study). Because of the FAA's concern that some child restraint systems that work well in automobiles may not provide the level of protection desirable in airplanes, the FAA conducted a study to evaluate the adequacy and effectiveness of child restraint devices on airplanes. The FAA is continuing to study child restraint systems and when further studies are completed, they will be made available to the public.

ADDRESSES: Copies of the study may be obtained by contacting: Mr. Jeffrey H. Marcus, AAM–630, Protection and Survival Laboratory, Civil Aeromedical Institute, 6500 South MacArthur, Oklahoma City, OK 73125, (405) 954–5555, fax (405) 954–4813.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey H. Marcus, AAM–630, Protection and Survival Laboratory, Civil Aeromedical Institute, 6500 South MacArthur, Oklahoma City, OK 73125, (405) 954–5555, fax (405) 954–4813.

SUPPLEMENTARY INFORMATION: In 1992, the FAA set forth in §§ 91.107(a), 121.311(b), 125.211(b), and 135.128(a) the child restraint systems acceptable for use in aircraft by listing labeling requirements and certain use requirements. The FAA's 1992 determination as to which child

restraint systems would be approved for use aboard aircraft was based on many years of work by both the FAA and the National Highway Traffic Safety Administration (NHTSA). In the mid 1980's, the FAA and NHTSA undertook an effort to develop a common approach to the approval of child restraints. NHTSA Standard 213 was amended to provide criteria for the certification of child restraints that were appropriate for both aircraft and automobiles.

NHTSA Standard 213, as revised, is the current U.S. standard, and has allowed hundreds of models of seats to be approved. The current FAA child restraint rules do not specifically refer to NHTSA Standard 213. However, NHTSA Standard 213 is the basis for the labels required under the FAA rules.

Because of the FAA's concern that some child restraint systems that work well in automobiles may not provide the level of protection desirable in airplanes, the FAA conducted a study to evaluate the adequacy and effectiveness of child restraint devices on airplanes, to respond to questions from the Air Transport Association concerning which child restraint systems were approved for aircraft, and to respond to comments received from child restraint manufacturers, private testing organizations, the National Transportation Safety Board, foreign regulatory organizations, and consumer activists. The FAA is continuing to study child restraint systems and when further studies are completed, they will be made available to the public.

Issued in Washington, DC on September 20, 1994.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 94–23880 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number LI–93–13) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before, October 31, 1994, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Northeast Illinois Railroad Corporation (Metra)

Waiver Petition Docket Number LI–93–13

Metra seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229) for Electric MU Locomotives and Non-MU Control Cab Locomotives. Metra is seeking relief from the requirements of Section 229.135 that all trains operating over 30 mph shall be equipped with an event recorder by May 5, 1995. Metra requests that the compliance date be extended to July 1, 1996.

The Locomotive Safety Standards were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 mph to be equipped with an event recorder by May 5, 1995. The railroad states that event recorders will be installed on existing equipment by retrofit and by an outside rebuilding program. In addition, new cars to be delivered will be equipped when built. The schedule for these activities extend to July 1, 1996, making the May 5, 1995, compliance date unattainable.

Southeastern Pennsylvania Transportation Authority (SEPTA)

Waiver Petition Docket Number LI–94–7

SEPTA seeks a permanent waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229). SEPTA is seeking relief from the requirement of § 229.5(g) that:

> Event recorders monitor and record data: over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed.

SEPTA states that a railroad supervisor can get to the scene of any accident on their system within one hour. They feel that 8 hours of recorded information is sufficient for any accident investigation on their railroad. SEPTA's event recorders are solid state devices which record each change in state. With their present recorder system a printed copy of the stored information fills about 73 pages. To accommodate 48 hours of recorded information would result in a very extensive printed copy with no additional useful information. FRA has previously "grandfathered" event recorders which were in service on July 8, 1993, and which recorded only 8 hours of data.

Southeastern Pennsylvania Transportation Authority (SEPTA)

Waiver Petition Docket Number LI–94–8

SEPTA seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229) for Electric MU Locomotives. SEPTA is seeking relief from the requirements of Section 229.135 that all trains operating over 30 mph shall be equipped with an event recorder by May 5, 1995. SEPTA requests the compliance date be extended to December 7, 1995.

The Locomotive Safety Standards were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 mph to be equipped with an event recorder by May 5, 1995. The railroad states that off-the-shelf event recorders will be installed on conventional (non-MU locomotives) locomotives within the specified time, however, new design event recorders will be required for the Electric MU Locomotives. SEPTA is requesting seven additional months for the design, manufacture and installation of event recorders on their MU locomotive fleet.

Metro-North Commuter Railroad (MNCW)

Waiver Petition Docket Number LI–94–10

MNCW seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (49 CFR Part 229) for their locomotives. MNCW is seeking relief from the requirements of Section 229.135 that all trains operating over 30 mph shall be equipped with an event recorder by May 5, 1995. MNCW requests the compliance date be extended to December 5, 1997.

The Locomotive Safety Standards were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 mph to be equipped with an event recorder by May 5, 1995. The railroad states that off-the-shelf event recorders will be installed on conventional (non-MU locomotives) locomotives within the specified time, however, new design event recorders will be required for the Electric MU Locomotives. MNCW is requesting two years additional time for the design, procurement, manufacture and installation of event recorders on their locomotive fleet of 413 units to be equipped. The railroad cites funding, FRA and State-mandated purchasing practices, non-availability of off-the-shelf event recorders for electric rail cars, impact on car availability, limited physical plant and energy conservation/cost savings as the justification for the delay. MNCW estimates that 43 percent of their fleet will be equipped with event recorders by May 5, 1995.

The Western Railway Museum (WRM)

(Waiver Petition Docket Number RSGM-94-9)

The WRM, of Suisun City, California, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one caboose. The caboose is used for educational purposes only and is operated at speeds of 15 mph or less in a rural area with no history of vandalism.

The Ohio Central Railroad Company (OHCR)

Waiver Petition Docket Number RSGM-94-10

The OHCR on behalf of their affiliate Ohio Southern Railroad, Incorporated (OSRR), seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one caboose. The caboose, OHCR 553, a former New York Central all-steel caboose was rebuilt in the 1960's by the Pittsburgh and Lake Erie Railroad and is not equipped with FRA certified glazing. The OSRR operates between South Zanesville and Glass Rock, a distance of approximately 19 miles. An out of service line extends 14 miles from East Fultonham Junction to New Lexington, Ohio. The railroad states there is no record of vandalism regarding train movements. Train speed is limited to 5 mph in this rural area. Two trains are operated per week and mostly in day light hours.

Owego Harford Railway (OHRY)

Waiver Petition Docket Number RSGM 94-11

The OHRY seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive, an EMD Model GP-9, is equipped with FRA certified glazing in the front and rear locations but not in the side windows. The railroad states there has been no vandalism in this rural area. The OHRY operates between Owego and Harford, New York, a distance of approximately 30 miles.

Providence and Worcester Railroad Company (PW)

Waiver Petition Docket Numbers RSGM-94-12 and SA-94-6

The PW seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. Locomotive PW 150 is a 25-ton diesel electric industrial switcher built by General Electric which was recently purchased to provide service on an industrial track which cannot accommodate a full size locomotive. This operation is on one-half mile of track at the end of the Bell Dock Railroad at New Haven Terminal, Connecticut. In addition, PW is restoring a section of track for a customer in South Providence, Rhode Island, and the locomotive will be used at that location. The locomotive is now equipped with new laminated safety glass.

PW seeks a permanent waiver of compliance with certain provisions of the Railroad Safety Appliance Standards (49 CFR Part 231) for Locomotive PW 150. Section 231.30 specifies requirements for locomotives used in switching service. PW requests relief from the requirements of this section since the locomotive was built without corner stairway openings and switching steps. The railroad states that a crew member would be either in the locomotive cab, on the cars or walking next to the equipment when in the street. Thus, safety is not compromised by non-compliance with Section 231.30.

Nash County Railroad (NCYR)

Waiver Petition Docket Number RSGM 94-13

The NCYR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives. The NCYR operates over approximately 20 miles of track between Spring Hope and Rocky Mount, North Carolina.

River Terminal Railway Company (RT)

Waiver Petition Docket Number RSGM 94-14

The RT seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 17 locomotives. The railroad provides switching service for Republic Steel in their steel mill in Cleveland, Ohio Present glazing is 1/4-inch laminated safety glass. The railroad states there have been no incidents or vandalism involving glazing. The RT feels the burden of installing certified glazing is excessive when considering the minimal risks.

Atlantic and Gulf Railroad (AGLF)

Waiver Petition Docket Number RSGM 91-25

The AGLF seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for three locomotives. The railroad operates between Sylvester and Albany, Georgia, a distance of 18 miles and between Albany and Thomasville, Georgia, a distance of 54 miles. The area is primarily rural. The AGLF was granted a waiver for one locomotive in 1992.

Wiregrass Central Railroad Company, Incorporated (WGCR)

Waiver Petition Docket Number RSGM 91-27

The WGCR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five locomotives. The WGCR operates over approximately 18 miles of track between Enterprise and Waterford, Alabama. The area is primarily rural with several miles being within Fort Rucker army base. WGCR was granted a waiver for four locomotives in 1993.

Laurinburg Southern Railroad Company (LRS)

Waiver Petition Docket Number RSGM 90-4

The LRS seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five locomotives. The LRS was granted a waiver for 36 locomotives on February 23, 1994, and have now purchased five additional locomotives. LRS 136 and LRS 140-143 are SW-1 switchers and LRS 139 is an NW-2 switcher locomotive.

Minnesota Commercial Railway Company (MNNR)

Waiver Petition Docket Number RSGM 89–31

The MNNR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The MNNR was granted a waiver for three locomotives on August 16, 1993. Two of these locomotives (MNNR 303 and 304) have been sold and replaced by MNNR 110 and 200 for which the waiver is requested. These locomotives will operate under the same conditions as their predecessors.

Issued in Washington, D.C. on September 21, 1994

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–23867 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–6–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP)—No. 3318

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 9401 Indian Creek Parkway, Overland Park, Kansas 66210–2007.

The Burlington Northern Railroad Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the two main track, between Emerson, Nebraska, milepost 365.9 and East Alliance, Nebraska, milepost 364.4, Central Corridor, Alliance Division, Butte and Sand Hills Subdivision; including the relocation of East Alliance CTC station and the supervision and direction of train movement operations by the yardmaster.

The reason given for the proposed changes is to make better use of the signals in a traffic congested area.

BS–AP–No. 3319

Applicant: Grand Trunk and Western Railroad Incorporated, Mr. Kenneth J. Bagby, Engineer, Communications and Signals, 1333 Brewery Park Boulevard, Detroit, Michigan 48207–2699.

The Grand Trunk and Western Railroad Incorporated seeks approval of the proposed discontinuance and removal of the traffic control system, on the single main track, Dearborn Branch, between Fordhaven, milepost 2.3 and Park, milepost 9.2, Wayne County, Michigan, and operate under Yard Limit Rule.

The reason given for the proposed changes is permanent reduction of operating speeds to 20 mph

BS–AP–No. 3320

Applicant: Atchison, Topeka and Santa Fe Railway Company, Mr W S Seery, Director Signal Systems, Communications and Signal, 4515 Kansas Avenue, Kansas City, Kansas 66106–1199.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed discontinuance and removal of controlled signals 128L and 130L, on the two main tracks, milepost 382.9, near Woodward, Oklahoma, Panhandle Division, Panhandle Subdivision.

The reason given for the proposed changes is that the signals are no longer required due to the permanent retirement of the railroad crossing at grade.

BS–AP–No. 3321

Applicant: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed discontinuance and removal of two controlled interlockings, at E.E. Huntington, milepost CA502.4 and W. E. Huntington, milepost CA504.6, near Huntington, West Virginia, C&O Business Unit, Kanawha; consisting of the discontinuance and removal of 12 controlled signals, the conversion of 8 power-operated switches to hand operation, and the elimination of Interlocking Rules as the method of operation.

The reason given for the proposed changes is the interlockings are no longer needed for present day operation.

BS–AP–No. 3322

Applicant: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, between N.E. Lilly, Georgia, milepost ANB710.6 and S.E. Dooling, Georgia, milepost ANB716.3, Atlanta Division, Fitzgerald Subdivision; consisting of the discontinuance and removal of one automatic signal and the relocation of two automatic signals.

The reason given for the proposed changes is to improve operations and increase efficiency

BS–AP–No. 3323

Applicant CSX Transportation, Incorporated, Mr D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, between N.E. Ideal, Georgia, milepost ANB737.6 and S.E. Rupert, Georgia, milepost ANB745.0, Atlanta Division, Fitzgerald Subdivision; consisting of the relocation of four automatic signals.

The reason given for the proposed changes is to improve operations and increase efficiency.

BS–AP–No. 3324

Applicants: Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410.

Norfolk Southern Railway Company, Mr. J.W. Smith, Chief Engineer—C&S, Communication and Signal Department, 99 Spring Street, SW., Atlanta, Georgia 30303.

The Consolidated Rail Corporation (Conrail) and Norfolk Southern Corporation (NS) jointly seek approval of the proposed discontinuance and removal of "Red Key" Automatic Interlocking, milepost 124.9, Red Key, Indiana, Indianapolis Division, Frankfort District, of Conrail, where a single secondary track of Conrail crosses at grade a single track of the NS. The proposed changes consist of the discontinuance and removal of four interlocking signals and four associated approach signals, and the installation of four stop boards and four approach signs.

The reason given for the proposed changes is to retire facilities no longer required for present operations.

BS–AP–No. 3325

Applicant: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the automatic block signal system, on the single main track, between Lafayette Junction, Indiana, milepost Q121.0 and Romney, Indiana, milepost Q132.6, Chicago Division, Monon Subdivision; consisting of the discontinuance and removal of three automatic signals and relocation of two automatic signals.

The reason given for the proposed changes is to improve operations and increase efficiency by installing electronic coded track circuits.

BS–AP–No. 3326

Applicant: Atchison, Topeka and Santa Fe Railway Company, Mr. W.S. Seery, Director Signal Systems, Communications and Signal, 4515 Kansas Avenue, Kansas City, Kansas 66106–1199.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the yard lead tracks, between milepost 897 and milepost 897.5, near Belen, New Mexico, New Mexico Division, Clovis Subdivision.

The reason given for the proposed changes is that the signal system is no longer required due to changes in railroad operating procedures.

BS–AP–No. 3327

Applicant: Chicago and North Western Transportation Company, Mr. D. E. Waller, Senior Vice President Engineering and Equipment, 165 N. Canal Street, Chicago, Illinois 60606.

The Chicago and North Western Transportation Company seeks approval of the proposed modification of the automatic block signal system, on the single main track, between Rock Siding, Wisconsin, milepost 41.7 and Wyeville, Wisconsin, milepost 28.8, on the Adams Subdivision; consisting of the relocation of 38 automatic block signals, the discontinuance and removal of 15 automatic block signals, and the installation of 2 absolute signals.

The reason given for the proposed changes is to maximize efficiency and safety of train operations by replacing aging pole line with modern solid state coded track circuitry.

Rules Standards & Instructions Application (RS&I–AP) No. 1093

Applicant: Norfolk Southern Corporation, Mr. B.L. Sykes, General Manager Signal and Electrical, 99 Spring Street, S.W., Atlanta, Georgia 30303.

The Norfolk Southern Corporation (NS) seeks relief from the requirements of the Rules, Standard and Instructions, 49 CFR, Part 236, Section 236.377, 236.378, 236.379, 236.380, and 236.381, to the extent that NS not be required to perform the associated locking tests if a plug-in type relay is replaced with another relay and the following requirements are met:

1. The replacing relay is of the same drawing number as the relay being replaced;
2. The contacts of the replacing relay are verified to be of the correct arrangement for the drawing number;
3. Registration plates for the correct drawing number are in place and functional on both the plug board and the replacing relay;
4. If the relay is a biased type, voltage of the incorrect polarity must be applied to the coil to verify that the relay will not operate; and
5. Replacing relay is correctly mounted on the plug board.

The applicant's justification for relief is that a fail-safe device has been built to enable a simple test/verification procedure of a relay to be performed accurately and quickly. This will enable the signal system to be restored to service quickly in the event of a relay failure without disarrangement.

RS&I–AP No. 1094

Applicant: Florida East Coast Railway Company, Mr. M.E. Deputy, Vice President Transportation, One Malaga Street, P.O. Box 1048, St. Augustine, Florida 32085–1048.

The Florida East Coast Railway Company (FEC) seeks relief from the requirements of the Rules, Standard and Instructions, 49 CFR, part 236, § 236.566, to the extent that FEC be permitted to operate foreign line non-equipped locomotives, in automatic train control (ATC) territory, in accordance with Centralized Traffic Control System rules as defined by FEC Operating Rules and 49 CFR, part 236, § 236.567.

The applicant's justification for relief is that it is not economically feasible to equip run-through foreign power with ATC equipment, and it will improve train handling and customer satisfaction.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on September 21, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–23832 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 94–62; Notice 2]

Decision That Nonconforming 1991 Mercedes-Benz 230CE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1991 Mercedes-Benz 230CE passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1991 Mercedes-Benz 230CE passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1991 Mercedes-Benz 300CE, and they are capable of being readily altered to conform to the standards.

DATES: The decision is effective as of September 27, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor

vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA 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 decides, 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 decision in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to decide whether 1991 Mercedes-Benz 230CE passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on July 22, 1994 (59 FR 37528) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 84 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1991 Mercedes-Benz 230CE (Model ID 124.043) is substantially similar to a 1991 Mercedes-Benz 300CE originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 22, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–23873 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–77; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1988 Volvo 740 Sedans Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1988 Volvo 740 Sedans are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1988 Volvo 740 Sedan that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It 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) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 27, 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 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA 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 decides, 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 decision in the **Federal Register.**

Western Cascade of Seattle, Washington (Registered Importer 94–23) has petitioned NHTSA to decide whether 1988 Volvo 740 Sedans are eligible for importation into the United States. The vehicle which Western Cascade believes is substantially similar is the 1988 Volvo 740 Sedan that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1988 Volvo 740 Sedan to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Western Cascade submitted information with its petition intended to demonstrate that the non-U.S. certified 1988 Volvo 740 Sedan, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1988 Volvo 740 Sedan is identical to its U.S. certified counterpart 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*, 111 *Rearview Mirror*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 118 *Power Window Systems*, 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*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 214 *Side Door Strength*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model sealed beam headlamps; (b) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 114 *Theft Protection:* installation of a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Additionally, the petitioner states that shock absorbers must be installed behind the bumpers on the non-U.S. certified 1988 Volvo 740 Sedan to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, 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: 49 U S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8, delegations of authority at 49 CFR 1 50 and 501.8

Issued on September 22, 1994

William A. Boehly,

Associate Administrator for Enforcement

[FR Doc. 94–23872 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–76; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1971 Iso Grifo Lusso Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1971 Iso Grifo Lusso passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1971 Iso Grifo Lusso that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it 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) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is October 27, 1994.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm].

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA 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 decides, 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 decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 1971 Iso Grifo Lusso passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1971 Iso Grifo Lusso that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Iso Automotoveicoli, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1971 Iso Grifo Lusso to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1971 Iso Grifo Lusso, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1971 Iso Grifo Lusso is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence. . . .*, 103 *Defrosting and Defogging Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 108 *Lamps, Reflective Devices and Associated Equipment*, 109 *New Pneumatic Tires*, 110 *Tire Selection and Rims*, 111 *Rearview Mirrors*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 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*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, and 301 *Fuel System Integrity*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) placement of a hazard symbol on the hazard warning signal switch.

Standard No. 114 *Theft Protection:* installation of a warning device to be activated when the key is left in the steering lock assembly and the driver's door is opened.

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.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extend possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 22, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–23871 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–59–M

Denial of Motor Vehicle Petition

This notice sets forth the reasons for denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under Section 30162 of Chapter 301, Title 49, United States Code (formerly Section 124 of the National Traffic and Motor Vehicle Safety Act of 1966 (the Act)).

Mr Lawrence J. Hutchens, an attorney representing Ms. Gloria Ody-Costello, petitioned the Administrator of NHTSA with respect to the automatic transmission dipstick and dipstick tube on all 1994 Mercury Cougar model vehicles. The petitioner maintains that when the subject vehicle is brought to a sudden stop, transmission fluid spills out of the dipstick tube and ignites on the catalytic converter located below the tube. The petitioner requests that NHTSA order the recall of all 1994 Mercury Cougars for the installation of a clamp to be installed on the subject dipstick to retain the dipstick in the dipstick tube in a more positive manner and "look into" relocating or increasing the length of the dipstick tube.

Mr. Hutchens' petition specifically calls for the recall of all 1994 Mercury Cougars vehicles. According to the Vehicle Identification Number (VIN) provided by Mr. Hutchens, Ms. Ody-Costello owns a 1993 Mercury Cougar, which is equipped with an automatic transmission and 5.0 liter V–8 engine. Mr. Hutchens states in his letter that Ms. Ody-Costello took her vehicle into a Ford dealer for unspecified transmission repairs. When the vehicle was returned to Ms. Ody-Castello, the transmission dipstick was allegedly not pushed completely into the top of the dipstick tube, which left the top of the dipstick tube partially open. Also, according to Mr. Hutchens, this condition allowed automatic transmission fluid to spill onto the catalytic converter during sudden braking and ignite. There is no mention of any damage to the vehicle as a result of such ignition. As the vehicle owned by Ms. Ody-Costello is actually a 1993 model, this model was also included in the NHTSA analysis.

Mr. Hutchens suggests three corrective actions in his letter:

1. Install a clamp on the dipstick tube to hold the dipstick in a more positive manner.

2. Relocate the dipstick tube, so that the opening of the tube is not above the catalytic converter.

3. Increase the length of the tube, to raise the opening of the tube into a higher location in the engine compartment.

The 1993 and 1994 Mercury Cougar are available with two engine options, either a 5.0 liter V–8 or a 3.8 liter V–6. Both the 1993 and 1994 models are equipped with the same dipstick and have the same dipstick tube location, regardless of engine size. The dipstick tube runs upward from the transmission to a location near the rear corner of the right side engine valve cover, where the dipstick is inserted into the tube. The opening of the tube is located about 12 inches above the heat shield that surrounds one of the engine's catalytic converters.

The upper end of the dipstick is fitted with a metal cap that fits over the top of the dipstick tube. This cap is about ½ inch deep. Inside the cap and extending about ½ inch from the opening of the cap is a rubber seal that closes the opening of the dipstick tube. This seal is basically a rubber plug that fits snugly into the opening. The plug portion is tapered for the first ¼ inch to facilitate its entry into the opening of the tube. According to Ford Motor Company (Ford), when the dipstick is inserted into the dipstick tube properly, so that the metal cap seats over the end of the tube, the rubber plug will provide a seal that will prevent any transmission fluid from spilling from the tube under all foreseeable driving conditions, including sudden or panic stops. Instructions in the Cougar owner's manual, contained in the glove compartment of all new vehicles, advise the owner to make sure the dipstick is fully seated when checking transmission fluid. The owner's manual also warns against overfilling of the transmission and instructs the owner to have any excess fluid removed from the transmission if the fluid ever exceeds the recommended level.

A search of the Office of Defects Investigation's (ODI) consumer complaint file disclosed no other reports of fluid spilling from the automatic transmission dipstick tube in either 1993 or 1994 Mercury Cougars. As the automatic transmission dipstick in the 1993 and 1994 Cougar is identical or very similar to the dipstick is most other Fords products, a search of ODI's consumer complaint file was also conducted involving all Ford vehicles from 1990 through 1994. Again, no complaints of transmission fluid spilling from the automatic transmission dipstick tubes were located. Ford was also contacted and reported that Ms. Ody-Costello's complaint was the only one it has received involving the subject transmission dipstick.

Mr. John R. Jackson, represented by Mr. Hutchens as an expert witness, was retained by Mr. Hutchens to inspect the Ody-Costello vehicle. According to Mr. Jackson's report, a one-page letter, when he first inspected the Ody-Costello vehicle, the transmission was overfilled. In spite of this overfilled condition, when Mr. Jackson examined the underside of the vehicle and the area

surrounding the transmission dipstick tube, he reported that there was no evidence that any oil had spilled or was spilling from the dipstick tube. With the transmission in the overfilled condition, the owner pulled the dipstick out, so that the opening of the dipstick tube was "partially" open. When the vehicle was brought to two sudden stops in this condition, transmission fluid reportedly spilled from the dipstick tube on both occasions and was ignited by the exhaust system. This test was repeated two more times, after the excess transmission fluid was removed (with the dipstick tube still partially open), with the same result.

After the four previously described tests, a final test was conducted. According to Mr. Jackson's report, "the dipstick was then properly installed and the test repeated." In the final test, there was no ignition, although Mr. Jackson did report that there were "several spots of fluid along that path traveled by the decelerating vehicle. Mr. Jackson did not explain in his report, whether these spots could have come from residual oil that had possibly leaked during the four previous tests, when the dipstick tube was intentionally left partially open, nor did he indicate that the vehicle was inspected for the presence of any residual oil or that the area around and under the dipstick tube was cleaned after any of the previous tests. There was also no indication in the report that these spots were verified actually to be transmission fluid from Ms. Ody-Costello's vehicle.

Ms. Ody-Costello also demonstrated the problem for Mr. David Horowitz, the host of a syndicated television show, that deals with consumer issues. During the test conducted for Mr. Horowitz, the transmission dipstick also was not seated into the transmission dipstick tube. This condition resulted in a partial opening of the dipstick tube, although this fact was not mentioned by Mr. Horowitz in his broadcast (Mr. Hutchens submitted a video tape of the segment of Mr. Horowitz's show dealing with the Ody-Costello vehicle).

In an effort to better understand petitioner's allegations and particularly to verify Mr. Jackson's testing, ODI conducted an informal test program involving four 1993/1994 Mercury Cougar vehicles.

All four vehicles were randomly selected from the inventory of two large metropolitan dealership. Two were new vehicles with less than 50 miles recorded on the odometer and two were used vehicles. The vehicles were first inspected both in the engine compartment and under the vehicle for any evidence of oil spillage from the transmission dipstick tube. None of the vehicles showed any signs of oil leakage or spillage and were clean and free from any oil residue in the area beneath and surrounding the transmission dipstick tube. All four vehicles were then driven for approximately 30 minutes to bring the transmission up to normal operating temperature. Each vehicle was then inspected and the transmission fluid levels checked according to the manufacturer's instructions from the vehicle owner's manual. The dipstick has a crosshatched area, not quite ¾ inches long, near its lower extremity. The manufacturer recommends that the fluid level fall within this area when the transmission fluid is at operating temperature. The fluid level in all four vehicles fell within ⅛ inch of the uppermost limit of the crosshatched area of the dipstick. All were topped off as necessary to bring the fluid level to the top of the crosshatched area. It is also noted that there is a warning stamped into the dipstick immediately above the crosshatched area reading "DON'T ADD."

With the transmission dipsticks in place and seated into the dipstick tube according to the manufacturer's instructions, the uppermost area of the transmission dipstick tube, from 3 inches below the opening of the tube, was next loosely wrapped with paper toweling. This wrap extended above the top of the tube and around the handle portion of the dipstick above the cup containing the dipstick tube seal. The toweling was retained in position with masking tape.

Each vehicle was then driven for approximately 15 miles in stop and go traffic and for a second 15 miles at highway speeds of 55 to 65 mph. The vehicles were then subjected to braking in a large, level parking lot. The asphalt surface of the lot was dry and the ambient temperature was 87 degrees F. Each vehicle was driven along a straight path and brought up to a speed of 50 mph, at which time the brakes were applied as firmly as possibly, bringing the vehicle to a sudden panic-type stop. (Although the test vehicles were not equipped with anti-lock brakes, as was the Ody-Costello vehicle, the deceleration was so severe that the valence panel under the front bumper of the test vehicles contacted the road surface during four of the test stops.) This was repeated three times with each vehicle. After each of the three tests of each vehicle, the area underhood and under the vehicle was inspected for any evidence of fluid spillage. Each time, the paper toweling was removed and replaced with fresh toweling prior to the next test.

NHTSA found no evidence of any transmission fluid escaping from any of the dipstick tubes in any of the 12 braking tests nor any of the "stop and go" or highway tests. There were no oil spots on the testing surface, nor any evidence of any oil on any of the paper towels used around the dipstick tubes.

ODI maintains a library of owner's manuals for all passenger vehicles sold in the United States. Currently, the manuals cover all model years from 1989 through 1994. These manuals were reviewed and no passenger vehicle was located that was fitted with any original equipment device or clamp to retain the transmission dipstick into the dipstick tube. In addition, almost all transmission dipsticks are located near the rear of the engine compartment on the passenger side. In all cases where the vehicles are equipped with either V–8 or V–6 engines, this places the opening of the dipstick tube above the exhaust manifold and exhaust pipe for the right bank of cylinders. Although a few vehicles were located with the transmission dipstick tube opening located a few inches higher than the subject Cougars, the height of the opening of the Cougar dipstick tube is typical.

There has been one safety recall involving a transmission dipstick (recall #93V016). This recall involved 1988 through 1990 full-sized Chevrolet trucks. It was determined that when these vehicles were towing heavy trailers in overdrive, pressure could build up in the automatic transmission and transmission fluid would be forced from the transmission dipstick tube. A special dipstick was supplied to owners with a locking seal. There is no evidence to indicate that pressure build up occurs in the subject Cougar vehicles.

The construction of the Cougar dipstick and the method used to seal the top of the dipstick tube with the dipstick are also typical of peer vehicles. Dipsticks were examined for several model vehicles manufactured by Chrysler and General Motors, and the dipsticks and seals were all found to be of the same style and very similar in both construction and design. The location and the method by which the dipstick is inserted into the transmission tube are also very similar.

The petitioner's primary request ("suggestion") is that the agency require the manufacturer to install a clamp to hold the dipstick into the dipstick tube in a more positive manner. This suggestion implies that the petitioner recognizes that if the dipstick is seated into the dipstick tube according to the manufacturer's recommendations, no

fluid will escape. The petitioner also suggests that NHTSA might want to look into the possibility of raising or relocating the dipstick tube so that if the dipstick is not properly installed into the dipstick tube, transmission fluid will be less likely to escape or come in contact with exhaust system components.

Both ODI and the manufacturer have searched their files and the petitioner's reported incident is the only recorded occurrence that has been located. The petitioner states that the problem originally occurred when a dipstick was improperly installed by a mechanic in a Ford dealership, after transmission repairs. The dipstick is not in a unique location, nor does proper insertion of the dipstick appear to be difficult, even for owners that are not mechanically inclined. It appears that the dipstick was inadvertently left loose, or not fully seated after repairs. In order to duplicate the original incident, the petitioner has had to leave the dipstick unseated, so that the opening of the dipstick tube is partially open. The Ford dipstick tube height is typical of peer vehicles. In fact, most vehicles on the road have their transmission dipsticks in similar locations and also seal the top of the transmission dipstick tube with a rubber seal located on the dipstick.

In summary, a review of all the pertinent information leads to the following conclusions:

1. The petitioner's allegation appears to be an isolated incident.

2. The alleged problem appears to be the result of improper maintenance and repair, rather than a manufacturing defect.

3. The Cougar transmission dipstick, dipstick tube, and sealing system are typical of other peer vehicles.

4. If an owner uses reasonable care and follows the manufacturer's instructions in the vehicle's owner manual, the seal on the transmission dipstick will prevent spillage or escape of transmission fluid.

5. There is no evidence that the transmission dipstick will not stay in place once properly inserted into the tube. However, the dipstick could be left loose by an inattentive owner or mechanic, regardless of the presence of a retaining device.

In consideration of the available information, it is concluded that there is not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the petitioner's allegations would be issued at the conclusion of an investigation. Further commitment of resources to determine whether a safety-related defect trend exists does not appear to be warranted. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: September 22, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–23870 Filed 9–26–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

[Treasury Order Number 140–01]

Federal Law Enforcement Training Center; Authority Delegation

Dated: September 20, 1994.

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and the Government Employees Training Act (5 U.S.C. 4101–4118), as implemented by Executive Order 11348 of April 20, 1967, the Federal Law Enforcement Training Center (FLETC), as a bureau within the Department with a Director as the bureau head, shall provide interagency training facilities and programs.

2. *The Functions of the FLETC shall be to:*

a. Provide training to participating Federal organization personnel and serve as an interagency law enforcement training center for Federal agencies as well as an intergovernmental law enforcement training organization for State, local and international agencies, and private security personnel;

b. Provide the facilities, equipment, and support services necessary for conducting basic and advanced training for law enforcement personnel, including food, lodging, recreation programs and administrative services for students;

c. Provide support, administrative, and training personnel for common training programs to:

(1) Consolidate requirements of participating agencies and develop training curricula;

(2) Develop course content and instructional methodologies to ensure that materials are designed to meet objectives; and

(3) Instruct and evaluate students;

d. Conduct research in law enforcement training methods and curriculum content to maintain state-of-the-art expertise in adult learning methodology; and

e. Provide advice and technical assistance to the participating organizations, State and local law enforcement organizations, and international organizations in determining their needs for law enforcement training, in developing curriculum and course content, and in teaching methods and techniques for the advanced training which they provide at the FLETC.

3. *The Director, FLETC, shall provide:*

a. Executive direction and overall management to the FLETC's training sites, programs and support activities while ensuring that organizational program goals and priorities are administered in the most sound, effective, efficient, and economical fashion;

b. Impetus for establishing and monitoring long-range and strategic FLETC plans and goals;

c. Overall managerial direction for the effective and efficient performance of the functions of the FLETC, including evaluation of students and removal of students from training for such matters as deficiency in training, health, or conduct; and

d. Advice to the Under Secretary (Enforcement) and Assistant Secretary (Enforcement) relative to executive level policy and program administration of Federal law enforcement activities.

4. *The Director, FLETC, shall have the authority to:*

a. Appoint uniformed personnel as special policemen;

b. Make all rules and regulations; and

c. Annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318[c]) as will ensure their enforcement for the protection of persons and property at the Federal Law Enforcement Training Centers, Brunswick, Georgia, and Artesia, New Mexico, and such other FLETC sites as may be appropriate. This authority shall be exercised in accordance with the Act of June 1, 1948, as amended (62 Stat. 281; 40 U.S.C. 318–318[c]).

5. *FLETC Operations.* The Department of the Treasury is the executive agency for operating the FLETC and serves as the established point of authority for implementation of Federal regulations and policies having governmentwide application. Within this concept:

a. All employees of the FLETC staff will either be appointed under the authority of the Secretary of the Treasury and shall be employees of the Department of the Treasury, or they will be detailed from their respective agencies for a specific period of time to the FLETC; and

b. FLETC operations will be financed by separate appropriations to the Department of the Treasury to be used to pay costs of salaries, equipment, and other expenses.

6. *Cancellation.* Treasury Order 140–01, "Federal Law Enforcement Training Center", dated January 13, 1987, is superseded.

Lloyd Bentsen,

Secretary of the Treasury.

[FR Doc. 94–23868 Filed 9–26–94; 8:45 am]

BILLING CODE 4810–25–P

Office of Thrift Supervision

Cobb Federal Savings Association, Marietta, GA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Cobb Federal Savings Association, Marietta, Georgia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 12, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23850 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

Dryades Savings and Loan Association, a Federal Association, New Orleans, LA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Dryades Savings and Loan Association, A Federal Association, New Orleans, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 8, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23853 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

Hollywood Federal Savings Bank, Hollywood, FL; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Hollywood Federal Savings Bank, Hollywood, Florida ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 19, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23849 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

Oak Tree Federal Savings Bank, New Orleans, LA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Oak Tree Federal Savings Bank, New Orleans, Louisiana ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on August 26, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23852 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

Second National Federal Savings Association, Salisbury, MD; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Second National Federal Savings Association, Salisbury, Maryland ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 16, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23854 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

Western Federal Savings Bank, Marina del Rey, CA; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in Subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator Western Federal Savings Bank, Marina del Rey, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on September 8, 1994.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White.,

Corporate Technician.

[FR Doc. 94–23851 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–58; OTS No. 06420]

Cecil Federal Savings Bank, Elkton, MD; Approval of Conversion Application

Notice is hereby given that on September 12, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Cecil Federal Savings Bank, Elkton, Maryland, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, Georgia 30309.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23847 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–56; OTS No. 02518]

First Federal FSB, Hutchinson, MN; Approval of Conversion Application

Notice is hereby given that on August 12, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal FSB, Hutchinson, Minnesota, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John

Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23845 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–57; OTS Nos. H–2017 and 05329]

Home Financial Corporation, M.H.C., Hollywood, FL; Approval of Conversion Application

Notice is hereby given that on August 15, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Home Financial Corporation, M.H.C., Hollywood, Florida, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE, Atlanta, Georgia 30309.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23846 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–53; OTS No. 04521]

Sulphur Springs Loan and Building Association, Sulphur Springs, TX; Approval of Conversion Application: Correction

In notice document relating to the approval of the conversion application of the Sulphur Springs Loan and Building Association, Sulphur Springs, TX, dated August 17, 1994, and published at 59 FR 43381, August 23, 1994, OTS No. 00707 was incorrectly carried in the heading. The correct OTS No. is "04521" as set forth above.

Dated: September 22, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23844 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

[AC–59; OTS No. 05329]

First Federal Savings and Loan Association of Sylacauga, Sylacauga, AL; Approval of Conversion Application

Notice is hereby given that on September 16, 1994, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Sylacauga, Sylacauga, Alabama, to convert to the stock form of organization. Copies of the application are available for inspection at the information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: September 21, 1994.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 94–23848 Filed 9–26–94; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 186
Tuesday, September 27, 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

TIME AND DATE: 10:00 a.m., Thursday, September 29, 1994.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Steel Branch Mining*, Docket No. WEVA 92–953. (Continuation of consideration of issues which include whether the judge correctly concluded that Steel Branch Mining violated 30 C.F.R. § 77.404(a), and that the violation was significant and substantial, and whether the judge assessed an appropriate civil penalty.)
2. *Drillex, Inc.*, Docket No. SE 92–130–M. (Issues include whether the judge correctly concluded that Drillex's operation was subject to Mine Act jurisdiction.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R. § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/800–877–8339 Toll Free.

Dated: September 22, 1994.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 94–24031 Filed 9–23–94; 3:41 pm]

BILLING CODE 6735–01–M

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: October 4, 1994, 11:30 a.m.–3:00 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open except for the portions specified as closed session as provided in 22 CFR part 1004.4(b).

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the April 19, 1994, Meeting of the Board of Directors.
2. President's Report.
3. Staff Program Presentations.
4. Amendment of Board Bylaws.
5. Executive Session to Discuss Personnel Issues (closed)
6. Audit Committee Report.
7. Program Allocations by Country.
8. Old Business.
9. New Business.

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: September 26, 1994.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 94–23918 Filed 9–22–94; 4:58 pm]

BILLING CODE 7025–01–M

LEGAL SERVICES CORPORATION

Board of Directors; Audit and Appropriations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on September 30, 1994. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., Board Room, 11th Floor, Washington, D.C. 20002, (202) 336-8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of August 5–6, 1994 Meeting.
3. President's Report.
4. Review of Budget and Expenses for the Period Ending August 31, 1994.
5. Consider and Act on the Consolidated Operating Budget for Fiscal Year 1995, Including the Preliminary Allocation of Fiscal Year 1994 Fund Balances.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: September 22, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–23929 Filed 9–23–94; 9:15 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors; Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on September 30, 1994. The meeting will commence at 2:30 p.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., BOARD ROOM, 11th Floor, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of July 15, 1994 Meeting.
3. President's Report.
4. Consideration of Status Report on Issues Related to Performance Evaluation and Program Improvement.
6. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: September 22, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–23930 Filed 9–23–94; 8:45 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on October 1, 1994. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 First Street, NE., Board Room, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consult with the President and General Counsel on the matter of *Wilkinson* v. *LSC*. Further, the Board will be briefed by the Inspector General on Office of the Inspector General Activities.[2] The closing will be

[2] Briefings do not constitute "meetings" as defined by the Government in the Sunshine Act.

authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of July 16, 1994 Meeting.
3. Approval of Minutes of July 16, 1994 Executive Session.
4. Chairman's and Members' Reports.
5. President's Report.
6. Consider and Act on Operations and Regulations Committee Report.
   a. Consider and Act on Committee Recommendation Regarding Proposed Changes to Part 1607 of the Corporation's Regulations.
   b. Ratification of Notational Vote Taken September 19–20, 1994, Approving Withdrawal of Proposed Changes to Part 1602 of the Corporation's Regulations As Published in the **Federal Register** on October 13, 1994.

OPEN SESSION: (Continued)

7. Consider and Act on Provision for the Delivery of Legal Services Committee Report.
8. Consider and Act on Audit and Appropriations Committee Report.
   a. Consider and Act on the Consolidated Operating Budget for Fiscal Year 1995, Including the Preliminary Allocation of Fiscal Year 1994 Fund Balances.
   b. Consider and Act on Proposed Fiscal Year 1996 Budget Mark and Allocation of Funds to Specific Line Items, New Initiatives, and Management and Administration.
9. Inspector General's Report.
10. Public Comment.

CLOSED SESSION:

11. Briefing of Board by the Inspector General on Office of the Inspector General Activities.
12. Consult with the President and General Counsel on the Matter of *Wilkinson* v. *LSC*.

OPEN SESSION: (Resumed)

13. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: September 22, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–23931 Filed 9–23–94; 9:15 am]

BILLING CODE 7050–01–M

Notice of this briefing is being provided solely as a courtesy to the public.

LEGAL SERVICES CORPORATION

Board of Directors; Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on September 30, 1994. The meeting will commence at 1:30 p.m.

PLACE: Legal Services Corporation, 750 First Street, N.E., Conference Room, 10th Floor, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of September 16–17, 1994 Meeting.
3. Executive Vice President's Report.
4. Consider and Act on Proposed Changes to Part 1607 of the Corporation's Regulations.
5. Consider and Act on Proposed Changes to Part 1610 of the Corporation's Regulations.
6. Public Comment.
7. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:
Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: September 22, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–23932 Filed 9–23–94; 9:15 am]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 26, October 3, 10, and 17, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 26

There are no meetings scheduled for the Week of September 26.

Week of October 3—Tentative

There are no meetings scheduled for the Week of October 3.

Week of October 10—Tentative

Thursday, October 13

9:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 17—Tentative

Thursday, October 20

10:00 a.m.
Briefing on Medical Use Program and Meeting with Advisory Committee on Medical Use of Isotopes (ACMUI) (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION:
Dr. Andrew Bates (301) 504–1963.

Dated: September 23, 1994.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 94–24015 Filed 9–23–94; 2:24 pm]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE

Board of Governors; Notice of Vote to Close Meeting

By telephone vote, a majority of the members contacted and voting, the Board of Governors voted to add to the agenda of its meeting closed to public observation on October 3, 1994, in Seattle, Washington, consideration of an incentive compensation plan (See 59 FR 46084, September 6, 1994).

The Board determined that pursuant to section 552b(c)(2) of title 5, United States Code, and section 7.3(b) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information relating to internal personnel practices.

The Board further determined that the public interest did not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal

Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(2) of title 5, United States Code; and section 7.3(b) of title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 94–24029 Filed 9–23–94; 3:28 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 26, 1994.

An open meeting will be held on Tuesday, September 27, 1994, at 2:30 p.m., in Room 6059. A closed meeting will be held on Tuesday, September 27, 1994, following the open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session, and determined that this was the earliest practicable time to provide notice of the open meeting.

The subject matter of the open meeting scheduled for Tuesday, September, 27, 1994, at 2:30 p.m., will be:

1. The Commission will consider whether to amend Rule 10b—10 and adopt Rule 11Acl–3 under the Securities Exchange Act of 1934 generally requiring disclosure by broker-dealers of the practice of payment for order flow. In addition, the Commission will consider whether to delegate the authority to grant exemptions from Rule 11Ac1–3 to the Director of the Division of Market Regulation. For further information, please contact Jill W. Ostergaard at (202) 942–0169.

2. The Commission will consider whether to issue a release proposing and soliciting comment on rule 15c5–1. The rule would prohibit a market maker in a NASDAQ/NMS security from trading for its own account, directly or indirectly, at a price at which the market maker could execute a customer limit order that it is holding, without executing the customer limit order at such price or a price more favorable to the customer, under the specific terms and conditions by which the order is accepted by the market maker. There are certain itemized exceptions to the rule as well as specific provisions governing the type of orders and the class of persons eligible for protection under the rule. For further information, please contact Scott C. Kursman at (202) 942–0168.

The subject matter of the closed meeting scheduled for Tuesday, September 27, 1994, following the open meeting will be:

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 23, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–23988 Filed 9–23–94; 12:47 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 186
Tuesday, September 27, 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 COMMERCE

National Institute of Standards and Technology

[Docket No. 940549-4149]

Computer Systems Laboratory Cooperative Agreement Program -- Availability of Funds

Correction

In notice document 94-22759 beginning on page 47304 in the issue of Thursday, September 15, 1994 make the following correction:

On page 47306, in the second column, under the paragraph heading *Evaluation Criteria*, in the fifth line from the bottom, "19%" should read "10%".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Public Meetings on National Energy Policy

Correction

In notice document 94-21776 beginning on page 45670 in the issue of Friday, September 2, 1994, make the following correction:

On page 45671, in the second column, in the fourth line, after Hotline:"(615)214–2545." should read "(615)241–2545."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs Feeds; and Related Products; Ketamine Hydrochloride Injection, USP

Correction

In rule document 94-20066 beginning on page 41975 in the issue of Tuesday, August 16, 1994, make the following correction.

§ 522.1222a [Corrected]

On page 41976, in the third column, in amendatory instruction 2., in the second line, paragraph "(c)" should read "(c)(1)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94F-0257]

Betz Laboratories; Filing of Food Additive Petition

Correction

In notice document 94-20450 appearing on page 42837 in the issue of Friday, August 19, 1994, make the following correction:

In the 3d column, under SUPPLEMENTARY INFORMATION, in the 2d paragraph, in the 13th line remove "*(insert date 30 days after date of publication in the* Federal Register" and insert "September 19, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960-AC22

Supplemental Security Income for the Aged, Blind, and Disabled; Continuation of Benefits and Special Eligibility for Certain Severely Impaired Recipients Who Work

Correction

In rule document 94-19712 beginning on page 41400 in the issue of Friday, August 12, 1994, make the following corrections:

1. On page 41401, in the first column, in the penultimate line insert "2" between "section" and "of".

§ 416.265 [Corrected]

2. On page 41404, in § 416.265, in the second column, in paragraph (d), in the third line from the bottom "§ 416.269(d)" should read "§ 416.269(d))".

§ 416.269 [Corrected]

3. On the same page, in § 416.269, in the third column, in paragraph (b)(1) in the third line from the bottom "vary" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 58 and 92

[Docket No. R-94 1735; FR 3716-1-01]

RIN 2501-AB77

HOME Investment Partnerships Program

Correction

In rule document 94-20866 appearing on page 44258 in the issue of August 26, 1994, in the first column, line 3 under DATES, the effective date reads "October 26, 1994 through June", the date should read September 26, 1994 through June".

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Presidential Determination No. 94–46 of September 8, 1994

Extension of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Correction

The billing code to Presidential Determination No. 94–46, on page 47229 in the issue of Thursday, September 15, 1994 is incorrect. The correct billing code should have read 4810-31-M.

BILLING CODE 1505–01–D

federal register

Tuesday
September 27, 1994

Part II

Department of Transportation

Coast Guard

46 CFR Parts 10 and 12

Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 12

[CGD 91–211]

RIN 2115–AD92

Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rulemaking establishes Coast Guard regulations which implement the provisions of the Oil Pollution Act of 1990 (OPA 90) that require certificates of registry (CORs) and merchant mariner's documents (MMDs) to be renewed every 5 years. A 5-year renewal period allows the Coast Guard to ensure that vessel personnel continue to be qualified to safely serve aboard a vessel. This rulemaking includes requirements for renewing CORs and MMDs, a schedule for renewing existing CORs and MMDs, and the associated user fees.

EFFECTIVE DATE: This rule is effective October 27, 1994, except for 46 CFR 10.811 and 46 CFR 12.02–29 which are effective January 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mrs. Justine Bunnell, Merchant Vessel Personnel Division (G–MVP–1), Office of Marine Safety, Security, and Environmental Protection, (202) 267–0238.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. James W. Cratty, Project Manager, and Ms. Jacqueline L. Sullivan, Project Counsel, OPA 90 Staff.

Regulatory History

On September 16, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Five-Year Term of Validity for Certificates of Registry and Merchant Mariner's Documents in the **Federal Register** (58 FR 48572). The 60-day comment period closed on November 15, 1993. The NPRM discussed the background and statutory requirements of section 4102 (b) and (c) of OPA 90 which amended 46 U.S.C. 7107 and 7302. It also discussed the requirements of the Omnibus Budget Reconciliation Act of 1990 which amended 46 U.S.C. 2110. The Coast Guard received 13 letters commenting on the proposal from mariners, unions, and marine industry representatives. A public hearing was not requested, and one was not held.

After careful review of these comments and the NPRM, the Coast Guard has finalized the requirements for renewal of Certificates of Registry and Merchant Mariner's Documents. The Coast Guard finds that the regulations provide the maximum flexibility practicable in establishing requirements for a 5-year term of validity for CORs and MMDs.

Background and Purpose

The Coast Guard issues certificates of registry (CORs) under the authority of 46 U.S.C. chapters 71 and 75. CORs are issued to provide registry of staff officers for service in positions such as purser, medical doctor, and professional nurse. The Coast Guard issues merchant mariner's documents (MMDs) under the authority of 46 U.S.C. chapters 73 and 75. MMDs authorize individuals to work in different capacities on deck, and in the engine and steward's departments, on seagoing vessels over 100 gross tons. MMDs, with an appropriate endorsement, also identify qualified tankermen.

Section 4102(b) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) amended 46 U.S.C. 7107 by limiting the term of a COR to 5 years. Section 4102(c) of OPA 90 amended 46 U.S.C. 7302 by establishing the same limited term for MMDs. The Conference Report on OPA 90 (H.R. Conf. Rep. No. 101–653) explains that a 5-year renewal period will allow the Coast Guard to ensure that vessel personnel continue to be qualified to operate a vessel safely.

Section 4102(d) of OPA 90 limits the term of validity of all existing CORs and MMDs and provides for staggered expirations over a 5-year span. The statutory language provides that CORs and MMDs issued before August 18, 1990 expire on the day they would have expired if they had been issued for a term of 5 years and been renewed at the end of each succeeding 5-year period. This avoids the problems that would have been encountered if all CORs and MMDs expired at the same time. If this language is interpreted so that the 5-year period began on August 18, 1990, the date OPA 90 was enacted, documents would have expired at a time when no review and renewal procedures were in place. Mariners with such an expired document could not continue working, placing a tremendous burden on both individual mariners and the maritime industry. The Coast Guard interprets the statutory language to include an additional 5-year renewal cycle to avoid such a harsh result. The Coast Guard has modified the tables in 46 CFR 10.811 and 12.02–29 to commence the mandatory 5-year renewal period beginning on January 1, 1995. This will allow merchant mariners sufficient time to comply with the regulation's requirements.

Pending the development of these proposed procedures for renewal of CORs and MMDs, the Coast Guard has been issuing CORs and MMDs that are valid for a period of 5 years since March 1991.

The Omnibus Budget Reconciliation Act of 1990 amended 46 U.S.C. 2110 to require the Coast Guard to establish and collect user fees for services it provides under subtitle II of 46 U.S.C., including the issuance and renewal of CORs and MMDs.

Sections 4101 (a) and (b) of OPA 90 amend 46 U.S.C. 7101 and 7302, respectively, to require every person who applies for the issuance or renewal of a license, COR, or MMD to have a chemical test for dangerous drugs. On March 4, 1994, the Coast Guard published an NPRM in the **Federal Register** entitled "Chemical Testing for Dangerous Drugs of Applicants for Issuance or Renewal of Licenses, Certificates of Registry, or Merchant Mariner's Documents" (59 FR 10544) (CGD 91–223). The Coast Guard originally intended to merge the chemical testing requirements and the regulations for terms of validity into one final rule. However, the Coast Guard has decided to publish these rules separately in order to facilitate public participation.

As required by OPA 90, the Coast Guard is also developing a rulemaking which addresses how review of information in the National Driver Register and a criminal record review will become part of the license, COR, and MMD renewal process (CGD 91–212).

Discussion of Comments and Changes

Thirteen letters were received in response to the NPRM. The Coast Guard has reviewed all of the comments and, in some instances, revised the proposed regulations as appropriate. The comments have been grouped by issue, and are discussed as follows.

1. User Fees

Several comments objected to the proposed Coast Guard user fees for renewals of MMDs and CORs. As stated in the NPRM, the Omnibus Budget Reconciliation Act of 1990 amended 46 U.S.C. 2110 to require the Coast Guard to establish and collect user fees for services it provides under 46 U.S.C., subtitle II. The Coast Guard has no discretion in the decision to establish fees for these services. The fee amounts for issuance of CORs and MMDs and for issuance and renewal of licenses were set by a final rule entitled "User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation" (58 FR 15228; March 19, 1993) (CGD 91–002). These rules became effective April 19, 1993. At that time, CORs and MMDs were not being renewed so that rule did not establish fee amounts for COR and MMD renewals. Therefore, fee amounts for COR and MMD renewals are set in this final rule.

The regulatory evaluation in this final rule discusses the fee amounts. For a summary of how the fee amounts were set, see the "Regulatory Evaluation" section of this rule.

2. Concurrent Renewals

One comment suggested a reduced fee for mariners who renew more than one merchant mariner credential at the same time. This approach was outlined in the NPRM and remains unchanged in the final rule. The Coast Guard encourages concurrent renewal of merchant mariner credentials whenever possible. However, all renewal requirements for each license, COR, or MMD must be met.

Renewal Evaluation Fees. When CORs or MMDs are renewed in conjunction with the renewal of a license, the Coast Guard will charge only the license renewal evaluation fee, since the evaluation for a license encompasses all factors considered in evaluating applicants for MMDs. When CORs or MMDs are renewed in conjunction with one another, but not in conjunction with a license, the Coast Guard will charge only the MMD renewal evaluation fee, if applicable, since there is no COR renewal evaluation fee.

Renewal Exercise Fees. When an MMD is renewed concurrently with a license and the applicant must take an open-book exercise for each renewal, the applicant need only pay the license exercise fee. If a license and MMD are renewed concurrently and the only open-book exercise is for an MMD, then the applicant will pay the MMD exercise fee.

Renewal Issuance Fees. It should be noted that a separate issuance fee will always be charged for each license, COR or MMD issued, regardless of whether the credential(s) are issued concurrently or individually.

3. Physical Requirements

The Merchant Marine Personnel Advisory Committee recommended to the Coast Guard that individuals holding MMDs with qualified ratings be required to undergo physical examinations when renewing MMDs. The Coast Guard has included such a requirement in this rulemaking.

Two comments addressed the physical requirements for renewal of MMDs with endorsements. The comments stated that the physical standards for renewal of MMDs with endorsements should not be the same as the physical standards for the original issuance of MMDs with endorsements. In response to these comments, the Coast Guard revised the physical examination section for MMD renewal, making it consistent with the physical examination section for license renewal. The physical examination for renewal of a license does not require the applicant to be tested for color sensitivity; however, the physical examination for original issuance of a license does require a color sensitivity test. This is the only difference in physical requirements between original issuance and renewal of licenses. The Coast Guard has revised the physical examination section for renewal of MMDs with endorsements to no longer require a color sensitivity test.

It should be noted that while the examination requirements are slightly different, the medical standards the Coast Guard applies to determine if a mariner is qualified for a license or document are the same regardless of whether the license or document is an original or a renewal. The Coast Guard believes that these standards are the minimum necessary to ensure safe service under a license or document and are therefore appropriate for both originals and renewals.

4. Professional Requirements

One comment suggested that individuals holding MMDs with qualified ratings, who serve as officials for unions in positions closely related to the training and servicing of active seamen should be required to show only 1 year of employment to meet the professional requirements for renewing an MMD. The professional requirements are intended to ensure that mariners maintain their professional knowledge and keep abreast of current technology. The NPRM proposed 3 years of employment in a position closely related to the operation, construction, or repair of vessels (either deck or engineer, as appropriate) as a substitute for 1 year of sea service. The Coast Guard believes that 1 year in a position of closely related maritime service, including training and servicing of active seamen, does not provide experience equivalent to 1 year of actual sea service. Therefore, the final rule retains the 3 year time requirement for all forms of closely related service.

One comment expressed concern about using an open-book "examination" as a substitute for sea service when renewing an MMD with an endorsement. The open-book renewal exercise will provide a means for those individuals who are not actively sailing or involved in the industry to maintain a working familiarity with the skills necessary to work in the industry. The renewal exercise contains general subject matter pertaining to the various endorsement(s) of the MMD and requires a 90 percent passing grade. The Coast Guard has concluded that this is an acceptable means of ensuring that endorsement holders continue to maintain their professional knowledge.

5. Continuity Endorsement

In response to several comments, the Coast Guard has included in the final rule a provision to renew MMDs "For Continuity Purposes Only." This provision follows the same procedures as the renewal policy for license holders. Individuals renewing MMDs with qualified ratings who cannot meet the professional or physical requirements will have the endorsement "Continuity only; service under document prohibited" placed on the MMD. Holders with this continuity endorsement may have the service prohibition rescinded at any time by satisfying the renewal requirements not previously met and paying the appropriate renewal fees.

6. Other Comments

Another comment addressed the renewal of Continuous Discharge Books (CDB) which the Coast Guard issues to merchant mariners for a chronological record of seagoing employment. Regulations listed in 46 CFR 12.02 cover issuing additional CDBs. Because OPA 90 does not address CDBs and because CDBs alone do not allow employment on a merchant ship, no change to the regulations is required.

Another comment stated that the NPRM did not address the grace period provision for MMD expiration dates determined by Table 12.02–29. The

grace period explained under § 12.02–27(e) applies to all MMD expiration dates including MMD expiration dates specified in Table 12.02–29. For example, an MMD issued on January 1, 1966, would expire on January 1, 1996 under Table 12.02–29. The holder of that MMD will have a 12 month period of grace, running until January 1, 1997, in which he or she may renew the document.

One comment pointed out that the description of the procedures for renewal of MMDs by mail was not detailed enough. The Coast Guard has provided additional detail in § 12.02–27(e)(3) of the regulations.

Additional Changes

To correct minor errors and to reflect renewal requirements for certificates of registry, the Coast Guard is updating the table in 46 CFR 10.203. Additionally, numerous non-substantive editorial changes have been made to the final rule in order to improve its clarity, and to ensure that the public understands the requirements set forth.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** The Evaluation is summarized as follows.

1. *Government/Coast Guard cost.* Government and Coast Guard costs attributable to implementing renewal requirements for merchant mariner credentials will be primarily incurred by the 17 Coast Guard Regional Examination Centers (RECs). Cost incurring activities will consist of evaluating renewal applications, administering examinations, and issuing renewed CORs and MMDs. Projections of costs and impacts for renewal of CORs and MMDs are based upon a calculation of the current merchant marine licensing and documentation program costs. Data used in this calculation included: information from a workload analysis study; hourly standard rates provided in the Coast Guard Standard Rate Instruction (COMDTINST 7310); and the Coast Guard Staffing Standards Manual (COMDTINST M5312.11A).

The Coast Guard calculates the projected personnel and associated infrastructure costs for COR and MMD renewal activities to be approximately $1.23 million annually, which will be offset by approximately $1.16 million annually in user fees. User fee receipts will be deposited in the general fund of the U.S. Treasury as offsetting receipts of the Department of Transportation and ascribed to Coast Guard activities.

2. *Costs to the public.* The Coast Guard estimates a total pool of 1,500 active staff officers and 88,500 active MMD holders who may seek renewal of CORs or MMDs respectively. One-fifth of the total pool is expected to renew each year, resulting in 300 COR and 17,700 MMD renewals annually. Because the renewal process occurs once every 5 years, total costs can be divided by 5 to determine an annualized cost. Costs incurred by merchant mariners seeking renewal of CORs or MMDs will consist of user fees, photographs for MMDs, physical examinations, and time spent in the renewal process itself. This aggregate cost represents the highest average amount a mariner may expect to pay. However, variations in fees and renewal requirements will result in significantly lower costs for many mariners. The cost estimates are as follows:

		Total cost	Annualized
Individual Mariner	=	$278.84	$55.77
Whole Pool Impact	=	25,095,600	5,019,120

3. *Benefits.* Direct and societal benefits resulting from periodic renewal of CORs and MMDs may be substantial. The renewal process will eventually include three additional regulatory initiatives to implement OPA 90, and to ensure continuing qualification of merchant mariners. These initiatives are: (1) criminal record reviews, (2) national driver register checks, and (3) chemical drug testing.

Licensed, certificated, or documented merchant mariners play crucial and responsible roles in the safe operation of vessels, and they have important responsibilities during vessel emergencies. It is imperative that merchant mariners know that they are going to sea with a competent crew and that other vessels are operated by equally competent mariners. This rule will protect employees, employers, the marine environment, and the general public. Some of the direct benefits will include the following:

a. Employment protections and preferences, identification, proof of citizenship, proof of physical and other competency qualifications. Merchant mariners get employment benefits and know that shipmates to whom they entrust their lives at sea are qualified; and

b. Potentially fewer personal injuries.

In addition, society may benefit indirectly through potentially fewer groundings, accidents, losses of property, and releases of oil and hazardous materials into the marine environment. There is insufficient historical data to quantify the benefits of the regulations. However, should this program manage to save even two lives per year at $2.6 million per statistical life saved (which recent research shows is a reasonable estimate of people's willingness-to-pay for safety), its benefits would exceed its cost. If maritime accidents were reduced even by a small percentage, savings would accrue to the maritime industry through lower repair and medical costs and to the public through environmental protection.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Individual applicants are responsible for payment of issuance and renewal fees of CORs and MMDs to the Coast Guard. However, some firms in the maritime industry now voluntarily pay their employees' fees for obtaining CORs and MMDs. Some firms may choose to pay part or all of their employees' additional fees which will result from this rulemaking. However, the regulations do not require firms to pay for document issuance or document renewal fees for any applicant in whom the final rule vests responsibility. Consequently, small entities—for example, the 355 inland barge operators with fleets of 10 or fewer barges—are not, and will not be required to incur costs for applicant renewals of CORs and MMDs. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic

impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section numbers are 10.209 and 12.02–27 and the corresponding OMB Control Number is 2115–0514.

Federalism

The Coast Guard has analyzed these regulations under the principles and criteria contained in Executive Order 12612 and has determined that the regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of these regulations and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, the regulations are categorically excluded from further environmental documentation. Section 2.B.2.1 of that instruction excludes administrative actions and procedural regulations and policies which clearly do not have any environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 10 and 12 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The authority citation for part 10 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2103, 7101, 7106, 7107; 49 CFR 1.45, 1.46; Section 10.107 also issued under the authority of 44 U.S.C. 3507.

2. Section 10.109 is amended by adding paragraph (d)(3) to read as follows:

§ 10.109 Fees.

* * * * *

(d) * * *

(3) For renewal of a Certificate of Registry:

(i) For evaluation for renewal of a certificate of registry, no fee.

(ii) For issuance of a renewed certificate of registry, $35.

* * * * *

3. Section 10.202 is amended by revising the section heading and paragraphs (a), (b), and (c) to read as follows:

§ 10.202 Issuance of licenses and certificates of registry.

(a) Applications for original licenses, original certificates of registry, raises of grade, extensions of route, or endorsements must be current and up-to-date with respect to service and the physical examination, as appropriate. Physical examinations and approved applications are valid for 12 months.

(b) Any person who is found qualified under the requirements set forth in this part is issued an appropriate license or certificate of registry valid for a term of 5 years from date of issuance. Any license or certificate of registry which is renewed or upgraded prior to its expiration date automatically becomes void upon issuance of the replacement license or certificate of registry.

(c) A license or certificate of registry is not valid until signed by the applicant and the OCMI (or the OCMI's designated representative).

* * * * *

4. Section 10.203 is revised to read as follows:

§ 10.203 Quick reference table for license and certificate of registry requirements.

Table 10.203 provides a guide to the requirements for various licenses and certificates of registry. Provisions in the reference section are controlling.

TABLE 10.203

License category	Minimum age	Citizenship requirement	Physical required	Experience requirements	Recommendations and character check	Firefighting certificate	Professional exam requirements	Recency of Service	First aid and CPR requirements
Masters/mates and operators or uninspected passenger vessels (original license).	21; 10.201(f); Note: exceptions.	Yes, 10.201(e); Note: exception.	Yes, 10.205(d); Note: (d)(2).	Yes, 10.205(e); subpart D.	Yes, 10.205(f)	Yes, 10.205(g); Note: exceptions.	Yes, 10.205(i), 10.910; Note: 10.903(b).	Yes, 3 months past 36 months, 10.202(e).	Yes, in 10.205(h).
Engineers (original license)	21;10.201(f); Note: exceptions.	Yes	Yes, 10.205(d); Note: (d)(3).	10.205(e); subpart E.	Yes, 10.205(f);	Yes, 10.205(g)	Yes, 10.205(i) 10.950.	Yes, 3 months in past 36 months, 10.202(e).	Yes, 10.205(h).
All raises of grade	21; 10.201(f); Note: exceptions.	Yes	10.207(e); Note: (e)(1).	10.207(c); subparts D & E.	N/A	Yes, Note: 10.207(f).	10.207(d). 10.910. 10.920. 10.950.	Yes, 3 months in past 36 months 10.202(e).	N/A.
License renewals	N/A	Yes	10.209(d)	10.209(c)	N/A	N/A	10.209(c)	10.209(c)	N/A.
COR renewals	N/A	Yes	No	10.209(c)(5)	N/A	N/A	N/A	N/A	N/A.
Pilot	21	Yes	Yes, 10.709	10.703, 10.706(a), 10.715.	Yes, 10.205(f)	N/A	10.707, 10.910	Yes, 10.703, 10.705(e), 10.713.	Yes, 10.205(h).
Uninspected fishing industry vessels.	21; 10.201(f); Note: exceptions.	Yes	Yes, 10.205(d); Note: (d)(2) or (d)(3).	Deck: 10.462, Eng: 10530, 10.205(f).	Yes, 10.205(f)	Yes, 10.205(g)	Yes, 10.205(i). 10.910. 10.950(oral).	Yes, 3 months in past 36 months 10.202(e).	Yes, 10.205(h).
Uninspected towing vessels	Operator:21; 2/c operator: 19.	Yes	Yes, 10.205(d); Note: (d)(2).	10.464	Yes, 10.205(f)	Yes, 10.205(g) oceans.	Yes, 10.205(i). 10.910.	Yes, 3 months in past 36 months, 10.202(e).	Yes, 10.205(h).
Radio officer	19	Yes	Yes, 10.205(d); Note: (d)(3).	10.603	Yes, 10.205(f)	N/A	N/A	N/A	Yes, 10.205(h).
Staff officer	21	Yes	No	10.807	Yes, 10.205(f)	N/A	N/A	N/A	N/A.
Offshore installation manager, barge supervisor, ballast control operator.	21; 10201(f); Note: exceptions.	Yes	Yes, 10.205(d); Note: (d)(3).	Deck: 10.468, Eng: 10.540.	Yes, 10.205(f)	Yes, 10.205(g)	Yes, 10.205(i). 10.920.	Yes, 3 months in past 36 months, 10.202(e).	Yes, 10.205(h).

5. Section 10.209 is revised to read as follows:

§ 10.209 Requirements for renewal of licenses and certificates of registry.

(a) *General.* Except as provided in paragraph (g) of this section, an applicant for renewal of a license or certificate of registry shall establish possession of all of the necessary qualifications before the license or certificate of registry is issued.

(1) Each application must be on a Coast Guard furnished form and be accompanied by the evaluation fee set out in § 10.109. An approved application is valid for 12 months.

(2) The applicant may apply in person at any Regional Examination Center listed in § 10.105 or may renew the license or certificate of registry by mail under paragraph (e)(3) of this section.

(3) The applicant shall submit the original or a photocopy of the license or certificate of registry to be renewed. A photocopy will include the back and all attachments. If requested, the old license or certificate of registry will be returned to the applicant.

(b) *Fitness.* No license or certificate of registry will be renewed if it has been suspended without probation or revoked as a result of action under part 5 of this chapter, or facts that would render a renewal improper have come to the attention of the Coast Guard.

(c) *Professional requirements.* (1) In order to renew a license as master, mate, engineer, pilot, or operator, the applicant shall:

(i) Present evidence of at least 1 year of sea service during the past 5 years;

(ii) Pass a comprehensive, open-book exercise covering the general subject matter contained in appropriate sections of subpart I of this part;

(iii) Complete an approved refresher training course; or

(iv) Present evidence of employment in a position closely related to the operation, construction or repair of vessels (either deck or engineer as appropriate) for at least 3 years during the past 5 years. An applicant for a deck license with this type of employment must also demonstrate knowledge on an applicable Rules of the Road exercise.

(2) The qualification requirements for renewal of *radar observer* endorsement are in § 10.480.

(3) Additional qualification requirements for renewal of a license as pilot are contained in § 10.713.

(4) An applicant for renewal of a radio officer's license shall, in addition to meeting the requirements of paragraphs (a) and (b) of this section, present a currently valid license as first- or second-class radiotelegraph operator issued by the Federal Communications Commission. This license will be returned to the applicant.

(5) An applicant for renewal of a medical doctor or professional nurse certificate of registry shall, in addition to meeting the requirements of paragraphs (a) and (b) of this section, present evidence that he or she holds a currently valid appropriate license as physician, surgeon, or registered nurse issued under the authority of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(d) *Physical requirements.* (1) An applicant for renewal of a license shall submit a certification by a licensed physician or physician assistant that he or she is in good health and has no physical impairment or medical condition which would render him or her incompetent to perform the ordinary duties of that license. This certification must address visual acuity and hearing in addition to general physical condition and must have been completed within 12 months of the date of application.

(2) If the OCMI has reason to believe that an applicant for renewal of a license suffers from some physical impairment or medical condition which would render the applicant incompetent to perform the ordinary duties of that license, the applicant may be required to submit the results of an examination by a licensed physician or physician assistant that meets the requirements for original license.

(3) An applicant who has lost the sight of one eye may obtain a renewal of license, provided that the applicant is qualified in all other respects and that the visual acuity in the one remaining eye passes the test required under § 10.205(d).

(4) Physical examinations are not required for renewal of certificates of registry.

(e) *Special circumstances*—(1) *Period of grace.* Except as provided herein, a license may not be renewed more than 12 months after it has expired. To obtain a reissuance of the license, an applicant must comply with the requirements of paragraph (f) of this section. When an applicant's license expires during a time of service with the Armed Forces and there is no reasonable opportunity for renewal, including by mail, this period may be extended. The period of military service following the date of license expiration which precluded renewal may be added to the 12 month period of grace. The 12 month period of grace, and any extension, do not affect the expiration date of the license. A license is not valid for use after the expiration date.

(2) *Renewal in advance.* A license or certificate of registry may not be renewed more than 12 months before expiration unless it is being renewed in conjunction with a merchant mariner's document which is either due for renewal or being endorsed, or unless the OCMI is satisfied that special circumstances exist to justify renewal.

(3) *Renewal by mail.* (i) Applications for renewal by mail of licenses or certificates of registry may be sent to the Coast Guard office that issued the license or certificate of registry or holds the applicant's file. The following documents must be submitted:

(A) A properly completed application on a Coast Guard furnished form and the evaluation fee required by § 10.109.

(B) The expired license or certificate of registry to be renewed; or, if it has not expired, a photocopy of the license or certificate, including the back and all attachments.

(C) A certification from a licensed physician or physician assistant in accordance with paragraph (d) of this section for the renewal of a license.

(D) If the applicant desires to renew a license with a radar observer endorsement, either the radar observer certificate or a certified copy.

(E) Evidence of, or acceptable substitute for, sea service for the renewal of a license.

(F) For a certificate of registry as a medical doctor or professional nurse, evidence that he or she holds a currently valid, appropriate license as physician, surgeon, or registered nurse, issued under the authority of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia.

(ii) The open-book exercise, if required, may be administered through the mail.

(iii) Upon receipt of the renewed license or certificate of registry, the applicant shall sign it in order to validate the license or certificate.

(4) *Concurrent renewal of licenses, certificates of registry, and merchant mariner's documents.* An applicant for concurrent renewal of more than one merchant mariner credential shall satisfy the individual renewal requirements and pay the applicable fees required by §§ 10.109 and 12.02–18 of this chapter for each license, certificate of registry, or merchant mariner's document being renewed.

(f) *Reissuance of expired license or certificate of registry.* (1) Whenever an applicant applies for reissuance of a license more than 12 months after expiration, in lieu of the requirements of

paragraph (c) of this section, the applicant shall demonstrate continued professional knowledge by completing a course approved for this purpose, or by passing the complete examination for that license. The examination may be oral-assisted if the expired license was awarded on an oral exam. The fees listed in § 10.109 apply to these examinations. In the case of an expired radio officer's license, the license may be issued upon presentation of a valid first- or second-class radiotelegraph operator license issued by the Federal Communications Commission.

(2) A certificate of registry that has been expired for more than 12 months shall be renewed in the same way as a current certificate of registry. There are no additional requirements for reissuing certificates of registry that have been expired for more than 12 months.

(g) *Inactive license renewal.* (1) Applicants for renewal of licenses who are unwilling or otherwise unable to meet the requirements of paragraphs (c) or (d) of this section may renew their licenses, with the following restrictive endorsement placed on the back of the license: "License renewed for continuity purposes only; service under the authority of this license is prohibited." Holders of licenses with this *continuity endorsement* may have the prohibition rescinded at any time by satisfying the renewal requirements in paragraphs (c) and (d) of this section.

(2) Applications for renewal of a license with the continuity endorsement must include:

(i) The license to be renewed, or, if it is unexpired, a photocopy of the license including the back and all attachments; and,

(ii) A signed statement from the applicant attesting to an awareness of the restriction to be placed on the renewed license, and of the requirements for rescinding the continuity endorsement.

6. Section 10.805 is amended by adding paragraph (f) to read as follows:

§ 10.805 General requirements.

* * * * *

(f) A certificate of registry is valid for a term of 5 years from the date of issuance. Procedures for renewing certificates of registry are found in § 10.209. The expiration date of a certificate of registry issued without an expiration date shall be determined in accordance with § 10.811.

7. Section 10.811 and Table 10.811 are added to read as follows:

§ 10.811 Expiration of existing certificates of registry.

The expiration year of a certificate of registry issued without an expiration date is calculated by adding 5-year increments to the issuance date of the certificate of registry, up to first applicable year falling between 1995 and 1999, inclusive. The day and month of expiration are the same as that of issuance. Table 10.811 is provided as an aid for calculating the expiration date of a certificate of registry issued without an expiration date. A certificate of registry is not valid for use after the expiration date calculated under this section, but may be renewed in accordance with the requirements of § 10.209.

TABLE 10.811.—EXPIRATION OF CERTIFICATES OF REGISTRY ISSUED WITH NO EXPIRATION DATE [1]

Expiration year				
1999	1998	1997	1996	1995
Issue Year				
1994	1993	1992	1991	1990
1989	1988	1987	1986	1985
1984	1983	1982	1981	1980
1979	1978	1977	1976	1975
1974	1973	1972	1971	1970
1969	1968	1967	1966	1965
1964	1963	1962	1961	1960
1959	1958	1957	1956	1955
1954	1953	1952	1951	1950
1949	1948	1947	1946	1945
1944	1943	1942	1941	1940
1930	1938	1937	.....	.....

[1] Find the year in which the certificate of registry was issued (Issue Year), then move up the column to find the Expiration Year. Month and day of expiration correspond to the month and day of issue.

PART 12—CERTIFICATION OF SEAMEN

8. The authority citation for part 12 is revised to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2103, 2110, 7301, 7302; 49 CFR 1.46.

9. Section 12.02–9 is amended by adding paragraph (e) to read as follows:

§ 12.02–9 Application for documents.

* * * * *

(e) Approved applications are valid for 12 months.

10. Section 12.02–15 is revised to read as follows:

§ 12.02–15 Oath requirement.

Applicants for a merchant mariner's document for any rating shall take an oath before an Officer in Charge, Marine Inspection, or other official authorized to give such oath, or a commissioned officer of the Coast Guard authorized to administer oaths under 10 U.S.C. 936 or 14 U.S.C. 636, that they will faithfully and honestly perform all the duties required of them by law and carry out all lawful orders of superior officers on shipboard. Such an oath remains binding for all subsequent merchant mariner's documents issued to a person until the document is surrendered to the Officer in Charge, Marine Inspection.

11. Section 12.02–17 is amended by revising paragraph (b) to read as follows:

§ 12.02–17 Rules for the preparation and issuance of documents.

* * * * *

(b) Upon determining that the applicant satisfactorily meets all requirements for the document and any endorsements requested, the Officer in Charge, Marine Inspection, shall issue the appropriate document to the applicant. A merchant mariner's document is valid for a term of 5 years from the date of issuance. Any document which is renewed or reissued prior to its expiration date automatically

becomes void upon issuance of the replacement document.

* * * * *

12. Section 12.02–18 is amended by adding paragraph (a)(7) to read as follows:

§ 12.02–18 Fees.

(a) * * *

(7) For renewal of a merchant mariner's document:

(i) For evaluation for renewal of a merchant mariner's document endorsed with a qualified rating, $45.

(ii) For evaluation for renewal of a merchant mariner's document when submitted with a license where a renewal evaluation fee already applies, no fee.

(iii) For evaluation for renewal of a merchant mariner's document without qualified rating endorsement, no fee.

(iv) For administration of open-book exercises required by § 12.02–27, $40.

(v) For administration of MMD open-book exercises when required in addition to license open-book exercises for concurrent renewal of these documents, only the license exercise fee in § 10.109(c)(2) will apply.

(vi) For issuance of a renewal of a merchant mariner's document including those issued for continuity purposes only, $35.

* * * * *

13. Section 12.02–27 is added to read as follows:

§ 12.02–27 Requirements for renewal of a merchant mariner's document.

(a) *General.* Except as provided in paragraph (g) of this section, an applicant for renewal of a merchant mariner's document shall establish possession of all of the necessary qualifications before a merchant mariner's document is issued.

(1) Each application must be on a Coast Guard furnished form and accompanied by the evaluation fee established in § 12.02–18. An approved application is valid for 12 months.

(2) The applicant may apply in person at any Regional Examination Center listed in § 12.01–7 or may renew the merchant mariner's document by mail under paragraph (e)(3) of this section.

(3) The applicant shall submit the original or a photocopy of the merchant mariner's document to be renewed. A photocopy must include the front and back of the merchant mariner's document. If requested, the old document will be returned to the applicant.

(4) The expiration date of a merchant mariner's document that was issued without an expiration date is determined in accordance with § 12.02–29.

(5) Each applicant shall comply with § 12.02–09(b)(1) of this part.

(b) *Fitness.* No merchant mariner's document will be renewed if it has been suspended without probation or revoked as a result of action under part 5 of this chapter, or facts which would render a renewal improper have come to the attention of the Coast Guard.

(c) *Professional requirements.* (1) In order to renew a merchant mariner's document endorsed with a qualified rating, the applicant shall comply with one of the following:

(i) Present evidence of at least 1 year of sea service during the past 5 years;

(ii) Pass a comprehensive, open-book exercise covering the general subject matter required by this part for the applicable endorsement or pass an open-book license exercise that covers the same subject matter required for the MMD endorsement;

(iii) Complete an approved refresher training course; or,

(iv) Present evidence of employment in a position closely related to the operation, construction, or repair of vessels (either deck or engineer as appropriate for the endorsement) for at least 3 years during the past 5 years.

(2) There are no professional requirements for renewal of a merchant mariner's document that is not endorsed with any qualified ratings.

(d) *Physical requirements.* (1) An applicant for renewal of a merchant mariner's document endorsed with a qualified rating other than lifeboatman, shall submit a certification by a licensed physician or physician assistant that he or she is in good health and has no physical impairment or medical condition which would render him or her incompetent to perform the ordinary duties of that qualified rating(s). This certification must address visual acuity and hearing in addition to general physical condition, and must have been completed within the previous 12 months.

(2) If the Officer in Charge, Marine Inspection has reason to believe that an applicant suffers from some physical impairment or medical condition which would render the applicant incompetent to perform the duties of the qualified rating(s) (other than lifeboatman), the applicant may be required to submit the results of an examination by a licensed physician or physician assistant that meets the requirements for originally obtaining the rating(s).

(3) An applicant who has lost sight in one eye may renew a merchant mariner's document with qualified ratings, provided the applicant is qualified in all other respects and that the visual acuity in the remaining eye passes the test required in § 10.205(d) of this chapter.

(e) *Special circumstances*—(1) *Reissuance after expiration, Period of grace.* Except as provided in this paragraph, a merchant mariner's document may not be renewed more than 12 months after it has expired. To obtain a reissuance of a merchant mariner's document expired more than 12 months, an applicant shall comply with the requirements of paragraph (f) of this section. When an applicant's merchant mariner's document expires during a time of service with the Armed Forces and there is no reasonable opportunity for renewal, including by mail, this 12-month period of grace may be extended. The period of military service following the date of merchant mariner's document expiration which precluded renewal may be added to the 12 month period of grace. The 12 month period of grace, and any extension, do not affect the expiration date of the document. A merchant mariner's document, and any endorsements that it contains, are not valid for use after the expiration date.

(2) *Renewal in advance.* A merchant mariner's document may not be renewed more that 12 months before expiration unless it is being renewed in conjunction with a license or certificate of registry which is either due for renewal or being upgraded, or unless the Officer in Charge, Marine Inspection is satisfied that special circumstances exist to justify renewal.

(3) *Renewal by mail.* (i) Applications for renewal of merchant mariner's documents by mail may be sent to any Coast Guard Regional Examination Center. The following documents must be submitted:

(A) A properly completed application on a Coast Guard furnished form, and the evaluation fee required by § 12.02–18.

(B) The document to be renewed, or, if it has not expired, a photocopy of the document, including the back.

(C) A certification from a licensed physician or physician assistant in accordance with paragraph (d) of this section.

(D) Evidence of, or acceptable substitute for, sea service in accordance with paragraph (c) of this section.

(ii) The open-book exercise, if required, may be administered through the mail.

(4) *Concurrent renewal of merchant mariner's documents, and licenses, or certificates of registry.* An applicant for concurrent renewal of more than one merchant mariner credential shall satisfy the individual renewal requirements and pay the applicable

fees required by §§ 12.02–18 and 10.109 of this chapter for each merchant mariner's document, license, or certificate of registry being renewed.

(f) *Reissuance of expired merchant mariner's documents.* (1) Whenever an applicant applies for reissuance of a merchant mariner's document endorsed with qualified rating(s) more than 12 months after expiration, in lieu of the requirements of paragraph (c) of this section the applicant shall demonstrate continued professional knowledge for each qualified rating for which reissuance is sought by completing a course approved for this purpose or, by passing the complete examination for each rating, or by passing the examination for a related license required by § 10.209(f)(1) of this chapter. The fees listed in §§ 12.02–18 and 10.109 apply to these examinations.

(2) A merchant mariner's document without any qualified rating endorsements that has been expired more than 12 months shall be reissued in the same manner as a current merchant mariner's document. There are no additional requirements for reissuing merchant mariner's documents without qualified ratings that have been expired more than 12 months.

(g) *Inactive document renewal.* (1) Applicants for renewal of merchant mariner's documents that are endorsed with qualified ratings, who are unwilling or otherwise unable to meet the requirements of paragraphs (c) or (d) of this section may renew the merchant mariner's document, with the following restrictive endorsement placed on the document: "Continuity only; service under document prohibited." Holders of merchant mariner's documents with this *continuity endorsement* may have the prohibition rescinded at any time by satisfying the renewal requirements in paragraphs (c) and (d) of this section.

(2) Applications for renewal of a document with the continuity endorsement must include:

(i) The document to be renewed, or, if it is unexpired, a photocopy of the document including the back and,

(ii) A signed statement from the applicant attesting to an awareness of the restriction to be placed on the renewed document and of the requirements for rescinding the continuity endorsement.

14. Section 12.02–29 and Table 12.02–29 are added to read as follows:

§ 12.02–29 Expiration of existing merchant mariner's documents.

The expiration year of a merchant mariner's document issued without an expiration date is calculated by adding 5-year increments to the issuance date of the document, up to the first applicable year falling between 1995 and 1999, inclusive. The day and month of expiration are the same as that of issuance. Table 12.02–29 is provided as an aid for calculating the expiration date of a document issued without an expiration date. A merchant mariner's document is not valid for use after the expiration date calculated under this section, but may be renewed in accordance with the requirements of § 12.02–27.

TABLE 12.02–29.—EXPIRATION OF MERCHANT MARINER'S DOCUMENTS ISSUED WITH NO EXPIRATION DATE [1]

Expiration year				
1999	1998	1997	1996	1995
Issue Year				
1994	1993	1992	1991	1990
1989	1988	1987	1986	1985
1984	1983	1982	1981	1980
1979	1978	1977	1976	1975
1974	1973	1972	1971	1970
1969	1968	1967	1966	1965
1964	1963	1962	1961	1960
1959	1958	1957	1956	1955
1954	1953	1952	1951	1950
1949	1948	1947	1946	1945
1944	1943	1942	1941	1940
1939	1938	1937	.....	.....

[1] Find the year in which the merchant mariner's document was issued (Issue Year), then move up the column to find the Expiration Year. Month and day of expiration correspond to the month and day of issue.

Dated: September 19, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–23655 Filed 9–26–94; 8:45 am]

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federal register

Tuesday
September 27, 1994

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 1994–95 migratory bird hunting season. These late seasons include most waterfowl seasons, the earliest of which generally commence on or about October 1, 1994. The effects of this final rule are to facilitate the selection of hunting seasons by the States to further the annual establishment of the late-season migratory bird hunting regulations. State selections will be published in the **Federal Register** as amendments to §§ 20.104 through 20.107 and § 20.109 of title 50 CFR part 20.

EFFECTIVE DATE: September 27, 1994.

ADDRESSES: Season selections from States are to be mailed to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1994

On April 7, 1994, the Service published for public comment in the **Federal Register** (59 FR 16762) a proposal to amend 50 CFR part 20, with comment periods ending July 21 for early-season proposals and September 2 for late-season proposals. The deadline for late-season proposals was subsequently extended to September 9 in the September 7 **Federal Register** (58 FR 46320). These regulations would be proposed for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons), Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). These species are designated as "migratory game birds" in conventions between the United States and several foreign nations for the protection and management of these birds. All other birds designated as migratory (under 10.13 of Subpart B of 50 CFR Part 10) in the aforementioned conventions may not be hunted. On June 8, 1994, the Service published for public comment a second document (59 FR 29700) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 23, 1994, a public hearing was held in Washington, DC, as announced in the April 7 and June 8 **Federal Registers**, to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 12, 1993, the Service published in the **Federal Register** (59 FR 35566) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1994–95 season. On August 4, 1994, a public hearing was held in Washington, DC, as announced in the April 7, June 8, and July 12 **Federal Registers**, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 17, 1994, the Service published a fourth document (59 FR 42474) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1994–95. The fifth document in the series, published August 24, 1994 (59 FR 43684), dealt specifically with proposed frameworks for the 1994–95 late-season migratory bird hunting regulations. On September 1, 1994, the Service published in the **Federal Register** a sixth document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. On September 7, 1994, the Service published in the **Federal Register** a seventh document announcing an extension of the closing date for the comment period on late-season regulations from September 2 to September 9. This document, which establishes final frameworks for late-season migratory bird hunting regulations for the 1994–95 season, is the eighth in the series.

Review of Comments and the Service's Response

Public-hearing and written comments received through September 9, 1994, relating to proposed late-season frameworks are discussed and addressed here. Ten individuals presented statements at the August 4, 1994, public hearing. Individuals and the organizations represented were: Dr. Rollin Sparrowe, Wildlife Management Institute; Walter Sikes, California Waterfowl Association; Brian Cavey, Office of Senator Max Baucus; Bruce Barbour, National Audubon Society; K.L. Cool, Central Flyway Council; Scott Sutherland, Ducks Unlimited; Congressman Jay Dickey, 4th Congressional District in Arkansas; Congressman Tim Petrie, 6th Congressional District in Wisconsin; Dr. Gary Will, Pacific Flyway Council; and Congressman Steve Gunderson, 3rd Congressional District in Wisconsin. The Service received 504 written comments that specifically addressed late-season issues. These late-season comments are summarized and discussed in the subject order used in the April 7, 1994, **Federal Register**. Only the numbered items pertaining to late seasons for which comments were received are included. Flyway Council recommendations shown below include only those involving changes from the 1993–94 late-season frameworks. For those topics where a Council recommendation is not shown, the Council supported continuing the same frameworks as in 1993–94.

General

Public-Hearing Comments: Dr. Rollin Sparrowe, Mr. Brian Cavey, Mr. Bruce Barbour, Mr. K. L. Cool, and Mr. Scott Sutherland expressed optimism for the recovery of duck populations this year due to the return of good water and improved upland habitat conditions. They noted that a variety of circumstances likely contributed to this improvement but praised the Conservation Reserve Program (CRP) and the cooperative efforts of private landowners, State and Federal wildlife agencies, and conservation organizations for having played a significant role. However, Mr. Sutherland stated that several species, including the mallard, black duck, pintail, American wigeon, blue-winged teal, canvasback, and scaup are still below the North American Waterfowl Management Plan goals. He stressed the need to expand and improve population surveys and banding program databases

which would allow the development of refined regional and flyway management plans.

Written Comments: The California Waterfowl Association urged the Service to consider the link between hunting opportunities and hunter support of habitat programs when formulating regulations. They believe that the current sizes of waterfowl populations justify a relaxation of restrictions.

An individual from California requested that waterfowl harvests be managed on a flyway basis.

Dr. Robert McLandress, Director of the Waterfowl and Wetland Program of the California Waterfowl Association, expressed his concern for the 65 percent decrease in California waterfowl hunters during the past two decades and the impact of such losses on wetland habitat preservation and maintenance. He noted that the number of California waterfowl hunters was more highly correlated with pintail harvests and pintail breeding populations than with harvests and populations of other ducks.

Mr. Walter R. Sikes, representing the California Waterfowl Association, noted that 1994 would be the second year of good production for Pacific Flyway duck populations which should provide relief to the existing regulations restrictions. He commented that reduced waterfowl populations and hunting opportunities had discouraged support for habitat restoration efforts in California; but nonetheless, California waterfowlers have spent millions of dollars on waterfowl habitat improvement programs in that State. He further indicated that historical data supported relaxation of regulations, noting that during years with similar duck populations, seasons were 31 percent longer, bag limits were 75 percent higher, and hunter numbers were at least 35 percent greater than in 1993.

Two local sportsmen's organizations from Massachusetts requested threshold figures for all species of waterfowl defining when seasons shall be opened or closed.

The Fund for Animals expressed concern that many States are establishing late-season migratory bird hunting dates prior to the publication of the final frameworks by the Service. They contend that such premature action by State agencies, regardless of the time constraint the agencies may face, conflict with the notice and comment requirements of the Administrative Procedures Act. The purpose of publishing the **Federal Register** proposed rulemaking document and allowing a subsequent comment period is to provide opportunity for interested parties to submit data and facts and to present their views. They maintain that this scenario places the Service in a difficult situation and compromises its ability to make changes. As a result, they believe that the Service does not seriously consider comments received and thus does not involve the public in the decision-making process.

The New York State Department of Environmental Conservation expressed concern regarding the timing of the process required to establish final frameworks for setting migratory game bird regulations and asked that the Service modify the administrative process. They suggested that regulations should be finalized a month earlier in order to establish season dates and provide information to hunters in an orderly and timely manner.

The Humane Society of the United States (hereinafter the Humane Society) expressed concern that the public was not well represented in the regulations-establishment process. They requested establishment of a system directly involving the non-hunting public. They also requested that the Service undertake efforts to obtain population estimates for all hunted species.

Service Response: When the preliminary proposed rulemaking document was published in the **Federal Register** on April 7, 1994, the Service announced the comment periods for the early-season and late-season proposals and gave notice that the process of promulgating hunting regulations "must, by its nature, operate under time constraints". Ample time must be given to gather and interpret survey data, consider recommendations and develop proposals, and to receive public comment. Scheduled dates are set to give the greatest possible opportunity for public input. If States do take action to establish their seasons prior to the final decisions on the frameworks, they risk having to withdraw and modify those actions. The Service is obligated to, and does, give serious consideration to all information received as public comment. The Service has long recognized the problems associated with the length of time necessary to establish the final frameworks, and in conjunction with States, Flyway Councils, and the public, continues to seek new ways to streamline and improve the regulatory process.

Regarding population estimates, the long-term objectives of the Service include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Annually, the status of populations are evaluated and the potential impacts of hunting are considered. The Service believes that hunting seasons are consistent with the current status of waterfowl populations and long-term population goals.

1. Ducks

A. General Harvest Strategy

Council Recommendations: The Pacific Flyway Council recommended seasons and limits similar to those in effect during 1985–87 (with the exception of pintail), when significant reductions in bag and season length were imposed to protect certain declining duck populations. The Council presented information on duck populations, hunter numbers, and duck harvest in support of their recommendations.

Public-Hearing Comments: Dr. Rollin Sparrowe indicated that while a recovery of duck populations appears to be underway, a single year does not represent an upward trend. He noted that some liberalization may be warranted this year, but added that the major question was how much and how fast should these liberalizations be implemented. Mr. Bruce Barbour advised a cautious restraint and suggested that our goal should be to return as many breeding pairs as possible next spring to take full advantage of the likely excellent nesting conditions. Mr. Walter Sikes and Mr. Brian Cavey commented that with the increased breeding populations and improved fall flight of ducks, some liberalization in the hunting regulations was justified this year. Tim Petrie believed that Wisconsin hunters were deserving of additional hunting opportunities because of their support and participation in habitat programs. Mr. Walter Sikes accused the Service of imposing restrictions based on a trend towards continental waterfowl management and a desire to simplify regulations. He believed such restrictions were unnecessary on healthy populations and inconsistent with the status of populations and habitat conditions within a flyway.

Written Comments: The Louisiana Department of Wildlife and Fisheries expressed their dissatisfaction with the decision by the Service to offer an option package on duck seasons this year. They indicated that most optional regulations regarding waterfowl hunting were abandoned years ago.

The Florida Game and Fresh Water Fish Commission commented that regulations changes should ideally

result in measurable responses to those changes and that "tinkering" should be avoided. They maintained that the hybrid option proposed by the Service this year will further complicate evaluations and impede our capabilities to learn about the effects of those regulation changes.

The Nebraska Game and Parks Commission asked the Service to explain the basis of information used to change the proposed frameworks from those presented at the public hearing on August 4, 1994, to those published in the **Federal Register** on August 24, 1994. Further, they indicated that they were unaware of the opportunity to provide comments regarding the regulations frameworks prior to the publication of the proposed late-season rulemaking document in the **Federal Register**.

The Texas Parks and Wildlife Department was critical of the regulations-development process this year and questioned the partnership between the Service, States, and Flyway Councils. They indicated that certain perceptions or politics were driving the decision process rather than constructive compromise based on sound biology. They advocated the need for greater focus on population biology, current and projected habitat conditions, and concerns of those who still hunt ducks. They believe this will build the base of knowledge on which sound decisions should be made.

The Central Flyway Council commented that the Service's proposal of one additional bird or 10 additional days was overly conservative, penalized hunters, and was inconsistent with our biological knowledge. They stated that it appeared as if biologically-based action had been overridden by risk-aversive conservatism and clearly amounted to "tinkering", which would impede learning.

The Delta Waterfowl Foundation expressed concern that the increase in the spring population survey represented a redistribution of ducks from unsurveyed areas, and raised concerns about the reliability of short-term population projections in justifying significant changes in harvest strategies. Given the fact that 1994 was only the first year of good production and considering the uncertain variability in the fall-flight index, they maintained that a conservative framework was justified. They further recommended allowing populations to rebuild during these potentially short-lived years of good cover and water conditions.

The Federation of State Waterfowl Associations expressed concern that the Service was moving towards a continental waterfowl-management approach and a simplification of regulations rather than using the flyway concept to tailor regulations to specific populations and to promote habitat management.

Two individuals asked that shooting hours be returned to sunrise rather than one-half hour before sunrise to reduce crippling loss and aid in species identification and management.

Service Response: During most of the past decade, drought conditions on the principal duck breeding grounds have resulted in depressed duck populations, with numbers of some species reaching all-time lows. This situation necessitated restrictions in hunting regulations to reduce harvest rates commensurate with the status of ducks. This year, habitat conditions were much improved and breeding-population indices for many duck species and fall-flight indices for both mallards and all ducks combined increased substantially. Further, the continuation of good habitat conditions into mid-summer this year increases the likelihood that breeding habitat conditions may again be favorable for good production in 1995.

As a result of the increases observed in breeding-population and production surveys this year, the Service believed that some relaxation of the harvest restrictions that have been in place in recent years was warranted. The question was how much relaxation should occur in this first year of improvement. Several alternatives were available, including: (1) to continue harvest restraints one more year by making little or no change in regulations in an attempt to provide maximum population growth and potentially be in a better position to capitalize, in terms of duck production, on the prospects for good habitat conditions next year, or (2) to increase harvest opportunity to a greater extent this year and have a lesser chance for continued growth in duck populations. The Service felt that the first alternative offered the greatest opportunity for long-term benefit for both duck populations and harvest opportunity.

Flyway Councils felt that more liberalization in the hunting regulations was justified and recommended increases in both season length and bag limits for the duck season. In the Service's view, these changes would significantly increase harvests and were more in line with the second alternative identified above. Consequently, the Service opted for increases in bag limits similar to those recommended by the Councils, but preferred to retain last year's season lengths. The Service felt that this approach would provide additional harvest opportunity for hunters but would have a lesser impact on overall harvest than longer seasons.

At the public hearing for late-season regulations on August 4, 1994, in Washington, DC, the Service proposed duck-season frameworks consisting of the same season length as last year and an increase of one bird in the overall daily bag limit. In response to numerous comments received after the public hearing, the proposed frameworks published in the **Federal Register** on August 24, 1994, were changed to include an option for States to select either the same season length as last year with a larger bag limit or a season length 10 days longer than last year with essentially the same bag limit.

The Service recognizes the wide divergence of views concerning an appropriate harvest strategy for ducks during this first year of significant improvement in the status of ducks. However, 1 year of significant growth does not constitute a full recovery and several years of growth are needed to rebuild the principal stocks in the surveyed area that were depressed during the 1980s. The Service remains committed to this goal and believes that in order to reach these desired population levels, we must take full advantage of the much-improved habitat conditions and prudently manage harvest rates. The Service welcomes this challenge and asks that States, Flyway Councils, hunters and the general public join in this effort.

In regard to shooting hours, the Service has received considerable support for the proposed shooting hours. The Service has compiled information which demonstrates that shooting hours beginning at one-half hour before sunrise do not contribute significantly to the harvest of nontarget species. Consistent with the Service's long-term strategy for shooting hours, published in the September 21, 1990, **Federal Register** (55 FR 38898), the frameworks herein provide for shooting hours of one-half hour before sunrise to sunset, unless otherwise specified.

B. Framework Dates

Council Recommendations: The Central Flyway Council recommended that the hunting-season frameworks for ducks, coots, and mergansers begin on the Saturday nearest October 1 (October 1, 1994) and extend until the Sunday nearest January 20 (January 22, 1995).

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended framework opening and closing dates of the Saturday nearest

October 1 to January 20. The Lower-Region Regulations Committee also recommended that opening and closing dates be established as a basic regulation and not fluctuate annually.

The Pacific Flyway Council recommended outside season dates of the Saturday nearest October 1 to the Sunday nearest January 20. Floating framework dates are recommended because (1) the flyway has traditionally been offered Saturday openings and Sunday closing for most migratory game birds, (2) fixed calendar dates will further restrict hunting opportunity in those States that traditionally open hunting on Saturday and close on Sunday, (3) departure from this traditional format will be confusing and unnecessarily restrictive, (4) there are no biological consequences to floating frameworks since we are dealing with only plus or minus 3 days in opening and closing dates, (5) a Saturday opening allows participation by school-age hunters and those that have a traditional work week, (6) there are no biological or political justifications which warrant a change from previous outside framework dates.

Written Comments: The Nebraska Game and Parks Commission requested the Service to consider the use of floating framework dates, rather than the proposed fixed dates.

The Humane Society recommends that all seasons open on Wednesday in order to reduce the high level of harvest associated with traditional Saturday season openings.

Service Response: The use of floating framework dates automatically allows earliest opening and latest closing dates to vary by almost a full week over a period of years. These kinds of annual variations tend to confound assessment of the impact of hunting regulations on duck populations. As the Service has previously stated in the **Federal Register** (58 FR 50190), a State may choose to delay its opening date to correspond with a particular day of the week or to close earlier to maximize the number of weekends that hunting is allowed. Regarding the consideration of framework dates as "basic" rather than "annual" regulations, the Service has previously stated its policy to retain the use of framework dates as a harvest-management tool.

C. Season Lengths

Council Recommendations: The Atlantic Flyway Council and the Upper-Region and Lower- Region Regulations Committees of the Mississippi Flyway Council recommended a 40-day duck season.

The Central Flyway Council recommended that the season length in the High Plains Mallard Management Unit be 69 days, 16 of which must begin no earlier than the Saturday nearest December 10 (December 10, 1994). For the remainder of the Flyway, the Council recommended a season length of 53 days.

The Pacific Flyway Council recommended a season length of 79 days, with 7 additional days in the Columbia Basin Mallard Management Unit.

Public-Hearing Comments: Mr. Walter Sikes, Mr. Brian Cavey, Mr. K. L. Cool, and Mr. Scott Sutherland supported the Flyway Councils' recommendations to expand season lengths and allow hunters to have more opportunity. Mr. Jay Dickey supported a 10-day season extension in Arkansas to allow families additional time to spend together. Congressman Steve Gunderson (Wisconsin) commented on the inequity of an additional 9-day teal season in "non-production" States without making some additional duck harvest opportunity available to "production" States.

Written Comments: The Federation of State Waterfowl Associations supported the adoption of recommendations by the Flyway Councils. They believe that the recommendations provide an incentive to duck hunters to maintain and enhance waterfowl habitat under their control.

An individual from California asked that the Service consider allowing 86 days of duck hunting in the Pacific Flyway.

The Nebraska Low Plains Waterfowlers' Association urged the Service to allow 46 days of duck hunting in the Low Plains portion of the Central Flyway.

The Wisconsin Department of Natural Resources endorsed the recommendations of the Mississippi Flyway Council's Upper-Region Regulations Committee and requested that the Service reconsider its proposal for a 30-day duck season with a 4-bird daily bag limit. They suggested that if the Service feels a more conservative season is necessary this year, a 40-day season with a 3-bird daily bag limit would be more acceptable. They also expressed concern that "non-production" States are offered a 9-day special teal season while production States are not offered some type of compensatory opportunity.

Two local sportsmen's organizations in Massachusetts requested a 35-day season for duck hunting in the Atlantic Flyway.

The Illinois Department of Conservation urged the Service to consider a 40-day season framework with a 3-bird daily bag limit.

Congressman Steve Gunderson of Wisconsin expressed concern about the Service's proposal to allow a 30-day season and asked that consideration be given to a 40-day season with a 3-bird daily bag limit to provide more recreational opportunity for hunters.

Both the Wisconsin Wildlife Federation and the Wisconsin Conservation Congress asked the Service to consider a 40-day season with a 3-bird daily bag limit.

The Michigan Department of Natural Resources expressed concern that the Service did not support the Mississippi Flyway Council proposal for a 40-day season with a 4-bird daily bag limit and suggested that if further protection was warranted, they would prefer a 40-day season with a 3-bird daily bag limit.

The Indiana Department of Natural Resources disagreed with the Service's proposal and asked for reconsideration of a 40-day season with a 4-bird daily bag limit, but they indicated they would accept a 3-bird daily bag limit and a 40-day season, if necessary.

The Kentucky Department of Fish and Wildlife Resources indicated preference for an increase in the season length rather than an increase in the daily-bag limit, but stated that they may support the decisions of the Service, if conservative measures were necessary, based on additional information.

The Ohio Department of Natural Resources asked for a season of 40 days with a 4-bird bag limit, but if not acceptable to the Service, they would opt for a longer season over an expanded bag limit.

The South Carolina Department of Natural Resources felt that input from the States was being disregarded and that the Service's restrictive proposal did not show support for hunting and would be difficult to explain to sportsmen.

The Massachusetts Division of Fisheries and Wildlife recommended a 35-day to 40-day season in the Atlantic Flyway with a 3-bird daily bag limit, stating that an additional 5 to 10 days of hunting is an appropriate response to the improved situation of the past 3 years.

The Maryland Department of Natural Resources supported a 40-day season with a 3-bird daily bag limit.

The Alabama Department of Conservation and Natural Resources, the Arkansas Game and Fish Commission, the Florida Game and Fresh Water Fish Commission, the Louisiana Department of Wildlife and Fisheries, the Minnesota

Department of Natural Resources, the Mississippi Department of Wildlife, Fisheries, and Parks, the Missouri Department of Conservation, the New York Department of Environmental Conservation, the North Carolina Wildlife Resources Commission, the Ohio Department of Natural Resources, the South Carolina Department of Natural Resources, and the Tennessee Wildlife Resources Agency supported the recommendations of the Atlantic and Mississippi Flyway Councils for a 40-day season and a 4-bird daily bag limit.

The New York Department of Environmental Conservation stated that a 40-day season with a 4 bird daily bag limit would help biologists evaluate harvest under regulations comparable to 1985–87. Further, they would support implementation of these recommendations in 1995 to help future evaluations.

The Missouri Department of Conservation expressed concern that the frameworks did not adequately reflect the substantial input from the Flyway Councils. Further, they stated that the recommendation to return to hunting seasons similar to those in 1985–87 was justified when considered in the context of existing management plans, the current and expected improvement in breeding populations, and the status of breeding habitat.

The Tennessee Wildlife Resources Agency believed the recommendation of the Mississippi Flyway Council was biologically justified.

The Louisiana Department of Wildlife and Fisheries stated that the breeding-pair and production survey information clearly supported reasonable upward adjustments in the bag limit and season length for the Mississippi Flyway.

The Alabama Department of Conservation and Natural Resources commented that they see no biological reason why the season should not be 40 days and the requested increase was modest at best. However, they stated that if 10 additional days is deemed to be inappropriate, 7 additional days would be acceptable.

The Florida Game and Fresh Water Fish Commission commented that a 40-day season and a 4-bird daily bag limit represented a reasonable response to improved duck population status.

The Mississippi Department of Wildlife, Fisheries, and Parks, while supporting the Flyway's recommendation, believed that there was abundant information to support a 40-day season and a 5-bird daily bag limit.

Senators David Pryor and Dale Bumpers of Arkansas expressed support for the recommendations of the Mississippi Flyway Council for a 40-day season and a 4-bird daily bag limit. Senator Bumpers commented that it appears that the scientific recommendations of the Mississippi Flyway Council were ignored.

The Congressional Sportsmen's Caucus, composed of over 180 House Members and 35 Senators, supported the recommendations of the Flyway Councils for expanded seasons and bag limits and felt that maintaining a 30-day season with a daily bag limit of 3 birds sets a dangerous precedent of ignoring sound scientific information in making management decisions.

Congressman G.V. Montgomery and Congresswoman Blanche Lambert of Arkansas; Congressmen Don Sundquist, John Tanner, James Quillen, Jim Cooper, Bart Gordon, Bob Clement, and John Duncan, Congresswoman Marilyn Lloyd, and Senators Jim Sasser and Harlan Matthews of Tennessee; and Senators J. Bennett Johnston and John Breaux, Congressmen Robert Livingston, W.J. Tauzin, Jimmy Hayes, William Jefferson, Richard Baker, Jim McCrery, and Cleo Fields of Louisiana supported the recommendations of the Mississippi Flyway Council for a 40-day season with a daily bag limit of 4 birds.

Congressman John Dingell of Michigan expressed support for the Michigan Department of Natural Resources' recommendation for a 40-day season with a 3-bird daily bag limit.

Governor Jim Guy Tucker of Arkansas, State Senators James Scott and Jay Bradford of Arkansas, and State Senator Joe McPherson of Louisiana expressed support for a 40-day season and a 4-bird daily bag limit.

Other organizations supporting Flyway Council recommendations for a 40-day season and a 4-bird daily bag limit included the North Carolina Wildlife Federation, Arkansas Ducks Unlimited, the North Carolina Wildlife Habitat Foundation, the Alliance for Wetlands, the Southern Illinois Quotazone Waterfowl Association, the South Shore Waterfowlers Association of New York, the Sabine Chapter (Texas) of Ducks Unlimited, Migratory Waterfowl Hunters, Inc. of Illinois, and the Illinois Federation of Outdoor Resources.

The Delta Waterfowl Foundation supported the proposal for a 30-day season and stated that they did not believe this was the time to liberalize duck hunting regulations. Stating that now was the time for patience and to build for the future, they further commented that limiting the liberalization to the increase in bag limits and not days was appropriate and should be the final decision for the late-season frameworks.

The National Wildlife Federation concurred with the Service's proposal of either a 10-day increase in the season or an additional bird, but not both. They commented that it was critical to err on the side of conservation in the interest of ensuring the long-term well-being of waterfowl populations.

One hundred and eighty individuals in Arkansas, Florida, Georgia, Illinois, Indiana, Louisiana, Mississippi, Missouri, New Jersey, New York, Tennessee, Texas, and Wisconsin expressed support for a 40-day season with a 4-bird daily bag limit.

One hundred and forty-nine individuals from Arkansas, Florida, Illinois, Indiana, Louisiana, Maryland, Minnesota, Missouri, Pennsylvania, Tennessee and Wisconsin expressed support for a 40-day season with a 3-bird daily bag limit.

Three hundred and thirty-one individuals, including one petition containing 237 names, from Arkansas, Connecticut, Georgia, Illinois, Louisiana, Minnesota, Mississippi, New Jersey, and Tennessee requested a 40-day season.

Thirteen individuals from Arkansas, Connecticut, Florida, Minnesota, South Carolina, and Texas expressed support for a daily bag limit of 4 birds and a 30-day season.

Twelve individuals from Illinois, Minnesota, Texas, and Wisconsin supported the rejection of a 40-day season.

Twenty-three individuals from Arkansas, Iowa, Florida, Minnesota, Tennessee, Texas, and Wisconsin were opposed to any increase in either the daily bag limit or season length.

The Central Flyway Council urged the Service to reconsider and grant the original Central Flyway proposal for a modest liberalization in the 1994 season.

The Texas Parks and Wildlife Department supported the recommendations of the Central Flyway Council for a 49-day season with a daily bag limit of 4 birds. They believed these proposals were warranted and would not jeopardize continued expansion of the duck population.

The Kansas Department of Wildlife and Parks urged support for a 53-day season and a daily bag limit of 4 birds, stating that this expansion would not threaten the continued recovery of our duck resources.

The Oklahoma Department of Wildlife Conservation urged the Service to reconsider additional hunting days in all Flyways with an additional 10–14 days provided in the Central Flyway.

They further pointed out that in mid-latitude States, additional season length is very important, since duck availability can be very variable.

The Montana Department of Fish, Wildlife, and Parks encouraged the Service to consider adopting regulations more typical of those in the early 1980s. They stated that their information supported modest increases in both bag and season length and would not jeopardize continued increases in duck populations from habitat areas on the northern plains.

Congressman Martin Frost of Texas supported the Flyway Council's recommendation to expand the season length and bag limits in the Central Flyway.

The Wetland Habitat Alliance of Texas supported a 5-bird daily bag limit and 49-day season.

The Sportsmen Conservationists of Texas, the Texas Handicapped Sportsman, and Hunt County (Texas) Ducks Unlimited expressed support for a 49-day season and a 4-bird daily bag limit.

Thirty individuals from Texas expressed support for the recommendations of the Central Flyway Council for an extended season and a larger daily bag limit.

In the Pacific Flyway, the California Department of Fish and Game and the Nevada Division of Wildlife supported the recommendations of the Pacific Flyway Council. As an alternative to the proposed framework, the California Department of Fish and Game requested that an additional 8 days of hunting be considered. Both the California Department of Fish and Game and the Nevada Division of Wildlife believed that the 1994 duck population status justifies the seasons and bag limits proposed by the Pacific Flyway Council.

Congressmen Calvin Dooley, Vic Fazio, Richard Lehman, Robert Matsui, and George Miller of California, the California Waterfowl Association, and the California Rice Industry Association also expressed their support for the recommendations of the Pacific Flyway Council and for the California Department of Fish and Game's request for an additional 8 days of hunting.

The Westside Associated Duck Clubs and Wildlife Refuge of Utah urged the addition of more hunting days.

Southern California Ducks and twelve individuals from Utah and California supported the recommendations of the Pacific Flyway Council.

Seven individuals from Utah and California and the Grassland Water District of California expressed support for the California Department of Fish and Game recommendation for an additional 8 days of hunting.

An individual from Utah urged that the season be lengthened at the expense of the additional bird in the daily bag limit.

The Nebraska Low Plains Waterfowlers' Association requested liberalizations in duck hunting frameworks this year. They requested that, if both season length and bag limits cannot be increased, season length alone should be liberalized. They believe it is time to reward sportsmen for their support of waterfowl management.

The Minnesota Department of Natural Resources urged the Service to liberalize season length rather than bag limits if both could not be liberalized this year.

Service Response: At the public hearing for late-season regulations on August 4, 1994, in Washington, DC, the Service proposed duck-season frameworks consisting of the same season length as last year and an increase of 1 bird in the daily bag limit. In response to numerous comments received after the public hearing, the proposed frameworks published in the **Federal Register** on August 24, 1994, included an option for States to select either the same season length as last year with a larger daily bag limit or a season length 10 days longer than last year with essentially the same bag limits as last year. Recommendations from Flyway Councils and numerous comments included increases in both season length and daily bag limits; however, the Service believes that increasing both season length and daily bag limits for ducks is not appropriate this first year of substantial improvement in the status of ducks. Therefore, the frameworks herein contain the same options as those in the proposed frameworks. Regarding comments on the inequity of the special teal seasons in "non-production States," the Service previously responded to this issue in the August 17, 1994, **Federal Register** (59 FR 42474).

E. Bag Limits

Council Recommendations: The Atlantic Flyway Council recommended a 4-bird daily bag limit for the regular duck season, which would include no more than 1 canvasback, 1 black duck, 1 pintail; 2 wood ducks, 2 redheads; and 3 mallards (of which only 1 could be a hen).

The Central Flyway Council requested that the Service review its policy for the use of the point-system bag-limit option that requires that it be no more liberal than the conventional bag limit.

The Central Flyway Council recommended that with respect to duck, coot and merganser hunting regulations, States selecting the High Plains Mallard Management Unit season option of additional late hunting opportunity may select either the point system or the conventional bag limit for establishing daily possession limits in the entire State.

The Central Flyway Council recommended that for those States where the daily bag and possession limits are established by the conventional bag limit, the daily bag would be 4 birds with species and sex restrictions as follows: hen mallard, pintail, redhead, mottled duck, and canvasback, 1 bird; wood duck, 2 birds; all other species and sexes not mentioned above, 4 birds. The possession limit would be twice the daily bag limit.

The Central Flyway Council recommended that for those States where the daily bag and possession limits are established by the point-system bag limit, point values for species and sexes would be as follows: redhead, canvasback, hen mallard, pintail, hooded merganser and mottled duck, 100 points each; wood duck, 50 points each; mallard drake, gadwall, wigeon, green-winged teal, blue-winged teal, cinnamon teal, shoveler, whistling duck, common and red-breasted merganser, 20 points each; all other species and sexes of ducks, 35 points each. The possession limit under the point system would be the maximum number of birds that legally could be taken in 2 days.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a point-system bag-limit option that would provide, for several species, 1 more bird in the daily bag limit than the conventional bag limit.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council requested that the Service review its current point-system bag-limit policy. They feel that at least 1 more bird should be allowed in the point system than in the conventional bag limit.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the overall duck bag limit be increased from 3 to 4, that the number of male mallards allowed be increased from 2 to 3, and that 1 canvasback be allowed daily. The Lower-Region Regulations Committee also recommended a restriction of 3 mottled ducks in the 4-bird daily limit. Other species/sex restrictions would be the same as last year.

The Pacific Flyway Council recommended that the Service: (1) review its current point-system policy, (2) work with both Pacific and Central Flyway Technical Committees to interpret available data, and (3) consider all available new information and evaluate the point system against other bag-limit systems. The Council also recommended a daily bag limit of 5 ducks, including no more than 4 mallards (only 1 of which may be a hen), 2 pintails (only 1 of which may be a hen), 2 redheads, and 1 canvasback.

Public-Hearing Comments: Mr. K. L. Cool stated that he could not support the elimination of the point system because of its success in directing harvest pressure toward abundant species and away from species and sexes of concern. Dr. Gary Wills argued that an increase in the pintail bag limit was biologically sound and would not greatly increase harvest pressure from its current low level.

Written Comments: The Minnesota Department of Natural Resources supported the Mississippi Flyway Council's Upper-Region Regulations Committee recommendation for a daily bag limit of 4 ducks.

An individual from California requested that the Service consider increasing the total-duck daily bag limit to 5, the mallard limit to 5, and the pintail limit to 2 in the Pacific Flyway.

The Nebraska Low Plains Waterfowlers' Association urged the Service to allow a daily bag limit of 3 mallards in the Low Plains portion of the Central Flyway.

An individual from California requested that the duck daily bag limit be increased to 6, with a daily bag limit of 1 or 2 for mallards, or no mallards at all as an acceptable alternative. He also requested increasing the daily bag limit of pintails to 2.

Dr. Robert McLandress presented historical information on regulations and harvests of pintails and believed that an increase in the pintail daily bag limit to at least 3 birds was warranted and would provide much-needed encouragement for hunters and habitat management in California. He believed bag-limit restrictions for mallards in California were inappropriate given evidence of a preponderance of California-produced mallards in the harvest, consistently high nesting success and good brood survival. He believed the breeding population decline in California in 1994 was caused by the elimination of set-aside rice lands, favored by nesting mallards; however, there were significant increases elsewhere in the State. In addition to increased limits of mallards and pintails, he recommended an addition of 1 duck to the daily bag limit and 8 additional days.

Senator Lauch Faircloth of North Carolina commented that in light of the favorable data this year on duck populations, the Service should raise the limit to promote reasonable hunting privileges.

The Oklahoma Department of Wildlife Conservation requested that the Service work with the Flyway Councils to cooperatively review its policy on the use of the point system for determining daily bag limits for ducks. It was pointed out that the Central Flyway Council believes that the 1990 point-system review contained misinterpretations and omissions that should be cooperatively resolved prior to any decision on the use of this important harvest-management tool. Further, they stated that the process used for the handling of the updated review of the point system appeared to be a breach of the cooperative spirit and partnership approach to migratory bird management programs in the Central Flyway.

The Colorado Division of Wildlife questioned the objectivity of the Service's review and analysis of the point system. They stated that illogical conclusions were drawn from inconsistent reasoning. They also criticized the Service for failing to work cooperatively with States on the point-system issue.

The Texas Parks and Wildlife Department urged the Service and Flyway Councils to develop a cooperative approach to review the point system and strengthen Federal/State partnerships.

The Nebraska Game and Parks Commission expressed concern about the elimination of the point system without thorough consultation with the Flyway Councils and asked that it be offered to States as a bag-limit option.

An individual from Georgia requested that the point system be revisited to reward knowledgeable hunters and to penalize those hunters who shoot group limits.

An individual from Wyoming commented on the value of the point system to protect hen mallards and asked the Service to reconsider the point system for the 1995 hunting season.

The Humane Society expressed support for abandoning the point system as a bag-limit option. They cited strong evidence that many hunters are reordering their bag limits to achieve higher harvests and many are unable to distinguish ducks by species. As a regulatory tool, they claim that the point system is highly vulnerable to abuse. Further, they supported no increase in daily bag limits from the 1993–94 season.

The California Department of Fish and Game asked that the Service consider adding a second pintail, of which no more than one could be a hen, to the daily bag limit in the Pacific Flyway.

The Idaho Fish and Game Department and the Nevada Division of Wildlife expressed support for California's request to add a second pintail to the daily bag limit.

Congressmen Calvin Dooley, Vic Fazio, Richard Lehman, Robert Matsui, and George Miller of California recommended adding a second pintail (no more than 1 hen) to the daily bag limit of 5 ducks in the Pacific Flyway.

Several individuals from California asked that the Service support the Pacific Flyway Council's recommendation for a second pintail in the daily bag limit.

Several individuals from California requested that the daily bag limit on hen mallards be increased to 2, as many hens are being thrown away in the field.

An individual from Illinois requested a 4-bird daily bag limit including 2 drake mallards, allowing no hens, and a 2-scaup bag limit.

Service Response: The Service, with input from the Flyway Councils, completed a comprehensive review of the point system in 1990, and established a policy that the point system should be restricted to a maximum daily bag no greater than that allowed under the conventional daily bag limit. In 1994, the Flyway Councils asked the Service to review this policy. The Service's review was completed in July 1994 and sent to all Flyway Councils. The 1990 review indicated that (1) there was little evidence that the point system was more effective than the conventional bag at redirecting harvest (2) major problems remained with determining appropriate species- and sex-specific point values (3) species closures eliminated the bird-in-hand identification advantage of the point system (4) reordering of point values in the field was an incentive under the point system and enforceability remained a major concern and (5) most problems with the point system were in application and not concept.

In the 1994 review, the Service considered additional information that has been gathered since the 1990 review, and concluded that the point-system alternative to the conventional bag limit should be discontinued. Over the years, the Flyway Councils and States have had substantial opportunity

to provide input into the review of scientific studies and analysis of this information. The completion of the 1990 and 1994 reviews and the decision to discontinue the point system have considered input from all entities. The Service has worked with the Flyway Councils on this issue several times in an effort to resolve differences.

Three of the four Flyway Councils recommended retaining the 1-pintail limit. Pintail breeding populations have not increased above levels of the mid-1980s, when major restrictions were first implemented, and winter population indices for the pintail in the Pacific Flyway remain at record low levels. While the production outlook has improved over the last 2 nesting seasons, the Service believes that, until more evidence of a sustained recovery is available, additional liberalization of the pintail in the daily bag limit is not warranted.

F. Zones and Splits

Council Recommendations: The Pacific Flyway Council recommended continuation of the Southern San Joaquin Valley Waterfowl Zone in California in 1994 and that this zone be made permanent. About 3,500 acres of Tulare Basin wetlands are managed as duck clubs, compared to about 5,000 acres of managed wetlands in 1971. About 200 additional acres of wetlands had been flooded for waterfowl and other wetland-dependent wildlife in response to the creation of the zone. During 1991–93, this zone has allowed for a month delay in the opening date from the surrounding Balance-of-the-State and Southern California zones. This delay allows private wetland owners to take advantage of reduced electric pumping rates which become effective November 1, as well as reduced evapotranspiration rates which occur as temperatures decline. This results in an approximate 20 percent reduction in the cost of flooding. Any reductions in water cost provide an incentive for the continued flooding of private wetlands. The situation is not relieved by improvements in rainfall, because although surface water availability improves somewhat, ground water pumping costs are still high.

Establishment of the zone has not affected harvest. Estimated harvest of ducks from Kern, Kings and Tulare Counties constituted between 3.0 and 5.6 percent of the Statewide harvest in the periods 1961–1990. Since implementation of the zone in 1991, 2.5 percent of the State duck harvest has occurred in the zone. Pintail harvest in the zone declined from a high of 4.5 percent of the State harvest to 2.5 percent.

Written Comments: Two local sportsmen's organizations from Massachusetts requested continuation of zoning for their State.

Two individuals from Texas requested a third zone in Texas between the Mallard High Plains Management Area and the Eastern Zone, due to the size of the State.

The Humane Society urges the Service to discontinue all split and special seasons and recommends that any State establishing such seasons reduce the total number of hunting days by a minimum of 10 days.

Mr. Boyd Gibbons, Director, California Department of Fish and Game, provided information on wetland habitat and waterfowl harvests in the Southern San Joaquin Valley Duck Zone and requested that the temporary zone be made permanent. Twenty percent of the remaining Tulare Basin wetlands are managed as private clubs, with most relying on costly, pumped groundwater. Allowing this zone to set a late, straight season which typically differs from adjacent zones would allow clubs to flood later when evaporative rates were lower and pumping costs significantly reduced. Estimated harvests of pintails and total ducks during 2 years with the zone (1991–92) were 16 percent less and 5 percent more, respectively, than during the 2 years prior (1989–90).

An individual from Minnesota expressed support for a straight (non-split) season due to cold weather onset at the first of November in the extreme northern portions of the State.

Service Response: The Service acknowledges that the Southern San Joaquin Valley Zone in California appears to provide economic incentives for maintaining privately-managed wetlands, especially during recent years when season lengths have been relatively short. The Service will allow this zone to continue on a temporary basis for this year. With longer seasons, such as currently offered as an option to larger limits, the necessity and advantages for such a zone diminish. Regarding comments about zoning in Massachusetts and Texas, current zoning arrangements will continue until 1996, at which time States will have the opportunity to modify zone configurations in accordance with Service guidelines previously established. In reference to split seasons in Minnesota, the State has the option to change from 3-way splits to continuous seasons or 2-way splits if it wishes to do so.

G. Special Seasons/Species Management

i. Canvasback

Council Recommendations: The Atlantic Flyway Council recommended that an open season for canvasbacks be allowed with a 1-bird daily bag limit throughout the length of the 1994 season in the Atlantic Flyway.

The Central Flyway Council recommended that the Service adopt the alternative canvasback harvest-management strategy developed by State representatives on the Adaptive Harvest Management Working Group from all four Flyways.

The Central Flyway Council recommended that an open season for canvasbacks throughout the regular duck season be allowed for all four Flyways with a 1-bird daily bag limit beginning in 1994, contingent upon breeding population and habitat conditions.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that an open season for canvasbacks be allowed in the Mississippi Flyway with a 1-bird daily bag limit throughout the regular duck season.

The Pacific Flyway Council recommended adoption of an interim canvasback strategy that would allow harvest of that species throughout the regular duck season in all four Flyways, with a daily bag limit of 1 canvasback (either sex), when the 3-year running average of the estimated May breeding population is at or above 480,000 birds. No season should be allowed when the average index is below that level.

Public-Hearing Comments: Mr. Bruce Barbour expressed support for the Service's proposed canvasback harvest strategy but cautioned that the Service should consider the use of closures in specific areas where canvasback concentrate and may be especially vulnerable. Congressman Steve Gunderson supported the opening of the canvasback season Flyway-wide with certain restrictions recommended by the Upper-Region Regulations Committee of the Mississippi Flyway Council.

Written Comments: The Michigan Department of Natural Resources supported the Service's strategy for canvasback harvest management. They recommended allowing a canvasback season in 1994 and continuing the season for at least 3 years.

The Wisconsin Department of Natural Resources opposed the reestablishment of closed areas for canvasback hunting, preferring instead that the season be open Flyway-wide.

The Massachusetts Division of Fisheries and Wildlife recommended

that 1 canvasback be allowed in the daily bag limit and the New York Department of Environmental Conservation supported the canvasback daily bag limit of 1 bird throughout the duck season.

The Ohio Department of Natural Resources commented that if canvasback numbers were a concern, they would not oppose removing canvasbacks from the daily bag limit.

The Alabama Department of Conservation and Natural Resources, the Texas Parks and Wildlife Department, and the Florida Game and Fresh Water Fish Commission supported the opening of canvasback season.

The National Wildlife Federation agreed with the Service proposal to open the canvasback season nationwide and restrict the daily bag limit to 1 bird.

The Sportsmen Conservationists of Texas supported the allowance of 1 canvasback per day in the daily bag limit.

An individual from Wisconsin opposed the opening of a season for canvasbacks, stating that the population is still rebuilding. If, however, the season were to be opened, options considered should be 1) a drake-only season, 2) issuance of 1 to 2 tags per hunter, and 3) only a 1 to 2-week season.

Several individuals from Wisconsin and Minnesota disagreed with the proposal to open the canvasback season and allow 1 canvasback in the daily bag limit.

An individual from Minnesota supported the addition of a canvasback in the daily bag limit.

Service Response: The Service concurs with recommendations to open the hunting season on canvasbacks during the 1994–95 season. Based on current population levels, expected production, and projected harvest estimates, the Service believes that a season in all Flyways with a 1-bird daily bag limit is warranted. Area closures designed to protect key migrational and wintering concentrations from heavy harvest pressure and to reduce enforcement problems are not being considered at this time, but, some States may opt to close local areas that are problematic. The Service is aware of the high harvest potential for this species and will closely monitor this season's canvasback harvest and the population status next spring. As an interim strategy, the Service will annually assess several population parameters to manage future harvests of canvasbacks.

3. Mergansers

Council Recommendations: The Central Flyway Council recommended point-value changes under the point-system bag-limit option that involve mergansers. See item **1. Ducks, E. Bag Limits.**

Service Response: No point-system option is provided in the 1994–95 frameworks. See item **1. Ducks, E. Bag Limits.**

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the Service amend the criteria for late special Canada goose seasons to require a 2-year data-collection period for proposal submission. They also recommended a 3-year late experimental season in northeastern New Jersey for 1995–97. The Council also requested that the late special Canada goose season in Long Island, New York, be discontinued.

Written Comments: The South Carolina Department of Natural Resources requested that the frameworks for their resident Canada goose season be expanded to 8 days, occurring between December 1 and February 15.

The Minnesota Department of Natural Resources asked that the Criteria for Special Canada Goose Seasons be modified to allow harvest of both resident and migrant birds in metropolitan areas where their occurrence causes problems and should be discouraged. Further, they believe it is unreasonable and an unnecessary burden to require the experimental period to continue for 3 more years in order to evaluate the impacts of adding 2 hunting days beyond September 10.

Service Response: The Service concurs with the expanded season frameworks on resident geese in South Carolina, the addition of an experimental season in New Jersey, and discontinuing the season in Long Island. The Service asks that evaluations of these seasons continue in accordance with the criteria that have been established. These criteria are subject to periodic review and may be modified upon agreement and consensus of the Service and Flyway Councils. The Service will request input from the other Flyways regarding expanding from 1 to 2 years the data–collection period required prior to proposal submission for a late special season. The Service requests that Minnesota provide a biological rational for their contention that migrant geese harvested in metropolitan areas during special goose season not be subject to the special Canada goose season criteria. The Service also notes that Minnesota has the option of not extending their special season 2 days and thus avoiding further evaluation if, in their judgement, such an extension does not warrant the additional evaluation costs.

B. Regular Seasons

Council Recommendations: The Central Flyway Council recommended that the dark goose hunting regulations in the east-tier States (Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas [Eastern Goose Zone]) be 86 days with a bag limit of 2 in North Dakota and 2 with no more than 1 white-fronted goose in Kansas, Nebraska, Oklahoma, South Dakota and the eastern goose zone of Texas. The white-fronted goose season in Texas should not exceed 72 days, and during the remaining 14 days of the season, the bag limit will be no more than 2 Canada geese.

The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended several changes in Canada goose quotas, season lengths, etc., based on population status and population management plans and programs. The Upper-Region Regulations Committee also recommended that the Service allow seasons for geese to be split into 3 segments.

The Pacific Flyway Council recommended allowing cackling Canada geese to be taken outside their normal range in California, Oregon, and Washington as part of the prevailing limit on Canada geese. Within their normal range, the Council recommended that the bag limit include not more than 1 cackling Canada goose. The 1-cackler limit would apply to the Southwestern Washington Goose Quota Area, all of Oregon, and a majority of California where the season would be concurrent with the restricted white-fronted goose season.

The Pacific Flyway Council also recommended that for Oregon, the Malheur County Zone be incorporated into a Harney, Klamath, Lake, and Malheur Counties Zone, thereby allowing the season on dark geese to end on the Saturday nearest January 20 instead of the first Sunday in January. The dark goose limit would be increased from 3 to 4, including not more than 2 whitefronts. The adjacent Southwestern Zone in Idaho would be permitted frameworks similar to those recommended for Malheur County.

The Pacific Flyway Council sought a limited resumption of cackling Canada goose hunting throughout the population's range and recommended that the Service provide an expedited

Section 7 Consultation review of their recommended changes in cackling Canada goose regulations for possible impacts on Aleutian Canada geese.

Public-Hearing Comments: Congressman Steve Gunderson of Wisconsin endorsed a procedure recommended by the Mississippi Flyway Council to manage Canada goose harvest in the Mississippi River Subzone in southwest Wisconsin.

Written Comments: The Delaware Division of Fish and Wildlife requested that the Service review the Federal frameworks for hunting Canada geese on the DelMarva Peninsula. They believe that the existing frameworks are more liberal than can be justified based on the size of the population. They maintained that high harvest rates on adult birds are suppressing the population and preventing a recovery. During the 1993–94 hunting season, Delaware voluntarily restricted their seasons, but because these Canada goose populations move about the Peninsula, they believe that harvest pressure should be reviewed in parts of Delaware, Maryland, and Virginia and appropriate action taken to reduce harvest and protect these migrant Canada geese.

Congressman Steve Gunderson (Wisconsin) requested that the Mississippi River Subzone in Wisconsin be declared a giant Canada goose harvest area and removed from Canada goose harvest-quota considerations for the State.

The Minnesota Department of Natural Resources requested a change in the boundary of their West-Central Goose Zone, as required by State legislation. They indicated that they had requested endorsement of the proposed change by the Upper-Region Regulations Committee of the Mississippi Flyway Council; however, the Committee did not endorse it.

An individual from Wisconsin commented that Wisconsin's goose harvest quota should be more than the allotted 60,000 geese since the Mississippi Valley Population has increased from 1993.

The Texas Parks and Wildlife Department, the Sportsmen Conservationists of Texas, and the Wetland Habitat Alliance of Texas expressed their support for the Service's proposal to extend the framework for dark geese to 86 days with a 2-bird daily bag limit.

Service Response: The Service generally concurs with recommendations from the Flyway Councils for the 1994–95 frameworks. However, the Service does not endorse 3-way splits for Canada goose seasons at this time. The use of 3-way splits as a harvest-management tool may have merit, but a more detailed proposal, including plans for a Flyway-wide evaluation and projections of potential impacts, should be prepared prior to implementing such a change. The Service is willing to work with the Mississippi Flyway Council to investigate the desirability of this option during the coming year.

Regarding the Mississippi River Subzone in southwest Wisconsin, the Service concurs with the Mississippi Flyway Council recommendation to assign a reasonable portion of the State's Canada goose quota to the Subzone and remove the monitoring requirement.

In reference to season frameworks for the Delmarva Peninsula, the Service believes that a departure from the Flyway Council's recommended 3-year harvest strategy is not warranted at this time, since this is the third year of that period. The Service suggests that Delaware work with other concerned Flyway States during the coming year to develop appropriate harvest strategies for this important wintering area of the Atlantic Flyway Population of Canada geese.

Regarding the recommendation by Minnesota for a boundary change in the West-Central Goose Zone, the Service believes that such changes should be made in cooperation with other Flyway States involved in the management of the Eastern Prairie Canada Goose Population. Since the Upper-Region Regulations Committee of the Mississippi Flyway Council did not endorse the Minnesota proposal, the Service does not concur with the recommended change.

Concerning Canada goose harvest quotas in Wisconsin, recommendations for the annual allocation of allowable harvests among harvest areas are developed cooperatively by Flyway States involved in the management of the various Canada goose populations. The Service endorses this procedure, and notes that the Wisconsin quota provided in the following frameworks is larger than 60,000.

5. White-fronted Geese

Council Recommendations: The Central Flyway Council recommendations regarding dark geese involve white-fronted geese. See item **4. Canada Geese.**

The Pacific Flyway Council recommended that: for Washington, the special bag-limit restriction on white-fronted geese be removed, allowing them to be included in the overall 4-dark-goose limit; for Oregon, the season on white-fronted geese would open at the same time as the dark-goose season, approximately 1 week earlier than currently allowed; and for California, the white-fronted goose season would be extended by 2 weeks within the Sacramento Valley special goose-closure portion of the "Balance-of-the-State" Zone.

Public-Hearing Comments: Dr. Gary Will recommended allowing modest liberalization of the take of white-fronted geese in California, Oregon, and Washington, which would still allow a 5–10 percent increase in annual growth. He indicated that the population would likely be at the objective level this fall and that the Service's request for a long-term harvest strategy would be completed.

Written Comments: The Association of Village Council Presidents, representing Native American interests in the Yukon-Kuskokwim Delta area of Alaska, supported modest liberalizations of white-fronted goose seasons in Alaska and Washington. However, they did not support further liberalizations in Oregon or California, noting that liberalizations occurred during each of the preceding years and that it was difficult to measure the effects of these incremental changes.

Service Response: The Service concurs with the Flyway Council recommendations for season frameworks, except the changes recommended by the Pacific Flyway Council for Washington, Oregon, and California. Although the Flyway's population of white-fronted geese is increasing, it remains below the management objective endorsed by the Council. The Flyway harvest strategy for this population of geese has not been completed, and some members of the Native American Community in Alaska have not endorsed portions of this recommendation. Further, changes in white-fronted seasons made last year have not yet been fully evaluated. For these reasons, the Service believes the recommended changes are not warranted at this time.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 2-bird daily bag limit and a 50-day season length for brant.

The Central Flyway Council recommendations regarding dark geese involve brant. See item **4. Canada Geese.**

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the daily bag limit for brant be reduced to 2 birds to better conform with limits in other Flyways.

Written Comments: The New York Department of Environmental Conservation supported the increase in season length to 50 days in the Atlantic Flyway.

Service Response: The Service concurs with the recommendations regarding Brant seasons.

7. Snow and Ross' (Light) Geese

Council Recommendations: The Central Flyway Council recommended that the framework dates for light geese be from the Saturday nearest October 1 (October 1, 1994) through the Sunday nearest February 15 (February 12, 1995), except in Colorado, New Mexico, Texas, Oklahoma, and Kansas where the closing framework date would be extended to February 28, 1995. The Council also recommended that the State of Kansas be allowed to modify its boundary for Zone 1 (light goose) to include that portion of Kansas east of the Kansas Highway 99, and Zone 2 include the remainder of the State west of Highway 99.

The Mississippi Flyway Council recommended that the season length for light geese be increased from 80 to 107 days.

The Pacific Flyway Council recommended a season framework adjustment to extend the light-goose closing date for Malheur County of Oregon and southwest Idaho from the first Sunday in January to the Sunday nearest January 20. Malheur County would become part of a Harney, Klamath, Lake, and Malheur Counties Zone. This adjustment aligns the framework of the affected area with the remainder of the Flyway.

Written Comments: The Texas Parks and Wildlife Department supported a change in the Federal frameworks that would extend the framework closing date for light geese until February 28. This change would allow for increased harvest of the Mid-continent Population of lesser snow geese which are at record-high levels and, because of these levels, may be threatening their own breeding habitat.

The Texas Parks and Wildlife Department, the Sportsmen Conservationists of Texas, and the Wetland Habitat Alliance of Texas agreed with the Service's proposal to extend the framework for light geese to February 28.

Service Response: The Service concurs with the above recommendations.

8. Tundra swans

Council Recommendations: The Central Flyway Council recommended that the experimental tundra swan season in North Dakota be granted an additional year of experimental status with a final report due on June 1, 1995.

The Pacific Flyway Council recommended that the number of permits in Utah authorizing the take of 1 tundra swan per season be increased from 2,500 to 2,800 to compensate for lost hunting opportunity from a State-imposed early season closure. As an informational item, the Council recommended that Montana, Nevada, and Utah implement a monitoring program to assess the number of trumpeter swans, if any, taken accidentally during the tundra swan season. The Council also recommended that Utah be more restrictive than the Federal frameworks by ending its season on or before December 15 and closing the Green River Area to swan hunting. The 3-year-average midwinter population index of 79,406 tundra swans is well above the Flyway objective level of 38,000. Proposed frameworks will result in harvest levels within those prescribed in the 1989 Tundra Swan Hunt Plan endorsed by the Pacific Flyway Council. The changes are premised on the implementation of the State-Federal cooperative program for hazing trumpeter swans from winter concentration areas near Harriman State Park in Idaho to more favorable sites.

Public-Hearing Comments: Dr. Gary Will reemphasized the Council's support for restrictions on tundra swan hunting in portions of the Pacific Flyway to minimize the accidental take of trumpeter swans and encouraged the Service to continue to cooperate with the Council and participating States in the management of the Rocky Mountain Population (RMP) of trumpeter swans. He recommended that a reasonable harvest of tundra swans be continued while also accommodating the range expansion of trumpeter swans to resolve winter bottleneck problems in southeastern Idaho.

Written Comments: Mr. D. C. Carlton, representing the Biodiversity Legal Foundation (Foundation), commented on the management of the RMP of trumpeter swans. He detailed the status and perceived threats to these swans, reviewed past and current management actions, and concluded that leadership, actions, and funding by the Service are inadequate to assure the population's recovery and believes they warrant listing under the Endangered Species Act. Among many recommendations directed at improving the effectiveness of range-expansion efforts directed at benefiting these swans, those germane to hunting regulations included: (1) not allowing either a permitted or incidental take of trumpeter swans during a tundra swan season, (2) having no open seasons for hunting tundra swans in the most critical trumpeter swan range-expansion areas, including all of Utah and Nevada, (3) modifying hunting regulations on National Wildlife Refuges in Montana, Utah, and Nevada to provide sanctuary for resting, reproduction, and rearing of cygnets, and (4) ending waterfowl hunting after October 20 at two sites on the Snake River in Idaho, at a site on the Green River, including Seedskadee National Wildlife Refuge in Wyoming, and in unspecified areas within the Tristate Yellowstone region.

Ms. Heidi Prescott, on behalf of The Fund for Animals, Inc., highlighted recent survey reports, reviewed portions of the Pacific Flyway Council's management plan and a report by Ms. Ruth Shea, a Service employee, and presented the group's views regarding management action pertaining to RMP trumpeter swans. The Fund for Animals, Inc., concurred with the recommendations of the Foundation pertaining to migratory game bird hunting contained in the aforementioned letter from Mr. D. C. Carlton of the Foundation.

Mr. D. J. Schubert, also on behalf of the Fund for Animals, Inc., reiterated certain concerns and needed actions deemed necessary for successful range expansion of RMP trumpeter swans. He believed that a mandatory check of swans taken by hunters in Utah and Nevada is necessary to measure the level of accidental take. While the purposeful hazing of trumpeter swans to more favorable winter sites has merit, it put more trumpeter swans at risk in tundra swan hunt areas; and he therefore recommended a new management strategy. The Fund for Animals believes there are two possible management strategy changes that would minimize excessive killing of trumpeter swans and still be consistent with the Migratory Bird Treaty Act: (1) prohibit hunting of tundra swans in Utah and Nevada; or, although less preferred, (2) prohibit hunting in certain critical areas in Utah. Under both options, security areas should be established in Idaho, and recreational activities such as waterfowl hunting and boating should be evaluated for possible negative impacts on trumpeter swan behavior and habitat use. Should intensive hazing be pursued to disperse birds to more favorable wintering sites, and if law enforcement policy is to be changed to facilitate the collection of information on the accidental take of trumpeter swans during the tundra swan season, the Fund for Animals recommended that: (1) both Idaho and Wyoming Game and Fish Departments

provide sanctuaries in designated areas; (2) the Utah Division of Wildlife Resources, at the maximum, not allow swan hunting or, at the minimum, not allow swan hunting in Box Elder, Cache, and Rich Counties; (3) the Nevada Division of Wildlife close Stillwater Wildlife Management Area to swan hunting; (4) the Service close all National Wildlife Refuges in Utah and Nevada to the hunting of tundra swans; and (5) should the aforenamed States not exercise the recommended action, the Service should do so. Additionally, all States should enhance their hunter-education programs to emphasize proper identification of swans and waterfowl to minimize the accidental take of trumpeter swans as a result of other hunting seasons.

Mr. D. J. Schubert, in comments representing both The Fund for Animals, Inc., and the Foundation, reiterated and elaborated upon previous recommendations from those two organizations for curtailing tundra swan hunting and waterfowl hunting to enhance RMP trumpeter swan winter-range expansion (see above and 59 FR 43691–43692) and made specific comments on the proposed frameworks. At a minimum, Mr. Schubert recommends prohibiting tundra swan hunting and restricting waterfowl hunting on all Federal lands in south-central Montana, southern Idaho, western Wyoming, Utah, and Nevada. He believes that the Service is negligent in not using to the fullest extent various management provisions afforded and mandated by the Migratory Bird Treaty Act of 1918, the National Wildlife Refuge Administration Act, and the Refuge Recreation Act to protect RMP trumpeter swans. He described the historic RMP trumpeter swan populations, probable causes for their current restricted winter distribution, and past and current management efforts aimed at restoring the population; he offered management solutions to restore the population; and he argued in support of a petition for listing the RMP trumpeter as a threatened species which had been dismissed by the Service. He insists that the Service is obligated by law to restore the trumpeter swan to its native range. He contends that the Service is operating under an unpublished policy of nonenforcement of the Migratory Bird Treaty Act with respect to tundra swan hunters who might accidentally shoot a trumpeter swan. He recanted his previous recommendation for measuring the level of accidental take, by saying that there was sufficient information to know that it occurred.

Mr. Michael Roy, on behalf of the National Wildlife Federation, expressed concern about the successful continuation of the RMP trumpeter swan range-expansion program, in part because of a perceived ineffective and confusing management structure that is not adequately represented by all interested parties, and in part by accidental take of trumpeter swans during tundra swan seasons in Utah. He believes certain recommendations provided by Ms. Ruth Shea, a Service employee, were reasoned and practical and, if implemented, would enhance range-expansion efforts. Premised on Ms. Shea's recommendations, he recommended that tundra swan hunting in Utah be discontinued from the southern boundary of the Bear River National Wildlife Refuge north and east to the Idaho and Wyoming borders for an initial 5-year period. This closure would be intended to minimize the accidental take of trumpeter swans during translocation activities and, hopefully, tundra swan hunting could be reinstated afterwards.

Ms. Louisa Willcox, representing the Greater Yellowstone Coalition, raised questions regarding the Service's role in managing RMP trumpeter swans and funding efforts to increase their numbers and expand their distribution. She asked how the Service will monitor the accidental take of trumpeter swans during tundra swan hunting seasons in Montana, Nevada, North Dakota, South Dakota, and Utah and what measures will be taken to minimize the potential losses. She also asked why the Service has not sought establishment of trumpeter swan wintering sites outside the Montana-Idaho-Wyoming region. She requested that the Service develop a long-term strategy to prevent wintering waterfowl, including trumpeter swans, from damaging vegetation and fish habitat at Harriman State Park in Idaho.

The Humane Society recommended that all tundra swan seasons be closed.

Service Response: The Service concurs with the recommendation to extend the experimental tundra swan season in North Dakota one additional year, with a final report due by June 1, 1995.

In conjunction with a larger Federal-State-Flyway effort to enhance and monitor both winter and summer distribution of RMP trumpeter swans, the Service believes that modification of tundra swan hunting seasons in the Pacific Flyway portion of Montana, in Utah, and in Nevada is warranted to minimize the accidental killing of trumpeter swans by tundra swan hunters. Accordingly, final frameworks require: (1) States to collect and report information on the accidental take of trumpeter swans in conjunction with tundra swan seasons, and (2) in Utah, the season must end on or before December 15 and four counties would be closed to swan hunting. The Pacific Flyway Council's request for additional permits to compensate for lost hunting opportunities in Utah is not without merit from the standpoint of tundra swan management; however, the Service denied the Council's request and believes a conservative approach is warranted because of the possibility of trumpeter swans moving into the general hunting area. Further, there has been no change in either policy or law regarding enforcement of migratory game bird hunting regulations as they apply to the illegal take of trumpeter swans. Monitoring of the winter distribution of trumpeter swans will provide the Service with additional opportunities to further modify hunt programs if warranted.

Trumpeter swans are expected to number about 17,000–20,000 individuals during the next range-wide survey scheduled for 1995 and have been increasing at about 6 percent per year during 1968–90 (1990 was the last year in which a range-wide survey was conducted). Populations such as the RMP warrant additional attention, which the Service continues to give with considerable assistance from State and other Federal agencies and moral, if not financial, support from several non-governmental organizations.

Regarding closure of all tundra swan seasons, the Service believes that the status of tundra swan populations does not warrant such closures.

23. Other

Council Recommendations: The Atlantic Flyway Council recommended that the Service provide compensatory days for State-imposed Sunday-hunting prohibitions.

Written Comments: Two local sportsmen's organizations from Massachusetts suggested compensatory days for those days lost due to State-imposed Sunday-hunting prohibitions.

The Humane Society supported the closure of hunting on Sundays.

Service Response: The Service is not aware of any biological basis for prohibiting hunting on Sundays and therefore neither promotes nor condones prohibition of Sunday hunting. Sunday-hunting closures are established by State or local law. The Service has stated previously in the September 24, 1993, **Federal Register** (58 FR 50188) that it believes this problem is an individual State issue and

can best be resolved by each State removing its self-imposed restrictions.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options are being considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1994," which is available upon request.

Endangered Species Act Consideration

In August 1994, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Order 12866; and the Paperwork Reduction Act

In the **Federal Register** dated April 7, 1994 (59 FR 16762), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing an Analysis of Regulatory Effects and an updated Final Regulatory Impact Analysis, under the Regulatory Flexibility Act (5 U.S.C. 601 et seq), and publication of a summary of the latter. This information is included in the present document by reference. This action was not subject to review by the Office of Management and Budget under E.O. 12866. This rule does not contain any information collection requiring approval by the Office of Management and Budget under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rule is Robert J. Blohm, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1994–95 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1994–95 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a—d and e—j).

Dated: September 22, 1994.

Robert P. Davison,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1994–95 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1994, and March 10, 1995.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Definitions: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese - Canada geese, white-fronted geese, and brant.

Light geese - lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: Either (a) 30 days and daily bag limit of 4 ducks, including no more than 3 mallards (no more than 1 of which may be a female), 2 wood ducks, 2 redheads, 1 canvasback, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous whistling

duck or (b) 40 days and daily bag limit of 3 ducks, and the other restrictions shown above.

Closures: The season on harlequin ducks is closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their Statewide seasons into two segments.

Canada Geese

Season Lengths, Outside Dates, and Limits: Unless specified otherwise, seasons may be split into two segments. Seasons in States, and in independently described goose management units within States, may be as follows:

Connecticut: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special experimental season may be held in the South Zone between January 15 and February 15, with 5 geese per day.

Delaware: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

Florida: Closed season.

Georgia: In specific areas, an 8–day experimental season may be held between November 15 and February 5, with a limit of 5 Canada geese per day.

Maine: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Maryland: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days and 2 geese per day thereafter.

Massachusetts: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening. In addition, a special 16–day season for resident Canada geese may be held in the Coastal and Central Zones during January 21 to February 5, with 5 geese per day.

New Hampshire: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

New Jersey: 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental special season may be held in a designated area of Northeastern New Jersey from January 28 to February 11, 1995, with 5 geese per day.

New York:

Northeastern Zone - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Remainder of State - 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

North Carolina:

East Zone - Suspended.

West Zone - Suspended.

Pennsylvania:

South Zone - 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental season may be held in the Susquehanna/Juniata Zones from January 20 to February 5 with 5 geese per day.

Erie, Mercer, and Butler Counties - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Crawford County - 35 days between October 1 and January 20; with 1 goose per day.

Remainder of State - 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Rhode Island: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

South Carolina: Suspended regular season. An 8–day special season may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during December 1 to February 15, with a daily bag limit of 5 Canada geese per day.

Vermont: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening.

Virginia:

Back Bay - Suspended.

Remainder - 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese per day thereafter.

West Virginia: 70 days between October 1 and January 20, with 3 geese per day.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107–day season between October 1 and February 10, with 5 geese per day. States may split their seasons into two segments.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50–day season between October 1 and January 20, with 2 brant per day.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: Either (a) 30 days and daily bag limit of 4 ducks, including no more than 3 mallards (no more than 1 of which may be a female), 3 mottled ducks, 1 black

duck, 1 pintail, 2 wood ducks, 1 canvasback, and 1 redhead or (b) 40 days and daily bag limit of 3 ducks, including no more than 2 mallards (no more than 1 of which may be a female), and the other restrictions shown above.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Mississippi, the season may be split into two segments.

In Arkansas and Minnesota, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania (Northwest Zone).

Geese

Split Seasons: Seasons for geese may be split into two segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 1) and January 31, and 107 days for light geese between the Saturday nearest October 1 (October 1), and February 14. The daily bag limit is 7 geese, to include no more than 2 Canada geese, 2 white-fronted geese, and 2 brant. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone. In the West Zone, an experimental season for Canada geese of up to 14 days may be selected. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 109,600 birds.

(a) Southern Illinois Quota Zone - The season for Canada geese will close after 51 days or when 39,800 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession. All harvested Canada geese in excess of twice the daily bag limit that are transported outside the zone must be tagged with tags containing the name and signature of the hunter and the date and location where the birds were taken. If any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.

2. 10 consecutive days of daily high temperatures less than 20 degrees F.

3. Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

4. Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

(b) Rend Lake Quota Zone - The season for Canada geese will close after 51 days or when 11,400 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession. All harvested Canada geese in excess of twice the daily bag limit that are transported outside the zone must be tagged with tags containing the name and signature of the hunter and the date and location where the birds were taken.

(c) Northern Illinois Quota Zone - The season for Canada geese will close after 51 days or when 13,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(d) Central Illinois Quota Zone - The season for Canada geese will close after 51 days or when 22,400 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(e) Remainder of the State - The season for Canada geese may extend for 51 days in the respective goose zones. The daily bag limit is 2 Canada geese.

Indiana: The total harvest of Canada geese in the State will be limited to 61,900 birds.

(a) Posey County - The season for Canada geese will close after 53 days or when 4,550 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State - The season for Canada geese may extend for 70 days in the respective duck-hunting zones, except in the SJBP Zone, where the season may not exceed 35 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 55 days in the respective duck-hunting zones and may open no earlier than October 8. The daily bag limit is 2 Canada geese.

Kentucky:

(a) Western Zone - The season for Canada geese may extend for 53 days (66 days in Fulton County), and the harvest will be limited to 21,900 birds. Of the 21,900–bird quota, 14,300 birds will be allocated to the Ballard Reporting Area and 4,200 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 53–day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 53 days (66 days in Fulton County). The season in Fulton County may extend to February 13. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone - The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State - The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: Louisiana may hold 107-day seasons for light geese and 70-day seasons for white-fronted geese and brant between the Saturday nearest October 1 (October 1) and February 14 in the respective duck-hunting zones. The daily bag limit is 7 geese, to include no more than 2 white-fronted geese and 2 brant, except as noted below. In the Southwest Zone, a 9-day season for Canada geese may be held. During the Canada goose season, the daily bag limit for Canada and white-fronted geese in the Southwest Zone is 2, no more than 1 of which may be a Canada goose. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 63,100 birds.

(a) North Zone - The framework opening date for all geese is September 24 and the season for Canada geese may extend for 23 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone - The season for Canada geese may extend for 23 days. The daily bag limit is 2 Canada geese.

(c) South Zone

(1) Allegan County GMU - The season for Canada geese will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(2) Muskegon Wastewater GMU - The season for Canada geese will close after 53 days or when 400 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU - The season for Canada geese will close after 40 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(4) Tuscola/Huron GMU - The season for Canada geese will close after 40 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(5) Remainder of South Zone - The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose.

(d) Southern Michigan GMU - An experimental special Canada goose season may be held between January 7 and February 5. The daily bag limit is 2 Canada geese.

Minnesota:

(a) West Zone

(1) West Central Zone - The season for Canada geese may extend for 30 days. In the Lac Qui Parle Zone the season will close after 30 days or when a harvest index of 4,000 birds has been reached, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Southeast Zone - The season for Canada geese may extend for 70 days, except in the Twin Cities Metro Zone and Olmsted County, where the season may not exceed 80 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(e) Fergus Falls/Alexandria Zone - An experimental special Canada goose season of up to 10 days may be held in December. During the special season, the daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Missouri:

(a) Swan Lake Zone - The season for Canada geese will close after 40 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone - The season for Canada geese may extend for 40 days. The daily bag limit is 2 Canada geese.

(c) Central Zone - The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese. An experimental special season of up to 10 consecutive days prior to October 15 may be selected in addition to the regular season. During the special season, the daily bag limit is 3 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. In the Pymatuning Reservoir Area, the seasons, limits, and shooting hours for all geese shall be the same as those selected in the adjacent portion of Pennsylvania.

Tennessee:

(a) Northwest Zone - The season for Canada geese will close after 75 days or when 8,100 birds have been harvested, whichever occurs first. The season may extend to February 15. All geese harvested must be tagged. The daily bag limit is 2 Canada geese.

(b) Southwest Zone - The season for Canada geese may extend for 59 days, and the harvest will be limited to 1,000 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone - The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese.

(d) Remainder of the State - The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 76,800 birds.

(a) Horicon Zone - The framework opening date for all geese is September 24. The harvest of Canada geese is limited to 41,000 birds. The season may not exceed 80 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone - The framework opening date for all geese is September 24. The harvest of Canada geese is limited to 1,300 birds. The season may not exceed 61 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone - The framework opening date for all geese is October 1. The harvest of Canada geese is limited to 30,000 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 70 days and the daily bag limit is 1 Canada goose. In the Mississippi River Subzone, the season for Canada geese may extend for 70 days in each duck zone. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 29,500 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Swan Lake Zone in Missouri, and the Northwest and Kentucky/Barkley Lakes Zones in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks, Mergansers, and Coots

Outside Dates: October 1 through January 20.

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): Either (a) 51 days and daily bag limit of 4 ducks, including no more than 1 of which may be a female mallard, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback and 2 wood ducks or (b) 61 days and daily bag limit of 3, and the other restrictions shown above. Under both options, the last 12 days may start no earlier than the Saturday nearest December 10 (December 10).

(2) Remainder of the Central Flyway: Either (a) 39 days and daily bag limit of

4 ducks, including no more than 1 female mallard, 1 mottled duck, 1 pintail, 1 redhead, 1 canvasback and 2 wood ducks or (b) 49 days and daily bag limit of 3 ducks, and the other restrictions shown above.

Merganser Limits: The daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons by zones.

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

Geese

Season Lengths, Outside Dates, and Limits: Seasons may be split into two segments. The Saturday nearest October 1 (October 1), through January 31, for dark geese and the Saturday nearest October 1 (October 1), through the Sunday nearest February 15 (February 12), except in Colorado, Kansas, New Mexico, Oklahoma, and Texas, where the closing date is February 28, for light geese. Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 107 days, with a daily bag limit of 5 light and 3 dark geese.

Kansas: For dark geese, no more than 86 days, with a daily bag limit of 2, including no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

Montana: No more than 107 days, with daily bag limits of 2 dark and 5 light geese in Sheridan County and 4 dark and 5 light geese in the remainder of the Central Flyway portion.

Nebraska: For dark geese, no more than 86 days, with a daily bag limit of not more than 2, which may include no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

New Mexico: No more than 107 days, with a daily bag limit of 5 light and 3 dark geese, except in the Middle Rio Grande Valley where the daily bag limit of light geese is 10.

North Dakota: For dark geese, no more than 86 days, with a daily bag limit of 2.

For light geese, no more than 107 days, with a daily bag limit of 10.

Oklahoma: For dark geese, no more than 86 days, with a daily bag limit of 2, including no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

South Dakota: For dark geese, no more than 86 days, with a daily bag limit of not more than 2, including no more than 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

Texas: For the West Unit, no more than 107 days, with a daily bag limit of 5 light and 3 dark geese.

For dark geese in the East Unit, no more than 86 days. The daily bag limit is 2, including no more than 1 white-fronted goose during the first 72 days; during the last 14 days, the season is closed on white-fronted geese and the daily bag limit is 2 Canada geese.

For light geese in the East Unit, no more than 107 days, with a daily bag limit of 10.

Wyoming: No more than 107 days, with a daily bag limit of 5 light and 3 dark geese.

Pacific Flyway

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons and Duck Limits: Either (a) Concurrent 59 days and daily bag limit of 5 ducks, including no more than 4 mallards (no more than 1 of which may be a female), 1 pintail, 2 redheads and 1 canvasback or (b) Concurrent 69 days and daily bag limit of 4 ducks, including no more than 3 mallards, and the other restrictions shown above.

In the Columbia Basin Mallard Management Unit, the seasons may be an additional 7 days. The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Outside Dates: Between October 1 and January 20.

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments either Statewide or in each zone.

Colorado, Montana, New Mexico, and Wyoming may split their duck seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100–day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 1), and the Sunday nearest January 20 (January 22), and the basic daily bag limits are 3 light geese and 3 dark geese, including no more than 2 white-fronted geese.

Brant Season - A 16–consecutive-day season may be selected in Oregon and Washington, and a 30–consecutive day season may be selected in California. In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 2 geese.

California:

Northeastern Zone - White-fronted geese and cackling Canada geese may be taken only during the first 23 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone - The seasons and limits must be the same as those selected in the adjacent portion of Arizona (South Zone).

Southern Zone - The daily bag and possession limits for dark geese is 2 geese, including not more than 1 cackling Canada goose.

Balance-of-the-State Zone - A 79–day season may be selected, except that white-fronted geese and cackling Canada geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2, provided that they are Canada geese

other than cackling Canada geese for which the daily limit is 1.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese and cackling Canada geese must end on or before November 30, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23.

Colorado: The daily bag limit for dark geese is 2 geese.

Idaho:

Northern Unit - The daily bag limit is 4 geese, including 4 dark geese, including not more than 2 white-fronted geese, and 3 light geese.

Southwest Unit - The daily bag limit on dark geese is 4, including not more than 2 white-fronted geese.

Southeastern Unit - The daily bag limit is 3 geese, including not more than 2 white-fronted geese.

Montana:

West of Divide Zone - The daily bag limit on dark geese is 4, including not more than 2 white-fronted geese.

Nevada:

Clark County Zone - The daily bag limit of dark geese is 2 geese.

New Mexico: The daily bag limit for dark geese is 2 geese.

Oregon: Except as subsequently noted, the dark goose limit is 4, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Harney, Lake, Klamath, and Malheur Counties Zone - The season length may be 100 days. White-fronted geese may not be taken before October 17 during the regular goose season.

Western Zone - In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 210 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 3, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Utah: The daily bag limit for dark geese is 2 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese, but not more than 2 white-fronted geese, and 3 light geese.

West Zone - In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 90 dusky Canada geese. See section on quota zones.

Wyoming: In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose season shall not exceed 100 days.

Quota Zones: Seasons on Canada geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese. The daily bag limit of Canada geese may not include more than 1 cackling Canada goose.

Tundra Swans

In Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, must occur during the light goose season, but may not extend beyond January 31.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—The season may be 107 days and must occur during the light goose season.

—In the Central-Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,000 permits may be issued during the experimental season.

—In South Dakota, no more than 1,500 permits may be issued during the experimental season.

In the Pacific Flyway

—Except as subsequently noted, a 100–day season may be selected between the Saturday nearest October 1 (October 1), and the Sunday nearest January 20 (January 22). Seasons may be split into 2 segments. The States of Montana, Nevada, and Utah must implement a harvest-monitoring program to measure the extent of accidental harvest of trumpeter swans.

—In Utah, no more than 2,500 permits may be issued. The season must end on or before December 15.

—In Nevada, no more than 650 permits may be issued.

—In the Pacific-Flyway portion of Montana, no more than 500 permits may be issued.

Area, Unit and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: That portion of the State south of I–95.

Maine

North Zone: Game Management Zones 1 through 5.

South Zone: Game Management Zones 6 through 8.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

West Virginia

Zone 1 : That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State between the North and South Zone boundaries.

South Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along County 12 to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, then east along I–70 to the Indiana border.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: That portion of the State west of a line extending north from the Tennessee border along Interstate Highway 65 to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U.S. Bypass 60 to U.S. Highway 231, then north along U.S. 231 to the Indiana border.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

South Zone: That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of,

Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to Michigan Highway 20, east on Michigan 20 to U.S. Highway 10B.R. in the city of Midland, east on U.S. 10B.R. to U.S. 10, east on U.S. 10 and Michigan 25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn Power Plant, to a point one mile north of the Charity islands, then continuing northeasterly to the Ontario border in Lake Huron.

Middle Zone: The remainder of Michigan.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I–55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State 35 to State 25, north along State 25 to U.S. Highway 10, east along U.S. 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains: That area west of U.S. 283.

Low Plains: That area east of U.S. 283.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland, and Yellowstone.

Zone 2: The Counties of Big Horn, Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure, and Wibaux.

Nebraska

High Plains: West of Highways U.S. 183 and U.S. 20 from the northern State line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the southern State line.

Low Plains: East of the High Plains boundary.

Zone 1: Those portions of Burt, Dakota, and Thurston Counties north and east of a line starting on NE 51 on the Iowa border to U.S. 75, north on U.S. 75 to U.S. 20, west on U.S. 20 to NE 12; west on NE 12 to the Boyd County line; to include those portions of Cedar, Dakota, Dixon, and Knox Counties north of NE 12; all of Boyd County; Keya Paha County east of U.S. 183. Where the Niobrara River forms the southern boundary of Keya Paha and Boyd Counties, both banks of the river shall be included in Zone 1.

Zone 2: The area bounded by designated highways and political boundaries starting on NE 2 at the State line near Nebraska City; west to U.S. 75; north to U.S. 34; west to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to U.S. 34; west to NE 2; south to I–80; west to U.S. 34; west to U.S. 136; east on U.S. 136 to NE 10; south to the State line; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; northwesterly to NE 91; west to U.S. 281, north to NE 91 in Wheeler County; west to U.S. 183; north to northerly boundary of Loup County; east along the north boundaries of Loup, Garfield, and Wheeler Counties; south along the east Wheeler County line to NE 70; east on NE 70 from Wheeler County to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east to the State line; and south and west along the State line to the point of beginning.

Zone 3: The area, excluding Zone 1, north of Zone 2.

Zone 4: The area south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: The Central-Flyway portion of New Mexico north of I–40 and U.S. 54.

South Zone: The remainder of the Central-Flyway portion of New Mexico.

North Dakota

High Plains: That portion of North Dakota west of a line extending north from the South Dakota border on U.S. 83 and I–94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 8, north to U.S. 2, west to U.S. 85, north to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains: Beaver, Cimarron, and Texas Counties.

Low Plains

Zone 1: That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I–40, I–40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I–35, I–35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Kansas border.

Zone 2: The remainder of the Low Plains portion of Oklahoma.

South Dakota

High Plains: West of highways and political boundaries starting at the State line north of Herreid; U.S. 83 and U.S. 14 to Blunt, Blunt-Canning Road to SD 34, a line across the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, the Reservation Boundary and Lyman County Road through Presho to I–90, and U.S. 183 to the southern State line.

Low Plains

North Zone: That portion of northeastern South Dakota bounded by the following highways: starting at the North Dakota border, U.S. 83 south to

U.S. 212, U.S. 212 east to I–29, I–29 north to SD 15, SD 15 east to Hartford Beach, due east of Hartford Beach to the Minnesota border.

South Zone: Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, East on Geddes Highway to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to the Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of the Low Plains portion of South Dakota.

Texas

High Plains: West of highways U.S. 183 from the northern State line to Vernon, U.S. 283 to Albany, TX 6 and TX 351 to Abilene, U.S. 277 to Del Rio, and the Del Rio International Toll Bridge access road.

Low Plains: The remainder of Texas.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 11, 12B, 13B, and 14–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 10, 12A, and 13A.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following counties or portions of counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Ada includes the Counties of; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except that portion within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Clark County Zone: All of Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Statewide, except Deschutes, Klamath, and Lake Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: Deschutes, Klamath, and Lake Counties.

Utah

Zone 1: All of Box Elder, Cache, Davis, Morgan, Rich, Salt Lake, Summit, Utah, Wasatch, and Weber Counties and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

Same zones as for ducks.

Georgia

Special Area for Canada Geese: The Counties of Baldwin, Hancock, Harris, Jones, McDuffie, Meriwether, Monroe, Richmond, Upson, Warren, and all Counties north thereof; and Decatur and Seminole Counties and all of Lake Seminole within the State of Georgia.

Massachusetts

Same zones as for ducks.

New Hampshire

Same zones as for ducks.

New Jersey

Special Area for Canada Geese: That portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with the Pennsylvania State boundary; then north along the Pennsylvania boundary in the Delaware River to its intersection with the New York State boundary.

New York

Same zones as for ducks.

North Carolina

Canada Geese

East Zone: That portion of North Carolina east of I–95.

West Zone: That portion of North Carolina west of I–95.

Pennsylvania

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties.

North Zone: That portion of the State north of a line extending east from the Ohio border along I–80 to U.S. 220, U.S. 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Susquehanna/Juniata—See State regulations for detailed description.

South Carolina

Canada Goose Area: The Central Piedmont, Western Piedmont, and Mountain Hunt Units. These designated areas include: Abbeville, Anderson, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Kershaw, Lancaster, Laurens, Lexington, McCormick, Newberry, Oconee, Pickens, Saluda, Spartanburg, Union, and York Counties.

Virginia

Back Bay Area

Defined for Canada geese as those portions of the cities of Virginia Beach and Chesapeake east of U.S. 17 and I–64.

Defined for white geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, Izard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

Illinois

North Goose Zone: Same as for ducks.

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Goose Zone: That portion of the State between the North and South Goose Zone boundaries.

Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Goose Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along County 12 to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I-70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I-70, then east along I-70 to the Indiana border.

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, Lake, LaPorte, Newton, Porter, Pulaski, Starke, and Steuben Counties.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the state west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: That portion of the state between the Western Zone and a line described as follows: From the Indiana border south along U.S. Highway 231 to the Green River Parkway, southeast along the Green River Parkway to Interstate Highway 65, then south along I–65 to the Tennessee border.

Louisiana

Same zones as for ducks, but in addition:

Southwest Zone: That portion of the State encompassed by a line extending east from the Texas border along Louisiana Highway 12 to Ragley, east along U.S. Highway 190 to Interstate Highway 49 near Opelousas, south along I–49 to U.S. 167 near Lafayette, south along U.S. 167 to Louisiana 82 at Abbeville, south and west along Louisiana 82 to the Intercoastal Waterway at Forked Island, westerly along the Intercoastal Waterway to the Calcasieu Ship Channel, south along the west side of the Calcasieu Ship Channel to Louisiana 82 at Cameron, westerly along Louisiana 82 to the Texas border. All open waters of Lake Arthur and the Mermentau River from the Louisiana 14 bridge southward are closed.

Michigan

Same zones as for ducks, but in addition:

South Zone

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bayport Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in

Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly 1/2 mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Michigan

Upper Peninsula Zone—That portion of the Upper Peninsula outside the AuTrain Basin Waterfowl Project in Alger County (described below) and east of a line described as follows: Beginning at the point where the meridian line 87'30' intersects the United States-Canada border, then south along the 87'30' meridian line to the 47'00' parallel, west along the 47'00' parallel to a point directly north of County Road 550 in the village of Big Bay in Marquette County, southerly along this line and County 550 through Big Bay to County 510, southerly along County 510 to Michigan Highway 28/U.S. Highway 41, westerly along M-28/U.S. 41 to M-35, southerly along M-35 to the Delta County line, westerly and southerly along the Delta County line to the Lake Michigan shoreline, then southeasterly along the Central-Eastern time zone boundary to the Wisconsin border in Green Bay. The AuTrain Basin Waterfowl Project is bounded on the north by M-94, on the south by Trout Lake Road, on the east by County 509 (Rapid River Truck Trail), and on the west by M-67.

Northern Lower Peninsula Zone—Bay, Isabella, Mecosta, Midland, Newaygo, and Oceana Counties and all counties north thereof.

Southern Lower Peninsula Zone—The remainder of the Lower Peninsula, excluding Huron, Saginaw, and Tuscola Counties.

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Minnesota

West Zone: That portion of the state encompassed by a line beginning at the junction of U.S. Highway 71 and the Iowa border, then north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Zone: The Counties of Anoka, Carver, Chisago, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Isanti, Mower, Olmsted, Ramsey, Rice, Scott, Steele, Wabasha, Washington, and Winona.

Special Canada Goose Seasons

Fergus Falls/Alexandria Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Fergus Falls/Benson Zone: That area encompassed by a line beginning on State Trunk Highway (STH) 55 at the Minnesota border, then south along the Minnesota border to a point due south of the intersection of STH 7 and County State Aid Highway (CSAH) 7 in Big Stone County, north to the STH 7/CSAH 7 intersection and continuing north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21

in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. Highway 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to the Swift County border, east along the south border of Swift County and north along the east border of Swift County to the south border of Pope County, east along the south border of Pope County and north along the east border of Pope County to STH 28, west along STH 28 to CSAH 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the east border of Otter Tail County, north along the east border of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then west along STH 55 to the point of beginning.

Southwest Canada Goose Zone - All of Blue Earth, Cottonwood, Faribault, Jackson, LeSueur, Lincoln, Lyon, Martin, McLeod, Murray, Nicollet, Nobles, Sibley, Waseca, and Watonwan Counties; that portion of Brown County lying south and west of the following described line: beginning at the junction of U.S. Highway 14, and the east of Brown County line; thence west on U.S. Highway 14 to Cobden; thence due west one mile on U.S. Highway 14 and the township road to the Brown County line; thence due west 12 miles along the county line to the west Brown County line; that portion of Renville County east of State Trunk Highway 4 (STH); that portion of Meeker County south of U.S. Highway 12; in Scott County, the Townships of Belle Plaine, Blakeley, and Helena, including the municipalities located therein; and that portion of Carver County lying west, of the following described line: beginning at the northeast corner of San Francisco Township, thence west along the San Francisco Township line to the east boundary of Dahlgren Township, thence north on the Dahlgren Township line to U.S. Highway 212, thence west on U.S. Highway 212 to STH 284, thence north on STH 284 to County State Aid Highway (CSAH) 10, thence north and west on CSAH 10 to CSAH 30, thence north and west on CSAH 30 the STH 25, thence east and north on STH 25 to CSAH 10, thence north on CSAH 10 to the Carver County line.

Twin Cities Metro Zone: All of Hennepin and Ramsey Counties.

In Anoka County; the municipalities of Andover, Anoka, Blaine, Centerville, Circle Pines, Columbia Heights, Coon Rapids, Fridley, Hilltop, Lexington, Lino Lakes, Ramsey, and Spring Lake Park; that portion of Columbus Township lying south of County State Aid Highway (CSAH) 18; and all of the municipality of Ham Lake except that portion described as follows:

Beginning at the intersection of CSAH 18 and U.S. Highway 65, then east along CSAH 18 to the eastern boundary of Ham Lake, north along the eastern boundary of Ham Lake to the north boundary of Ham Lake, west along the north boundary of Ham Lake to U.S. 65, and south along U.S. 65 to the point of beginning.

In Carver County; the municipalities of Carver, Chanhassen, Chaska, and Victoria; the Townships of Chaska and Laketown; and those portions of the municipalities of Cologne, Mayer, Waconia, and Watertown and the Townships of Benton, Dahlgren, Waconia, and Watertown lying north and east of the following described line:

Beginning on U.S. 212 at the southwest corner of the municipality of Chaska, then west along U.S. 212 to State Trunk Highway (STH) 284, north along STH 284 to CSAH 10, north and west along CSAH 10 to CSAH 30, north and west along CSAH 30 to STH 25, west and north along STH 25 to CSAH 10, north along CSAH 10 to the Carver County Line, and east along the Carver County Line to the Hennepin County Line.

In Dakota County; the municipalities of Apple Valley, Burnsville, Eagan, Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemont, South St. Paul, Sunfish Lake, and West St. Paul; and the Township of Nininger.

In Scott County; the municipalities of Jordan, Prior Lake, Savage and Shakopee; and the Townships of Credit River, Jackson, Louisville, St. Lawrence, Sand Creek, and Spring Lake.

In Washington County; the municipalities of Afton, Bayport, Birchwood, Cottage Grove, Dellwood, Forest Lake, Hastings, Hugo, Lake Elmo, Lakeland, Lakeland Shores, Landfall, Mahtomedi, Marine, Newport, Oakdale, Oak Park Heights, Pine Springs, St. Croix Beach, St. Mary's Point, St. Paul Park, Stillwater, White Bear Lake, Willernie, and Woodbury; the Townships of Baytown, Denmark, Grant, Gray Cloud Island, May, Stillwater, and West Lakeland; that portion of Forest Lake Township lying south of STH 97 and CSAH 2; and those portions of New Scandia Township lying south of STH 97 and a line due east from the intersection of STH 97 and STH 95 to the eastern border of the State.

Missouri

Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Central Zone: Boone County and that portion of Callaway County west of U.S. Highway 54.

Middle Zone

Schell-Osage Zone: That portion of the State encompassed by a line extending east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

Ohio

Same zones as for ducks but in addition:

North Zone

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Lake Erie SJBP Zone: That portion of the state encompassed by a line extending south from the Michigan border along Interstate Highway 75 to I–280, south along I–280 to I–80, and east along I–80 to the Pennsylvania border.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

East Tennessee Zone—Anderson, Blount, Campbell, Claiborne, Knox,

Loudon, Monroe, Roane, and Union Counties and those portions of Meigs and Rhea Counties north of Highway 68.

Wisconsin

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I-90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Early-Season Goose Subzone: That area encompassed by a line beginning at Lake Michigan in Port Washington and extending west along State Highway 33 to State 175, south along State 175 to State 83, south along State 83 to State 36, southwest along State 36 to State 120, south along State 120 to U.S. Highway 12, then southeast along U.S. 12 to the Illinois border.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming border south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park Area: Chaffee, Custer, Fremont, Lake, Park, and Teller Counties.

San Luis Valley Area: Alamosa, Conejos, Costilla, and Rio Grande Counties and the portion of Saguache County east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Remainder: Remainder of the Central-Flyway portion of Colorado.

Kansas

Light Geese

Unit 1: That portion of Kansas east of KS 99.

Unit 2: The remainder of Kansas.

Dark Geese

Marais des Cygne Valley Unit: The area is bounded by the Missouri border to KS 68, KS 68 to U.S–169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by Highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Central Flint Hills Unit: That area southwest of Topeka bounded by Highways U.S. 75 to I–35, I–35 to U.S. 50, U.S. 50 to U.S. 77, U.S. 77 to I–70, I–70 to U.S. 75.

Southeast Unit: That area of southeast Kansas bounded by the Missouri border to U.S. 160, U.S. 160 to U.S. 69, U.S. 69 to KS 39, KS 39 to U.S. 169, U.S. 169 to the Oklahoma border, and the Oklahoma border to the Missouri border.

Montana (Central Flyway Portion)

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central-Flyway portion of Montana.

Nebraska

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

East Unit: The area east of a line beginning at U.S. 183 at the northern State line; south to NE 2; east to U.S. 281; south to the southern State line, excluding the North Unit.

West Unit: All of Nebraska west of the East Unit.

New Mexico (Central Flyway Portion)

Light Geese

Middle Rio Grande Valley Unit: The Central-Flyway portions of Socorro and Valencia Counties.

Remainder: The remainder of the Central-Flyway portion of New Mexico.

North Dakota

Dark Geese

Missouri River Zone: That area encompassed by a line extending from the South Dakota border north on U.S. 83 and I–94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 37, south to ND 1804, south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, south and west across the lake to ND 8, south to ND 200, east to ND 31, south to ND 25, south to I–94, east to ND 6, south to the South Dakota border, and east to the point of origin.

Statewide: All of North Dakota.

South Dakota

Dark Geese

Missouri River Unit: The Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson (east of SD 65), Dewey, Gregory, Haakon (north of Kirley Road and east of Plum Creek), Hughes, Hyde, Lyman (north and east of I–90 and U.S. 183), Potter, Stanley, Sully, Tripp (east of U.S. 183), Walworth, and Yankton (west of U.S. 81).

Remainder: The remainder of South Dakota.

Dark Geese

Texas

West Unit: That portion of the State lying west of a line from the international toll bridge at Laredo; north along I-35 and I-35W to Fort Worth;

northwest along US 81 and US 287 to Bowie; and north along US 81 to the Oklahoma border.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion)

Area 1: Albany, Campbell, Carbon, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties east of the Continental Divide.

Area 2: The Counties of Converse and Natrona.

Area 3: The Counties of Bighorn, Fremont, Hot Springs, Park, and Washakie.

Area 4: Goshen County.

Area 5: Platte County.

Pacific Flyway

Arizona

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on I–5 to Hahn Road north of Arbuckle in Colusa County; easterly on Hahn Road and the Grimes Arbuckle Road to Grimes on the Sacramento River; southerly on the Sacramento River to the Tisdale Bypass to O'Banion Road; easterly on O'Banion Road to CA 99; northerly on CA 99 to the Gridley-Colusa Highway in Gridley in Butte County; westerly on the Gridley-Colusa Highway to the River Road; northerly on the River Road to the Princeton Ferry; westerly across the Sacramento River to CA 45; northerly on CA 45 to CA 162; northerly on CA 45–162 to Glenn; westerly on CA 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

San Joaquin Valley Area: That area bounded by a line beginning at Modesto in Stanislaus County proceeding west on CA 132 to I–5; southerly on I–5 to CA 152 in Merced County; easterly on CA 152 to CA 165; northerly on CA 165 to CA 99 at Merced; northerly and westerly on CA 99 to the point of beginning.

Colorado (Pacific Flyway Portion)

Browns Park Area: The Browns Park portion of Moffatt County.

Delta/Montrose Area: All of Delta and Montrose Counties.

Gunnison/Saguache Area: Gunnison County and that portion of Saguache County west of the Continental Divide.

Dolores/Montezuma Area: All of Dolores and Montezuma Counties.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific-Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific-Flyway portion of Montana.

Nevada

Clark County Zone: Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific-Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific-Flyway portion of New Mexico located south of I–40.

Oregon

Western Zone: All counties west of the summit of the Cascades, excluding Klamath and Hood River Counties.

Special Canada Goose Management Area: Those portions of Coos, Curry, Douglas, and Lane Counties west of U.S. 101; and that portion of western Oregon west and north of a line starting at the Columbia River at Portland, south on I–5 to OR 22 at Salem, east on OR 22 to the Stayton Cutoff, south on the Stayton Cutoff to Stayton and straight south to the Santiam River, west (downstream) along the north shore of the Santiam River to I–5, south on I–5 to OR 126 at Eugene, west on OR 126 to OR 36, north on OR 36 to Forest Road 5070 at Brickerville, west and south on Forest Road 5070 to OR 126, west on OR 126 to the Pacific Coast.

Northwest Oregon Special Permit Goose Area: Includes Sauvie Island Wildlife Area, only in designated areas but excluding North Unit and Columbia River Beaches, private lands of Sauvie Island, and including Scappoose Flat and Deer Island, lower Columbia River Area, Ankeny National Wildlife Refuge, private lands adjacent to William L. Finley National Wildlife Refuge, and private lands adjacent to Baskett Slough National Wildlife Refuge.

Lower Columbia River Early-Season Canada Goose Zone: Those portions of Clatsop, Columbia, and Multnomah Counties within the following boundary: beginning at Portland, Oregon, at the south end of the Interstate 5 Bridge; south on I–5 to Highway 30; west on Highway 30 to the town of Svensen; south from Svensen to Youngs River Falls; due west from Youngs River Falls to the Pacific Ocean coastline; north along the coastline to a point where Clatsop Spit and the South Jetty meet; due north to the Oregon-Washington border; east and south along the Oregon-Washington border to the I–5 Bridge; south on the I–5 Bridge to the point of beginning.

Northwest Oregon Early-Season Canada Goose Zone: All of Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties; except for the Lower Columbia River Zone.

Eastern Zone: All counties east of the summit of the Cascades, including all of Klamath and Hood River Counties.

Columbia Basin Goose Area: Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco Counties.

Harney, Klamath, Lake and Malheur Counties Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Early-Season Canada Goose Area: Cache County.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Goose Area: Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Counties and east of Satus Pass (U.S. 97) in Klickitat County.

West Zone: All areas west of the East Zone.

Lower Columbia River Area: Clark, Cowlitz, Pacific and Wahkiakum Counties.

Skagit Area: Island, Skagit, Snohomish, and Whatcom Counties.

Lower Columbia River Early-Season Canada Goose Zone: Beginning at the Washington-Oregon border on the I–5 Bridge near Vancouver, Washington; north on I–5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Wyoming (Pacific Flyway Portion): See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Brown, Campbell, Clark, Codington, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Marshall, McPherson, Potter, Roberts, Spink, and Walworth.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Hill, Liberty, Pondera, Teton, and Toole Counties.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah:

Open Area: Statewide, except Cache, Daggett, Rich and Uintah Counties.

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federal register

Tuesday
September 27, 1994

Part IV

The President

Proclamation 6724—Gold Star Mother's Day, 1994

Federal Register
Vol. 59, No. 186
Tuesday, September 27, 1994

Presidential Documents

Title 3—

The President

Proclamation 6724 of September 23, 1994

Gold Star Mother's Day, 1994

By the President of the United States of America

A Proclamation

Americans owe a lasting debt of gratitude to those who pledged their lives to secure for us the blessings of liberty. We, therefore, set aside certain days during the year to honor their distinguished service—Veterans Day, for all who have served in our Armed Forces, and Memorial Day, for those who lost their lives in that service. But perhaps the greatest sacrifice of all in protecting our way of life was made by another group—women whose sons and daughters lost their lives in service to our country. These are the Gold Star Mothers of America, and they have earned a special place in our hearts.

These women once experienced the anxiety of watching their sons or daughters go off to war, not knowing whether they would return. These mothers felt the anguish of waiting for word of their loved ones. It is a drama that has been played out throughout our Nation's history. Sadly, in each generation, there are mothers who have been called on to accept the terrible truth that their son or daughter will not return. There can be no doubt that these brave women—our courageous Gold Star Mothers—are due our utmost respect.

This year, the 50th anniversary of the D-Day invasion at Normandy, we remember especially those whose sons and daughters served so valiantly during World War II. Half a century later, we recall the courage, spirit, and determination of those who went ashore to fight against tyranny. We celebrate D-Day because there, on the windswept beaches of Normandy, the first beach-head for freedom was won in the most epic of all American conflicts.

Inscribed in the chapel in the American cemetery in Normandy are the proud words:

> "These endured all and gave all that justice among nations might prevail, and that mankind might enjoy freedom and inherit peace."

At the same time, our Gold Star Mothers endured all—and their deeply felt personal loss did not end in one day. Today, as we enjoy the peace and security our Nation has achieved through the sacrifices of American citizens, Gold Star Mothers can take solace in knowing that their sons and daughters left all humanity a legacy of invaluable meaning.

In respect and recognition of the sacrifices our Gold Star Mothers have made, the Congress, by Senate Joint Resolution 115 on June 23, 1936 (49 Stat. 1895), has designated the last Sunday in September as "Gold Star Mother's Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 25, 1994, as Gold Star Mother's Day. I invite the American people to join with me in a fitting salute to our Gold Star Mothers. I also call upon all government officials to display the United States flag on government buildings on this solemn day. I additionally urge the American people to display the flag and to hold appropriate

meetings in their homes, places of worship, or other suitable places, as public expression of the sympathy and the respect that our Nation holds for its Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of September, 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 nineteenth.

William J. Clinton

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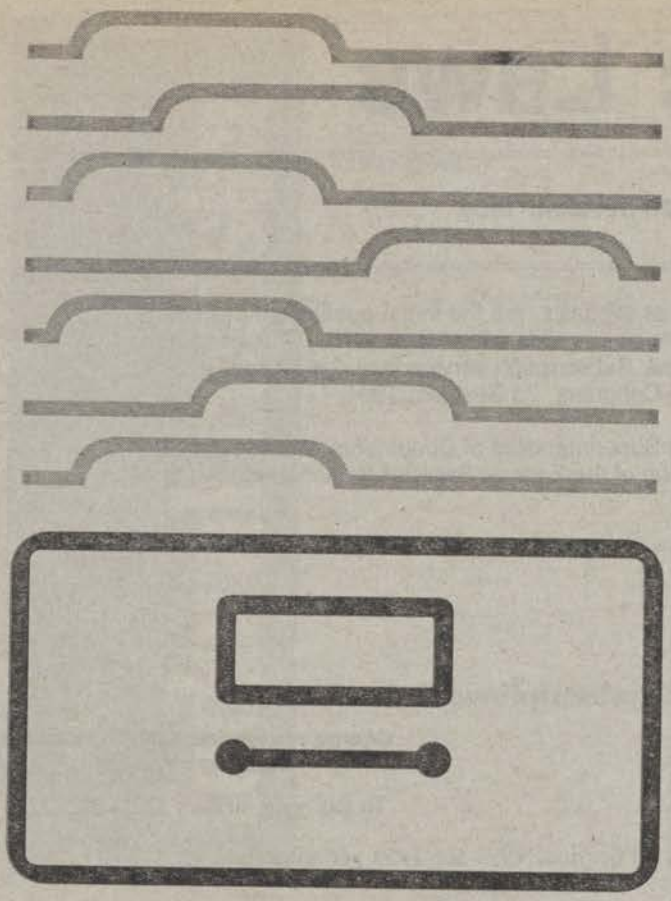

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in the Code of Federal Regulations (CFR)

Revised January 1, 1994

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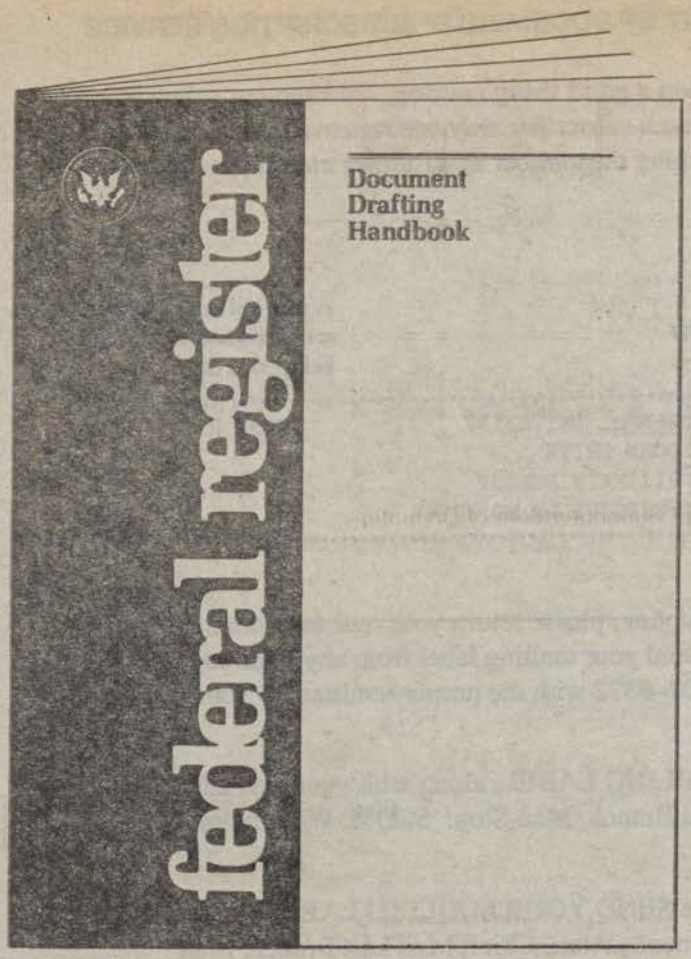

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